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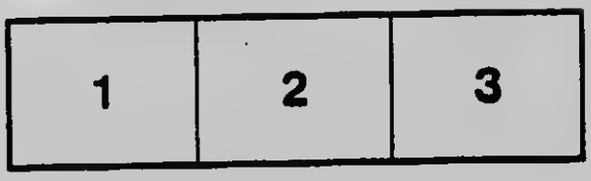

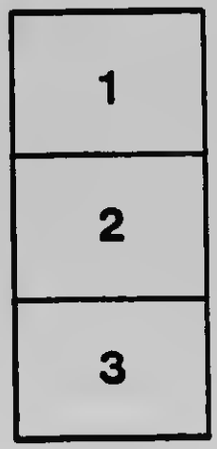

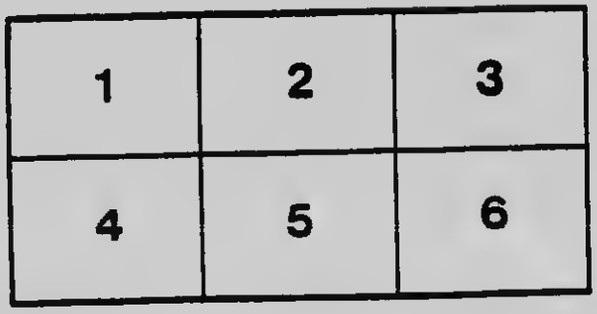

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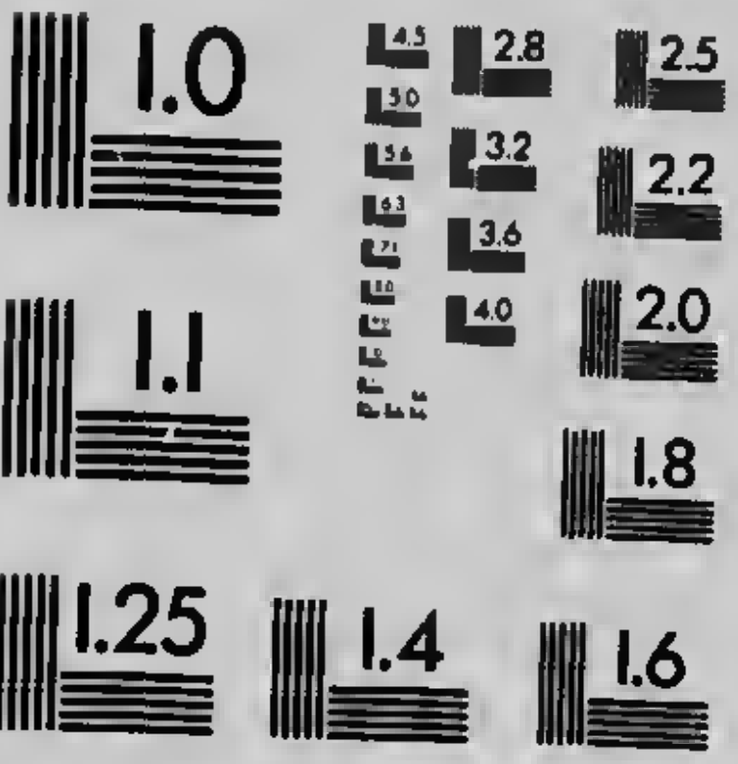

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THE

ON THE
INTERPRETATION OF STATUTES

BY THE LATE

SIR PETER BENSON MAXWELL,

CHIEF JUSTICE OF THE STRAITS SETTLEMENTS,
AND LEGAL ADMINISTRATOR IN EGYPT, 1883-4.

"Benignius leges interpretandæ sunt, quo voluntas earum conservetur."
Dig. 1, 3, 18

SIXTH EDITION

BY

W. WYATT-PAINE,

OF THE INNER TEMPLE AND NORTH EASTERN CIRCUIT, BARRISTER-AT-LAW,
AUTHOR OF "A COMMENTARY ON THE LAW OF BAILMENTS," ETC., ETC.
EDITOR OF THE 4TH EDITION OF 'MACQUEEN'S LAW OF HUSBAND AND WIFE,"
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4TH, 5TH, AND 6TH EDITIONS OF "CLERK AND LINDSELL ON TORTS."

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PREFACE TO THE SIXTH EDITION.

THE present edition is an attempt to make one of the greatest authorities on the Interpretation of Statutes worthy of its classic reputation. To do this something more was needed than the mere addition of modern cases. It was essential that the Statutes themselves should be considered in order that the precise legal signification of the words employed therein might be ascertained. For though very many of the Acts of Parliament discussed by the learned author have either fallen into temporary or complete disuse, or have been expunged from the Statute Book, the principles of Interpretation, slowly crystallised by generations of eminent jurists, still constitute the canons by which the construction and sense of Acts of Parliament are to be determined, and form no mean part of the inheritance bequeathed to this generation by the great lawyers of the past.

In the present edition, the Editor has endeavoured to retain the original style of the work in spite of the fact that very many emendations in the text were essential. Every living system of jurisprudence is necessarily in a constant state of

flux; the needs of each generation are not those of that which either precedes or follows it. Consequently in preparing a new edition of a work like Maxwell on the Interpretation of Statutes two essentials seemed necessary—first, to retain the style of the original author, and second, to make the work of real utility to the practitioner of the present day.

How far the Editor has succeeded in combining these desiderata it is for the reader of the present edition to determine, although no trouble has been spared in the attempt to make the book worthy of its high reputation. Valuable assistance in the preparation of the Index, Table of Statutes and Table of Cases has been given to the Editor by his friend, Mr. J. R. MacIlraith, of the Middle Temple and Northern Circuit, barrister-at-law.

W. WYATT-PAINE.

INNER TEMPLE,
1920.

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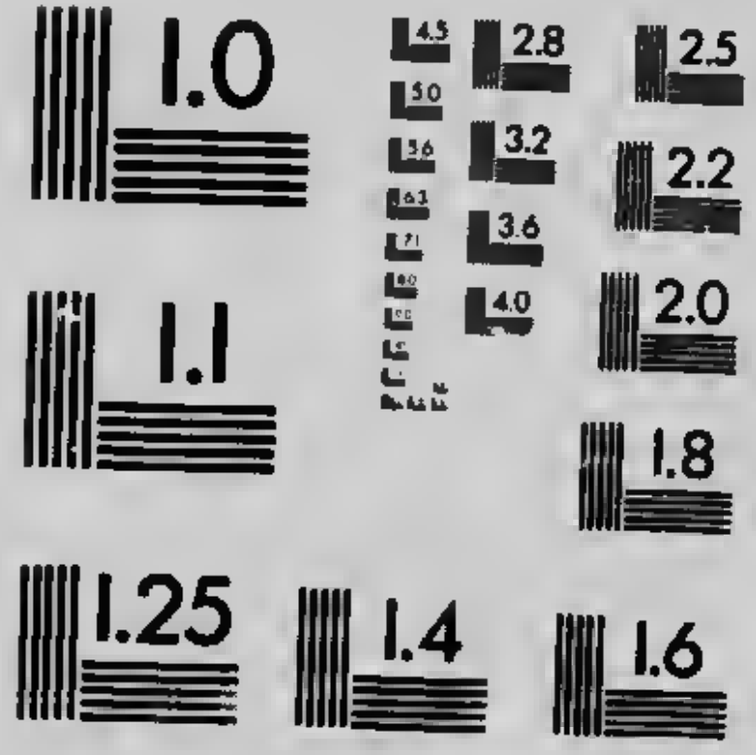

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ON THE

INTERPRETATION OF STATUTES.

CHAPTER I.

SECTION I.—INTRODUCTORY.

A STATUTE is the will of the Legislature; and the fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded "according to the intent of them that made it" (*a*). And if the words of the statute are in themselves precise and unambiguous no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the Legislature (*b*). The object of all interpretation of a statute is to determine what intention is conveyed, either expressly or impliedly, by the language used, so far as is

(*a*) 4 Inst. 330; *Sussex Peerage* (1844), 11 Cl. & F. 143.

(*b*) *Income Tax Commissioners* v. *Pemsel*, [1891] A. C. 534, 543; 61 L. J. Q. B. 265; *River Wear Commissioners* v. *Adamson* (1877), 2 App. Cas. 743, at p. 778; 47 L. J. Q. B. 193; see also *Grdyce* v. *Bridges* (1847), 1 H. L. C. 1, p. 4; *Glass* v. *Patterson*, [1902] 2 Ir. R. 660, at p. 667.

I.S.

necessary for determining whether the particular case or state of facts presented to the interpreter falls within it. When the intention is expressed, the task is one of verbal construction only; but when the statute expresses no intention on a question to which it gives rise, and yet some intention must necessarily be imputed to the Legislature regarding it, the interpreter has to determine it by inference grounded on certain legal principles. The Act (*a*), for instance, which imposes a penalty, recoverable summarily, on every tradesman, labourer and other person who carries on his worldly calling on a Sunday, would give rise to a question of the former kind, when it had to be determined whether the class of persons to which the accused belonged was comprised in the prohibition. But two other questions arise out of the prohibition: is the offender indictable as well as punishable summarily? and, is the validity of a contract entered into in contravention of the Act affected by it? On these corollaries or necessary inferences from its enactment, the Legislature, though silent, must nevertheless be held to have entertained some intention, and the interpreter is bound to determine what it was.

And in such case the interpretation must be that which best accords with the public benefit,

(*a*) Sunday Observance Act, 1677 (29 Car., 11 Ch. 7).

thus where a statute imposes a penalty without expressly stating to whom it is to be paid such penalty by implioation goes to the Crown (*a*).

The subject of the interpretation of a statute seems thus to fall under two general heads: What are the principles which govern the construction of the language of an Aot of Parliament? and next, What are those which guide the interpreter in gathering the intention on those inoidental points on whioh the Legislature is necessarily presumed to have entertained an opinion, but on which it has not expressed any?

SECTION II.—LITERAL CONSTRUCTION.

The first and most elementary rule of construction is, that it is to be assumed that the words and phrases of technical legislation are used in their technical meaning if they have acquired one, and, otherwise, in their ordinary meaning; and, secondly, that the phrases and sentences are to be construed according to the rules of grammar. From these presumptions it is not allowable to depart, where the language admits of no other meaning; nor, where it is susceptible of another meaning, unless adequate grounds are found, either in the history or cause of the enactment or in the context or in the consequences which

(*a*) *Bradlaugh* v. *Clarke* (1883). 52 L. J. Q. B. 505 (H. L.).

would result from the literal interpretation, for concluding that that interpretation does not give the real intention of the Legislature (*a*). If there is nothing to modify, nothing to alter, nothing to qualify, the language which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences (*b*).

The great fundamental principle is:—

> "In construing Wills, and indeed, Statutes and all Written Instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to absurdity, or some repugnancy or inconsistency with the rest of the instrument; in which case the grammatical and ordinary sense of the words may be modified so as to avoid that

(*a*) Bac. Ab. Statute (I.) 2; *Becke* v. *Smith* (1836), 2 M. & W. 191, p. 195; 46 R. R. 567; *Cox* v. *Hakes* (1890), 15 App. Cas. 506; 60 L. J. Q. B. 89; *McDougal* v. *Paterson*, 21 L. J. C. P. 27; *Mallan* v. *May* (1844), 13 M. & W. 511; 67 R. R. 707; *per* Maule J., *Jeffery* v. *Boosey* (1854), 4 H. L. Cas. 815; *R.* v. *Millis*, 59 R. R. 134, *per* Lord Brougham; *A.-G.* v. *Westminster Chambers Assoc.* (1876), 45 L. J Ex. 886, *per* Jessel M.R.; *Cull* v. *Austin* (1872), 41 L. J. C. P. 153; *R.* v. *Castro* (1874), 43 L. J. Q. B. 105; *Bradlaugh* v. *Clarke* (1883), 52 L. J. Q. B. 505, *per* Lord Fitzgerald; *Hornsey* v. *Monarch Bldg. Socy.*, 24 Q. B. D. 5, *per* Lord Esher M.R.; *Travis* v. *Uttley* (1893), 63 L. J. M. C. 48.

(*b*) *St. John, Hampstead* v. *Cotton* (1886), 12 App. Cas. 6, *per* Lord Halshury L.C.

absurdity, repugnancy, or inconsistency, but no further" (*a*).

In repeating this canon in *Abbott* v. *Middleton* (*b*), Lord Wensleydale said: "This rule was in substance laid down by Mr. Justice Burton in *Warburton* v. *Loveland* (*c*). It had previously been described by Lord Ellenborough, in *Doe* v. *Jessep* (*d*), as 'a rule of common sense as strong as can be.' It had been stated by Lord Cranworth (when Chancellor) as 'a Cardinal Rule,' from which, if we departed, we should launch into a sea of difficulties not easy to fathom (*e*); and as the **Golden Rule** when applied to Acts of Parliament, by Jervis C.J., in *Mattison* v. *Hart*" (*f*), who there states "we ought . . . to give to an Act of Parliament the plain, fair, literal meaning of its words, where we do not see from its scope that such meaning would be inconsistent, or would lead to manifold injustice."

When the language is not only plain but admits

(*a*) *Per* Lord Wensleydale, *Grey* v. *Pearson*, 6 H. L. Cas. 106; 26 L. J. Ch. 481; see also *Vestry St. John's, Hampstead* v. *Cotton* (1886), 12 App. Cas., at p. 6, and note especially *Rhodes* v. *Rhodes* (1882), 7 App. Cas. (P. C.) 192, at p. 205.

(*b*) (1858), 7 H. L. Cas. 114, 115; 28 L. J. Ch. 114.

(*c*) 1 Huds. & Bro. 648.

(*d*) 12 East, 293.

(*e*) *Gundry* v. *Pinniger* (1852), 1 De G. M. & G. 502; 21 L. J. Ch. 405.

(*f*) (1854), 23 L. J. C. P. 108, at p. 114; 14 C. B. 385.

of but one meaning, the task of interpretation can hardly be said to arise. It is not allowable, says Vattel, to interpret what has no need of interpretation (*a*). *Absoluta sententia expositore non indiget* (*b*). Such language best declares, without more, the intention of the lawgiver, and is decisive of it (*c*). The Legislature must be intended to mean what it has plainly expressed, and consequently there is no room for construction (*d*). It matters not, in such a case, what the consequences may be. Where, by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the Legislature, it must be enforced, even though it be absurd or mischievous (*e*).

(*a*) Law of N., b. 2, s. 263.

(*b*) 2 Inst. 533.

(*c*) *Per* Buller J., *R.* v. *Hodnett*, 1 T. R. 96; *Sussex Peerage* (1844), 11 Cl. & F. 143; *U. S.* v. *Hartwell*, 6 Wallace, 395; *U. S.* v. *Wiltberger*, 5 Wheat. 95.

(*d*) *Per* Parke J., *R.* v. *Bunbury*, 1 A. & E. 142; *per* Cur., *Fisher* v. *Blight*, 2 Cranch, 399.

(*e*) *Per* Lord Esher M.R., *R.* v. *City of London Court*, [1892] 1 Q. B. 273, dissenting from the rule laid down by Jessel M.R. in *The Alina*, 5 Ex. D. 227; *per* Lord Herschel, *Mersey Docks &c. Board* v. *Turner*, [1893] A. C., at p. 477; *per* Lord Campbell, *R.* v. *Skeen*, 28 L. J. M. C. 94; *per* Jervis C.J., *Abley* v. *Dale*, 21 L. J. C. P. 104; *per* Pollock C.B., *Miller* v. *Salomons*, 21 L. J. Ex. 197; *per* Lord Brougham, *British Farmers &c. Co., In re* (1878), 48 L. J. Ch. 56; affirmed *sub. nom. Burkinshaw* v. *Nicolls* (1878), 3 A. C. 1004; *Crawford* v. *Spooner*, 6 Moo. P. C. 9. See *Sneed* v. *Commonwealth*, 6 Dana, 339 (Kentucky).

The underlying principle being that the meaning and intention of a statute must be collected from the plain and unambiguous expressions used therein rather than from any notions which may be entertained by the Court as to what is just or expedient (*a*). If the words go beyond what was probably the intention, effect must nevertheless be given to them (*b*). They cannot be construed, contrary to their meaning, as embracing or excluding cases merely because no good reason appears why they should be excluded or embraced (*c*). However unjust, arbitrary or inconvenient the meaning conveyed may be, it must receive its full effect (*d*). When once the meaning is plain, it is not the province of a Court to scan its wisdom or its policy (*e*). Its duty is not to

(*a*) *Gwynne* v. *Burnell* (1839), 7 Cl. & F. 572; Coleridge J., at p. 606; 51 R. R. 43.

(*b*) *Notley* v. *Buck* (1828), 8 B. & C. 164.

(*c*) *Pike* v. *Hoare* (1763), 2 Eden, 184, *per* Lord Northington; but see *Compunhia de Mocambique* v. *British South Africa Co.*, [1892] 2 Q. B. 358, C. A.; and *per* Cur., *Denn* v. *Reid* (1836), 10 Peters, 524; an American case.

(*d*) *Ornamental Woodwork Co.* v. *Brown*, 2 H. & C. 63, *per* Martin B. and Bramwell B.; *Mirehouse* v. *Rennell*, 1 Cl. & F. 546, *per* Parke J.; *R.* v. *Poor Law Commissioners*, 6 A. & E. 7; *Biffin* v. *Yorke*, 63 R. R. 337, *per* Erskine J.; *May* v. *G. W. R. Co.*, 41 L. J. Q. B. 104.

(*e*) *Per* Lord Ellenborough, *R.* v. *Watson*, 7 East. 214, and *R.* v. *Staffordshire*, 12 East, 572; *R.* v. *Hodnett*, 1 T. R. 100, *per* Lord Mansfield; *R.* v. *Worcestershire*, 3 P. & D. 465, *per* Lord

make the law reasonable, but to expound it as it stands, according to the real sense of the words (*a*).

Apparently, however, the statutory crystallisation of an existing common law liability will not, in the absence of express words to that effect, create a new and extended application of that obligation (*b*). And where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation it is not to be held that such earlier and special legislation is either indirectly repealed, altered or derogated from merely by force of such general words, without any indication of a particular intention to do so (*c*). Moreover, although the effect of repealing a statute is to obliterate it as completely as if it had never been passed this rule must be taken with the qualification that it does not deprive persons of vested rights acquired

Denman; *per* Bramwell B., *Archer* v. *James*, 2 B. & S. 61; *Miller* v. *Salomons*, 21 L. J. Ex. 197, *per* Pollock C.B.; *Exp. Attwater*, 5 Ch. D. 30, *per* James L.J. Followed in Payne *Exp. Cross, In re* (1879), 11 Ch. D. 539, note, p. 552.

(*a*) *Biffin* v. *Yorke*, 63 R. R. 337, *per* Cresswell J. See ex. gr. *Plasterers Co.* v. *Parish Clerks Co.*, 20 L. J. Ex. 362; *Dennis* v. *Tovell* (1872), 42 L. J. M. C. 33; "*The Merle*" (1874), 31 L. T. 447.

(*b*) *River Wear Commissioners* v. *Adamson* (1877), 2 A. C. 743.

(*c*) *Seward* v. *Vera Cruz* (1884), 10 A. C. 59, at p. 68.

by them in actions duly determined under the repealed law (*a*).

But although as a general principle retrospective operation ought not to be given to a statute unless the intention of the Legislature that it should be so construed is expressed in plain and unambiguous language (*b*), it seems where vested rights are divested, and acts which were perfectly lawful when done are subsequently made unlawful by a statute, those who have to interpret the law must give effect to it (*c*). And they are bound to do this even when they suspect (on conjectural grounds only) that the language does not faithfully express what was the real intention of the Legislature when it passed the Act, or would have been its intention if the specific case had been proposed to it. "It may have been an oversight in the framers of the Act," says Parke B., in one case, "but we must construe it according to its plain and obvious meaning" (*d*). "Our decision," says

(*a*) *Lemm* v. *Mitchell* (1912), 81 L.J. P. C. 173; [1912] A. C. 400 P. C. *Comp. Rex* v. *Southampton Income Tax Commissioners; Singer, Exp.* (1916), 86 L. J. K. B. 66, C. A.; [1917] 1 K. B. 259.

(*b*) *Young* v. *Adams*, [1898] A. C. 469, p. 476 (P. C.); *Bourk* v. *Nutt*, [1894] 1 Q. B. 725, C. A.

(*c*) *Midland R. Co.* v. *Pye*, 10 C. B. N. S. 179, *per* Erle C.J.

(*d*) *Nixon* v. *Phillips* (1852), 21 L. J. Ex. 88.

Lord Tenterden, in another (*a*), "may, in this partioular oase operate to defeat the objeot of the Aot; but it is better to abide by this oonsequenoe than to put upon it a oonstruotion not warranted by the words of the Aot, in order to give effeot to what we may suppose to have been the intention of the Legislature." "I oannot doubt," says Lord Campbell, in another (*b*), "what the intention of the Legislature was; but that intention has not been carried into effeot by the language used. . . . It is far better that we should abide by the words of a statute, than seek to reform it aooording to the supposed intention." "The Aot," says Lord Abinger, in another (*c*), "has praotioally had a very pernioious effeot not at all oontemplated; but we oannot oonstrue it aooording to that result."

In short, when the words admit of but one meaning, a Court is not at liberty to speoulate on the intention of the Legislature, and to oonstrue them aocording to its own notions of what ought to have been enaoted (*d*). Nothing oould be more dangerous than to make suoh oonsiderations the

(*a*) *R.* v. *Barham*, 8 B. & C. 99; see also *per* Bayley J., *R.* v. *Stoke Damerel*, 7 B. & C. 569.

(*b*) *Coe* v. *Lawrence*, 22 L. J. Q. B. 140.

(*c*) *A.-G.* v. *Lockwood*, 9 M. & W. 395; *Lockwood* v. *A.-G.*, 10 M. & W. 464. *Per* Lord Denman, *R.* v. *Mabe* (1835), 3 A. & E. 531.

(*d*) *Per* Cur., *York & N. Midland Ry. Co.* v. *R.*, 22 L. J. Q. B. 225, and *comp. The Queen* v. *French* (1879), 4 Q. B. D. 507.

ground for construing an enactment that is unambiguous in itself. To depart from the meaning on account of such views is, in truth, not to construe the Act, but to alter it (*a*). But the business of the interpreter is not to improve the statute; it is, to expound it. The question for him is not what the Legislature meant, but what its language means (*b*); *i.e.* what the Act has said that it meant (*c*). To give a construction contrary to, or different from, that which the words import or can possibly import, is not to interpret law, but to make it; and judges are to remember that their office is *jus dicere*, not *jus dare* (*d*).

Though this rule appears so obvious, it is so frequently appealed to that it is advisable to illustrate it by some examples to show its general scope and the limits of its application. Thus, for instance, it was repeatedly decided at law (before the Judicature Act, 1873, s. 24) that the statutes of limitation which enacted that actions should not be brought after the lapse of certain periods

(*a*) *Per* Lord Brougham, *Gwynne* v. *Burnell*, 51 R. R. 42; *per* Lord Westbury, *Exp. St. Sepulchre's* (1863), 33 L. J. Ch. 372; *per* Grove J., *Allkins* v. *Jupe*, 2 C. P. D. 375.

(*b*) Wigram, Interp. Wills, 5th ed., 1914, p. 7; *per* Cockburn C.J., *Palmer* v. *Thatcher*, 3 Q. B. D. 353; *per* Lord Coleridge, *Coxhead* v. *Mullis*, 3 C. P. D. 439.

(*c*) *Per* Mathew J., *Rothschild* v. *Inl. Rev.*, [1894] 2 Q. B. 145.

(*d*) Lord Bacon, Essay on Judicature. *Per* Pollock C. B., *Rodrigues* v. *Melhuish*, 10 Ex. 116.

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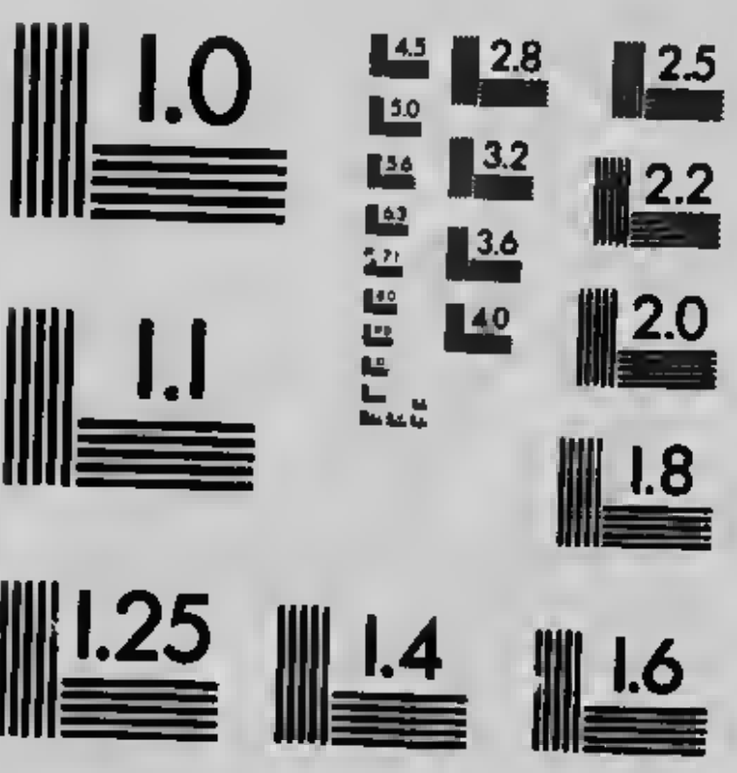

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from the time when the cause of action accrued, barred actions brought after the time so limited, though the cause of action was not discovered or, practically, discoverable by the injured party at the date of accrual, or was even fraudulently concealed from the wrong-doer until the time limited by the Act had expired (*a*). The hardship of such decisions was obvious, but the language admitted of no other construction. So, if an Act provides that convictions shall be made within a certain period after the commission of the offenoe, a conviction made after the lapse of that period would be bad, although the prosecution had been begun within the time limited, and the case had been adjourned to a day beyond it, with the consent, or even at the instance, of the defendant (*b*). So,

(*a*) *Short* v. *McCarthy*, 22 R. R. 503; *Brown* v. *Howard*, 2 Brod. & B. 73; *Colvin* v. *Buckle*, 58 R. R. 834; *Imperial Gas Co.* v. *London Gas Co.*, 23 L. J. Ex. 303; *Bonomi* v. *Backhouse* (1856), 27 L. J. Q. B. 378; *Smith* v. *Fox*, 77 R. R. 152; *Violett* v. *Sympson*, 27 L. J. Q. B. 138; *Hunter* v. *Gibbons*, 26 L. J. Ex. 1; *Darley Main Colliery Co.* v. *Mitchell* (1885, 1886), 55 L. J. Q. B. 529. As to concealed fraud, see *Bulli Coal Co.* v. *Osborne* (1899), 68 L. J. P. C. 49; *Oelkers* v. *Ellis*, [1914] 2 K. B. 139; *Gibbs* v. *Guild*, 51 L. J. Q. B. 313; *Willis* v. *Earl Howe*, 62 L. J. Ch. 690; and *Thorne* v. *Heard*, 64 L. J. Ch. 652. See also *Kirk* v. *Todd*, 52 L. J. Ch. 224. As to the effect upon the contracts of an alien enemy, see *Halsey* v. *Lowenfeld*, [1916] 2 K. B. 707, C. A. *Comp.* Chap. IX, Sec. II.

(*b*) *R.* v. *Bellamy*, 1 B. & C. 500; *R.* v. *Tolley*, 3 East, 467; *Pellew* v. *Wonford*, 9 B. & C. 134; *Farrell* v. *Tomlinson*, 5 Bro.

when an Act gave to persons aggrieved by an order of justices a certain period, after the making of the order, for appealing to the Quarter Sessions, it has been held that the time ran from the day on which the order was verbally pronounced, not from the day of its service on the aggrieved person (*a*). Even when the order was made behind his back, as in the case of stopping up a road, the time ran from the same date, and not from the day on which he got notice of it (*b*), notwithstanding the manifest hardship and injustice resulting from such an enactment (*c*).

And as a general proposition of law the rule laid down by Lord Halsbury in *Leader* v. *Duffey* for the construction of wills applies *à fortiori* to the construction of statutes, consequently "whatever the instrument, it must receive a construction according to the plain meaning of the words and sentences therein contained . . . and it is arguing in a vicious circle to begin by assuming an intention apart from the language of the instrument itself,

P. C. 438; *Adam* v. *Bristol*, 2 A. & E. 389; *R.* v. *Mainwaring*, 27 L. J. M. C. 278.

(*a*) *R.* v. *Derbyshire*, 7 Q. B. 193; *R.* v. *Huntingdonshire* (1850), 19 L. J. M. C. 127; *Exp. Johnson*, 32 L. J. M. C. 193; *R.* v. *Barnet*, 45 L. J. M. C. 105; *Nutter* v. *Moorhouse* (1904), 68 J. P. 134. *Comp. R.* v. *Shrewsbury*, 22 L. J. M. C. 98.

(*b*) *R.* v. *Staffordshire*, 3 East, 151.

(*c*) *Per* Lord Ellenborough, Id. 153.

and, having made that fallacious assumption, to bend the language in favour of the assumption so made" (*a*).

Where an Act ordained that no converted Papist should be deemed a Protestant unless he received the sacrament, took the abjuration oath, and filed certain certificates within 6 months from his declaring himself a Protestant, a compliance one day after that period was held too late (*b*). The Welsh Sunday Closing Act, 1881, being fixed to come into operation on the day "next appointed" for the annual licensing meeting, was by a literal construction postponed for a year later than was, in all probability, intended; but the Court refused to avert this result by any departure from the primary meaning of the words (*c*). The Wills Act, 1837 (*d*), which requires, s. 9, a testator to sign his will "in the presence" of two witnesses, has been construed as meaning the actual visual presence (*e*). And prior to the passing

(*a*) *Leader* v. *Duffey* (1888), 13 A. C. 294, at p. 301. See also *Scale* v. *Rawlins*, [1892] A. C. 342.

(*b*) *Farrell* v. *Tomlinson*, 5 Bro. P. C. 438. See also *Mohammud* v. *Bareilly*, L. R. 1 Ind. App. 167.

(*c*) *Richards* v. *McBride* (1881), 51 L. J. M. C. 15.

(*d*) 7 Will. IV., 1 Vict. c. 26.

(*e*) 1 Vict. c. 26, s. 9. *Brown* v. *Skirrow*, 71 L. J. P. D. & A. 19. As to the effect of foreign domicile on s. 9, see *Simpson, In re*, [1916] 1 Ch. 502. See also *Wilkinson's Settlement, In re*, [1917] 1 Ch. 620. As to nuncupative wills in case of

of 38 & 39 Vict. c. 86, s. 17, which repealed 5 Eliz. c. 4, s. 25, it was held that if an Act of Parliament provided that no deed of apprenticeship should be valid unless signed and sealed by justices of the peace, the omission of the seal would be fatal to the validity of the instrument (*a*). So, if an Act authorises orders of commitment "in open Court," an order not in the Court, but signed in another part of the building also open to the public, would be invalid (*b*), and generally it is provided by s. 21 (1) of the Summary Jurisdiction Act, 1879, that any Act (other than a purely ministerial act, such as the signing of summons, &c.) must be heard, tried, determined or adjudged in open Court. The Bills of Sale Act, 1878, requiring an affidavit of the due attestation as well as of the execution of the deed, the omission in the former to mention the attestation was held fatal, although the attestation clause of the deed asserted it (*c*). It would not be open to the interpreter, in

sailors or soldiers killed in action, see *John Wardrop, in the estate of*, [1917] P. 54.

(*a*) *R.* v. *Stoke Damerel*, 7 B. & C. 563. See also *R.* v. *Mellingham*, 2 Bott. 363; *R.* v. *Margram*, 5 T. R. 153; *R.* v. *St. Peter's*, 1 B. & Ad. 916; *R.* v. *St. Paul's*, 10 B. & C. 12; *R.* v. *Staffordshire*, 23 L. J. M. C. 17.

(*b*) Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 5; *Kenyon* v. *Eastwood*, 57 L. J. Q. B. 455.

(*c*) *Ford* v. *Kettle*, 51 L. J. Q. B. 558. The necessity for attestation by a solicitor is avoided by s. 10 of 45 & 46 Vict.

such cases, to shut his eyes to the formalities required, because he deemed them unimportant, or because a hardship or failure of justice might result, in the particular case before him, from a neglect of any of them.

An Act which enacted that a pilot was to deliver up his licence to the pilotage authorities "whenever required to do so," would call for implicit obedience to the letter, however arbitrarily the power which it conferred might be misused, and although the withdrawal of the licence would in effect amount to a dismissal of the pilot from his employment (*a*). The Prescription Act, 1832, making easements "indefeasible" which were enjoyed for a number of years "next before some suit or action wherein the claim or matter" was brought in question, was held to leave the title to the easements inchoate only, no matter how long they had been uninterruptedly enjoyed, until a

c. 43. Attestations may now be made "by one or more credible witness or witnesses not being a party or parties thereto." As to the Act of 1882 (45 & 46 Vict. c. 43), s. 9; *Thomas* v. *Kelly* (1888), 13 App. Cas., *per* Lord Halsbury, p. 511. See also *Parsons* v. *Brand*, 59 L. J. Q. B. 189; *Comp. Bird* v. *Davey*, 60 L. J. Q. B. 8. See other illustrations in *Re New Eberhardt Co.*, 59 L. J. Ch. 73; *Sims* v. *Trollope* (1897), 66 L. J. Q. B. 11; *Lister* v. *Hickling*, [1916] 2 K. B. 302.

(*a*) *Henry* v. *Newcastle Trinity House* (1858), 27 L. J. M. C. 57. Sec. 20 (2) of 2 & 3 Geo. V. c. 31, limits the power of the Pilotage Authority in this matter to certain specified cases.

suit or action was brought, when the title ripened into a complete right (*a*). Prior to the passing of 45 & 46 Vict. c. 20, s. 3 (which altered the law), the earlier Act which provided that if the occupier assessed to a rate ceased to occupy before the rate was wholly discharged, the overseers should enter his successor in the rate book, and the outgoer should not be liable for more than his due proportion, did not relieve such outgoer from the rest of the rate, when the premises remained unoccupied after his removal (*b*).

An enactment that a magistrate might, on the application of the mother of a bastard, summon its putative father for its maintenance, within 12 months from its birth, would not authorise a second magistrate to issue a second summons after the expiration of the 12 months, merely because the first summons could not be served by reason of the defendant having absented himself, and could not be renewed or continued, because

(*a*) 2 & 3 Will. IV. c. 71; *Colls* v. *Home & Colonial Stores*, [1904] A. C. 179, Lord Macnaghten at pp. 189, 190; *Wright* v. *Williams* (1836), 46 R. R. 265; *Cooper* v. *Hubbuck*, 31 L. J. C. P. 323; *Hyman* v. *Van Den Bergh*, 77 L. J. Ch. 154. See also *Levet* v. *Gas Light & Coke Co.* (1918), 35 T. L. R. 47.

(*b*) 32 & 33 Vict. c. 41, s. 16; *St. Werburgh* v. *Hutchinson*, 49 L. J. M. C. 23. See, as other illustrations, *Marsden* v. *Saville Foundry*, 3 Ex. D. 203; *Simpkin* v. *Birmingham*, L. R. 7 Q. B. 482; *R.* v. *Liverpool Justices*, 52 L. J. M. C. 114.

the justice who had issued it had died (*a*). And as the same enactment required the justices to hear the evidence of the mother at the hearing, and such other evidence as she might produce, and, if her evidence was corroborated, to adjudge the man to be the putative father, it was held that no order could be made against the putative father when the mother could not be examined, having died after the summons and before the hearing (*b*).

Where an Act (*c*) prohibits the removal of a conviction by Certiorari to the Supreme Court, that writ cannot be issued (the justices having jurisdiction) even for the purpose of bringing up a case stated by justices for the opinion of the Court; although the object of such a prohibition is to prevent convictions being quashed for technical defects, but not to exclude the jurisdiction of the Supreme Court, when consulted on a substantial question which the justices themselves have raised (*d*). An Act which imposed a penalty on any person who piloted a ship in the Thames before he was examined and admitted a Trinity House pilot, was held not to reach one who had been expelled from the Society after examination

(*a*) 7 & 8 Vict. c. 101; *R.* v. *Pickford* (1861), 30 L. J. M. C. 133.

(*b*) *R.* v. *Armitage* (1872), 42 L. J. M. C. 15.

(*c*) 12 & 13 Vict. c. 92, s. 26.

(*d*) *R.* v. *Chantrell* (1875), 44 L. J. M. C. 94.

and admission (*a*). The Indian Insolvent Act, 11 & 12 Vict. c. 21, which required the insolvent to file a schedule of all his creditors, and provided that his discharge should be a bar to all demands, like a certificate under the bankruptcy laws in England, was held to bar a debt which had not been included in the schedule, and the creditor had consequently been deprived by the neglect or design of his debtor of the opportunity of opposing the discharge (*b*). So, where an Act gave an appeal to the next session, and directed that "no appeal should be proceeded upon" if it was found by the session that no reasonable notice had been given, but should be adjourned to the next session, the appellant was enabled to secure delay by omitting to give any notice, so that the session could not find that "reasonable notice" had been given (*c*). In these two cases the construction worked an injustice and enabled a person to take

(*a*) *Pierce* v. *Hopper* (1720), 1 Stra. 249. Sec. 48 (*d*) of 2 & 3 Geo. V. c. 31, subjects a pilot who acts during suspension to a penalty not exceeding £100.

(*b*) *Exp. Parbury* (1861), 30 L. J. Ch. 518; *Comp. Messon* v. *Alcard*, 22 L. J. Ex. 45.

(*c*) 9 Geo. I. c. 7; *R.* v. *Bucks*, 3 East, 342; *R.* v. *Staffordshire*, 8 R. R. 668. The better law, however, at the present day appears to be that an appellant cannot by any conduct on his part make impracticable the sessions which otherwise would be the next practicable sessions; *R.* v. *Surrey Justices* (1880), 6 Q. B. D. 100, at p. 107, and see *R.* v. *Sussex*, 34 L. J. M. C. 69.

advantage of his own wrong or neglect (*a*); but the language of the Legislature admitted of no other construction.

The Act which required members of Parliament, before voting in the House, to take the abjuration oath in a form which concluded with the declaration that it was taken "on the true faith of a Christian," received a literal construction, which had the effect of excluding Jews from Parliament; although the history of the enactment showed that it was intended to test the loyalty, not the religious creed, of the member, and was directed solely to the exclusion of Roman Catholics; and though those who refused to take the oath would have been deemed Popish recusants, and liable to banishment as such (*b*). So the plain language of the Test and Corporation Acts of Charles II., though the first of them was really aimed only at the actual holders of offices, and the second at Roman Catholics, had the effect of disqualifying Protestant Dissenters from public employment. Where an Act disqualified from killing game all persons not possessing land of a certain value,

(*a*) See Chap. VIII, Sec. III.

(*b*) 1 Geo. I. st. 2, c. 13; *Miller* v. *Salomons*, 21 L. J. Ex. 161; 22 Id. 169; *Salomons* v. *Miller*, 8 Ex. 778. Jews were relieved from having to take the oath "on the true faith of a Christian" by 21 & 22 Vict. c. 49, amended by 23 & 24 Vict. c. 63. As to Roman Catholics, see 10 Geo. IV. c. 7, & 30 & 31 Vict. c. 62.

except the heir apparent of an esquire or other person of higher degree, it was held that esquires not possessed of the requisite property qualification were not excepted. However strange it might seem that the Legislature should refuse them the privilege which it had granted to their eldest sons (*a*), it was held to be safer to adopt what the Legislature had actually said rather than to conjecture what they had meant to say (*b*). So, until 1875 under an Act which qualified for the magistracy owners in immediate remainder or reversion of lands leased for two or three lives, it was held that a remainderman expectant on the death of a tenant for life in possession was not qualified, as there was no lease. There was perhaps no good reason why the qualification should not have been extended to such a remainderman, but there was no actual absurdity, inconvenience, or injustice in the omission (*c*). The rule in the Ballot Act, 1872, which provides that a candidate may undertake any duties which any agent of his, if appointed, might have performed, and may assist his agent in the performance of such duties, and "may be present at any place at which his agent may, in pursuance of the Act,

(*a*) *Jones* v. *Smart* (1785), 1 T. R. 44.

(*b*) *Per* Ashurst J., Id. 51

(*c*) 18 Geo. II. c. 20; *Woodward* v. *Watts*, 22 L. J. M. C. 149. See 38 & 39 Vict. c. 54.

attend," was construed literally as authorising the presence of the candidate absolutely, and not only in the event of his undertaking the duties of his agent or assisting him; though it was conceded that this construction gave a barren and useless, or even mischievous, right against which the other provisions of the Act seemed to militate (*a*).

A statute which empowered a Court of Requests to summon any person residing in a town or navigating from its port, by leaving the summons at his abode, and to proceed *ex parte* if he did not appear, was held to justify *ex parte* proceedings against a seafaring man who had for months before the summons, and during the whole of the proceeding, been absent beyond the seas (*b*). So, where an Act authorised justices to hear bastardy cases on proof that the summons had been served at the last place of abode of the putative father, it was held that they had jurisdiction in a case where the latter was abroad, and had had no cognizance of the summons (*c*). The Carriers Act,

(*a*) *Clementson* v. *Mason*, 44 L. J. C. P. 171. See *per* Brett J., Id. 217.

(*b*) *Culverson* v. *Melton*, 12 A. & E. 753.

(*c*) *R.* v. *Damarell*, 37 L. J. M. C. 21. See also *R.* v. *Davis*, 22 L. J. M. C. 143; *R.* v. *Higham* (1857), 26 L. J. M. C. 116. *Comp. R.* v. *Smith* (1875), L. R. 10 Q. B. 604. It should be noted that in bastardy a summons cannot be served on the alleged

1830 (*a*), which exempted a common carrier from liability for the loss of or injury to certain classes of goods unless the value was declared and insured (*b*), was construed literally as exempting him from liability, even when the loss was owing to his negligence, so long as such negligence did not amount to a wilful misfeasance, or a wrongful act inconsistent with his character of carrier (*c*). The provisions of s. 8, Licensing Act, 1872 (repld. s. 69, Licensing Act, 1910), requiring intoxicating liquors, sold by retail not in cask or bottle or in quantities less than half a pint, to be sold in measures marked according to the imperial standard, would be violated by the sale of beer, even at the request of the customer, in a vessel containing one-third of a quart, there being no imperial measure answering to that quantity (*d*). The Common Law Procedure Act, 1854, which empowered by s. 50 (repld. by 46 & 47 Vict. c. 49) a judge to order either party to a cause to produce documents upon the application of the

putative father out of England, *R.* v. *Lightfoot* (1856), 20 J. P. 677.

(*a*) 11 Geo. IV. & 1 Will. IV. c. 68.

(*b*) *Doey* v. *L. & N. W. Ry. Co.*, [1919] 1 K. B. 623. See also *L. & N. W. Ry. Co.* v. *Ashton*, [1919] W. N. 234.

(*c*) *Hinton* v. *Dibbin* (1842), 57 R. R. 754; *Morritt* v. *N. E. Ry. Co.* (1876), 45 L. J. Q. B. 289.

(*d*) 35 & 36 Vict. c. 94; *Payne* v. *Thomas*, 60 L. J. M. C. 3.

other party supported by his own affidavit, was held not to authorise an order on the affidavit of another person in its stead (*a*), even though the party is absent beyond seas (*b*). And the same Act, by s. 60 (repld. by 46 & 47 Viot. o. 49), in empowering a judgment oreditor to obtain an order for the examination of his debtor, was held not to authorise the examination of the directors when the debtor was a oorporate body (*c*). So, the Solioitors Aot, 1860, 23 & 24 Vict. o. 127, s. 28, which authorises the imposition of a oharge for oosts on property "recovered or preserved" (*d*) through the instrumentality of a solicitor, was held not to authorise such a charge where the suit was to prevent or stop an invasion of the right to light; for this was a suit not respecting property, but respecting an easement merely, or the mode in which it was enjoyed (*e*); nor to a oase where the proceedings had not gone beyond a decree for an account, and the parties had then compromised without the knowledge of the solicitor of the party who thereby did recover property (*f*).

(*a*) *Christopherson* v. *Lotinga*, 33 L. J. C. P. 121; *Comp. Kingsford* v. *G. W. R. Co.*, 33 L. J. C. P. 307.

(*b*) *Herschfield* v. *Clark* (1856), 25 L. J. Ex. 113.

(*c*) *Dickson* v. *Neath & Brecon R. Co.* (1869), 38 L. J. Ex. 57.

(*d*) As to what constitutes recovery and preservation, see *Wingfield* v. *Wingfield*, [1919] 1 Ch. 462.

(*e*) *Foxon* v. *Gascoigne*, 43 L. J. Ch. 729.

(*f*) *Pinkerton* v. *Easton*, 42 L. J. Ch. 878. *Comp. Moxon* v.

A direction on his deathbed by the holder of a promissory note that it should be destroyed as soon as found, was held not "an absolute and unconditional renunciation of his rights" on the note within s. 62, Bills of Exchange Act, 1882 (*a*). And a like rule applies where, without renunciation in writing, the bill is given up to a third party (*b*).

It is but a corollary to the general rule in question, that nothing is to be added to or to be taken from a statute, unless there are similar adequate grounds to justify the inference that the Legislature intended something which it omitted to express (*c*): "it is a strong thing to read into an Act of Parliament words which are not there, and, in the absence of clear necessity, it is a wrong thing to do" (*d*); "we are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself" (*e*).

Sheppard, 59 L. J. Q. B. 286, where money had been paid into Court. See also *Re Wadsworth*, 54 L. J. Ch. 638.

(*a*) 45 & 46 Vict. c. 61; *Re George*, 59 L. J. Ch. 709.

(*b*) *Edwards* v. *Walters*, [1896] 2 Ch. 157, C. A.

(*c*) See *per* Tindal C.J., *Everett* v. *Wells*, 2 M. & Gr. 277; *per* Lord Eldon, *Davis* v. *Marlborough*, 53 R. R. 29; *per* Lord Westbury, *Exp. St. Sepulchre*, 33 L. J. Ch. 375; *Re Cherry's Estate*, 31 L. J. Ch. 351. *Comp. Re Wainwright*, 1 Phil. 258. See also inf. Chap. IX, Sec. I.

(*d*) *Per* Lord Mersey, *Thompson* v. *Goold*, 79 L. J. K. B. 911.

(*e*) *Per* Lord Loreburn L.C., *Vickers* v. *Evans*, 79 L. J. K. B. 955.

But where a section of a public Act is incorporated in a private Act the subsequent repeal of the public Act will not repeal the section interpolated in the private Act (*a*).

A case not provided for in a statute is not to be dealt with merely because there seems no good reason why it should have been omitted, and the omission appears consequently to have been unintentional. Thus, a Divorce Act, which provided that any order made for the protection of the earnings of a deserted married woman might be discharged by the magistrate who made it, was held not to empower his successor to discharge it, though the magistrate who had made it was dead (*b*), and this rule is of general application (*c*). An Act which authorises the removal of lunatics to a hospital when there is no lunatic asylum established in the county, does not authorise such a removal when a county asylum exists, but is so full as to be unable to receive another

(*a*) *Jenkins* v. *Gt. Central Ry.* (1912), 81 L. J. K. B. 24.

(*b*) 20 & 21 Vict. c. 85, s. 21, amended by 21 & 22 Vict. c. 108, ss. 7–9; *Exp. Sharpe* (1864), 5 B. & S. 322. See also *Nettleton* v. *Burrell*, 66 R. R. 658; *Wanklyn* v. *Woollett*, 72 R. R. 545; *R.* v. *Ashburton*, 8 Q. B. 871.

(*c*) *Higgs* v. *Schrœder* (1877), 47 L. J. Q. B. 426; *Newton* v. *Boodle*, 16 L. J. C. P. 135; *Nind* v. *Arthur*, 7 D. & L. 252; *Owen* v. *Henshaw* (1877), 47 L. J. Ch. 267; *Catlow* v. *Catlow* (1877), 2 C. P. D. 362.

lunatic (*a*). It was at one time held that if an Act requires that a writ, on renewal, shall be sealed with a seal denoting the date of renewal, a copy of the writ cannot be substituted for the original for this purpose, when the original is lost (*b*), but it is now provided by Order 8, R. S. C., r. 3, that "where a writ of which production is necessary, has been lost, the Court or a judge, upon being satisfied of the loss, and of the correctness of a copy thereof, may order that such copy shall be sealed and served in lieu of the original writ." So, also, it was held under the repealed Act 26 & 27 Vict. c. 29, s. 7, which enacted that answers made to an election commission should not be admitted in evidence in any proceeding except in cases of "indictment" for perjury, left such answers excluded in "informations" for perjury filed by the Attorney-General (*c*). Similarly, an Act requiring notice of action for "anything done" by a person in the execution of his office, was held not to extend to actions for words spoken in the execution of it (*d*); and the provisions of the County

(*a*) *R.* v. *Ellis* (1844), 6 Q. B. 501. This contingency is now provided for by s. 68 of the Lunacy Act, 1890.

(*b*) 15 & 16 Vict. c. 76; *Davies* v. *Garland*, 45 L. J. Q. B. 137.

(*c*) *R.* v. *Slater* (1881), 51 L. J. Q. B. 246, and see 46 & 47 Vict. c. 51, s. 59, and Schedule 4.

(*d*) 11 & 12 Vict. c. 44, s. 9, repealed by S. L. R., 1894, *Royal Aquarium* v. *Parkinson*, 61 L. J. Q. B. 409.

Court Act, 1888, which require certain formalities to be gone through before bringing an action against the bailiff, do not extend to a motion by a trustee in bankruptcy for the delivery up by the bailiff of property seized (*a*).

When the Common Law Procedure Act, 1852, abolished the writ of distringas without providing for the service of a writ on lunatics in confinement and inaccessible, it was found that no actions could be prosecuted against them (*b*). So, when extra-parochial places were made rateable, without either repealing the enactments which required that a copy should be affixed on or near the doors of all the churches in the parish, or making any other provision for publication, it was held, where there was no church in the extra-parochial place, that a rate affixed on a church door fifty yards from the boundary was invalid for want of publication (*c*). 4 & 5 W. & M. c. 20, which required

(*a*) 51 & 52 Vict. c. 43, s. 50; *Re Lock* (1890), 63 L. T. 320. Sec. 2 of the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61) repeals so much of any public Act, including the County Courts Act, as contains a provision that notice of action shall be given.

(*b*) *Holmes* v. *Service* (1854), 24 L. J. C. P. 24; *Williamson* v. *Maggs*, 28 L. J. Ex. 5. See s. 17 of the Common Law Procedure Act, but see Judic. Act, 1875, and Ord. 9 (5), R. S. C.

(*c*) 17 Geo. II. c. 3, and 1 Vict. c. 45; *R.* v. *Dyott* (1882), 51 L. J. M. C. 104; s. 4 of 45 & 46 Vict. c. 20, avoids the difficulty discovered in this and cognate cases.

that judgments should be dooketed, enacted that undooketed judgments should not affect lands as regarded purohasers or mortgagees, or have preference against heirs or exeoutors; 2 & 3 Vict. c. 11, abolished docketing, and enacted that no judgment should have effect unless registered; but it made no provision for the protection of heirs and executors. Though this was perhaps an oversight, resulting in hardship on an executor who had paid simple oontract debts without keeping sufficient assets to meet an unregistered judgment of whioh he had no notice, the Court refused to supply the omission (*a*). These were all *casus omissi* which the Court could not reaoh by any recognised canons of interpretation.

Where an Act authorised the apportionment of the cost of making a sewer, without limiting any time for the purpose, the Court refused to read the Act as limiting the exeroise of the power to a reasonable time (*b*). 21 Jac. I. c. 16, having provided that the Statute of Limitation should not run while the plaintiff was beyond the seas, and 4 & 5 Anne, c. 16, having made a similar provision where the defendant was abroad, s. 7, 3 & 4 W. IV. c. 42, enacted that no part of the United Kingdom

(*a*) *Fuller* v. *Redman* (1859), 29 L. J. Ch. 324; this mischief is remedied by s. 3 of 23 & 24 Vict. c. 38.

(*b*) *Bradley* v. *Greenwich Board of Works* (1878), 47 L. J. M. C. 111.

should be deemed "beyond the seas" within the meaning of the former Act, but made no mention of the latter Act; and it was held that 3 & 4 W. IV. c. 42, could not be stretched to include the latter Act (*a*). There may have been no good reason for thus limiting the new enactment to the Act of James; but there was no sufficient ground either in the context or in the nature of the consequences resulting from the omission, for concluding that the Act of Anne was intended to be included. So when the Married Women's Property Act, 1870 (repealed with certain savings by 45 & 46 Vict. c. 75, s. 2), empowered a married woman to sue, without making her liable to be sued, it was held that no action lay against her (*b*). Sec. 11, Habitual Criminals Act, 1869 (repealed by 34 & 35 Vict. c. 112), in enacting that upon a trial for receiving stolen goods, a previous conviction for any offence involving dishonesty should be admissible against the prisoner as evidence of his having received with guilty knowledge, provided that notice were given to him that the conviction would be put in evidence "and that he would be deemed to have known that the goods were stolen until he proved the contrary," omitted, however, to enact substan-

(*a*) *Lane* v. *Bennett*, 1 M. & W. 70; *Battersby* v. *Kirk*, 2 Bing. N. C. 584, and see *Mather* v. *Brown* (1876), 1 C. P. D. 596.

(*b*) 33 & 34 Vict. c. 93, s. 11; *Hancocks* v. *Lablache*, 47 L. J. C. P. 514.

tively that this effect should be given to the conviction; and it was held that the omission could not be supplied (*a*). Without such an emendation, the notice was incorrect and misleading; but it did not lead to any injustice or inconvenience or other mischievous consequence. Although the Bills of Sale Act, 1878, required that the execution of every bill of sale should be attested by a solicitor, and that "the attestation should state" that the instrument was explained by the solicitor to the grantor before execution, it was held that no explanation was required; for the Act did not expressly enact that an explanation should be given; it required only that the attestation should assert that it had been given (*b*). Again, although the Bankruptcy Act, 1869, provided for securing for the general body of creditors the proceeds of goods of a debtor sold in execution, it made no express provision for dealing with his goods when seized under an elegit; and it was held that the omission, however fatal to the whole policy of the Act, could not be supplied by any stretch of judicial interpretation (*c*).

(*a*) *R.* v. *Davis* (1872), L. R. 1 C. C. R. 272.

(*b*) Repealed as regards attestation by solicitor by 45 & 46 Vict. c. 43, s. 10; *Exp. National Merc. Bank* (1880), 49 L. J. Bank. 62.

(*c*) *Exp. Abbott*, 50 L. J. Ch. 80. Cured by 46 & 47 Vict. c. 52, s. 146. See also *Re Hutchinson* (1885), 55 L. J. Q. B. 582.

Where a Railway Act provided that the company, while in possession, under the Act, of lands liable to assessment to parochial rates, should, until its works were completed and liable to assessment, be bound to make good the deficiency in the parochial assessment by reason of the land having been taken, it was held, at first, that the company was bound to make good the deficiency in any one of the parishes through which the line ran, only until the line was completed within the parish (*a*); but this construction was rejected by the House of Lords, who held that when the company have completed and are actually working a line, or part of a line, within any parish, the company can claim, and is liable, to be assessed in respect of the actual letting value of the line, or part of a line, so completed and actually worked, whether it be or be not as valuable as the assessable property for which it is substituted, and whether the whole of the line of railway authorised by their Act of Parliament has or has not been completed (*b*). So s. 49, Bankruptcy Act, 1869, which enacted that "an order of discharge shall not release the bankrupt from any debt or liability incurred by means of any fraud or breach of trust,"

(*a*) *Whitechurch* v. *East London Ry. Co.*, L. R. 7 Ex. 248, 424; see also *R.* v. *Metrop. Distr. Ry. Co.*, 40 L. J. M. C. 113.

(*b*) *East London Ry. Co.* v. *Whitechurch*, L. R. 7 H. L. 81.

was held not to be confined to a fraud or breach of trust committed by the bankrupt personally; for such a construction could only have been put upon the words either by reading "his" instead of "any" before the words "fraud or breach of trust," or by adding the words "committed by him" after them (*a*).

A construction which would leave without effect any part of the language, would be rejected, unless justified on similar grounds (*b*). Thus, where an Act plainly gave an appeal from one Quarter Sessions to another, it was observed that such a provision, though extraordinary and perhaps an oversight, could not be eliminated (*c*). 32 & 33 Vict. c. 51, which gives to certain County Courts power to try claims under £300, arising out of "any agreement in relation to the use or hire of a ship," or in relation to the carriage of goods, with an appeal to the Court of Admiralty, and power to the latter Court to transfer any such causes to itself, was at first held not to give the County Court jurisdiction over suits for the breach of a charter-party, notwithstanding the compre-

(*a*) 32 & 33 Vict. c. 71; *Cooper* v. *Pritchard*, 52 L. J. Q. B. 526, and see the Bankruptcy Act, 1914, s. 26 (3,*l*.).

(*b*) See Chap. IX, Sec. I.

(*c*) *R.* v. *West Riding*, 1 Q. B. 329, and 4 & 5 Will. IV. c. 76, s. 103. This mistake is cured by 47 & 48 Vict. c. 43, s. 4, and Schedule.

hensive nature of the language used; on the ground that the literal construotion would involvo the presumably unintended anomalies of giving by mere implication a large, novel, and inconvenient jurisdiction to the Court of Admiralty, and to the suitor the remedy of proceeding *in rem* when his claim was under £300, whioh he did not possess when it exceeded it (*a*). But this construction did not prevail, because it left without effect the words which gave jurisdiction over any agreement in relation to the use or hire of a ship (*b*); and yet it was difficult to believe that the resulting oonsequences were within the oontemplation of the Legislature or the scope of the enactment.

In a case where the technical language used was precise and unambiguous, but inoapablo of reasonable meaning, the Court held that it was not at liberty, on merely conjectural grounds (*c*), to give the words a meaning which did not belong to them. 3 Geo. IV. o. 39, had made warrants of attorney to confess judgment void as against the

(*a*) *Simpson* v. *Blues*, 41 L. J. C. P. 121; *Gunnestad* v. *Price*, 44 L. J. Ex. 44.

(*b*) *Gaudet* v. *Brown*, L. R. 5 P. C. 134; "*The Alina*" (1880), 49 L. J. P. D. & A. 40. This right includes claims by holders of bills of lading for damage to goods on board ship during voyage, "*The Rona*" (1882), 51 L. J. Adm. 65, and see cases in noto at end of Chap. V, Sec. I.

(*c*) See, however, Chap. IX, Sec. I.

assignees of a bankrupt, if not filed within 21 days from execution, or unless judgment was signed "or" execution was "issued" within the same period; and the Court of Queen's Bench refused to alter "or" into "and," and "issued" into "levied"; though the passage was unmeaning as it stood, and the proposed alterations would have given it an effect which, because rational, was probably, but only conjecturally, the effect intended by the Legislature (*a*). This subject, however, will be further considered in a subsequent chapter (*b*).

SECTION III.—THE CONTEXT—EXTERNAL CIRCUMSTANCES.

The foregoing elementary rule of construction does not carry the interpreter far; for it is confined to cases where the language is precise and capable of but one construction, or where neither the history or cause of the enactment, nor the context, nor the consequences to which the literal interpretation would lead, show that that interpretation does not express the real intention.

(*a*) *Green* v. *Wood*, 14 L. J. Q. B. 217. This Act is extended by 6 & 7 Vict. c. 66, and applied to "Judges Orders" by 32 & 33 Vict. c. 62, s. 28, and *comp. Laird* v. *Briggs* (1881), 19 Ch. D. 22, at p. 33; *Quin* v. *O'Keefe* (1859), 10 Ir. C. L. R. 393.

(*b*) Chap. IX.

But it is another elementary rule, that a thing which is within the letter of a statute will, generally, be construed as not within the statute unless it be also within the real intention of the Legislature (*a*), and the words, if sufficiently flexible, must be construed in the sense which, if less correct grammatically, is more in harmony with that intention (*b*). Language is rarely so free from ambiguity as to be capable of being used in more than one sense; and to adhere rigidly to its literal and primary meaning in all cases would be to miss its real meaning in many. If a literal meaning had been given to the laws which forbade a layman to "lay hands" on a priest, and punished all who drew blood in the street, the layman who wounded a priest with a weapon would not have fallen within the prohibition, and the surgeon who bled a person in the street to save his life, would have been liable to punishment (*c*). On a literal construction of his promise Mahomed

(*a*) Bac. Ab. Statute (I.) 5.

(*b*) See *per* Cur., *Hollingworth* v. *Palmer* (1849), 18 L. J. Ex. 409; *Caledonian R. Co.* v. *N. Brit. R. Co.* (1881), 6 App. Cas. 114, at p. 122, *per* Lord Selborne; *per* Lord Blackburn, *Edinburgh Tramways Co.* v. *Torbain*, 1 App. Cas. 68; *Eastman Photographic Co.* v. *Comptroller of Patents*, [1898] A. C. 571, Lord Halsbury, at pp. 575, 576; *Direct U.S. Cable Co.* v. *Anglo-American Telegraph Co.* (1877), 2 App. Cas. 394, at p. 412; and *per* Jessel M.R., *Walton, Exp.* (1881), 17 Ch. D. 746, at pp. 750 *et seq.*

(*c*) 1 Bl. Comm. 61; Puff. L. 5, c. 12, s. 8.

II.'s sawing the Venetian governor's body in two, was no breach of his engagement to spare his head; nor Tamerlane's burying alive a garrison, a violation of his pledge to shed no blood (*a*). On a literal construction, Paches, after inducing the defender of Notium to a parley under a promise to replace him safely in the citadel, claimed to be within his engagement when he detained his foe until the place was captured, and put him to death after having conducted him back to it (*b*); and the Earl of Argyll fulfilled in the same spirit his promise to the laird of Glenstane, that if he would surrender he would see him safe to England; for he did not hang him until after he had taken him safely across the Tweed to the English Bank (*c*).

The equivocation or ambiguity of words and phrases, and especially such as are general, is said by Lord Bacon to be the great sophism of sophisms (*d*). They have frequently more than one equally obvious and popular meaning; words used in reference to one subject or set of circumstances

(*a*) Vattel, L. N. b. 2, s. 273.

(*b*) Thucyd. 3, 34; Grote's Greece, vol. 6, chap. 50.

(*c*) Burton's Sc. Crim. Tr. 17. *Immaturæ puellæ, quia more tradito nefas esset virgines strangulari, vitiatæ prius a carnifice, dein strangulatæ.* Suet. Tiberius, s. 61, and see Tacitus, Hist. Lib., V., c. 9. See other instances of such frauds collected in Grot. de jure b., b. 2, c. 16, s. 5. See also Herodotus, IV. 154.

(*d*) Lord Bacon, Advancement of Learning, b. 2.

may convey a meaning quite different from what the same words used in reference to another set of circumstances and another object would convey. General words admit of indefinite extension or restriction, according to the subject to which they relate, and the scope and object in contemplation. They may convey faithfully enough all that was intended, and yet comprise also much that was not; or, be so restricted in meaning as not to reach all the cases which fall within the real intention. Even, therefore, where there is no indistinctness or conflict of thought, or carelessness of expression in a statute, there is enough in the vagueness and elasticity inherent in language to account for the difficulty so frequently found in ascertaining the meaning of an enactment, with the degree of accuracy necessary for determining whether a particular case falls within it. But statutes are not always drawn by skilled hands, and they are always exposed to the risk of alterations by many hands which introduce different styles and consequent difficulties of interpretation. Nothing, it has been said by a great authority, is so difficult as to construct properly an Act of Parliament; and nothing so easy as to pull it to pieces (*a*). It is not enough

(*a*) *Per* Lord St. Leonards, *O'Flaherty* v. *McDowell* (1857), 6 H. L. Cas. 142, at p. 179; and see *Coverdale* v. *Charlton* (1878), 48 L. J. Q. B. 128, *per* Bramwell L.J., 2 Q. B. D.; *R.* v. *Monck*

to attain to a degree of precision which a person reading in good faith can understand, it is necessary to obtain a degree of precision which a person reading in bad faith cannot misunderstand (*a*).

The literal construction then, has, in general, but *primâ facie* preference. To arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope, and object of the whole Act; to consider, according to Lord Coke (*b*), 1. What was the law before the Act was passed; 2. What was the mischief or defect for which the law had not provided; 3. What remedy Parliament has appointed; and 4. The reason of the remedy. According to another authority, "in order properly to interpret any statute it is as necessary now as it was when Lord Coke reported *Heydon's Case* to consider how the law stood when the statute to be construed was passed, what the mischief was for which the old law did not provide, and the remedy provided by the statute to cure that mischief" (*c*). The true meaning

(1877), 544, at p. 552; *Twycross* v. *Grant* (1877), 2 C. P. D. 469, at p. 496; 4 Q. B. D. 104, at p. 115.

(*a*) *Per* Stephen J., *Castioni, Exp.*, [1891] 1 Q. B. 149; 60 L. J. M. C. 22.

(*b*) *Heydon's Case*, 3 Rep. 7b; *Marshalsea Case*, 10 Rep. 73a. *Comp. Bradlaugh* v. *Clarke* (1883), 8 A. C. 354, at p. 366, *et seq.*; 52 L. J. Q. B. 505.

(*c*) *Per* Lindley M.R., *Mayfair Property Co., In re*, [1898] 2 Ch. 28, at p. 35; 67 L. J. Ch. 337.

of any passage, it is said, is to be found not merely in the words of that passage, but in comparing it with other parts of the law, ascertaining also what were the circumstances with reference to which the words were used, and what was the object appearing from those circumstances, which the Legislature had in view (*a*). Every clause of a statute should be construed with reference to the context and the other clauses of the Act, so as, so far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject matter (*b*).

As regards the history, or external circumstances which led to the enactment, the general rule which is applicable to the construction of all other documents is equally applicable to statutes (*c*), viz., that the interpreter should so far put himself in the position of those whose words he is interpreting,

(*a*) See *per* Lord Blackburn, *River Wear Com.* v. *Adamson* (1877), 2 App. Cas. 743; and *per* Lord Halsbury L.C., *Eastman Co.* v. *Comptroller of Patents*, [1898] A. C. 576.

(*b*) *Per* Lord Davey, *Canada Sugar Refining Co.* v. *Reg.*, [1898] A. C. 741.

(*c*) It has indeed been said that it is safer to abstain from imposing with regard to Acts of Parliament any further canons of construction than those applicable to all documents: *Per* Bowen L.J., *Lamplough* v. *Norton* (1889), 22 Q. B. D. 452; 58 L. J. Q. B. 279. As to the decision in this case, see now Tithe Act, 1891, s. 6 (1).

as to be able to see what those words relate to. Extrinsic evidence of the circumstances or surrounding facts under which a will or contract was made, so far as they throw light on the matter to which the document relates, and of the condition and position and course of dealing of the persons who made it or are mentioned in it, is always admitted as indispensable for the purpose not only of identifying such person and things, but also of explaining the language, whenever it is latently ambiguous, or susceptible of various meanings or shades of meaning, and of applying it sensibly to the circumstances to which it relates (*a*). Thus, when a Charter-Party stipulates that "detention by ice" is not to be reckoned among laying days, the meaning intended by this term cannot be accurately determined without that knowledge of

(*a*) Wigram Int. Wills, Prop. 5, cited by Lindley L.J., *Dashwood* v. *Magniac* (1891), L. J. Ch. 817; *Trevor-Battye's Settlement, In re* (1912), 81 L. J. Ch. 646; *Anstee* v. *Nelms*, 1 H. & N. 225, *per* Bramwell B.; *Wood* v. *Priestner*, 36 L. J. Ex. 127; *Shortrede* v. *Cheek*, 40 R. R. 258; *Baumann* v. *James*, L. R. 3 Ch. 508; *Doe* v. *Benyon*, 12 A. & E. 431; *Blundell* v. *Gladstone*, 12 L. J. Ch. 225; *Turner* v. *Evans*, 22 L. J. Q. B. 412; *Graves* v. *Legg*, 23 L. J. Ex. 228; *Lewis* v. *G. W. R. Co.*, 47 L. J. Q. B. 133, *per* Bramwell L.J.; *Re De Rosaz*, 2 P. D. 66; *Whitfield* v. *Langdale*, 1 Ch. D. 61; *Hill* v. *Crook*, L. R. 6 H. L. 283; *Re Jameson*, 77 L. J. Ch. 729; *Butterley Co.* v. *New Hucknall Colliery Co.*, 78 L. J. Ch. 63; 79 Ib. 411; *Trevor-Battye's Settlement, In re* (1912), 81 L. J. Ch. 646.

the circumstances of the port and trade which the parties possessed, or are conclusively presumed to have possessed; and evidence of these circumstances is received for the purpose of accurately construing the contract (*a*). When a vessel is warranted seaworthy, the meaning must vary with the nature, not only of the vessel but of the voyage; and evidence of these circumstanoes is admitted in order to ascertain the precise intention of the parties. In a lease of a house with a covenant to keep it in tenantable repair, it is necessary to ascertain whether the house is an old or a new one, whether it is a tenement in St. Giles's or a palace in Grosvenor Square; for that which would be a repair of the one, might not be so of the other (*b*). So, on the sale of a horse warranted to go well in harness, the qualities of a good goer would be different in one fit to draw a lady's carriage, and a brewer's dray; and it would therefore be necessary to inquire what was the kind of horse which was the subject of the warranty (*c*). Where

(*a*) *Hudson* v. *Ede*, 37 L. J. Q. B. 166; on *whc.* see *per* Esher M.R., *Smith* v. *Rosario Nitrate Co.*, [1894] 1 Q. B. 178; see also *Behn* v. *Burness* (1861), 32 L. J. Q. B. 207, and *Bentson* v. *Taylor*, [1893] 2 Q. B. 274.

(*b*) *Gutteridge* v. *Munyard*, 1 Moo. & R. 336; *London* v. *G. W. R. Co.*, 70 L. J. Ch. 622; *Lurcott* v. *Wakely*, [1911] 1 K. B. 905.

(*c*) See jdgmt. of Blackburn J., *Burges* v. *Wickham* (1863), 33 L. J. Q. B. 17, at p. 28; *Clapham* v. *Langton* (1864), 34 L. J. Q. B. 46. Both of these cases relate to Marine Insurance.

a guarantee is worded in language equally applicable to a past and to a future credit, evidence of the state of the dealings of the parties at the time, may be given in order to determine which was the real sense in which they used the words (*a*).

So, in the interpretation of statutes, the interpreter, in order to understand the subject matter and the scope and object of the enactment, must, in Coke's words, ascertain what was the mischief or defect for which the law had not provided; that is, he must call to his aid all those external or historical facts which are necessary for this purpose, and which led to the enactment (*b*), and for these he may, as regards ancient statutes, consult contemporary or other authentic works and writings (*c*), and may also consider whether a statute was intended to alter the law, or leave it exactly where it stood before (*d*). It being "a very serious

(*a*) *Goldshede* v. *Swan*, 16 L. J. Ex. 284; *Wood* v. *Priestner*, 36 L. J. Ex. 127. See also *Laker* v. *Hordern*, 45 L. J. Ch. 315; *Re Woolverton Estates*, 47 L. J. Ch. 127; *Charter* v. *Charter*, 43 L. J. P. M. & A. 73; and *compare Bruner* v. *Moore*, [1904] 1 Ch. 305; *Morrell* v. *Studd & Millington*, [1913] 2 Ch. 648.

(*b*) *Gorham* v. *Exeter* (*Bp.*), Rep. by Moore, p. 462; see *per* Bramwell B., *A.-G.* v. *Sillem* (1863), 2 H. & C. 431, at p. 531; *per* Coleridge J., *R.* v. *Blane*, 13 Q. B. 773; *per* Thesiger L.J., *Yewens* v. *Noakes*, 6 Q. B. D. 535, and see *Phillips* v. *Rees* (1889), 59 L. J. Q. B., at p. 4.

(*c*) See *Read* v. *Lincoln* (*Bp.*), 62 L. J. P. C. 1; inf. p. 108.

(*d*) *Per* Cozens-Hardy L.J., *Re a Debtor*, [1903] 1 K. B. 705.

matter to hold that when the main object of a statute is olear it shall be reduced to a nullity by the draftsman's unskilfulness or ignoranoe of law" (*a*). In his celebrated judgment in the Alabama arbitration, Cockburn, C.J., showed, by a reference to their history, that both the Amerioan and English Foreign Enlistment Acts of the early part of the nineteenth century were intended, not to prevent the sale of armed ships to belligerents, but to prevent American and English oitizens from manning privateers against belligerents (*b*). 5 Geo. IV. c. 113, for the abolition of the slave trade, was construed to extend to offences committed by British subjects out of the British dominions, that is, on the West Coast of Africa, by the light of the notorious faot that the crime against whioh the Act was direoted, was mainly, if not exclusively committed there (*c*); though it may, perhaps, not have extended to our subjects in other parts of the world beyond our territories (*d*). . An ordinance of the colony of

(*a*) *Salmon* v. *Duncombe* (1886), 11 App. Cas., at p. 634; *Rex* v. *Vasey* (1905), 75 L. J. K. B. 117, [1905] 2 K. B. 748, C. C. R.

(*b*) Supplement to the *London Gazette*, 20 Sept. 1872, p. 4135.

(*c*) *R.* v. *Zulueta* (1843), 1 Car. & K. 215; *Société des Hôtels Réunis* v. *Hawker* (1913), 29 T. L. R. 578.

(*d*) *Per* Bramwell B., *Santos* v. *Illidge* (1859-60), 8 C. B. N. S. 861, and see the judgment of Wright J., in *Kaufman* v. *Gerson*, [1903] 2 K. B. 114; 73 L. J. K. B. 320.

Hong Kong which authorised the extradition of Chinese subjects to the government of China, when charged with "any crime or offence against the law of China," was construed, either by reference to the circumstances under which the treaty (which the ordinance enforced) had been made or to the geographical relation of Hong Kong to China, as limited to those crimes which all nations concur in prescribing (*a*). An Act which authorised "the Court" before which a road indictment was preferred, to give costs, was construed as authorising the judge at Nisi Prius to do so, partly on the ground of the well-known fact that such indictments were rarely tried by the Court in which they were, in the strict sense of the word, "preferred" (*b*). In construing an Extradition Act the terms of the treaty which it was intended to carry into effect should be considered, as the two documents ought not to conflict; accordingly where the treaty provided that no extradition should be made for offences committed before it came into operation, the Act, though silent on the point, should be limited in the same way (*c*).

There is some presumption that statutes passed to amend the law are directed against defects

(*a*) *A.-G.* v. *Kwok-a-Sing* (1873), L. R. 5 P. C. 179, 197.

(*b*) *R.* v. *Pembridge*, 12 L. J. Q. B. 47, 259.

(*c*) 33 & 34 Vict. c. 52, amended by 36 & 37 Vict. c. 60, and by 58 & 59 Vict. c. 33; *R.* v. *Wilson*, 3 Q. B. D. 42.

which have come into notice about the time when those statutes passed; and on the ground that s. 7, Railway & Canal Traffic Act, 1854, was passed to correct a state of the law brought into notice by a legal warfare which had been waged about negligence only, the reference in that section to losses of goods "occasioned by the neglect or default of" such company or its servants, has been held not to extend to a loss by the theft of a servant of the company without negligence on their part, that not being a loss by neglect or default on their part (*a*).

Again, on the ground that it was to prevent delay and costs that the Legislature enacted in s. 4, Arbitration Act, 1889, that, "before delivery of any pleadings or taking any other steps in the proceedings," any party may apply to the Court to stay the proceedings, it was held by the House of Lords, that a defendant who had taken out a summons and obtained an order for further time for delivering his defence had taken a "step" within the section (*b*).

(*a*) 17 & 18 Vict. c. 31; *Shaw* v. *G. W. R. Co.*, [1894] 1 Q. B. 373.

(*b*) 52 & 53 Vict. c. 49; *Ford's Hotel Co.* v. *Bartlett*, [1896] A. C. 1. But see *Chappell* v. *North*, 60 L. J. Q. B. 554, and *Brighton Marine Co.* v. *Woodhouse*, 62 L. J. Ch. 697; *County Theatres, Ltd.* v. *Knowles*, 71 L. J. K. B. 351. But the mere filing of affidavits in answer to a motion for a Receiver is not "a step in the proceedings" within the section, *Zalinoff* v. *Hammond*,

The external circumstances which may be thus referred to, do not, however, justify a departure from every meaning of the language of the Act. Their function is limited to suggesting a key to the true sense, when the words are fairly open to more than one, and they are to be borne in mind, with the view of applying the language to what was intended and of not extending it to what was not intended (*a*).

It has been said that unless for some special reason, *e.g.*, where a provision is of doubtful import, or employs words of technical meaning, the pre-existing law is not to be taken into consideration in construing a Codifying Act, which implies not only the collection, but in some respects the alteration of the law (*b*). Such an

67 L. J. Ch. 370, nor is a mere request for a Statement of Claim, *Ives* v. *Williams*, 63 L. J. Ch. 521; nor is giving notice of intention to defend by filling up the slip attached to a default summons. *Austin* v. *Bowley* (1913), 108 L. T. 920. But on the other hand attendance before a master, and acquiescing without protest on an order has been held to be "a step in the proceedings." *Cohen* v. *Arthur* (1912), 56 Sol. J. 344. Taking out a summons for discovery is also "a step." *Parker, Gaines & Co.* v. *Turpin*, [1918] 1 K. B. 358.

(*a*) See dictum of Jessel M.R., *Holme* v. *Guy*, 5 Ch. D. 905; and *R.* v. *Langriville*, 54 L. J. Q. B. 124; but see Hall V.C. in *A.-G.* v. *Manchester* (1881), 18 Ch. D., at p. 609; 50 L. J. Ch. 562.

(*b*) *Per* Lord Herschell, *Bk. of England* v. *Vagliano*, [1891] A. C. 144.

Act, in the main, expresses in abstract propositions the conclusions of law or equity which have been reached by the Judicature, *ex gr.* Bills of Exchange Act, 1882, and Sale of Goods Act, 1893. In relation to the latter, Cozens-Hardy, M.R., has said in a modern case: "I rather deprecate the citation of earlier decisions. The object and intent of the statute was no doubt simply to codify the unwritten law applicable to the sale of goods; but in so far as there is an express statutory enactment, that alone must be looked at and must govern the rights of the parties, even though the section may, to some extent, have altered the prior Common Law" (*a*). Yet counsel, and even eminent judges, will refer to the earlier decisions if only for elucidating an argument (*b*). And, indeed, as regards a Consolidation Act—*ex. gr.* Companies (Consolidation) Act, 1908—if it re-enacts, with a like context, a word or phrase in one of the Acts consolidated which has received judicial interpretation, that interpretation will, generally, be applicable to the same word or phrase in the Consolidation Act (*c*).

Reference has been occasionally made to what

(*a*) *Bristol Tramways Co.* v. *Fiat Motors* (1910), 79 L. J. K. B. 1109.

(*b*) See judgment of Farwell L.J., *Wallis* v. *Pratt* (1910), 79 L. J. K. B. 1023.

(*c*) See, however, cases cited, p. 109, inf.

the framers of the Act, or individual members of the Legislature intended to do by the enactment, or understood it to have done (*a*). Chief Justice Hengham said that he knew better than counsel the meaning of the 2d Westminster, as he had drawn up that statute (*b*). Lord Nottingham claimed that he had some reason to know the meaning of the Statute of Frauds, because, he said, it had had its first rise from him, he having brought it into the House of Lords (*c*). Lord Kenyon supported his construction of 9 Anne, c. 20, by the argument that so accurate a lawyer as Mr. Justice Powell, who had drawn it, never would have used several words where one sufficed (*d*). Lord Field refers to the improbability that the eminent lawyers who framed the Judicature Act, 1875, would not have made a certain exception if they intended it (*e*). Lord Halsbury states however that he has, on more than one occasion, said that the worst person to construe a statute is the person who is responsible for its drafting, for he is much disposed to confuse

(*a*) For an exposition of the general rules governing the Construction of Statutes, see Halsbury L.C., in *Cox* v. *Hakes*, [1890] 15 A. C., at pp. 577 *et seq.*

(*b*) Year Book of 33 Ed. I. M. Term. (Rolls Ed.) 82.

(*c*) *See Ash* v. *Abdy*, 3 Swanst. 664.

(*d*) *R.* v. *Wallis*, 5 T. R. 379.

(*e*) *Bell-Cox* v. *Hal*[illegible] (1890), 60 L. J. Q. B. 89; 15 A. C., at p. 544.

what he intended to do with the effect of the language which in fact he has employed (*a*). Yet, in determining the meaning of the rubric on vestments in the Prayer-book (enacted by the Uniformity Act, 13 & 14 Car. II. c. 4), the Privy Council, in one ecclesiastical case, referred to the introduction of a proviso by the Lords in that Act, and its rejection by the Commons, and to the reasons assigned by the latter, in the conference which ensued, for the rejection, as an indication of the intention of the Legislature (*b*); and in another, to a discussion between the bishops who framed or revised the rubric and the Presbyterian divines at the Savoy Conference in 1662, as showing the meaning attached to it by the former (*c*). And it has been stated as a general proposition in ecclesiastical matters that if the law excludes all historical investigation and discussion on antecedent usage in matters of ritual and practice it excludes one source of light upon doubtful questions (*d*). Lord Westbury, when Chancellor, referred to a speech made by himself, as Attorney-General, in the House of

(*a*) *Hilder* v. *Dexter* (1902), 71 L. J. Ch. 781, at p. 783.

(*b*) *Hebbert* v. *Purchas*, 40 L. J. Ecc. 33, and see *Mackonochie* v. *Martin* (1881), 6 A. C. 424.

(*c*) *Ridsdale* v. *Clifton*, 46 L. J. P. C. 27.

(*d*) See Halsbury L.C. in *Read* v. *Bishop of Lincoln*, [1892] A. C., at p. 652.

Commons, in 1860, in introducing the Bankruptcy Bill, which was passed into law in the following year; and one of his reasons in favour of the construction which he put on the Act was that it tallied best with the intention which the Legislature (that is, the three branches of the Legislature) might be presumed to have adopted, as it was the ground on which application had been made to one of the three. But he observed, at the same time, that he had endeavoured, in forming his opinion, to divest his mind, as far as possible, of all impressions received from the past, and to consider the language of the Act as if it had been presented to him for the first time in the case before him (*a*). The reports furnish other instances (*b*). But it is unquestionably a rule that what may be called the parliamentary history of an enactment is not admissible to explain its meaning (*c*). Its language can be regarded only as the language of the three Estates of the realm,

(*a*) *Re Mew*, 31 L. J. Bank. 89, and see *Hamilton, In re* (1878), Bacon C.J., 9 Ch. Div., at p. 696.

(*b*) Ex. gr. *per* Hale C.B., *Hedworth* v. *Jackson*, Hard. 318; *McMaster* v. *Lomax*, 2 Myl. & K. 32; *Mounsey* v. *Ismay*, 3 H. & C. 486; *Drummond* v. *Drummond*, 36 L. J. Ch. 153; *Hudson* v. *Tooth*, 47 L. J. Q. B. 18, and see *Bell-Cox, Exp.* (1887), 20 Q. B. D. 1, at p. 30.

(*c*) See ex. gr. *per* Cur., *R.* v. *Hertford College*, 47 L. J. Q. B. 649; *per* Pollock C.B., *A.-G.* v. *Sillem*, 3 H. & C. 521, and *per* Bramwell B., 537.

and the meaning attached to it by its framers or by individual members of one of those Estates cannot control the construction of it (*a*). Indeed, the inference to be drawn from comparing the language of the Act with the declared intention of its framers would be that the difference between the two was not accidental but intentional (*b*). Accordingly, the Dower Act, 1833, 3 & 4 Will. IV. c. 105, was construed to apply to gavelkind lands, although this was avowedly contrary to the intention of the real property commissioners who prepared that Act; for they stated in their report that it was their intention that it should not extend to lands of that tenure (*c*). Sir Francis Moor, who drew the Statute of Charitable Uses, 43 Eliz. c. 4, says, in his reading on it, that a gift of lands to maintain a chaplain or minister for divine service, or to maintain schools for catechising, was not within its meaning, having been intentionally omitted, lest they should be confiscated; since religion being variable according to the pleasure of succeeding princes, that which

(*a*) *Dean of York's Case* (1841), 2 Q. B. 1; 57 R. R. 545. *Per* Pollock C.B. and Parke B., *Martin* v. *Hemming* (1854), 10 Ex. 478; *Cameron* v. *Cameron* (1834), 2 Myl. & K. 289; *Hemstead* v. *Phœnix Gas Co.* (1865), 34 L. J. Ex. 108.

(*b*) *Per* Tindal C.J., *Salkeld* v. *Johnston* (1847), 2 C. B. 749, at p. 757, and see *Esdaile* v. *Payne* (1885), 52 L. T. 530.

(*c*) *Farley* v. *Bonham* (1861), 30 L. J. Ch. 239.

was orthodox at one time might be superstitious at another, and so be forfeited (*a*); but such devises were nevertheless afterwards held to fall within the Act (*b*). So, what took place before the committee cannot be invoked for putting such a construction on a private Act (*c*), as will limit its application to one party to the detriment of the general public. Although for the purpose of construing it the Court would be at liberty to consider the position of the parties concerned, and may come to the conclusion that a particular clause was inserted at the instance of a party who was present, for his protection, and conferred upon him such an interest as to entitle him to a mandamus to compel compliance therewith (*d*).

Another class of external circumstances which have, under peculiar circumstances, been sometimes taken into consideration in construing a statute, consists of acts done under it, for usage may determine the meaning of the language, at

(*a*) Duke, Char. Uses, 125.

(*b*) Id. 134, *Penstred* v. *Payer*, Id. 381; *Grieves* v. *Case*, 4 Bro. C. C. 67.

(*c*) *Davis & Sons* v. *Taff Vale Ry. Co.*, [1895] A. C. 542; *Steele* v. *Midland R. Co.*, L. R. 1 Ch. 282; *per* Lord Alverstone C.J., *R.* v. *Manchester Corp.*, 80 L. J. K. B. 265.

(*d*) *R.* v. *Manchester Corp.* (1910), 80 L. J. K. B. 263. As to the principles for construing such clauses, see inf. pp. 527–530.

all eveuts when the meaning is not free from ambiguity (*a*).

SECTION IV.—THE CONTEXT—EARLIER AND LATER ACTS—ANALOGOUS ACTS.

Passing from the external history of the statute to its oontents, it is an elementary rule that construction is to bo made of all the parts together, and not of one part only by itself (*b*). *Incivile est nisi tota lege perspecta, una aliqua particula ejus proposita, judicare vel respondere* (*c*). Such a survey is often iudispensable, even when the words are the plaiuest (*d*); for the true meaning of any passage is that which (being permissible) best harmonises with the subjeot, and with every other passage of the statute. If one section of an Act, for instance, required that "notice" should be "given," a verbal notice would, generally, be sufficient; but if another section provided that it shoJld be

(*a*) See ex. gr. *Leverton* v. *R.* (1869), L. R. 4 Q. B. 394, at p. 404, and other cases referred to inf., Chap. XI, Sec. I.

(*b*) Co. Litt. 381a; *Lincoln College Case*, 3 Rep. 59b. *Per* Lord Blackburn, *Turquand* v. *Board of Trade* (1886), 55 L. J. Q. B. 417.

(*c*) Dig. 1, 3, 34.

(*d*) *Per* Lord Esher, M.R. and Fry L.J., *Lancashire and Yorks. R. Co.* v. *Knowles* (1888), 20 Q. B. D. 391; and see *Chamber Colliery Co.* v. *Rochdale Canal Co.*, [1895] A. C. 564, at p. 571, *et seq.*

"served" on a person, or "left" with him, or in a particular manner or place, it would obviously show that a written notice was intended (*a*). Sec. 2, Prescription Act, 1832, 2 & 3 Will. IV. c. 71, in protecting certain stated easements from disturbance after specified periods of enjoyment, uses an expression which unambiguously includes all such easements, that is, those in gross as well as those appurtenant. But s. 5, which, in providing a form of pleading to be applicable to all rights within the Act, gives a form which could, from its nature, be applicable only to rights appurtenant, shows that the wide expression in the earlier section was used in the restricted sense of a right appurtenant (*b*). So, in the Dower Act, 1833, 3 & 4 Will. IV. c. 105, the word "land," which it

(*a*) 43 & 44 Vict. c. 42; 2 W. & M. c. 5; *Moyle* v. *Jenkins*, 51 L. J. Q. B. 112; *Wilson* v. *Nightingale*, 70 R. R. 727; *R.* v. *Shurmer*, 55 L. J. M. C. 153. See *Portingell, Exp.*, 61 L. J. M. C. 1. See also Workmen's Compensation Act, 1906, s. 2, providing that Notice of accident is to be "given"; which, on the context, imports that the Notice is to be in writing (*Hughes* v. *Coed Talon Colliery Co.* (1909), 78 L. J. K. B. 539), (as to what constitutes notice in writing see *Stevens* v. *Insoles*, [1912] 1 K. B. 36, C. A.), whilst the Claim which, under the same section, has to be "made," may be oral (*Lowe* v. *Myers* (1906), 75 L. J. K. B. 651, (note, p. 656), and need not be for a specific sum (*Thompson* v. *Goold* (1910), 79 L. J. K. B. 905).

(*b*) *Shuttleworth* v. *Le Fleming*, 34 L. J. C. P. 309; approved, followed in *Mercer* v. *Denne*, [1904] 2 Ch. 534; [1905] 2 Ch. 538; 74 L. J. Ch. 723.

defines as including manors, messuages, and all other hereditaments, both corporeal and incorporeal, except such as are not liable to dower, was held not to include copyhold lands; because s. 6, which provides that a widow shall not be entitled to dower, when "the deed" by which the land was conveyed to her husband contains a declaration to that effect, showed that only lands which were transferable by deed were within the contemplation of the Legislature (*a*). So a colonial statute which required an executor to file particulars of the "personal estate" of the testator was held to refer to such personal estate only as was held by the testator in the colony, it being clear that in other parts of the context a number of similar expressions had to be subjected to limitations or qualifications of the same nature. One of the safest guides, it has been said, to the construction of sweeping general words, which are difficult to apply in their full literal sense, is to examine other words of like import in the same instrument, and to see what limitations must be imposed on them; and if it is found that a number of such expressions have to be subjected to limitations and qualifications, and that such limitations and qualifications are of the same nature, that circum-

(*a*) *Smith* v. *Adams*, 24 L. J. Ch. 258; *Powdrell* v. *Jones*, 24 L. J. Ch. 123. *Comp. Doe* v. *Waterton*, 22 R. R. 328; inf. p. 144.

stance forms a strong argument for subjecting the expression in dispute to a like limitation and qualification (*a*). Where one section of an Act empowered the Board of Trade, when it had "reason to believe" that a ship could not go to sea without serious danger to human life, to detain it for survey; and another gave the shipowner a right to compensation if it appeared that there was not reasonable cause for its detention, by reason of the condition of the ship or the act or default of the owner; it was held that the latter section so modified the sense of the earlier one, that the Board of Trade would be liable to compensate the owner, though it had reasonable ground for belief when it ordered the detention, if it appeared from the evidence at the trial that a person of ordinary skill would have thought that there was no reasonable ground for detention (*b*).

So, where one section of 25 & 26 Vict. c. 102, enacted, that if "any building" projecting beyond the general line of the street was pulled down, the Board of Works might order it to be set back, giving compensation; and the next section enacted that under certain circumstances "no building" should be erected in any street, without the

(*a*) *Blackwood* v. *R.* (1882), 52 L. J. P. C. 10.

(*b*) 39 & 40 Vict. c. 80, ss. 6 and 10, repealed by 57 & 58 Vict. c. 60; see s. 459, and *Thompson* v. *Farrer* (1882), 51 L. J. Q. B. 534. A case under the repealed Act.

consent of the Board, beyond the general line; the latter section, which, *per se*, would have included alterations, whether on new sites or old, was confined by the former to buildings erected on land which had been hitherto vacant (*a*). Where one section of a repealed Act imposed a penalty for selling "as unadulterated" articles of food which are in fact adulterated; and another declared that a person who sold an article of food "knowing it to have been mixed with another substance to increase its bulk or weight," and did not, in selling it, declare the admixture to the purchaser, should be deemed to have sold an adulterated article, the different wording of the two sections showed that under the former the seller would be liable though he was ignorant of the adulteration (*b*). Commenting on this latter section, Lord Russell of Killowen says in *Spiers & Pond* v. *Bennett*, "I do not think there need be *mens rea* in order to constitute an

(*a*) *Lord Auckland* v. *Westminster Board of Works* (1872), 41 L. J. Ch. 723; *Wendon* v. *L. C. C.*, 63 L. J. M. C. 117; as to the meaning of "obstruction" or "enoroachment" within s. 1 of the Act of 1862, see *Vigers Bros.* v. *London C. C.*, [1919] 1K. B. 56. *Comp. Worley* v. *St. Mary Abbotts*, 61 L. J. Ch. 601. See also *Doe* v. *Olley*, 54 R. R. 607; *Lavy* v. *L. C. C.*, 64 L. J. M. C. 262.

(*b*) 35 & 36 Vict. c. 74, repealed by 38 & 39 Vict. c. 63, s. 1, which latter Act is amended by 42 & 43 Vict. c. 30, 48 & 49 Vict. c. 61, s. 5, 62 & 63 Vict. c. 51, and 7 Ed. VII. c. 21; *Fitzpatrick* v. *Kelly* (1873), 42 L. J. M. C. 132; *Dyke* v. *Gower* (1891), 61 L. J. M. C. 70; [1892], 1 Q. B. 220.

offence under the second part of the section. If the article which was in fact altered by abstraction was sold without disclosure it would constitute an offence under this section" (*a*). A provision in an Enclosure Act which reserved to the lord his right to minerals, and to the working of them as fully as if the Act had not been passed, without paying compensation, is materially limited by a direction that "highways should be set out over the land"; for this latter provision would preclude him from working the minerals under the highways without leaving adequate support (*b*). One section of the Companies Act, 1862, which enacted that where a company was being wound up by or under the supervision of the Court, any distress or execution put in force against the property of the company after the commencement of the winding-up "shall be void to all intents," was so modified by another which enacted that when an order for winding-up had been made, no action or other proceeding should be proceeded with against the company, except with the leave of the Court, that its true meaning and effect was only to invalidate the proceedings which it pronounced void, when

(*a*) (1896), 65 L. J. M. C. 144, at p. 147.

(*b*) *Benfieldside Local Board* v. *Consett Iron Co.*, 47 L. J. Ex. 491; and see *A.-G.* v. *Conduit Colliery Co.* (1894), 64 L. J. Q. B. 207, C. A.; as to right of action in successive subsidences, see *Darley Main Colliery Co.* v. *Mitchell* (1886) 55 L. J. Ch. 529.

the Court did not sanction them (*a*). Clause 21 in the Schedule to the Ballot Act, 1872, which in express terms requires the presiding officer at each station to exclude all persons except the clerks, the agents of the candidates, and the constables on duty, was found to include also the candidates themselves in the exception, since a subsequent clause (51) provides that a candidate may be present at any place at which his agent may attend (*b*). The words of s. 1, Fine Arts Copyright Act, 1862, which give to the author of every original painting the sole and exclusive right of copying, engraving, reproducing, and multiplying such painting, and the design thereof, by any means and of any size, are seen (when reference is made to subsequent sections empowering the owner of the copyright to obtain a forfeiture of the piratical imitations) to be inapplicable to the representation of a painting by a *tableau vivant* (*c*). In all these instances, the Legislature supplied in the context the key to the meaning in which it used

(*a*) *Re London Cotton Co.* (1866), 35 L. J. Ch. 425. See also *Vron Colliery Co., In re* (1882), 51 L. J. Ch. 389, C. A., and *British Salicylates, Ltd., In re*, [1919] 2 Ch. 155. See now ss. 140, 142, Companies (Consolidation) Act, 1908.

(*b*) *Clementson* v. *Mason* (1875), 44 L. J. C. P. 171.

(*c*) 25 & 26 Vict. c. 68, amended, and partially repealed, by Copyright Act, 1911; *Hanfstaengl* v. *Empire Palace*, [1894] 2 Ch. 1; see further, *Hanfstaengl* v. *Baines*, 64 L. J. Ch. 81, [1895] A. C. 20.

expressions which seemed free from doubt; and that meaning, it is obvious, was not that which literally or primarily belonged to them.

Where the later of two Acts provided that the earlier Act should, so far as was consistent, be construed as one with it, an enactment in the later statute that nothing therein should include debentures was held to exclude debentures from the earlier one also (*a*). It has been observed, however, that when an Act embodies several distinct Acts, one part throws no further light on the other parts than would be cast upon them by separate and distinct enactments to the same effect (*b*).

Where a single section of an Act is introduced into another statute, it must be read in the sense which it bore in the original Act from which it is taken, and consequently it is legitimate to refer to all the rest of that Act in order to ascertain what the section meant, although one section only is incorporated in the new Act (*c*).

(*a*) *Read* v. *Joannon*, 59 L. J. Q. B. 544; see also *Standard Mfg. Co., In re*, [1891] 1 Ch. 627, C. A.; and *Exp. Lowe*, 60 L. J. Ch. 292.

(*b*) *Per* Turner L.J., *Cope* v. *Doherty* (1858), 4 K. & J. 367; 27 L. J. Ch. 600. As to incorporation of earlier Acts in a subsequent statute, see *Knill* v. *Towse*, [1890] 24 Q. B. D. 186; 59 L. J. Q. B. 136, 697; *R.* v. *Pharmaceutical Society*, [1899] 2 Ir. R. 132. And see inf. p. 541 *et seq.*

(*c*) *Per* Lord Blackburn, *Mayor of Portsmouth* v. *Smith* (1885), 10 App. Cas. 371.

Probably, the rule as to the exposition of one Act by the language of another is satisfactorily and most comprehensively laid down in the broad statement of Lord Mansfield, that: "Where there are different statutes *in pari materiâ*, though made at different times, or even expired and not referring to each other, they shall be taken and construed together, as one system and as explanatory of each other" (*a*).

For instance, a by-law which authorised the election of "any person" to be Chamberlain of the City of London would be construed so as to harmonise, and not to conflict, with an earlier one which limited the appointment to persons possessed of a certain qualification, and "any person" would be understood to mean only any eligible person (*b*). Where a question arose as to whether s. 7 of the Admiralty Court Act, 24 Vict. c. 10, which gives that Court jurisdiction over any

(*a*) *R.* v. *Loxdale*, 1 Burr. 447, adopted in the C. A., *Goldsmiths Co.* v. *Wyatt* (1907), 76 L. J. K. B. 169; but in *R.* v. *Titterton*, [1895] 2 Q. B. 67, Lord Russell of Killowen C.J., observes that "it is proper to refer to earlier Acts *in pari materiâ* only where there is an ambiguity." See also *per* Cotton L.J., *Sutton* v. *Sutton*, 52 L. J. Ch. 337, cited by Bray J., *Shaw* v. *Crompton*, 80 L. J. K. B. 56; *McWilliam* v. *Adams*, 1 Macq. H. L. 136, *per* Lord Truro.

(*b*) *Tobacco Pipe Makers* v. *Woodroffe* (1826), 7 B. & C. 838 (overruling *Oxford* v. *Wildgoose*, 3 Lev. 293). See also *Poulterer's Co.* v. *Phillips* (1840), 6 Bing. N. C. 314; 9 L. J. C. P. 190.

claim for "damage" done by any ship, included injuries done to persons by collision; one reason for deciding in the negative was that in other Acts *in pari materiâ*, loss of life and personal injury, on the one hand, and loss and damage to ships and other property, on the other, were invariably treated distinctly, and the word "damage" was nowhere, in them, applied to injuries to the person (*a*). So, the expression "possession" in s. 26 (now repealed) of the Representation of the People Act, 1832, which enacts that no person shall be registered in respect of his estate or interest in land as a freeholder, unless he has been "in actual possession" of it for six months (*b*), was construed in the same sense as in the Statute of Uses, which declares that the person who has the use of the land is to be deemed in lawful "possession" of it; and consequently the grantee of a rent-charge by a conveyance operating under the latter statute was held to be in possession of it, within the meaning of the Representation of the People Act, 1832, from the date of the execution of the deed (*c*); though a grantee under a

(*a*) *Smith* v. *Brown* (1871), 40 L. J. Q. B. 214; *Seward* v. *The Vera Cruz* (1884), 54 L. J. P. D. & A. 9, inf. p. 317.

(*b*) The qualifying period under 7 & 8 Geo. V. c. 64, is six months, see s. 6.

(*c*) *Heelis* v. *Blain* (1864), 34 L. J. C. P. 88; *Hadfield's Case* (1873), 42 L. J. C. P. 146. See also *Lowcock* v. *Broughton Overseer's* (1883), 53 L. J. Q. B. 144.

oommon law conveyance would not be in possession, within the samo Act, until he had received a paymont of the rent-oharge (*a*).

Not only may the later Act be construed by the light of the earlier, but it sometimes furnishes a legislative interpretation of the earlior. Thus Chapter 23 of Magna Charta (9 Hen. III.), which provides that "all weirs shall be put down through Thames and Medway, and through all England, exoept by the sea-ooast," was held to apply only to navigable rivers, beoause 25 Ed. III. and other subsequent statutes spoke of it as having been passed to prevent obstruotion to navigation (*b*). To determine the meaning of the word "broker," in 6 Anne, c. 16, the Bubble Aot (6 Geo. I. o. 18), passed twelve years later, was referred to, where the same term was used (*c*). In s. 299, of the repealod Merchant Shipping Act, 1854, which enacted that damage arising from non-observance of the sailing rules should *primâ facie* be deemed to have been oocasioned by "the wilful default" of the person in charge of the deck, the expression

(*a*) *Murray* v. *Thorniley* (1846), 15 L. J. C. P. 155; 69 R. R. 477; *Orme's Case* (1872), L. R. 8 C. P. 281; 42 L. J. C. P. 48.

(*b*) 25 Ed. III. stat. 4, c. 4; *Rolle* v. *Whyte* (1868), 37 L. J. Q. B. 105; and see *Leconfield* (*Lord*) v. *Lonsdale* (*Lord*) (1870), L. J. C. P. 305; Callis on Sewers, 258, 4th ed., at p. 305.

(*c*) *Clarke* v. *Powell*, 4 B. & Ad. 846; *Smith* v. *Lindo* (1858), 27 L. J. C. P. 196, 335.

"wilful default" was construed by the light of the later Act (*a*), 25 & 26 Vict. c. 63, s. 29, of which declares that the ship which occasioned the collision shall be deemed to be "in fault," as including a negligent as well as a criminal fault (*b*). But where one Act (1 & 2 Vict. c. 110, s. 18) gave the effect of judgments to rules of Court, for the payment of money, and a later one (Common Law Procedure Act, 1854, s. 60) authorised creditors who obtained judgment to recover the amount by the new process, which it introduced, of foreign attachment, it was held that this remedy did not apply to rules of Court, the object of the former Act appearing to be merely to give to rules the then existing remedies of judgments, and of the latter, to confine the new remedy to judgments in the strict acceptation of the term (*c*).

General rules and forms made under the authority of an Act which enacted that they should have the same force as if they had been included in it have also been referred to for the purpose of assisting in the interpretation of the Act (*d*). And now by the

(*a*) Repealed by 57 & 58 Vict. c. 60, s. 745 and Sched. 22.

(*b*) *Grill* v. *General Screw Collier Co.* (1866), L. R. 1 C. P. 611, *per* Willes J.; 35 L. J. C. P. 321; and see *Price* v. *Union Lighterage Co.* (1903), 72 L. J. K. B. 374.

(*c*) *Re Frankland*, 42 L. J. Q. B. 13; *Best* v. *Pembroke* (1873), 42 L. J. Q. B. 212.

(*d*) *Re Andrew*, 45 L. J. Bank. 57.

Interpretation Act, 1889, s. 31, it is provided that rules, orders, etc., made under an Act shall be construed as using expressions in the same sense as the Act (*a*).

The language and provisions of expired and repealed Acts on the same subject, and the construction which they have authoritatively received, are also to be taken into consideration; for it is presumed that the Legislature uses the same language in the same sense, when dealing at different times with the same subject, and also that any change of language is some indication of a change of intention (*b*). Thus s. 202 of the repealed Bankruptcy Act of 1849, which made "void" all securities given by a bankrupt to a creditor to induce the latter to forbear opposition to the bankrupt's certificate, was construed in the same sense as that which had been given to the same provision in the earlier and repealed Bankruptcy Act of 6 Geo. IV. (*c*). What was meant in s. 4, Vagrancy Act, 1824, 5 Geo. IV. c. 83, by

(*a*) 52 & 53 Vict. c. 63. See *Institute of Patent Agents* v. *Lockwood* (1894), L. J. P. C. 74, inf. p. 93.

(*b*) See Chap. XI, Sec. III.; *R.* v. *Loxdale*, sup. 62, and see *Devonport Corpn.* v. *Tozer* (1902), 71 L. J. Ch. 754. Principle approved in *Stoomvart Maatschappy Nederland* v. *P. & O. Steamship Co.* (1882), 7 A. C., at p. 816.

(*c*) *Goldsmid* v. *Hampton*, 27 L. J. C. P. 286. See also *Copeland, Exp.*, 22 L. J. Bank. 17, inf. p. 479; 4 & 5 Geo. V. c. 59, is now the statute relating to Bankruptcy; see s. 44 as to preference.

"running away, leaving his or her child chargeable to the parish" (*a*), was determined by referring to the earlier Act of 5 Geo. I., which spoke of persons who "run or go away from their abodes into other counties or places, and sometimes out of the kingdom," and was therefore held not to apply to a woman who left her children at the door of the workhouse, and returned to her usual abode in the town, where the workhouse was situated (*b*). Where a repealed Act imposed a penalty on the owner of cattle found lying on a highway "without a keeper," and the same provision was re-enacted without the last words, the omission was construed as obviously showing the intention that the presence of a keeper should no longer absolve the owner from liability (*c*).

Where a part of an Act has been repealed, it may, although not of operative force, still be taken into consideration in construing the rest, for it is part of the history of the new Act (*d*). If, for instance, an Act which imposed a duty on

(*a*) For other offences under this section, see *Davis* v. *Curry* (fortune telling), [1918] 1 K. B. 109; *Hartley* v. *Ellnor* (suspected person) (1917), 86 L. J. K. B. 938.

(*b*) *Cambridge Union* v. *Parr*, 30 L. J. M. C. 242, *per* Byles J.; and see *Peters* v. *Cowie*, 46 L. J. M. C. 177.

(*c*) 27 & 28 Vict. c. 101, s. 25; *Lawrence* v. *King* (1868), 37 L. J. M. C. 78; and see *Golding* v. *Stocking* (1869), L. R. 4 Q. B. 516.

(*d*) See sup. pp. 40–48.

racehorses, cabhorses, and all other horses, were repealed as regards racehorses, the remaining words would still obviously include them, if the enactment were read as if the repealed words had never formed a part of it (*a*). Where a statute imposed a duty on artificial mineral waters, and on all other waters to be used as medicines, and the duty on artificial mineral waters was afterwards repealed, the repealed words were held essential for determining whether what still subsisted of the Act, though wide enough to include artificial waters, was intended to include them. It has been said, however, to be an extremely hazardous proceeding to refer to provisions which have been absolutely repealed, in order to ascertain what the Legislature meant to enact in their stead, though there may be occasions on which such a reference would be legitimate (*b*).

The construction which has been put upon Acts of similar scope on similar subjects, even though the language should be different, may for a similar reason be referred to. Thus, the provision of 9 Geo. IV. c. 14, requiring that an acknowledgment to take a debt out of the Statute of Limitation should be signed "by the party chargeable thereby," was held not to include an acknowledg-

(*a*) *Per* Bramwell L.J., *A.-G.* v. *Lamplough* (1878), 3 Ex. D. 214.

(*b*) *Per* Lord Watson, *Bradlaugh* v. *Clarke* (1883), 8 App. Cas. 354, at p. 380.

ment by his agent, on the ground that when the Legislature intended to include the signature of agents, not only in other Statutes of Limitation, but also in several sections of the Statute of Frauds, one of which was recited in the Act, express words had been used for the purpose (*a*). So, the repealed County Court Act of 1867, 30 & 31 Vict. c. 142, s. 11, which gave jurisdiction in ejectment when the value of the tenement did not exceed £20, was construed, as regards the measure of value, by reference to the Parochial Assessments Act, 1836, 6 & 7 Will. IV. c. 96 (*b*). That which was held a sufficient signature to a will or contract under the Statute of Frauds (*c*) was held for that reason sufficient under the repealed Bankruptcy Act, 6 Geo. IV. c. 16, s. 131 (*d*), under the Statute of Limitation (*e*), and

(*a*) *Hyde* v. *Johnson* (1836), 5 L. J. C. P. 291. For limitations on the prinoiple underlying this decision, see *Whitley Partners, In re Callan* (1886), 55 L. J. Ch. 540, C. A. (Cotton L.J.).

(*b*) *Re Elstone and Rose*, 38 L. J. Q. B. 6. See now County Court Acts, 1888, s. 59, and 1903, s. 3, under which the value has been raised to £100.

(*c*) *Lemayne* v. *Stanley* (1681), 3 Lev. 1; *Streatley in the Goods of* (1891), 60 L. J. P. 56; *Knight* v. *Crockford*, 5 R. R. 729; *Hubert* v. *Treherne*, 60 R. R. 600; *Ogilvie* v. *Foljambe* (1817), 17 R. R. 13.

(*d*) *Kirkpatrick* v. *Tattersall* (1845), 14 L. J. Ex. 209.

(*e*) *Lobb* v. *Stanley*, 5 Q. B. 574, *per* Patterson J.; as to what will constitute a valid authentication of a contract, see *Caton* v. *Caton* (1867), L. R. 2 H. L., at p. 139.

under the repealed Parliamentary Voters' Registration Act, 1843 (*a*).

But where the Acts are not *in pari materiâ*, it is fallacious to take the construction which has been put upon one as controlling the construction of another (*b*). For instance, the meaning put on the words "goods" in the reputed ownership clause of the Bankruptcy Acts would be no guide to its meaning in s. 17, Statute of Frauds, now s. 4, Sale of Goods Act, 1893, not only because the words associated with it are different, but because the objects of the Act are wholly different (*c*). For the same reason, the Parochial Assessments Act, 1836, 6 & 7 Will. IV. c. 96, was held to throw but little (if any) light on the meaning of "the clear yearly value" of a tenement which qualified a voter under the Representation of the People Act,

(*a*) 6 & 7 Vict. c. 18, s. 17; repealed by 7 & 8 Geo. V. c. 64, s. 47, and Schedule VIII.; *Bennett* v. *Brumfitt*, 37 L. J. C. P. 25. *Comp. R.* v. *Cowper*, 24 Q. B. D. 60, 533.

(*b*) *Dewhurst* v. *Feilden*, 66 R. R. 696, *per* Maule J.; *Eyre* v. *Waller*, 29 L. J. Ex. 247, *per* Wilde B.; *Gerard's Estate, Re* (1893), 63 L. J. Ch. 23; and see *Stanford* v. *Roberts*, [1901] 1 Ch. 440.

(*c*) *Humble* v. *Mitchell* (1839), 52 R. R. 318; 9 L. J. Q. B. 29, and see *Colonial Bank* v. *Whinney* (1886), 11 A. C. 426; 56 L. J. Ch. 43; for later cases under s. 4, see *Morris* v. *Baron*, [1918] A. C. 1, H. L. (E); *Meggeson* v. *Groves*, [1917] 1 Ch. 158; *Parker* v. *Crisp*, [1919] 1 K. B. 481; *Thiskell* v. *Cambi*, [1919] W. N. 195.

1832 (*a*). Because chambers are a "house" for the purposes of assessment to a poor rate under 43 Eliz. c. 2 (*b*), of gaining a settlement under 6 Geo. IV. c. 57 (*c*), of qualifying for a vote under the repealed Representation of the People Act, 1832 (*d*), and also as a place in which a burglary might be committed (*e*), it did not follow that the same meaning was to be given to the expression in the House Tax Act, 1808, 48 Geo. III. c. 55, repealed as to London, which imposed a duty on "inhabited houses" (*f*). A bicycle, which is a "carriage" within an enactment against furious driving, would not necessarily be also a carriage under a turnpike Act which imposed a toll on carriages propelled by steam or other agency (*g*).

(*a*) 2 Will. IV. c. 45, s. 27 (repealed & re-enacted with modifications in 48 & 49 Vict. c. 3, s. 5); *Colvill* v. *Wood* (1846), 69 R. R. 473; 15 L. J. C. P. 160; *Dobbs* v. *Grand Junc. W. W.* (1883), 53 L. J. Q. B. 50.

(*b*) *R.* v. *St. George's Union* (1871), 41 L. J. M. C. 30. *Comp. Re Hecquard*, 24 Q. B. D. 71; *Re Nordenfelt*, 64 L. J. Q. B. 182.

(*c*) *R.* v. *Usworth* (1836), 5 A. & E. 261.

(*d*) *Henrette* v. *Booth* (1863), 33 L. J. C. P. 61, as to existing law, see Representation of the People Act, 1918.

(*e*) *Evans and Fynch's Case*, Cro. Car. 473.

(*f*) *A.-G.* v. *Westminster Chambers Assoc.* (1876), 45 L. J. Ex. 886; *Grant* v. *Langston* (1899), 69 L. J. P. C. 66. See also *R.* v. *Oxford* (V.C.), L. R. 7 Q. B. 471.

(*g*) *Williams* v. *Ellis* (1880), 49 L. J. M. C. 47. See also *Simpson* v. *Teignmouth Co.* (1903), 72 L. J. K. B. 204, C. A.; *Smith* v. *Kynnersley* (1903), Id. 357.

It may be added that in construing Acts of a private or local character, such as Railway Acts, the Courts do not shut their eyes to the fact that special clauses, frequently found embodied in them, are in effect private arrangements between the promoters and particular persons; and are not inserted by the Legislature as part of a general scheme of legislation, but are simply introduced at the request of the parties concerned (*a*). If the general provisions of such Acts were to override such special clauses, those in whose favour the latter are inserted would have a just claim to be heard in Committee on every clause of the Act, which would make it impossible to conduct any private legislation (*b*). Such special clauses are therefore treated as isolated, and foreign to the rest of the Act; so that their wording, contrary to the general rule, is not to be regarded as throwing any light on the construction of it (*c*).

SECTION V.—THE TITLE—THE PREAMBLE—MARGINAL NOTES—SCHEDULE—RULES AND ORDERS.

Originally, bills in Parliament were mere petitions to the King. They were entered on the rolls

(*a*) But see sup. pp. 53-54.

(*b*) *Per* Jessel M.R., *Taylor* v. *Oldham* (1877), 46 L. J. Ch. 105.

(*c*) *Per* Lord Cairns, *East London R. Co.* v. *Whitechurch* (1874), L. R. 7 H. L. 89.

of Parliament, with the King's answer; and at the end of the session, the Judges drew up these records into statutes to which they gave a title (*a*). In the execution of their task, they occasionally made additions, omissions, and alterations; but the practice ceased in the reign of Henry VI., when bills in the form of statutes without titles were introduced (*b*). The title was first added about the eleventh year of Henry VII. (*c*). In the Lords the original title of a bill is amended at any stage at which amendments are admissible, when alterations in the body of the bill have rendered any change in the title necessary; and in the Commons since 1854 either in committee (*d*) or report (*e*) or on the third reading stage of a bill (*f*). This title is always on the roll (*g*).

(*a*) Co. Litt. 272a. And see Ilbert on Legislative Methods, p. 5.

(*b*) *Per* Lord Macclesfield *se defendendo* (1725), 16 St. Tr. 1389; May, Parlmy. Pr., 12th ed. chap. 15, p. 346.

(*c*) Barrington, Obs. Stat. 403.

(*d*) May, Parlmy. Pr., 12th ed. chap. 15, p. 376.

(*e*) Id., p. 382.

(*f*) May, Parlmy. Pr., 12th ed. chap. 15, p. 385, and see *Powell* v. *Kempton Park Racecourse Co.*, [1897] 2 Q. B. 242, at p. 289 (C. A.).

(*g*) *Per* Jessel M.R., *Sutton* v. *Sutton*, 22 Ch. D. 511, at p. 513. In order to facilitate citation a Short Titles Act was passed in 1896, and according to modern practice the House of Lords requires every Act of Parliament to have, for facility of reference, a short title in addition to its formal long title, Ilbert, Legislative Methods and Terms, p. 272.

But although the title of a statute was recognised and attached to it by Parliament until quite modern times, it was not considered a part of the statute, and was therefore held to be excluded from consideration in construing the statute thus:—"The title cannot be resorted to," says Lord Cottenham, "in construing the enactment" (*a*). "The title, though it has occasionally been referred to as aiding in the construction of an Act, is certainly no part of the law," was laid down by the Court of Exchequer, in a well-known and considered judgment, "and, in strictness, ought not to be taken into consideration at all" (*b*). And Lord Denman remarked that the Court had often laid that down (*c*).

The rule was not, indeed, invariably observed (*d*);

(*a*) *Hunter* v. *Nockolds*, 84 R. R. 217.

(*b*) *Per* Cur., *Salkeld* v. *Johnston*, 84 R. R. 255, citing Lord Coke, *Powlter's Case*, 11 Rep. 33b; Lord Holt, *Mills* v. *Wilkins*, 6 Mod. 62; Lord Hardwicke, *A.-G.* v. *Weymouth*, Ambl. 22; Lord Mansfield, *R.* v. *Williams*, 1 W. Bl. 95. See also *Chance* v. *Adams*, 1 Lord Raym. 77; and *per* Byles J., *Shrewsbury* v. *Scott*, 6 C. B. N. S. 1; *per* Lord St. Leonards, *Jefferys* v. *Boosey*, 4 H. L. Cas. 982; *per* Grove J., *Morant* v. *Taylor*, 1 Ex. D. 194; *per* Willes J., *Claydon* v. *Green*, L. R. 3 C. P. 522; and the American case, *Hadden* v. *The Collector*, 5 Wallace, 110.

(*c*) *R.* v. *Wilcock*, 14 L. J. M. C. 104.

(*d*) See ex. gr. *R.* v. *Wright*, 1 A. & E. 446; *Alexander* v. *Newman*, 69 R. R. 438; *Taylor* v. *Newman*, 32 L. J. M. C. 189; *Rawley* v. *Rawley*, 45 L. J. Q. B. 675; *Bentley* v. *Rotherham*, 46 L. J. Ch. 284; *East & West India Dock* v. *Shaw*, 39 Ch. D. 531;

for the mind, when labouring to discover the design of the Legislature, naturally seized on everything from which aid could be derived (*a*); AND IT IS NOW SETTLED LAW THAT THE TITLE OF A STATUTE IS AN IMPORTANT PART OF THE ACT (*b*), and may be referred to for the purpose of ascertaining its general scope (*c*), and of throwing light on its construction (*d*), and this rule seems to apply alike to the "long" and "short" title (*e*).

Apparently, however, the construction of a statute is not limited by its title (*f*).

Formerly the bill was, at one of its stages, engrossed without punctuation on parchment (*g*);

per Selborne L.C., *Middlesex Justices* v. *R.*, 9 App. Cas. 772; *Bryan* v. *Child*, inf. p. 79.

(*a*) *Per* Cur., *U. S.* v. *Fisher*, 2 Cranch, 386; *U. S.* v. *Palmer*, 3 Wheat. 631.

(*b*) *Per* Lindley M.R., *Fielding* v. *Morley Corporation*, [1899] 1 Ch. 3; *per* Sutton J., *Jones* v. *Shervington* (1908), 77 L. J. K. B. 774; *per* Romer L.J., in *Ambler* v. *Bradford Corporation*, [1902] 2 Ch. C. A., at p. 594.

(*c*) *Per* Lord Macnaghten, *Fenton* v. *Thorley*, [1903] A. C. 447; *A.-G.* v. *Margate Pier Co.*, 69 L. J. Ch. 331; *per* Lord Alverstone C.J., *London County Council* v. *Bermondsey Bioscope Co.*, 80 L. J. K. B. 144.

(*d*) Ilbert on Legislative Methods and Forms, p. 269.

(*e*) *A.-G.* v. *Margote Pier Co.* (1900), 69 L. J. Ch. 331.

(*f*) *Gross in the goods of* (1904), 73 L. J. P. 82; as to headings of sections, *Fletcher* v. *Birkenhead Corporation* (1907), 76 L. J. K. B. 218.

(*g*) 1 Bl. Com. (Ed. 1844) 183.

but as neither the marginal notes nor the punctuation appeared on the roll, they formed no parts of the Act (*a*). This practice was discontinued in 1849, since which time a copy of each Act, printed on vellum by the King's printer, is preserved in the House of Lords and constitutes the official record of statutes (*b*). Both marginal notes and punctuation now appear on the rolls of Parliament; nevertheless, it has been said they are not to be taken as parts of the statute (*c*). But as regards marginal notes, the rule as to their rejection for the purposes of interpretation is now of imperfect obligation. For the purpose of interpretation a marginal note was used by Martin B. (*d*) and by Collins M.R. (*e*), which latter

(*a*) Barrington, Obs. on Stat. 394; see *Barrow* v. *Wadkin*, 24 Beav. 327; *per* Maule J., *R.* v. *Oldham*, 21 L. J. M. C. 134.

(*b*) May, Parlmy. P., 12th ed., chap. 15, p. 399.

(*c*) *Per* Willes J., and Bovill C.J., *Claydon* v. *Green* (1868), L. R. 3 C. P. 521; *per* James L.J., *A.-G.* v. *G. E. R. Co.*, 11 Ch. D. 465; *per* Jessel M.R., *Sutton* v. *Sutton*, 22 Ch. D. 513, retracting his opinion in *Re Venour*, 2 Ch. D. 525; and *per* Lord Esher M.R., *Duke of Devonshire* v. *O'Connor*, 24 Q. B. D. 478.

(*d*) *Nicholson* v. *Fields*, 31 L. J. Ex. 233.

(*e*) *Bushell* v. *Hammond* (1904), 73 L. J. K. B. 1005, and *Smith* v. *Portsmouth Justices*, 75 L. J. K. B. 851. In s. 12 and 24, London Building Act, 1905 (5 Ed. VII. c. CCIX), marginal notes in that Act are used as references, and see also Woking Urban Council (Basingstoke Canal) Act, 1911, *In re* (1914), 83 L. J. Ch. 201.

learned Judge said in *Bushell* v. *Hammond* (*inf.*), "the side-note, although it forms no part of the section, is of some assistance, inasmuch as it shows the drift of the section."

As to headings prefixed to sections, see *inf.* p. 92.

The indorsement by the Clerk of Parliaments of the date of the passing of the Act is part of it since 1793 (*a*).

No introductory words are necessary to each section (*b*).

The preamble of a statute has been said to be a good means to find out its meaning, and, as it were, a key to the understanding of it (*c*); and as it usually states, or professes to state, the general object and intention of the Legislature in passing the enactment it may legitimately be consulted for the purpose of solving any ambiguity, or of fixing the meaning of words which may have more than one, or of keeping the effect of the Act within its real scope, whenever the enacting part

(*a*) 33 Geo. III. c. 13.

(*b*) 52 & 53 Vict. c. 63, s. 8.

(*c*) "I very much regret that the practice of inserting preambles in Acts of Parliament has disappeared; for the preamble often helped to the solution of doubtful points"; *per* Lord Alverstone C.J., *London County Council* v. *Bermondsey Bioscope Co.*, 80 L. J. K. B. 144.

is in any of these respects open to doubt (*a*). Thus s. 3, 26 Geo. III. c. 107 (*b*), empowered every person who had served in the militia and was married, to set up in trade in a corporate town, as freely as soldiers might under an earlier enactment, and declared that "no such militiaman" should be removable from the town until he became chargeable,—it being open to doubt whether this expression included all married militiamen, or only married militiamen who had set up in trade in towns, the preamble of an earlier Act fixed the latter as the true construction, as it was stated that the mischief to be remedied was the state of the law which prevented soldiers from setting up in trade in corporate towns (*c*). So, as an Act which authorised aliens who "shall have been resident" in the country for two years, to hold land, might either be limited

(*a*) Bac. Ab. Stat. (I.) 2; Co. Litt. 79a, 4 Inst. 330, Plowd. 369; *Halton* v. *Cove*, 35 R. R. 373; *per* Lord Selborne, *Turquand* v. *Board of Trade*, 11 App. Cas. 286; *Sussex Peerage*, 11 Cl. & F. 143, 144. But where the language used in the schedule to an Act of Parliament varies from that of the enacting clause to which it relates the language of the enacting clause prevails, *Jacobs* v. *Hart* (1900), 2 F. (Just. Cases) 33, at p. 37; *Shore* v. *Cunningham*, [1917] 2 Ir. R. 360. For an article on "The Office of a Preamble," see 55 Solicitors' Journal, 340.

(*b*) Repealed 42 Geo. III. c. 90, s. 1.

(*c*) *R.* v. *Gwenop* (1789), 3 T. R. 133.

to persons who had so resided before the passing of the Act, or extend to those who should at any time reside for the required time, the preamble was resorted to in order to determine which of the two meanings was the more agreeable to the policy and object of the Act; and as it recited that aliens were prevented by law from holding lands in the State, and it was the interest of the State that such prohibitions should be done away with, it showed that the former construction was less adapted to give effect to the intention of the Legislature than the latter (*a*). Sec. 137 of the (repealed) Bankruptcy Act of 1849, which enacted that a Judge's order to sign judgment, given by a trader defendant, should be void if not filed, was held limited to traders who became bankrupt, a conclusion favoured by the heading prefixed to the section which professed to enact it "with respect to transactions with the bankrupt" (*b*). A wider construction, it may be added, would have had the unjust effect of enabling the trader who had not become bankrupt to set aside as void his own deliberate act, an intention not to be imputed to the Legislature, if the language admits of any other meaning (*c*). Sec. 18, 12 & 13 Viot. c. 45,

(*a*) *Beard* v. *Rowan* (1835), 9 Peters, 301. An American case on an American statute.

(*b*) *Bryan* v. *Child*, 82 R. R. 710. See 4 & 5 Geo. V. c. 59, for existing law.

(*c*) See Chap. VIII, Sec. III.

which enacted that "any order" of Quarter Session might be removed to the Queen's Benoh for enforcement, was similarly confined to orders in appeal oases, by the preamble, which, in reciting that it was expedient that the law should be made uniform in oases of appeal, showed the limited scope of the Act (*a*). Under a statute whioh enacted that when a person came into the oocupation of premises for which the preceding tenant was rated to the poor, the old and new ocoupants should be liable to the rate in proportion to the time of their occupation, the question arose whether either, and if so, which of them, was to pay for the interval between the removal and the beginning of the second occupation; and this was determined by the preamble, which, by reciting that in oonsequence of rated ocoupiers removing without paying their rates, and other persons entering and oocupying the premises for a part of the year, great sums were lost to the parish, showed that the object of the Act was not to make an equitable adjustment between the two ocoupiers, but to protect the parish from loss; it was therefore held that the rates were payable for the interval between the two occupations, and that the burden fell on the outgoing tenant, who

(*a*) *R.* v. *Bateman*, 27 L. J. M. C. 95. The section quoted on p. 79 does not apply to an order of quarter sessions to abate a nuisance.

was formerly liable under the Act of Elizabeth for the whole rate (*a*). An Act which made it penal for a publican to allow bad characters to "assemble and meet together" in his house, would not be broken by his permitting such persons to enter for taking refreshment, and remaining there as long as was reasonably necessary for that purpose; if the preamble showed that the object in view was the repression of disorderly conduct, not the absolute denial of all hospitality to persons of bad character (*b*). Under the repealed Act, 25 Geo. II. c. 6, which recited in the preamble a doubt as to who were legal witnesses to a will of land, and enacted that legatees and devisees who attested "any will" should be good witnesses, but that the bequests and devises to them should be void, the enacting part was limited by the preamble to wills of land. Wills of personality, at that time, needed no attestation; and the principle of *cessante ratione*

(*a*) 17 Geo. II. c. 38, s. 12; *Edwards* v. *Rusholme*, L. R. 4 Q. B. 554; 17 Geo. II. c. 38, s. 12, was replaced by 32 & 33 Vict. c. 41, s. 16, on which see *Overseers of St. Werburgh* v. *Hutchinson*, 49 L. J. M. C. 23; 32 & 33 Vict. c. 41, s. 16, is further amended; 45 & 46 Vict. c. 20, s. 3.

(*b*) 23 & 24 Vict. c. 27, s. 32, repealed in part by 35 & 36 Vict. c. 94, s. 75; *Greig* v. *Bendeno* (1858), 27 L. J. M. C. 294. See *Belasco* v. *Hannant*, 31 L. J. M. C. 225. *Comp.* s. 14, 35 & 36 Vict. c. 94. In order to justify a conviction under this latter Act *affirmative* evidence must in every case be given by the prosecution, *Miller* v. *Dudley JJ.* (1898), 46 W. R. 606.

cessat lex, as well as the injustice of depriving persons of property, making it reasonably doubtful whether the Legislature had used the expression "any will" in its full and unrestricted meaning, the preamble was legitimately invoked to determine the scope of the enactment (*a*).

But the preamble cannot either restrict or extend the enacting part, when the language and the object and scope of the Act are not open to doubt (*b*). It is not unusual to find that the enacting part is not exactly co-extensive with the preamble. In many Acts of Parliament, although a particular mischief is recited, the legislative provisions extend beyond it. The preamble is often no more than a recital of some of the inconveniences, and does not exclude any others for which a remedy is given by the statute (*c*). The evil recited is but the motive for legislation; the remedy may both consistently and wisely be

(*a*) *Emmanuel* v. *Constable*, 3 Russ. 436, overruling *Lees* v. *Summersgill*, 17 Ves. 508; *Brett* v. *Brett*, 3 Addams, 219. See also *Wethered* v. *Calcutt*, 61 R. R. 606; *Carr* v. *Royal Exchange Ass. Co.*, 33 L. J. Q. B. 63; *Re Masters*, 33 L. J. Q. B. 146.

(*b*) 4 Inst. 330; *per* Lord Mansfield, *Pattison* v. *Bankes* (1777), Cowp. 543, and *Perkins* v. *Sewell* (1766), 1 W. Bl. 659; *Copland* v. *Davies* (1872), L. R. 5 H. L. 358; *Bentley* v. *Rotherham* (1876), 46 L. J. Ch. 284.

(*c*) *Per* Fortescue J., *R.* v. *Athos* (1723), 8 Mod. 144.

extended beyond the cure of that evil (*a*); and if on a review of the whole Act a wider intention than that expressed in the preamble appears to be the real one, effect is to be given to it notwithstanding the less extensive import of the preamble (*b*). And generally, although in cases where the meaning of words used in a statute is absolutely clear the Court has no right to go beyond them, when the words are capable of one meaning, and at the same time of a more extended meaning, the Court will look to the object and policy of the Act to see what meaning they ought to have (*c*). Thus, 4 & 5 Ph. & M. c. 8 (*d*), made the abduction of all girls under sixteen penal, though the preamble referred only to heiresses and other girls with fortunes (*e*). So, 13 Eliz. c. 10, which makes void all leases, gifts, grants and conveyances of estates, made by any dean and chapter or master of a hospital, of an hereditaments, parcel of the possessions of the cathedral church or hospital, except for the limited term

(*a*) *Per* Lord Denman, *Fellowes* v. *Clay* (1843), 4 Q. B. 349.

(*b*) *Per* Lord Tenterden, *Doe* v. *Brandling* (1828), 7 B & C. 660. See also *Copeman* v. *Gallant*, 1 P. Wms. 320.

(*c*) *Reigate Rural Council* v. *Sutton District Water Co.* (1908), 99 L. T. 168.

(*d*) Repealed as to England, 9 Geo. IV. c. 31, s. 1, which see as to India, 9 Geo. IV. c. 74, s. 125.

(*e*) Co. Litt. 88b, n. 14.

allowed by the Act, was not narrowed or controlled by a preamble which recited only that divers ecclesiastical persons endowed of ancient palaces, mansions, and buildings belonging to their benefices, not only suffered them to go to decay, but converted the materials to their own benefit, and conveyed away their goods and chattels to defeat their successors' claims for dilapidations (*a*). 5 Geo. IV. c. 84, s 26, which, after reciting that transported felons in New South Wales, after obtaining remissions, sometimes "by their industry acquired property, in the enjoyment whereof it was expedient to protect them," enacted that every felon who received such remission should be entitled to sue for the recovery of any property, real or personal, acquired since his conviction,— was held not limited by the preamble to property acquired by his own exertions, but applied to all property howsoever acquired, as for instance by inheritance (*b*). It has been more than once decided that the preamble of the still unrepealed 37 Geo. III. c. 123, which refers only to the mischiefs consequent on inciting men to sedition and mutiny, and on administering to them oaths with this object, did not restrict the enacting part

(*a*) *York* v. *Middleborough* (1828), 31 R. R. 566; 2 Y. & J. 196.

(*b*) *Gough* v. *Davies*, 25 L. J. Ch. 677, and see *Fleming* v. *Smith* (1861), 12 Ir. C. L. R. 404.

of the statute, which made it felony to administer oaths not only with a view to mutinous or seditious purposes, but also with a view to disturb the peace, or to be a member of any association for any such purpose, or not to reveal any unlawful combination or illegal act; but that the latter words included offences foreign to politics and military discipline, such as the administration of oaths to poachers not to betray their companions, and to workmen similarly binding them to secrecy as members of an association for raising wages by a strike, or for not working under certain prices (*a*). So the preamble of 14 Geo. III. c. 78, which declared that an earlier Act for the regulation of buildings and the prevention of fire in the cities of London and Westminster had been found inefficacious, and that it would tend to the safety of the inhabitants of those cities if other regulations were established, was not suffered to restrict to the metropolis s. 83 of that Act, which enacted in general terms that in order to deter persons from wilfully setting fire to their houses, with a view to gain to themselves the insurance money, the directors of insurance offices should, in

(*a*) *R.* v. *Brodribb* (1816), 6 C. & P. 571; *R.* v. *Marks*, 6 R. R. 577; *R.* v. *Loveless*, 40 R. R. 825; *R.* v. *Ball*, 40 R. R. 819, and *comp. Smith* v. *Moody* (1903), 72 L. J. K. B. 43; a case decided under s. 7 of the Conspiracy & Protection of Property Act, 1875.

suspicious cases, lay out the insurance money in reinstating the damaged buildings (*a*). This construction, however, was further justified by the circumstance that the section in question was a re-enactment of a similar provision in the earlier and repealed Act, with the significant omission of the words "within the limits aforesaid," which words remained in most of the other sections of the later Act (*b*). Sec. 11, 21 Jac. I. c. 19 (*c*), which empowered bankruptcy commissioners to dispose of goods which were in the possession of the bankrupt, as reputed owner, with the real owner's consent, was prefaced by a preamble which recited the mischiefs of bankrupts "secretly conveying" their goods to other persons, and yet remaining in the reputed ownership of them; but the enactment was not confined to this particular form of the mischief (*d*).

3 Jac. I. c. 10 (*e*), which, after reciting that the King's subjects were charged with conveying

(*a*) *Exp. Gorely*, 34 L. J. Bank. 1, *per* Lord Westbury. See also *Owen* v. *Burnett*, 2 Cr. & M. 353. The application of 14 Geo. III. c. 78, s. 83 to Scotland has been doubted, see *Westminster Fire Office* v. *Glasgow Provident Investment Co.* (1888), 13 A. C. 699.

(*b*) As to the construction of s. 86, see *Musgrove* v. *Pandelis*, [1919] 2 K. B. 43, C. A.

(*c*) Repealed by 6 Geo. IV. c. 16, s. 1.

(*d*) *Mace* v. *Cadell* (1774), Cowp. 232.

(*e*) Repealed by 4 & 5 Geo. V. c. 58, s. 44 and Sched. IV.

"felons and other malefactors and offenders against the law" to jail, punishable by imprisonment there, enacted that "every person" committed to the county jail by a justice "for any offence or misdemeanor," should bear his own charges of conveyance, if he had property, and that if he had not, they should be borne by the parish where he was apprehended, was held not to be confined by the preamble to offenders against the ordinary law, but to apply to deserters from the army (*a*). So, the preamble of 22 Geo. III. c. 75 (*b*), which recited the mischief of granting colonial offices to persons who remained in England, and discharged the duties of their offices by deputy, was not suffered to exclude judicial offices from the general enacting part, which authorised the Governor and Council to remove "any" office-holder for misconduct; although the mention of delegation in the preamble showed that the judicial office was not there in contemplation (*c*).

2 & 3 Will. IV. c. 100 (*d*), which after reciting that the expense and inconvenience of suits for the recovery of tithes ought to be prevented by

(*a*) *R.* v. *Pierce* (1814), 15 R. R. 410; 3 M. & S. 62.

(*b*) Commonly attributed to Burke, but really an Act of Lord Shelburne's; see Shelb. Life, Vol. III. p. 337. Act amended by 57 & 58 Vict. c. 17, s. 1.

(*c*) *Willis* v. *Gipps* (1846), 5 Moo. P. C. 379; see also *Cloete* v. *The Queen* (1854), 8 Moo. P. C. 484.

(*d*) Repealed as a *public* Act by 46 & 47 Vict. c. 49, s. 4.

shortening the time required for the valid establishment of claims to exemption from tithes, enacted that when a claim to tithes was made by a layman, a claim to exemption should be deemed conclusively established by proof of non-payment for sixty years, gave rise to a celebrated legal controversy, in which the effect of the preamble was much considered. Before the passing of that Act, no layman could establish exemption from tithes, except by proving that the land in respect of which they were claimed had formerly belonged to one of the great monasteries, and had been exempt in its hands; the latter proposition being usually established by such evidence of non-payment in modern times as sufficed for founding the inference of exemption. It was held by some of the Judges (*a*), that the enactment was confined to claims of this kind; and the preamble was invoked in support of this view. But it was considered by others (*b*), and finally decided (*c*), that the Act applied to all cases whatsoever; and that upon proof of non-payment for sixty years the landowner was exempt, whether the land had ever been monastic or not. The enactment was free

(*a*) Wigram V.-C., Tindal C.J., Cresswell, Patteson, and Coleridge JJ.

(*b*) Lord Denman, Williams, Coltman, Erle JJ., Pollock C.B., Parke, Alderson, and Platt BB.

(*c*) By Lord Cottenham.

from ambiguity, and contained no flexible expression capable of different meanings (*a*); while the preamble, which one side understood as meaning that the expense and inconvenience of the same kind of suits as before ought to be prevented, was thought on the other to mean that expensive and inconvenient suits ought to be prevented in all cases; and that this was best effected by giving the more easy method of establishing exemptions by simple proof of non-payment for a certain time (*b*).

Where the preamble is found more extensive than the enacting part, it is equally inefficacious to control the effect of the latter, when otherwise free from doubt. For instance, 3 W. & M. c. 14, s. 3 (*c*), which gave creditors an action of "debt" against the devisees of their debtor, was held not to authorise an action for a breach of covenant, or for the recovery of money not strictly a "debt" (*d*); though the preamble recited that it was not just that by the contrivance of debtors their creditors should be defrauded of their debts,

(*a*) *Per* Lord Cottenham, *Salkeld* v. *Johnston* (1849), 1 Mac. & G. 264; 18 L. J. Ch. 493.

(*b*) See *Salkeld* v. *Johnston*, 1 Mac. & G. 242; *Fellowes* v. *Clay* (1843), 12 L. J. Q. B. 202; 4 Q. B. 313; and see S. C. (1848), 18 L. J. Ex. 89; and see upon the general question *Coope* v. *Cresswell* (1866), L. R. 2 Ch. 112, at p. 118.

(*c*) Repealed by 1 Will. IV. c. 47, s. 3.

(*d*) *Wilson* v. *Knubley* (1806), 7 East, 128.

but that it had often happened that after binding themselves by bonds "and other specialities" they devised away their property. The mention, it was observed, of the action of debt in the enacting part was almost an express exclusion of every other (*a*). An Act which made it penal to dye seeds so as to give them the appearance of seeds of "another kind," could not be extended to similar manipulations of old or inferior seeds, to make them appear as new of the same species, by a recital that the practice of adulterating seeds in fraud of the Queen's subjects and the detriment of agriculture required repression (*b*). An Act which required the trustees of a turnpike trust to apply the monies which they received, first, in paying "any interest which might from time to time be owing," next, in keeping the road in repair, and finally, in paying off the principal sums due by the trust, was held not to authorise the payment of arrears of interest; although this enactment was prefaced by a preamble which recited that arrears of interest as well as principal sums were due by the trust, and could not be paid off unless further powers were granted (*c*). Such

(*a*) *Per* Lord Ellenborough, 7 East, 135.

(*b*) *Francis* v. *Maas* (1878), 47 L. J. M. C. 83; 41 & 42 Vict. c 17, was passed to overcome the difficulties experienced in this case.

(*c*) *Market Harborough* v. *Kettering* (1873), 42 L. J. M. C. 137;

an extension of the Act would have required very clear words, since it would have had the effect of throwing on the ratepayers of one year a burden properly belonging to those of another (*a*).

It has been sometimes said that the preamble may extend, but cannot restrain the enacting part of a statute (*b*). But it would seem difficult to support this proposition (*c*). Several of the cases above cited might be referred to as instances of a restricted meaning having been judicially given to an enactment by its preamble (*d*). It could hardly be doubted that a statute which, in general terms, made it felony to alter a bill of exchange, would

But see *Burton Turnpike Trustees* v. *Wincanton Highway Board*, 39 L. J. M. C. 155.

(*a*) See Chap. X, Sec. II.

(*b*) *R.* v. *Athos* (1723), 8 Mod. 144; *Copeman* v. *Gallant*, 1 P. Wms. 320; *per* Lord Abinger, *Walker* v. *Richardson* (1837), 46 R. R. 782; 6 L. J. Ex. 229; *per* Willes J., *Hayman* v. *Flewker*, 32 L. J. C. P. 132; *per* Turner L.J., *Drummond* v. *Drummond* (1866), L. R. 2 Ch. 44; *per* Crowder J., *Kearns* v. *Cordwainers' Co.*, 6 C. B. N. S. 388.

(*c*) See ex. gr. *per* Parker C.B. and Lord Hardwicke, *Ryall* v. *Rolle*, 1 Atk. 174, 182. See also *per* Lord Blackburn, *West Ham Overseers* v. *Iles* (1883), 8 App. Cas. 386, at p. 388.

(*d*) *R.* v. *Gwenop* (1789), 3 T. R. 133; *Salkeld* v. *Johnston*, sup. pp. 74, 89. See also *per* Cur., *R.* v. *Manchester* (1857), 26 L. J. M. C. 65; *Hughes* v. *Chester R. Co.*, 31 L. J. Ch. 97. See also *Lancashire Brick &c. Co.* and *Lancashire & Yorkshire Ry. Co.*, [1902] 1 K. B. 651, C. A.

be restrained to fraudulent alterations, by a preamble which recited that it was desirable to suppress cheats and frauds effected by altering bills (*a*). The function of the preamble is to explain what is ambiguous in the enactment (*b*), and it may either restrain or extend it as best suits the intention.

But it is a settled rule that the preamble cannot be made use of to control the enactments themselves when they are expressed in clear and unambiguous terms (*c*).

The headings prefixed to sections or sets of sections in some modern statutes are regarded as preambles to those sections (*d*).

(*a*) *R.* v. *Bigg* (1717), 3 P. Wms. 434, arg. For a *resumé* of cases on this point, see Archbold's Criminal Pleading, 25th ed., at pp. 772, 773.

(*b*) *The People* v. *Utica Insur. Co.*, 15 Johns. N. Y. Rep. 389. See also *Coosaw Mining Co.* v. *South Carolina* (1891), 144 U. S. 550, at p. 563.

(*c*) *Powell* v. *Kempton Park Racecourse Co.*, [1899] A. C. 143, at p. 185; 68 L. J. Q. B. 392.

(*d*) See ex. gr. *Bryan* v. *Child* (1850), 82 R. R. 710; 19 L. J. Ex. 264; *Shrewsbury* v. *Beazley*, 34 L. J. C. P. 328; *Eastern Counties R. Co.* v. *Marriage*, 9 H. L. Cas. 41; *Latham* v. *Lafone*, 36 L. J. Ex. 97; *Hammersmith Ry. Co.* v. *Brand*, L. R. 4 H. L. 171; *Lang* v. *Kerr*, 3 App. Cas. 536; *Rayson* v. *South London Tramways Co.*, [1893] 2 Q. B. 304; *per* Brett L.J., *R.* v. *Local Govt. Bd.*, 10 Q. B. D. 321; *per* Buckley L.J., *West* v. *Gwynne*, 80 L. J. Ch. 587, 588. *Comp. Broadbent* v. *Imperial Gas. Co.*, 26 L. J. Ch. 276; *per* Farwell L.J., *Fletcher* v.

Rules made under an Act which prescribes that they shall be laid before Parliament for a prescribed number of days, during which period they may be annulled by a resolution of either House, but that if not so annulled they are to be of the same effect as if contained in the Act, and are to be judicially noticed, must be treated for all purposes of construction or obligation or otherwise, exactly as if they were in the Act. If there is a conflict between one of these rules and a section of the Act, it must be dealt with in the same spirit as a conflict between two actions of the Act should be dealt with. If reconciliation is impossible, the subordinate provision must give way, and probably the rule would be treated as subordinate to the section (*a*).

In a word, then, it is to be taken as a fundamental principle, standing, as it were, at the threshold of the whole subject of interpretation, that the plain intention of the Legislature, as expressed by the language employed, is invariably to be accepted and carried into effect, whatever may be the opinion of the judicial interpreter of

Birkenhead Corporation, [1907] 1 K. B., at p. 218; *Union S.S. Co. of New Zealand* v. *Melbourne Commissioners* (1884), 53 L. J. P. C. 59; 9 App. Cas. 365. As to Marginal Notes, see sup. p. 76.

(*a*) *Per* Lord Herschell L.C., *Institute of Patent Agents* v. *Lockwood*, [1894] A. C., at p. 360.

its wisdom or justice. If the language admits of no doubt or secondary meaning, it is simply to be obeyed. If it admits of more than one construction, the true meaning is to be sought, not on the wide sea of surmise and speculation, but "from such conjectures as are drawn from the words alone, or something contained in them" (*a*); that is, from the context viewed by such light as its history may throw upon it, and construed with the help of certain general principles, and under the influence of certain presumptions as to what the Legislature does or does not generally intend. But the language of a statute must not be strained in order to make it apply to a case to which it does not legitimately, in its terms, apply, on account of the supposed intention of the Legislature and the theory that that supposed intention can only be effectually carried out by giving to the words a meaning which they do not naturally bear (*b*).

(*a*) Puff. L. N. b. 5, c. 12, s. 2, note by Barbeyrac; *Reigate Rural Council* v. *Sutton District Water Co.* (1908), 99 L. T. 168.

(*b*) *Per* Lord Herschell, *Kent C. C.* v. *Gerard*, [1897] A. C. 639; and see *Macbeth* v. *Chislett*, [1910] A. C. 220; 79 L. J. K. B. 376.

CHAPTER II.

SECTION I.—WORDS UNDERSTOOD ACCORDING TO THE SUBJECT MATTER.

THE words of a statute, when there is a doubt about their meaning, are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the Legislature has in view (*a*). Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained (*b*). It is not because the words of a statute, or the words of any document, read in one sense will cover the case, that that is the right sense. Grammatically they may cover it; but whenever a statute or document is to be construed, it must be construed not according to the mere ordinary general meaning of the words, but according to the ordinary meaning of the words as applied to the subject matter with regard to which

(*a*) Sup. pp. 39, 40.

(*b*) *Per* Cur., *R.* v. *Hall* (1822), 1 B. & C. 136; Grot. de B. & P. b. 2, s. 16; Puff L. N. b. 5, c. 12, s. 3.

they are used, unless there is something which renders it necessary to read them in a sense which is not their ordinary sense in the English language as so applied (*a*). This is evident enough in the simple case of a word which has two totally different meanings. The Act of Ed. III., for instance, which forbade ecclesiastics to purchase "provisions" at Rome would be construed as referring to those papal grants of benefices in England which were called by that name, and not to food; when it was seen that the object of the Act was not to prevent ecclesiastics from living in Rome, but to repress papal usurpations (*b*). The "vagabond" of the Vagrancy Act, 1824, 5 Geo. IV. c. 83, is not necessarily the mere wanderer of strict etymology (*c*). Nor is a person making a *bonâ fide* collection in the street for a charitable object a beggar within the mischief of s. 3 of the Vagrancy Act (*d*). No one is likely to confound the "piracy" of the high seas with the "piracy" of copyright; or to give, in one branch of the law, the meaning which would belong, in another, to

(*a*) *Per* Brett M.R., *Lion Insurance Co.* v. *Tucker* (1883), 53 L. J. Q. B. 189.

(*b*) 1 Bl. Comm. (Ed. 1770) 60; Statutes of Provisors or Præmunire passed in 1350, 1353, 1364, 1390, and 1401.

(*c*) *Monck* v. *Hilton* (1877), 46 L. J. M. C. 163; and see *Rex* v. *Dickinson*, [1917] 2 K. B. 393.

(*d*) *Mathers* v. *Penfold*, [1915] 1 K. B. 514.

a host of familiar words, such as "accept," "assure," "issue," "settlement." In the Succession Duty Act, 1853, which provided that the instalments of duty payable by a successor should cease at his death, except when he was "competent to dispose by will of a continuing interest in the property," the competency intended was obviously not mental sanity or freedom from personal incapacity, but the possession of an estate of inheritance which was capable of disposition by will (*a*). The Gasworks Clauses Act, 1847, did not, by calling the debt due for gas "rent," authorise a distress for the debt under the repealed Bankruptcy Act, 1869, which regulated the power of distress of a landlord "or other person to whom 'rent' is due" by the bankrupt (*b*). The Mutiny

(*a*) 16 & 17 Vict. c. 51, s. 21, amended by 51 & 52 Vict. c. 8, ss. 21, 22; *A.-G.* v. *Hallett* (1857), 27 L. J. Ex. 89. As to a judgment being "final," *Ridsdale* v. *Clifton*, 2 P. D. 276; *Exp. Moore*, 14 Q. B. D. 627; *Exp. Grimwade*, 17 Q. B. D. 357; *Re Henderson*, 20 Q. B. D. 509; *Onslow* v. *Inl. Rev.* (1890), 59 L. J. Q. B. 556; *Salaman* v. *Warner* (1891), 60 L. J. Q. B. 624; *Re Alexander*, [1892] 1 Q. B. 216; *Re Binstead* (1892), 62 L. J. Q. B. 207; *Re a Bankruptcy Notice*, [1895] 1 Q. B. 609.

(*b*) 32 & 33 Vict. c. 71, s. 34; *Hill, Exp.*, 6 Ch. D. 63. See *Harrison, Exp.*, 13 Q. B. D. 753; *Peake, Re*, 53 L. J. Ch. 977. As to "tolls" in Railway Acts, see cases collected in judgment of Field J., *Brown* v. *G. W. R. Co.*, 9 Q. B. D. 750; see also *North Central Wagon Co.* v. *Manchester, S. & L. R. Co.*, 55 L. J. Ch. 780, 56 ld. 609, 58 ld. 219. As to water "rate," see

Acts which exempt soldiers from the payment of tolls over "bridges" would not carry the exemption to a steam ferry boat, because it is called a floating bridge (*a*). The enactment which prohibited parish officials from being concerned in contracts for supplying goods, materials or provisions "for the use of the workhouse," meant "for the use of the persons in the workhouse," and therefore did not apply to a contract for the supply of materials for the repair of the building (*b*). This is too plain to need further illustration.

In dealing with matters relating to the general public, statutes are presumed to use words in their popular sense; *uti loquitur vulgus* (*c*). But when dealing with particular businesses or transactions, words are presumed to be used with the particular meaning in which they are used and understood in the particular business in question (*d*); that

Badcock v. *Hunt* (1888), 22 Q. B. D. 145; *Floyd* v. *Lyons* (1897), 66 L. J. Ch. 350; *Haslett* v. *Sharman*, [1901] 2 I. R. 433, 439.

(*a*) *Ward* v. *Gray* (1865), 34 L. J. M. C. 146.

(*b*) 55 Geo. III. c. 137, s. 6; repealed in part as to s. 6 by 31 & 32 Vict. c. 122, s. 40; *Barber* v. *Waite*, 1 A. & E. 514; *Comp.* 4 & 5 Will. IV. c. [illegible], s. 77, cited inf. p. 298.

(*c*) *The Fusilier*, 34 L. J. P. M. & A. 27, *per* Dr. Lushington. See ex. gr. *Pitts* v. *Millar*, L. R. 9 Q. B. 380.

(*d*) *Per* Lord Esher M.R., *Unwin* v. *Hanson*, [1891] 2 Q. B. 119 and *The Dunelm*, 9 P. D. 171; Grot. b. 2, c. 16, s. 3; Vattel, b. 2, s. 276; *Evans* v. *Stevens*, 4 T. R. 462, *per* Lord Kenyon; *Morrall* v. *Sutton* (1844), 65 R. R. 434; 14 L. J. Ch.

meaning being rejected, however, as soon as the judicial mind is satisfied that another is more agreeable to the object and intention (*a*). Thus, 38 Geo. III. c. 5 and c. 60, which exempted "hospitals" from the land tax, was construed as applying to all establishments popularly known by that designation, and even as extending to an asylum for orphans (*b*); when it appeared more consonant to the object of the Act to give it that wider meaning, than to restrict it to what are alone "hospitals" in the strict legal sense of the term, that is, eleemosynary institutions in which the persons benefited form a corporate body (*c*).

266; *Doe* v. *Jesson*, 21 R. R. 1; *Doe* v. *Harvey*, 4 B. & C. 610; *Abbott* v. *Middleton*, 7 H. L. Cas. 68; *The Pacific*, 33 L. J. P. M. & A. 120. See *per* James L.J., *Boucicault* v. *Chatterton*, 5 Ch. D. 275; *Spackman*, *Re*, 24 Q. B. D. 728; *Hughes*, *Re*, [1893] 1 Q. B. 595; *Rayner* v. *Rayner* (1903), 73 L. J. Ch. 114; [1904] 1 Ch. 176, note, p. 191.

(*a*) *Per* Lord Wensleydale, *Roddy* v. *Fitzgerald* (1858), 6 H. L. Cas. 877. See also *Pelham Clinton* v. *Newcastle, Duke of* (1901), 71 L. J. Ch. 53, C. A.; affirmed (1902), 72 L. J. Ch. 424; *Towns* v. *Wentworth* (1858), 11 Moore P. C. 543.

(*b*) *Colchester* v. *Kewney*, 36 L. J. Ex. 172. See *R.* v. *Manchester*, 4 B. & Ald. 504. For a similar construction of "Almshouse," see *Mary Clark Home* v. *Anderson*, [1904] 2 K. B. 645; 73 L. J. K. B. 806.

(*c*) *Sutton's Case*, 10 Rep. 31a. As to what is an "hospital" within s. 1, Poor Removal Act, 1846 (9 & 10 Vict. c. 66), see *Ormskirk Union* v. *Chorlton Union* (1903), 72 L. J. K. B. 721; *Ormskirk Union* v. *Lancaster Union*, 107 L. T. 620.

So the power given in the Highway Act, 1835, to a surveyor to "lop" trees growing near a highway, was construed in the popular sense as confined to cutting off lateral branches, and not extending to "topping" (*a*). An Act which privileged a bankrupt from arrest for "debt" was, on the same principle, extended to arrests for non-payment of money ordered to be paid by an order of the Court of Chancery, or by a rule of a Common Law Court, though technically not constituting a debt (*b*); and the provision of the repealed s. 18 (8),

(*a*) 5 & 6 Will. IV. c. 50, s. 65; *Urwin* v. *Hanson*, [1891] 2 Q. B. 115; 60 L. J. Q. B. 531. As to what will justify removal of a fence under 5 & 6 Will. IV. c. 50, s. 69, see *Evans* v. *Oakley*, 1 Car. & K. 125. As to when the occupier of land is under no obligation to the public for an obstruction, see *Hudson* v. *Bray*, [1917] 1 K. B. 520.

(*b*) By s. 7 of 4 & 5 Geo. V. c. 59 (The Bankruptcy Act, 1914), protection is given to the property and person of a debtor subsequently to the making of a receiving order. The following cases are illustrative of protection afforded under repealed Acts in cases where the liability was not technically a debt: *M'Williams, Exp.* (1803), 1 Sch. & Lef. 169, attachment for contempt; *R.* v. *Edwards* (1829), 9 B. & C. 652, attachment under rule of Court; *R.* v. *Dunne* (1813), 2 M. & S. 201, attachment for non-payment of Master's award; *Lees* v. *Newton* (1866), 35 L. J. C. P. 285, attachment out of Chancery. *Comp.* *Bancroft* v. *Mitchell* (1867), L. R. 9 Q. B. 549, no privilege under 43 Eliz. c. 2, s. 7; *Drover* v. *Beyer* (1879), 13 Ch. D. 242, refusal to grant writ of *ne exeat regno*; *Patterson* v. *Patterson* (1870), L. R. 2 P. & D. 189, bankruptcy of co-respondent; *Bates* v.

Bankruptcy Act, 1883, which made a composition binding on creditors as regards any "debts" due to them from the debtor and provable in bankruptcy, was held to apply to any contingent liabilities which would be released by an order of discharge (*a*). Words in statutes are not infrequently construed in their popular and not in their technical meaning. Thus, when it was enacted (5 & 6 Will. IV. c. 54) that marriages already celebrated between persons within prohibited degrees should not be annulled for that cause, unless by sentence pronounced in a suit then "depending"; it was held that this last word was to be understood in a popular and not technical sense, and that a suit was "depending" as soon as the citation had been issued (*b*). Again, "monopoly value" in

Bates (1888), 14 P. D. 17, no privilege under s. 4 of Debtors Act, 1869, from order to find security for wife's costs; *Rawley* v. *Rawley* (1876), 45 L. J. Q. B. 675, a right of "set off" only exists where the debt to be set off is enforceable by action. See also *Jones* v. *Thompson* (1858), 27 L. J. Q. B. 234; *R.* v. *Paget* (1881), 8 Q. B. D. 151. A "penalty" is not a sum of money claimed to be due within the meaning of s. 6 of the S. J. Act, 1879.

(*a*) 46 & 47 Vict. c. 52; *Flint* v. *Barnard*, 22 Q. B. D. 90; see also *Hardy* v. *Fothergill*, 13 App. Cas. 351; *Craig's Claim, Re*, [1895] 1 Ch. 267.

(*b*) *Sherwood* v. *Ray* (1837), 43 R. R. 90. See *Ditcher* v. *Denison*, 11 Moo. P. C. 324; *R.* v. *Brooks*, 2 C. & K. 402. A prosecution is "instituted" by the laying of the information: *Thorpe* v. *Priestnall*, 66 L. J. Q. B. 248; *Beardsley* v. *Giddings*, 73 L. J. K. B.

s. 14 (1) of the Licensing Consolidation Act, 1910, means "capital monopoly value" and is a lump sum to be definitely fixed upon the grant of the justices' licence (*a*).

The payment of a fixed sum "in each and every calendar month" is the payment of an annual sum within the meaning of the Annuity Act, 1853, and is therefore subject to Income Tax (*b*).

For the purposes of s. 42 of the Naval Prize Act, 1864 (27 & 28 Vict. c. 25), only such of His Majesty's vessels "as are actually present at the taking or destroying" of an enemy's ships are entitled to participate in the prize bounty although other ships may have helped in the fight (*c*). Moreover, such bounty being purely a naval reward, if the taking or destroying of an enemy's ships results from the combined efforts of His Majesty's sea and land forces no award of bounty

378; and a written claim to goods taken in execution, served on a sheriff, is a "proceeding instituted" within s. 2, Married Women's Property Act, 1893 (56 & 57 Vict. c. 63): *Nunn* v. *Tyson*, [1901] 2 K. B. 487. See also *Hood Barrs* v. *Heriot*, [1897] A. C. 177; *Moran* v. *Place*, [1896] P. 214.

(*a*) *Rex* v. *Sunderland Customs* (1914), 83 L. J. K. B. 555; *Rex* v. *Pilfield*, [1919] 2 K. B. 249.

(*b*) *Cooper, In re* (1918), 119 L. T. 303.

(*c*) *Falkland Islands Battle, In re H.M.S. Canopus, Exp.* (1917), 86 L. J. P. 47. See also *The Carmania* (1916), 32 T. L. R. 395; *The Sydney*, [1916] P. 300; *The Königsberg*, [1917] P. 174; *H.M. Submarine Vessel E* 14, [1917] P. 85.

can be made (*a*). And in like manner where under the constitution of an association, originally founded in 1861, there were frequent changes of membership, technically amounting to the formation of partnerships after 1862, it was held that as the association was "formed," within s. 4, Companies Act, 1862, before the passing of the Act, the expression must be taken in its popular sense (*b*). An Act (*c*) which authorised the Court before which a road indictment was "preferred," to give the prosecutor costs, was held to confer authority to award them to the judge, who tried the indictment at Nisi Prius even after its removal into the Queen's Bench (*d*); for the technical meaning of the word "preferred" would have rendered the Act nugatory in a large majority of cases, road indictments being rarely tried at the Assizes at which they are "preferred" (*e*). Where judgment was "recovered" for £500 on a

(*a*) *H.M.S. Triumph* and *H.M.S. Usk, In re* (1917), 86 L. J. P. 127.

(*b*) 25 & 26 Vict. c. 89, s. 4, repealed and replaced by s. 1 of 8 Edw. VII. c. 69; see as to earlier Act, *Shaw* v. *Simmons*, 12 Q. B. D. 117.

(*c*) 5 & 6 Will. IV. c. 50, s. 95, repealed as to costs by 8 Edw. VII. c. 15, s. 10 and Schedule.

(*d*) *R.* v. *Pembridge* (1842), 12 L. J. Q. B. 47, 259; *R.* v. *Preston*, 7 Dowl. 593; see also *R.* v. *Papworth*, 2 East, 413; *R.* v. *Ipstones*, L. R. 3 Q. B. 216; 37 L. J. M. C. 37.

(*e*) *Per* Coleridge J., 3 Q. B. 906.

warrant of attorney to seoure an annuity of £30, of which only £15 were due, it was held that the defendant was protected from arrest by the enactment that no person should be taken in execution on a judgment "where the sum recovered does not exoeed £20." Though technically the judgment was "recovered" for the larger sum, the sum really recovered was under £20 (*a*). The Railway Clauses Consolidation Act, 1845, which, while giving companies power to take land for temporary purposes, provided that they should not be exempted from "an aotion" for nuisance or other injury, was construed as not limited to what were technically "actions," but included all proceedings whether at law or in equity (*b*). Where the Quarter Sessions were empowered to order "the party against whom an appeal was decided," to pay the costs of the successful party; it was held that the prosecutor who had procured the conviotion suooessfully appealed against, was for this purpose the party appealed against, though

(*a*) 7 & 8 Vict. c. 96, s. 57, repealed by 32 & 33 Vict. c. 83, s. 20 and Schedule, see under repealed Act; *Johnson* v. *Harris*, 24 L. J. C. P. 40.

(*b*) 8 & 9 Vict. c. 20, s. 32; *Fenwick* v. *East London R. Co.* (1875), L. R. 20 Eq. 544; 44 L. J. Ch. 602. "Action" as used in s. 1, Public Authorities Protection Act, 1893, has been similarly construed: *Harrop* v. *Ossett* (*Mayor*), [1898] 1 Ch. 525; 67 L. J. Ch. 347; and see *Fielden* v. *Morley Corp.* (1900), 69 L. J. Ch. 314, A.C.

he was not so on the record, or formally, nor even by being served with notice of the appeal (*a*). The convicting justices were not the parties appealed against, though the Act required that the notice of appeal should be served on them. Even the word "party" has received the sense in which it is sometimes vulgarly used, of "person," when it is plain that Parliament so intended it; as in the repealed Chancery Amendment Act of 1852, which enacted that any "party" who made an affidavit in a suit should be liable to cross-examination (*b*). 17 Geo. III. c. 26 (*c*), which, after requiring the registration of annuities, to check, as the preamble states, the pernicious practice of raising money by the sale of life annuities, except annuities charged on lands whereof the grantor is "seised in fee simple or fee tail in possession," was construed as including in this exception a person who was tenant for life with a general power of appointment; for such a person, though not technically a tenant in fee simple, is substantially so, since he can dispose of the property absolutely (*d*). Although the word

(*a*) *R.* v. *Hants*, 9 L. J. M. C. 109; 35 R. R. 407; and see *Reg.* v. *London JJ.*, [1895] 1 Q. B. 616, at p. 631; 64 L. J. M. C. 100.

(*b*) 15 & 16 Vict. c. 86, s. 40; *Re Quartz Hill Co.*, 21 Ch. D. 642.

(*c*) Repealed by S. L. R. 1861.

(*d*) *Halsey* v. *Hales* (1797), 7 T. R. 194; *Eccles* v. *Cheyne*

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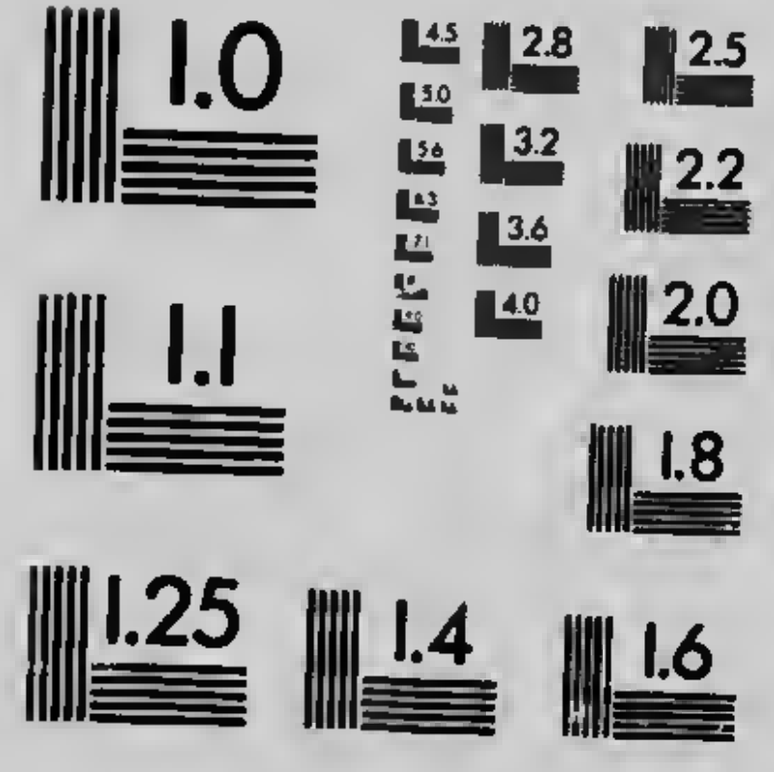

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"children" is generally confined to legitimate children (*a*), it would be construed as including illegitimate children when such seemed to be more consonant to the intention. Thus, 26 Geo. II. c. 33 (repealed by 4 Geo. IV. c. 76), which declared void the marriage of minors without the consent of their parents or guardians, was held to apply to illegitimate children, since clandestine marriages by them were within the mischief which it was the object to remedy (*b*); and the 4 & 5 Ph. & M. c. 8, s. 3 (*c*), which made it penal to take an unmarried girl under sixteen from the possession of her parents, against their will, was held to apply to the taking of a natural daughter from her putative father (*d*).

(1856), 2 K. & J., at p. 681. *Comp. Leach* v. *Jay* (1878), 47 L. J. Ch. 876.

(*a*) *R.* v. *Helton*, Burr. S. C. 187; *R.* v. *Birmingham* (1846), 8 Q. B. 410; *R.* v. *Maude* (1842), 65 R. R. 753; *Hill* v. *Crook* (1873), L. R. 6 H. L. 265; see *per* Pollock C.B., *Dickinson* v. *N. E. Ry. Co.*, 33 L. J. Ex. 91; *Dorin* v. *Dorin*, L. R. 7 H. L. 568.

(*b*) *R.* v. *Hodnett* (1786), 1 T. R. 96; see also *R.* v. *St. Giles* (1847), 11 Q. B. 173; *R.* v. *Brighton* (1861), 30 L. J. M. C. 197; see also 8 Edw. VII. c. 45, s. 3 (Punishment of Incest Act, 1908).

(*c*) Repealed by 9 Geo. IV. c. 31, s. 1.

(*d*) *R.* v. *Cornforth* (1742), 2 Stra. 1162. In *Dorin* v. *Dorin*, L. R. 7. H. L. 568; *Dickinson* v. *N. E. R. Co.*, 33 L. J. Ex. 91. As to conflict of Laws and indelibility of bastardy, see *Wright, Re* (1856), 25 L. J. Ch. 621.

A limited company incorporated under the Companies Acts is not a company "incorporated by Act of Parliament" (*a*).

In a Customs Act, which imposes duties on imported commodities, the articles specified would generally be understood in their known commercial sense (*b*). Thus, "Bohea" tea was understood to mean, not the pure and unadulterated article to which the name strictly belongs, and which alone is known by it in China; but all teas usually bought and sold at home as Bohea (*c*). So, to take an illustration from a contract, a fire policy which limited the responsibility of insurers to explosions by "gas," was construed as referring only to that kind of gas which was popularly known by that term, viz., common illuminating gas (*d*).

Where a statute applied to the United Kingdom,

(*a*) *Smith, Re*, [1896] 2 Ch. 590. See, however, *Olive* v. *Boyton*, [1891] 1 Ch. 501.

(*b*) *A.-G.* v. *Bailey* (1847), 17 L. J. Ex. 9; *Bailey* v. *Harris* (1849), 18 L. J. Q. B. 115.

(*c*) *Two hundred chests of tea*, 9 Wheat. 430; see also "Gin," *Webb* v. *Knight*, 2 Q. B. D. 530; "Spirits," *A.-G.* v. *Bailey*, sup. "Grain," *Cotton* v. *Vogan*, [1896] A. C. 457; 65 L. J. Q. B. 486.

(*d*) *Stanley* v. *Western Ins. Co.* (1868), L. R. 3 Ex. 71; *The Knight of St. Michael*, [1898] P. See as to covenant not to carry on the business of a "beerhouse," *Holt* v. *Collyer*, 16 Ch. D. 718, *London & Suburban Land Co.* v. *Field*, 50 L. J. Ch. 549, and *Nicoll* v. *Fenning*, 51 L. J. Ch. 166.

and the technical meaning of words differed in the different parts of the kingdom, the language would be taken in its popular sense (*a*).

The words of a statute will, generally, be understood in the sense which they bore when it was passed (*b*). For instance, a private Act (6 & 7 Will. IV. c. 100, s. 8), which provided that "no action in any of His Majesty's Courts of Law" should be brought against certain shipowners without a month's notice, has been held not to apply to proceedings in the Admiralty Division of the High Court of Justice; for when the Act was passed, the Admiralty Court was not called, and was not, one of His Majesty's Courts, nor were the proceedings there called an action (*c*).

And the same rule has been applied in the more recent case of "*The Burns*" in which it was held that the six months' limitation prescribed by 56 & 57

(*a*) *Saltoun* v. *Advocate-General*, 3 Macq. 659; *Macfarlane* v *Lord Advocate*, [1894] A. C. 307; *Income Tax Commissioners* v. *Pemsel*, [1891] A. C. 531. See also *London County Council* v. *South Metropolitan Gas Co.*, [1904] 1 Ch. 76, C. A; 73 L. J. Ch. 136.

(*b*) See *per* Lord Esher M.R., *Gas Light and Coke Co.* v. *Hardy*, 17 Q. B. D. 621; *Sharpe* v. *Wakefield*, 22 Q. B. D. 242; [1891] A. C. 173; *Rex* v. *Woodhouse*, [1906] 2 K. B. 501, at p. 530; *Read* v. *Lincoln* (*Bp.*), sup. p. 43.

(*c*) *The Longford*, 14 P. D. 34. See also *St. Cross* v. *Howard de Walden*, 6 T. R. 338; see also Chap. XI, Secs. I & VI. How far this applies to new things, see p. 144.

Vict. c. 61, s. 1 (*a*) does not apply to an Admiralty action *in rem* (*a*).

In a Consolidation Act (see sup. p. 48), it will be found that the language bears the meaning attached to it in the original enactment. For instance, the provision in the Sheriffs Act, 1887, requiring sheriffs' officers not to take arrested persons to prison for 24 hours, applies only to arrests on mesne process or Crown debts, such being the construction given to the original enactment, 32 Geo. II. c. 28 (*b*).

But it is in the interpretation of general words and phrases that the principle of strictly adapting the meaning to the particular subject matter in reference to which the words are used, finds its most frequent application. However wide in the abstract, they are more or less elastic, and admit of restriction or expansion to suit the subject matter. While expressing truly enough all that the Legislature intended, they frequently express

(*a*) [1907] P. 137; see also *Mitchell* v. *Aberdeen Insurance Committee*, Ct. Sess. (Sc.) (1918), W. C. & Ins. C. 206; *Bradford Corp.* v. *Myers*, [1916] 1 A. C. 242 H. L. (E.); *Rex* v. *Port of London Authority*; *Kynoch, Exp.*, [1919] 1 K. B. 176, C. A.

(*b*) 50 & 51 Vict. c. 55, s. 14; *Mitchell* v. *Simpson*, 25 Q. B. D. 183; *Smith, In re Hands* v. *Andrews*, [1893] 2 Ch. 1, C. A. See also *per* Lord Watson, *Smith* v. *Baker*, [1891] A. C. 349, and *per* Lord Herschell, *Bank of England* v. *Vagliano*, [1891] A. C. 144.

more, in their literal meaning and natural force; and it is necessary to give them the meaning which best suits the scope and object of the statute without extending to ground foreign to the intention. It is, therefore, a canon of interpretation that all words, if they be general and not express and precise, are to be restricted to the fitness of the matter (*a*). They are to be construed as particular if the intention be particular (*b*); that is, they must be understood as used in reference to the subject matter in the mind of the Legislature, and limited to it.

Thus, enactments which related to "persons" would be variously understood, according to the circumstances under which they were used, as including or not including corporations (*c*); and as limited to persons born in the King's allegiance,

(*a*) Bac. Max. 10.

(*b*) *Stradling* v. *Morgan* (1558), Plowd. 204; *Bradlaugh* v. *Clarke* (1883), A. C. 354, at p. 372; 52 L. J. Q. B. 505, 515; *Cox* v. *Hakes* (1890), 15 A. C. 506; 60 L. J. Q. B. 89.

(*c*) *R.* v. *Gardner*, Cowp. 79; *R.* v. *York*, 6 A. & E. 419; *R.* v. *Beverley Gas Co.*, Id. 645; Bac. Stat. Uses, 43, 57; *Pharmaceutical Soc.* v. *London Supply Assoc.*, 5 App. Cas. 857; *St. Leonard's* v. *Franklin*, 3 C. P. D. 377; *Hirst* v. *West Riding Union Banking Co., Ltd*, [1901] 2 K. B. 560, C. A. By 52 & 53 Vict. c. 63, s. 19, in that Act and in all future Acts, "person" includes any body corporate or unincorporate, "unless the contrary intention appears." See also Stroud's Jud. Dict. and Supplement, tit. "Person."

or as including also all foreigners actually within the British dominions (*a*), or in British ships on the high seas (*b*), or (the meaning in prize and commercial law) only persons domiciled in those dominions (*c*). Under the Licensing Act, 1872, "no person" may sell intoxicating liquor without a license, and "any person" selling without a license is made subject to penalties; but it was held that the sale prohibited was restricted to a sale by a person who ought to be licensed, and did not apply to a servant who sold liquor, the property of his master, by his master's orders (*d*). In a repealed Act (*e*) which provided for the recovery of wages by "persons belonging to a ship," this expression would obviously be confined to persons employed in its service on board; while in one which related to the salvage of "persons belonging to the ship," it would as obviously include

(*a*) *Courteen's Case*, Hob. 270; *Nga Hoong* v. *R.*, 7 Cox, 489; *Low* v. *Routledge*, 35 L. J. Ch. 117, *per* Turner L.J.

(*b*) *Davidson* v. *Hill*, [1901] 2 K. B. 606.

(*c*) *Wilson* v. *Marryat* (1798), 8 T. R. 31; *The Indian Chief*, 3 Rob. c. 12; and see *Croker* v. *Marquis of Hertford* (1844), 4 Moore P. C. 339, at p. 361.

(*d*) 35 & 36 Vict. c. 94, s. 3 (repealed, s. 65, Licensing (Consolidation) Act, 1910); *Williamson* v. *Norris* (1899), 68 L. J. Q. B. 31; *Boyle* v. *Smith*, [1906] 1 K. B. 432. See also *Titmus* v. *Littlewood*, [1916] 1 K. B. 272.

(*e*) 17 & 18 Vict. c. 84, repealed by 57 & 58 Vict. c. 60, Sched. 22.

passengers as well as crew (*a*). The 13 Eliz. c. 5, s. 1, which made void, as against creditors, all voluntary alienation of "goods," was held to apply only to such goods as were liable to be taken in execution; as the object of the Act was to prevent such property from being withdrawn from the reach of creditors: consequently, the word "goods" was held not to include choses in action, as long as these were not subject to execution (*b*). But the same word was held to include them in the reputed ownership clauses of former bankruptcy and insolvency Acts (*c*); as they were deemed to fall within the specific object of the Legislature, which was to protect creditors against being deceived by an apparent ownership of property (*d*). A bungalow constructed of wood and corrugated iron erected on a piece of land for the purpose of

(*a*) *The Fusilier* (1865), 3 Moore P. C. N. S. 51; see *The Cybele*, 3 P. D. 8; and see *The Renpor* (1883), 8 P. D. 115, C. A.

(*b*) *Dundas* v. *Dutens* (1790), 1 R. R. 112; *Rider* v. *Kidder*, 53 R. R. 269; *Norcutt* v. *Dodd*, 51 R. R. 224; *Sims* v. *Thomas*, 12 A. & E. 536. For other cases held not within the statute, see *Denny, Trustee of*, [1919] 1 K. B. 583; *Pearce* v. *Bulteel*, [1916] 2 Ch. 544; see herein 1 & 2 Vict. c. 110, s. 12.

(*c*) *Ryall* v. *Rowles*, 1 Ves. Sen. 367; *Exp. Baldwin*, 27 L. J. Bank. 17; "Insolvency," *comp. Re Muggeridge*, 29 L. J. Ch. 288, and *R.* v. *Saddlers' Co.*, 10 H. L. Cas. 404.

(*d*) As to goods in possession, order or disposition of a bankrupt within the Bankruptcy Act, 1914, see 4 & 5 Geo. V, c. 59, s. 38 (*c*).

exhibition and sale, but not used or occupied, or intended to be used or occupied on the spot on which it was erected, though clearly a "wooden structure or erection of a movable or temporary character," is not within the meaning of those words as used in s. 13, Metropolis Management and Building Acts Amendment Act, 1882 (repealed), see s. 84, 57 & 58 Vict. c. CCXIII., London Building Act, 1894, and does not require a license in writing from the County Council for its erection. The Act was not aimed at such a structure (*a*). A district surveyor is, however, entitled to notice under s. 145 of the Act (*b*). Damage caused by a ship to a pier, or by the mainsail gear of a barge coming in contact with a pile-driving engine fixed on a wharf, as the barge was sailing past, would not be "damage by collision" within the meaning of the County Court Admiralty Jurisdiction Acts, 1868 and 1869 (*c*). So, in Bankruptcy Acts, the word "creditor" is found to be limited, usually, to persons who are creditors at the time of the

(*a*) 45 & 46 Vict. c. 14; *London C. C.* v. *Humphreys*, [1894] 2 Q. B. 755. *Comp. Westminster Council* v. *London C. C.*, 71 L. J. K. B. 244.

(*b*) *City of Westminster Council* v. *Watson*, [1902] 2 K. B. 717.

(*c*) 31 & 32 Vict. c. 71, s. 3; 32 & 33 Vict. c. 51, s. 4; *Robson* v. *The Kate* (1888), 57 L. J. Q. B. 546; *The Normandy* (1904), 73 L. J. P. D. & A. 55; see also *The Upcerne* (1912), 81 L. J. P. 110.

bankruptcy and entitled to prove under it (*a*); and the statute which makes it a criminal offence for any member of a "co-partnership" to embezzle the moneys belonging to it, has been held not to apply to the case of an association having for its object, not the acquisition of gain, but the spiritual and mental improvement of its members (*b*).

The complex term "inhabitant" may be cited as having frequently furnished illustration of this adaptation of the meaning to what appears to suit most exactly the object of the Act. In the abstract, the word would include every human being dwelling in the place spoken of. A right of way over a field to the parish church granted to the "inhabitants" of a parish would include every person in the parish (*c*). But where the object of an Act was to impose a pecuniary burden in respect of property in the locality (as in the case

(*a*) *Grace* v. *Bishop*, 25 L. J. Ex. 58; *Re Polan*, 35 L. J. Bank. 19. Under s. 48, Bankruptcy Act, 1883 (repealed by 4 & 5 Geo. V. c. 59, and re-enacted by s. 44 of that Act, as to which see *Bulteel and Colmore* v. *Trustee in Bankruptcy* (1916), 32 T. L. R. 661; *Rooker, In re*, [1916] W. N. 293. See *Paine, Re, Read, Exp.* (1896), 66 L. J. Q. B. 71; *Blackpool Motor Car Co., In re*, [1901] 1 Ch. 77.

(*b*) 31 & 32 Vict. c. 116, s. 1; *R.* v. *Robson* (1885), 55 L. J. M. C. 55. *Comp. R.* v. *Tankard*, [1894] 1 Q. B. 548. Sec. 1 of 31 & 32 Vict. c. 116 is repealed by 6 & 7 Geo. V. c. 50, s. 48.

(*c*) *R.* v. *Mashiter* (1837), 6 L. J. K. B. 121; 6 A. & E. 165, *per* Littledale J. See also *R.* v. *Davie* (1837), 6 A. & E. 374.

of the Statute of Bridges, 22 Hen. VIII. c. 5, which throws the burden of making and repairing bridges on the "inhabitants" of the town or county in which they are situated, and in the Riot and Black Acts (*a*)), the expression would be construed as comprising all holders of lands or houses in the locality, whether resident or not, and corporate bodies as well as individuals, but as excluding actual dwellers who had no rateable property in the place, such as servants; it being "infinite and impossible" to tax every inhabitant being no householder, and who could not be distrained upon for non-payment, and therefore highly improbable that the Legislature intended to tax them (*b*).

On the other hand, where the object is to impose the performance of a personal service within the locality, the word "inhabitant" would probably be construed as not comprising either corporate bodies or non-resident proprietors. Thus, it was held that a person who occupied premises in one parish and carried on his business in person there, but resided in his dwelling-house in another, was not an "inhabitant" of the former parish so as to be bound to serve as its constable (*c*). So,

(*a*) *R.* v. *North Curry* (1825), 4 B. & C. 958, *per* Bayley J.

(*b*) 2 Inst. 702; *R.* v. *North Curry*, 4 B. & C. 958, *per* Bayley J.

(*c*) *R.* v. *Adlard*, 4 B. & C. 772. See also *R.* v. *Nicholson*, 11

an Act which authorised the imposition of a rate on all who "inhabited or occupied" any land or house, and the appointment of a number of "inhabitants" to collect the rates, was held to throw the latter duty only on actual dwellers in the locality (*a*). But here the word "occupied" would suggest a meaning for "inhabitants" distinct from "occupiers." A furnished house, not lived in during the year of assessment, is an "inhabited dwelling-house" and assessable to inhabited house duty (*b*).

Again, another meaning would be given to the same expression, where the object was to determine the settlement of a pauper, or the qualification of an elector. In these cases, a person is an inhabitant or resident in the place in which he usually sleeps (*c*). What amounts to inhabitancy

R. R. 398; *Williams* v. *Jones*, Id. 411. *Comp. Wethered* v *Calcutt*, inf. p. 122.

(*a*) *Donne* v. *Martyr* (1828), 8 B. & C. 62.

(*b*) 14 & 15 Vict. c. 36, s. 1; *Smith* v. *Dauney* (1904), 73 L. J. K. B. 646.

(*c*) *St. Mary* v. *Radcliffe*, 1 Stra. 60, *per* Parker C.J.; *R.* v. *Charles*, Burr. Set. C. 706; *R.* v. *Stratford*, 11 East, 176; *R.* v. *Mildenhall*, 3 B. & Ald. 374; *Beal* v. *Ford*, 3 C. P. D. 73; *Ford* v. *Drew*, 5 C. P. D. 59; *Riley* v. *Read*, 4 Ex. D. 100; *A.-G.* v. *Parker*, 3 Atk. 577, *per* Lord Hardwicke L.C. For modern decisions on this point, see *Gt. Yarmouth Union* v. *Bethnal Green Union* (1907), 97 L. T. 440; *Tewkesbury Union* v. *Upton-on-Severn Union* (1913), 83 L. J. K. B. 37; *Daventry Union* v. *Coventry Union* (1917), 86 L. J. K. B. 276.

in this sense, it is impossible to define. Sleeping in a place once or twice does not constitute it; and, on the other hand, such residence generally in a place, in this sense, is quite compatible with much absence from it (*a*). But if an Act requires residence for a certain time at least, as a qualification, it would be understood to make actual bodily presence in the place for that time indispensable; as was held in the construction of the Act constituting the congregation of the University of Oxford (*b*).

The same expression has received another meaning where the object of the Act was to preserve information as to the place where a person was to be found at times when it was most likely that he should be sought; as in the enactment which requires a solicitor to indorse his "place of abode" on the summons which he issues; or a witness to a bill of sale, to add to his signature a description of his occupation and

(*a*) *R.* v. *Mitchell*, 10 East, 518; *Wescomb's Case*, L. R. 4 Q. B. 110; *Taylor* v. *St. Mary Abbotts*, 40 L. J. C. P. 45; *Boud* v. *St. George's*, Id. 47. See also *Whithorne* v. *Thomas*, 7 M. & Gr. 1; *Ford* v. *Pye*, L. R. 9 C. P. 269; *Ford* v. *Hart*, Id. 273; *McDougal* v. *Paterson*, 87 R. R. 869; *Dunston* v. *Paterson*, 28 L. J. C. P. 185; *Powell* v. *Guest*, 34 L. J. C. P. 69; *Spittall* v. *Brook*, 18 Q. B. D. 426; *Beal* v. *Town Clerk of Exeter*, 20 Q. B. D. 300; *Donoghue* v. *Brook*, 57 L. J. Q. B. 122; *Gt. Yarmouth Union* v. *Bethnal Green Union* (1907), 97 L. T 440.

(*b*) *R.* v. *Oxford* (V.C.) (1872), L. R. 7 Q. B. 471.

"residence." In these cases it has been held, considering the object which the Legislature had in view, that the place of business constituted the abode or residence intended (*a*). But in general the place of business of a person would not be regarded as his "place of abode" (*b*). It has been held to be his "address" as a witness to a bill of sale under ss. 8–9 and schedule of the Bills of Sale Act, 1882 (*c*); but not to be his "address" for indorsement on a writ as plaintiff in an action (*d*).

A clerk or servant does not "carry on business" in the place where he is employed, within the meaning of Acts giving jurisdiction to County and other Courts over persons who dwell or carry on business within their limits (*e*); but the words would receive a wider meaning when the object of the enactment had reference to the distribu-

(*a*) *Thorp* v. *Browne* (1867), L. R. 2 H. L. 220.

(*b*) See *R.* v. *Hammond*, 21 L. J. Q. B. 153. See also *R.* v. *Deighton*, 13 L. J. Q. B. 241; *R.* v. *Coward*, 20 L. J. Q. B. 359.

(*c*) 45 & 46 Vict. c. 43; *Simmons* v. *Woodward* (1892), 61 L. J. Ch. 252. See also *Brandon Hill, Ltd.* v. *Lamb* (1914), 59 S. J. 75; *Boddington, In re* (1915), H. B. R. 183; *Rouard, In re* (1916), 85 L. J. (K. B.) 393.

(*d*) Rules of S. C. Order IV. r. 1; *Stoy* v. *Rees*, 24 Q. B. D. 748. In Ireland a magistrate suing in his official capacity may use his official place of business, *R.* v. *JJ. Co. Tyrone*, [1901] 2 Ir. R. 497.

(*e*) *Graham* v. *Lewis*, 22 Q. B. D. 1; 58 L. J. Q. B. 117, C. A.

tion of business between different Bankruptcy Courts (*a*).

Under the provisions of the County Courts Act, which gave the Superior Courts concurrent jurisdiction when the parties dwelt more than twenty miles apart, the principal office of a railway company was its dwelling (*b*); but not its other offices or stations (*c*). But the manufactory or shop, where the business is substantially carried on, and not its registered office, is the dwelling, within the meaning of the same provision, of a manufacturing company (*d*). For fiscal purposes, a corporation is regarded as residing where the governing body carries on the supreme management, though the scene of its operations and sources of profit, and even the majority of the shareholders, are out of the country, and though it has a foreign domicil and is registered abroad (*e*).

(*a*) *Breull, Exp.* (1880), 16 Ch. D. 484; 50 L. J. Ch. 384.

(*b*) *Adams* v. *G. W. R. Co.* (1861), 30 L. J. Ex. 124; *Taylor* v. *Crowland Gas Co.*, 23 L. J. Ex. 254; *Minor* v. *L. & N. W. R. Co.*, 26 L. J. C. P. 39.

(*c*) *Shiels* v. *G. N. R. Co.* (1861), 30 L. J. Q. B. 331; *Brown* v. *L. & N. W. R. Co.* (1863), 32 L. J. Q. B. 318.

(*d*) *Keynsham* v. *Baker* (1864), 33 L. J. Ex. 41. See also *Aberystwith Pier Co.* v. *Cooper*, 35 L. J. Q. B. 44.

(*e*) *Newby* v. *Colt's Arms Co.*, L. R. 7 Q. B. 293; *Haggin* v. *Comptoir d'Escompte* (1889), 23 Q. B. D. 519; 58 L. J. Q. B. 508; *Carron Iron Co.* v. *Maclaren*, 5 H. L. Cas. 459. See *A.-G.* v. *Alexander*, L. R. 10 Ex. 20.

A foreign corporation which had any establishment in this country would for the same purpose be considered as resident here, as regards the question of jurisdiction (*a*).

This proposition is, however, somewhat whittled down by the decision of the Court of Appeal in *Okura & Co.* v. *Forsbacka Jernverks Aktiebolag* (*b*) in which it was held that a London Firm of Merchants who acted as agents for various firms, including the defendants, did not so represent their principals as to constitute service upon them of a writ as valid service on their principals.

Again, the word "occupier" has received different meanings, varying with the object of the enactment. Ordinarily, the tenant of premises is the "occupier" of them, although he may be personally absent from them (*c*); while a servant or an officer who is in actual occupation of premises, *virtute officii*, would not be an "occupier" (*d*). But in the Bills of Sale Act, 1854 (repealed by s. 23, 41 & 42 Vict. c. 31), which provided that

(*a*) *Cesena Sulphur Co.* v. *Nicholson*, 1 Ex. D. 428.

(*b*) [1914] 1 K. B. 715, C. A.; 83 L. J. K. B. 561.

(*c*) *R.* v. *Poynder*, 25 R. R. 345; 1 B. & C. 178, and see *R.* v. *Spurrell*, 35 L. J. M. C. 74.

(*d*) *Clark* v. *Bury St. Edmunds*, 26 L. J. C. P. 12; *Bent* v. *Roberts*, 3 Ex. D. 66; *R.* v. *Spurrell*, L. R. 1 Q. B. 72; *McClean* v. *Prichard*, 20 Q. B. D. 285. See in this connection 44 Vict. c. 12, s. 24.

personal chattels should be deemed in the possession of the grantor of a bill of sale so long as they were on the premises "occupied" by him, actual personal occupation, and not merely tenancy, was intended; and therefore the owner of chattels in rooms which he did not personally occupy was not in the "apparent" possession of them, within that Act (*a*).

This restriction of meaning may be carried still further to promote the real intention, and not exceed the object and scope of the enactment. Thus, an Act which, reciting the inconveniences arising from churchwardens and overseers making clandestine rates, enacted that those officers should permit "every inhabitant" of the parish to inspect the rates, under a penalty for refusal, was held not to apply to a refusal to one of the churchwardens, who was also an inhabitant. As the object of the Act was limited to the protection of

(*a*) 17 & 18 Vict. c. 36; *Robinson* v. *Briggs*, 40 L. J. Ex. 17. As to the word "traveller," see *Taylor* v. *Humphreys*, 30 L. J. M. C. 242; *Fisher* v. *Howard*, 34 L. J. M. C. 42; *Atkinson* v. *Sellers*, 28 L. J. M. C. 12; *Saunders* v. *S. E. R. Co.*, 49 L. J. Q. B. 761; *Penn* v. *Alexander*, 62 L. J. M. C. 65; and in Ireland 6 Edw. VII. c. 39, s. 3; in England 10 Edw. VII., 1 Geo. V. c. 24, s. 61; "lodger" and "occupier," *Bradley* v. *Baylis*, 8 Q. B. D. 195, 210; *Morton* v. *Palmer*, 51 L. J. Q. B. 7; *Heawood* v. *Bone*, 13 Q. B. D. 179. See also *Bishop* v. *Duffy* (1894), 22 Rettie, 192, and as to hours of sale, *Bristow* v. *Piper*, [1915] 1 K. B. 271.

those inhabitants only who had previously no access to the rates (which the churchwardens had), the meaning of the term "inhabitants" was limited to them (*a*).

In another case, the majority of the Judges of the Queen's Bench went further than the Chief Justice thought legitimate, in giving an unusual and even artificial meaning to a word, for the purpose of keeping within the apparent scope of the Act. The treaty between Great Britain and the United States of 1842 and the 6 & 7 Vict. c. 76 (*b*), passed to give the Executive the necessary powers for carrying its provisions into effect, having provided that each State should, on the requisition of the other, deliver up to justice all persons who, being charged with murder, "piracy," or other crimes therein mentioned, committed within the jurisdiction of either State, should seek an asylum, or be found within the territories of the other; it was held that the word "piracy" was confined to those acts which are declared piracy by the municipal law of either country, such as slave-trading, and did not include those which are piracy in the ordinary and primary

(*a*) *Wethered* v. *Calcutt* (1842), 5 Scott, N. R. 409. See also *R.* v. *Mashiter* (1837), 45 R. R. 433; 6 L. J. K. B. 121; *R.* v. *Davie* (1837), 6 A & E. 374.

(*b*) Repealed by 33 & 34 Vict. c. 52, s. 27. See also The Extradition Act, 1906 (bribery inclusion).

sense of the word, that is, *jure gentium*: for as the latter offence was within the jurisdiction of all States, and was triable by all, and the offenders could not, consequently, be said to seek an asylum in any State, since none could be a place of safety for them, that species of the crime was not within the mischief intended to be remedied by the treaty or the Act (*a*).

SECTION II.—BENEFICIAL CONSTRUCTION.

It is said to be the duty of the judge to make such construction of a statute as shall suppress the mischief and advance the remedy (*b*). Even where the usual meaning of the language falls short of the whole object of the Legislature, a more extended meaning may be attributed to the words, if fairly susceptible of it. If there are circumstances in the Act showing that the phraseology is used in a larger sense than its ordinary meaning, that sense may be given to it (*c*). Thus, the Legislature having intended when passing the

(*a*) *Ternan, Re*, 33 L. J. M. C. 201. See also *A.-G.* v. *Kwok-a-Sing*, L. R. 5 P. C. 179.

(*b*) *Heydon's Case*, 3 Rep. 7b; *per* Lord Kenyon, *Turtle* v. *Hartwell*, 6 T. R. 429; *per* Cockburn C.J., *Twycross* v. *Grant*, 2 C. P. D. 530. See ex. gr. *Re Dick*, [1891] 1 Ch. 426.

(*c*) *Per* Lord Esher M.R., *Barlow* v. *Ross* (1890), 24 Q. B. D. 381, at p. 389; 59 L. J. Q. B. 183, and see *Gross in the goods of* (1904), 73 L. J. P. 82.

Workmen's Compensation Act, 1897, that every workman in the prescribed trades should be entitled to compensation, it ought to be construed so as, as far as possible, to give effect to its primary provisions (*a*). The repealed enactment (s. 54 (4), 25 & 26 Vict c. 63) limiting the liability of shipowners where, among other things, the injury done is "by reason of the improper navigation" of their ships, extends to a case where a collision was owing, not to any default of the crew, but to the breakdown of the steering gear from the negligence of engineers on shore, who had improperly fixed it (*b*). It would extend to every case where the negligence is that of any person for whose negligence the owner is responsible, unless it occurred with the privity of the latter (*c*). Where a colonial statute empowered municipal councils to construct bridges, and provided that in certain circumstances the authorities of "adjacent" districts should contribute to the cost, it was held that the word "adjacent" has not by ordinary usage a precise and uniform meaning, and is not confined to places adjoining, but

(*a*) 60 & 61 Vict. c. 37; *Lysons* v. *Knowles*, [1901] A. C. 79, and see *Fleming* v. *Lochgelly Iron & Coal Co.* (1902), 4 F. 890.

(*b*) *The Warkworth* (1884), 9 P. D. 145; as to existing law, see s. 503 of 57 & 58 Vict. c. 60.

(*c*) Id. *per* Brett M.R. See also *Canada Shipping Co.* v. *British Shipowners' Mutual Protection Society* (1889), 58 L. J. Q. B. 462.

that the degree of proximity which would justify its application is frequently a question of circumstances (*a*). A young person whose work is partly indoor and partly outdoor, the outdoor work being at some distance from the shop where he is employed, is when employed in outdoor work employed "in or about a shop" within the Shop Hours Act, 1892 (*b*). To supply beer at a public-house to a drunken man and his sober companion, would be to "sell" the liquor to the drunken man, although it was ordered and paid for by the sober companion (*c*). A driver who leaves a carriage and horses standing in the highway leaves them while they are "passing" upon such highway within s. 78, Highway Act, 1835 (*d*). Acts which gave a "single woman" who had a bastard child the

(*a*) *Mayor of Wellington* v. *Mayor of Lower Hutt*, [1904] A. C. 773. But see *Kimberley W. W. Co.* v. *De Beers Mines*, 66 L. J. P. C. 108; *Bateman and Parker, Re*, 68 L. J. Ch. 330.

(*b*) 55 & 56 Vict. c. 62; *Collman* v. *Roberts*, [1896] 1 Q. B. 457.

(*c*) 35 & 36 Vict. c. 94, s. 13; this section repealed as regards England by 10 Edw. VII. and 1 Geo. V. c. 24, s. 112, Sched. VII. As to existing law, see s. 75 of Licensing Consolidation Act, 1910, and see *Radford* v. *Williams* (1914), 78 J. P. 90; *Scatchard* v. *Johnson*, 57 L. J. M. C. 41. See, however, *Cundy* v. *Le Cocq*, inf. p. 186.

(*d*) 5 & 6 Will. IV. c. 50; *Phythian* v. *Baxendale*, [1895] 1 Q. B. 768; *Nuttall* v. *Pickering*, [1913] 1 K. B. 14; *Chatterton* v. *Parker* (1914), W. N. 200.

right to sue the putative father for its maintenance have been held to include in that expression, not only a widow (*a*), but also a married woman living apart from her husband (*b*); for, the general object of the Acts being to compel men to contribute to the support of their illegitimate offspring, even a married woman living under circumstances incompatible with marital access, though not in popular language a single woman, is nevertheless, for the purposes of the Acts, and therefore in the contemplation of the Legislature, as "single" as a woman who has no husband. So where by s. 141, Army Act, 1881, assignments of or charges upon pensions received by officers in respect of past services are forbidden, but nothing is said in terms about executions or attachments, it has been held that these must be regarded as included; as otherwise the object to be effected, viz., to secure a provision which should keep the pensioners from want, and enable them to maintain a respectable social position, would be frustrated (*c*). A soldier

(*a*) *Antony* v. *Cardenham*, 2 Bott, 194; *R.* v. *Wymondham*, 2 Q. B. 541.

(*b*) *R.* v. *Pilkington*, 2 E. & B. 546, nom. *Exp. Grimes*, 22 L. J. M. C. 153; *R.* v. *Collingwood*, 17 L. J. M. C. 168; *R.* v. *Luffe*, 9 R. R. 406. *Comp. Stacey* v. *Lintell*, 4 Q. B. D. 291; *Jones* v. *Davies*, [1901] 1 K. B. 118; see also *Reigate Union* v. *Croydon Union*, 14 App. Cas. 465.

(*c*) 44 & 45 Vict. c. 58; *Lucas* v. *Harris*, 56 L. J. Q. B. 15; *Re Saunders*, 64 L. J. Q. B. 739.

who has gone into barracks with a view to being drafted to the seat of war is "a soldier in actual military service" within s. 11, Wills Act, 1837 (*a*). The authority given by the Municipal Corporations Act to expend the local funds upon "corporate buildings" was construed as extending to the cost of lining the corporation pew in the church (*b*). Dogs (*c*), horses, cattle (*d*), and shares in a limited company (*e*), have, by a beneficial construction, been held to be "goods" within the meaning of that word as used in certain statutes; while on the other hand, a linen bag has been decided not to be a "case" in which gunpowder may be carried, for the purpose of satisfying the requirement of the Metalliferous Mines Regulation Act, 1872, that explosives shall not be taken into a mine except in

(*a*) 1 Vict. c. 26; *Hiscock, Re*, [1901] P. 78; *Gattward* v. *Knee*, [1902] P. 99; and see *Kitchen, In re* (1919), 35 T. L. R. 612; *Stable, In re*, [1919] P. 10; *Thomas' Estate, In re* (1918), 34 T. L. R. 626; *Tollemache's Estate, In re*, [1917] P. 246; *Heywood's Estate, In re*, [1916] P. 47; *Anderson's Estate, In re*, [1916] P. 49; *Hale, In re*, [1915] 2 Ir. R. 362.

(*b*) 5 & 6 Will. IV. c. 76 (repealed 45 & 46 Vict. c. 50, s. 5); *R.* v. *Warwick* (1846), 15 L. J. Q. B. 306.

(*c*) 2 & 3 Vict. c. 71, s. 40; *R.* v. *Slade*, 57 L. J. M. C. 120.

(*d*) 39 & 40 Vict. c. 80, s. 23 (repealed 57 & 58 Vict. c. 60); *Richmond Hill Co.* v. *Trinity House*, 65 L. J. Q. B. 561.

(*e*) R. S. C. 1883, Order L. r. 2; *Evans* v. *Davies*, [1893] 2 Ch. 216.

a "case or canister," as such a case would not effect the object of the statute by affording protection against ignition from sparks (*a*). An English trade-mark and goodwill are property within the Stamp Act, 1891, and so is a share in a colonial patent (*b*). On similar grounds the enactment in the Artizans and Labourers' Dwellings Improvement Act, 1875, which, after authorising local authorities to purchase land for such dwellings, provides that all rights or easements relating to the purchased land should be extinguished, but compensated for, has been held to include under the word "rights" inchoate as well as complete rights (*c*). An Act which required a railway company to make, for the accommodation of the owners and occupiers of the adjacent lands, sufficient fences for protecting the lands from trespass, and the cattle of the owners and occupiers from straying thereout, was held to include in the term

(*a*) 35 & 36 Vict. c. 77, s. 23 (2 *b*); *Foster* v. *Diphwys Casson Slate Co.*, 18 Q. B. D. 428.

(*b*) 54 & 55 Vict. c. 39, s. 59 (1); *Brooke* v. *Inl. Rev.*, [1896] 2 Q. B. 356; *Smelting Co. of Australia* v. *Inl. Rev.*, [1897] 1 Q. B. 175; electrical energy is property, see 9 Edw. VII. c. 34, s. 19.

(*c*) 38 & 39 Vict. c. 36, s. 20, repealed s. 22, 53 & 54 Vict. c. 70; *Barlow* v. *Ross*, 24 Q. B. D. 381. *Comp. Hawkins* v. *Rutter*, [1892] 1 Q. B. 668; 61 L. J. Q. B. 146, where "easement" was construed in its strictest sense. And see *Haworth* v. *Sutcliffe* (1895), 64 L. J. Q. B. 729.

"occupier" a person who merely had put his cattle on land with the license of the occupier (*a*). And the same word, even when coupled with "owner" in an Act of Parliament (*b*), has been construed, with the view of promoting the object of the enactment, as including a person standing on a spot in a park or place where he had no more right to stand than any other person (*c*). So it has been held under a repealed Act that cows agisted on the terms that the agister should take their milk in exchange for their pasturage, were taken in to be fed at a "fair price" (*d*), that an agreement by a shareholder with a company to set off a present liability of the company to pay cash to him against future calls on his shares was a payment of the calls "in cash" (*e*), that the attendance of an uncertificated midwife at the

(*a*) *Dawson* v. *Midland Ry. Co.*, 42 L. J. Ex. 49. See also *Kittow* v. *Liskeard*, 44 L. J. M. C. 23. As for principles distinguishing a license from a demise, see *Smith* v. *Lambeth Assessment Committee* (1882), 9 Q. B. D. 585, at. pp. 593 *et seq.*; affirmed, 52 L. J. M. C. 1.

(*b*) See Chap. XI., Sec. IV.

(*c*) See *Doggett* v. *Catterns* (1864), 34 L. J. C. P. 46; *Bows* v. *Fenwick* (1874), 43 L. J. M. C. 107; *Powell* v. *Kempton Park Racecourse Co.* (1899), 68 L. J. Q. B. 392; *Brown* v. *Patch* (1899), Id. 588.

(*d*) 46 & 47 Vict. c. 61, s. 45 (repealed by 8 Edw. VII. c. 28); *London & Yorks. Bank* v. *Belton*, 15 Q. B. D. 457.

(*e*) 30 & 31 Vict. c. 131, s. 25 (repealed by 8 Edw. VII. c. 69); *Jones Lloyd & Co., Re*, 41 Ch. D. 159.

confinement of the wife of an elector, who was sent to her and paid for by the relieving officer, was "medical assistance," so that the relief afforded did not disqualify the elector from being registered (*a*), that an antenuptial agreement for a marriage settlement was a "marriage settlement" (*b*), and that "bedding" to the value of £5, which is protected from seizure by s. 147, County Courts Act, 1888, which is incorporated into the Law of Distress Amendment Act, 1888, includes a bedstead (*c*). "Member" in Art. 27 of Table A to the repealed Companies Act, 1862—which provided that any increased capital should be offered to the "members" *pro rata*,—included the representatives of a deceased member whose name was on the register (*d*). A statute which requires a railway company to keep in repair a "bridge" carrying a highway over their lines, requires them also to maintain the roadway upon

(*a*) 48 & 49 Vict. c. 46, s. 2 (repealed by 7 & 8 Geo. V. c. 64, note, s. 9); *Honeybone* v. *Hambridge*, 18 Q. B. D. 418.

(*b*) 41 & 42 Vict. c. 31, s. 4; *Wenman* v. *Lyon & Co.*, [1891] 2 Q. B. 192; see also *Re Vansittart*, [1893] 1 Q. B. 181.

(*c*) 51 & 52 Vict. c. 21, s. 4; *Davis* v. *Harris* (1900), 69 L. J. Q. B. 232.

(*d*) 25 & 26 Vict. c. 89; *James* v. *Buena Ventura Syndicate*, 65 L. J. Ch. 284. See also *Allen* v. *Gold Reefs of West Africa*, 69 L. J. Ch. 266. A like condition is contained in Article 42 of Table A appended to 8 Edw. VII. c. 69.

the bridge (*a*). A fishing-boat of ten tons provided with masts, which unshipped, and sails used for going to sea, but which was propelled by four oars in harbour and shallow water, was decided to be a "ship" within the Merchant Shipping Act, 1862, which provides that when a collision between two "ships" takes place, the master of each ship is bound to render assistance to the other, on pain of the cancellation or suspension of his certificate. Though s. 2 of the repealed Merchant Shipping Act, 1854, enacted that the term "ship" should "have the meaning" thereby "assigned" to it, viz., that it should "include every description of vessel used in navigation not propelled by oars" (*b*), this was considered not to be a definition, and as not excluding vessels which it did not include (*c*). On the other hand, a steam launch used for the

(*a*) 8 & 9 Vict. c. 20, s. 46; *Lancashire & Yorks. Ry.* v. *Bury*, 14 A. C. 417; *North of England Ry.* v. *Langbaurgh*, 24 L. T. 544. See also as to a "book" within the repealed 5 & 6 Vict. c. 45, s. 2. See *Maple & Co.* v. *Junior A. & N. Stores*, 52 L. J. Ch. 67; *Cable* v. *Marks*, Id. 107; *Davis* v. *Comitti*, 54 L. J. Ch. 419. For an exhaustive disquisition on the Copyright Act, 1912, see Clerk and Lindsell on Torts, tit. "Copyright." And as to a "boiler" within 45 & 46 Vict. c. 22, *R.* v. *Boiler Explosions Act Commissioners*, 60 L. J. Q. B. 544.

(*b*) For definition of "vessel," see 57 & 58 Vict. c. 60, s. 742.

(*c*) *Ferguson and Hutchinson, Exp.*, L. R. 6 Q. B. 280. *Comp. The Mac*, 7 P. D. 126; *Gapp* v. *Bond*, 19 Q. B. D. 200; *Clyde Navigation* v. *Laird*, 8 App. Cas. 658.

purpose of carrying passengers on pleasure trips round an artificial lake has been held not to be a "vessel used in navigation" so as to need the suspension on board of a Board of Trade certificate (*a*). And perhaps as a general proposition the words of a statute should be construed in accordance with the *dictum* of Lord Watson, who says with regard to deeds, in an unrecorded case, "the deed must be read as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause should be so interpreted as to bring them into harmony with the other provisions . . . if that interpretation does no violence to the meaning of which they are naturally susceptible" (*b*).

Another instance of beneficial construction is afforded by s. 3 of the Common Lodging Houses Act, 1853, which forbids the keeping of "a common lodging-house" unless it has been inspected, approved, and registered. The object of the enactment (which is repealed except as to Metropolitan Police District by 38 & 39 Vict. c. 55, s. 343) being to secure for the poor using these houses conditions safeguarding health and preventing the

(*a*) 17 & 18 Vict. c. 104, ss. 2, 318 (repealed by Merchant Shipping Act, 1894); *Mayor of Southport* v. *Morriss*, [1893] 1 Q. B. 359; see also *Salt Union* v. *Wood*, [1893] 1 Q. B. 370.

(*b*) *North-Eastern Ry.* v. *Hastings* (*Lord*), [1900] A. C. 260, at p. 267.

spread of disease, which people better off are supposed to be able to secure for themselves, it was held to apply to a shelter kept for a charitable purpose and not for gain (*a*).

A debtor residing abroad "keeps out of the way to avoid service" of process, within the meaning of the Bankruptcy Rules for substituted service (*b*), and under s. 15 (7), Friendly Societies Act, 1875 (repealed s. 35, Friendly Societies Act, 1896), which provides that registered friendly societies shall be entitled to the privilege of having "any money or property belonging to the society," which shall be in the possession of any officer of the society upon his bankruptcy, handed over to the society in preference to any other debts or claims against his estate, it has been held that the society is entitled to be paid out of such estate any balance due to it, in respect of moneys received by him for it, even though he has not in his possession those moneys in specie, and they cannot be traced (*c*).

The statutes which require notice of action for

(*a*) 16 & 17 Vict. c. 41; *Logsdon* v. *Booth*, [1900] 1 Q. B. 401; *Logsdon* v. *Trotter*, Id. 617. See, however, *Parker* v. *Talbot*, 75 L. J. Ch. 8; *Gilbert* v. *Jones*, [1905] 2 K. B. 691.

(*b*) Bankruptcy Rules, 1886, Rule 154 (now Bankruptcy Rules, 1915, Rule 156); *Re Urquhart*, 59 L. J. Q. B. 364.

(*c*) 38 & 39 Vict. c. 60, s. 15 (7); *Re Miller* (1893), 62 L. J. Q. B. 324; *Eilbeck, Re* (1910), 79 L. J. K. B. 265.

anything "done" under them, are construed as including an omission of an act which ought to be done as well as the commission of a wrongful one (*a*). Even criminal statutes, which are subject to what has been called a strict construction, will be found to furnish abundant illustrations of giving an extended meaning to a word (*b*).

A statute which requires something to be done by a person would, except in cases subject to the principle that *delegatus non potest delegare*, be complied with, in general, if the thing were done by another on his behalf and by his authority; for it would be presumed that there was no intention to prevent the application of the general principle of law that *qui facit per alium facit per se*; unless

(*a*) *Wilson* v. *Halifax*, 37 L. J. Ex. 44; *Poulsum* v. *Thirst*, 36 L. J. C. P. 225. See also *Davis* v. *Curling*, 15 L. J. Q. B. 56; *Newton* v. *Ellis*, 24 L. J. Q. B. 337; *Edwards* v. *Islington*, 58 L. J. Q. B. 165; *Harman* v. *Ainslie* (1904), 73 L. J. K. B. 539; [1904] 1 K. B. 698. The Public Authorities Protection Act (1893), 56 & 57 Vict. c. 61, has repealed nearly all the statutes requiring notice of action, and substituted therefor by s. 1 (*a*) a general period of six months.

(*b*) See Chap. X. As to appeal in a "Criminal cause or matter," see *Woodall, Exp.*, 57 L. J. M. C. 71; *Schofield, Exp.* (1891), 60 L. J. M. C. 157; *R.* v. *Tyler*, [1891] 2 Q. B. 588; *Pulbrook, Exp.*, 61 L. J. M. C. 91; *Exp. Savarkar* (1911), 80 L. J. K. B. 57. No right of appeal in cases of "guilty" but "insane": *R.* v. *Taylor* (1915), 84 L. J. K. B. 1671; see also *Felstead* v. *Director of Public Prosecutions* (1914), 83 L. J. K. B. 1192.

there was something either in the language or in the object of the statute which showed that a personal act was intended. On this ground, an Act of Parliament which requires that notice of appeal shall be given by churchwardens is complied with if given by their solicitor (*a*). So in the absence of any provision to the contrary in the Bills of Sale Acts, it has been held that a bill of sale may be executed by attorney, and the grantee may be the attorney of the grantor for such purpose (*b*). And the repealed (*c*) Dramatic Copyright Act, 1833, 3 & 4 Will. IV. c. 15, which required the written consent of the author of a drama to its representation, was held sufficiently complied with if the consent were given by the author's agent (*d*). When an Irish statute, after giving to tenants for lives of for more than fourteen years, the right of felling any trees which they had planted, required

(*a*) *R.* v. *Middlesex* (1850), 20 L. J. M. C. 42; *R.* v. *Carew*, 20 L. J. M. C. 44*n.*; *R.* v. *Kent*, 42 L. J. M. C. 112; *France* v. *Dutton* (1891), 60 L. J. Q. B. 488; *R.* v. *St. Mary Abbotts* (1891), 60 L. J. M. C. 52; *Walsh* v. *Southwell*, 20 L. J. M. C. 165; *R.* v. *Huntingdonshire*, 19 L. J. M. C. 127; *Charles* v. *Blackwell*, 46 L. J. C. P. 368; *Re Lancaster*, 3 Ch. D. 498; *Mousell Bros.* v. *L. & N. W. Ry.* (1917), 87 L. J. K. B. 82. As to effect of Power of Attorney in imposing liability, see *Bank of Bengal* v. *Ramanathan Chetty* (1916), L. R. 43 Ind. App. 48, P. C

(*b*) *Furnivall* v. *Hudson* (1893), 62 L. J. Ch. 178.

(*c*) Repealed by 1 & 2 Geo. V. c. 46, s. 36, Sched. 2.

(*d*) *Morton* v. *Copeland*, 24 L. J. C. P. 169.

that "the tenant so planting" them should file an affidavit within twelve months, in a form given by the Act, which purported throughout to be made by the tenant personally, the House of Lords construed the Act as satisfied by the affidavit of the tenant's agent. A stricter construction, it was said, would have rendered the Act inapplicable to most of the cases which it had in view (*a*).

The principle is well illustrated by two decisions under the partially repealed (*b*) 6 & 7 Vict. c. 18, which required that the person who objected to a voter should sign a notice of his objection, and deliver it to the postmaster. This was held to require personal signature (*c*), but not personal delivery or receipt (*d*). It was material that the person objected to should be able to ascertain that he really was objected to by the objector, which he could not so easily do if a signature by an agent was admitted; just as, to guard against personation, the signature of a voting paper under the former Municipal Corporations Act must be personal and not by agent (*e*). But there was no

(*a*) *Mountcashell* v. *O'Neill* (1856), 5 H. L. Cas. 937. See also 51 & 52 Vict. c. 37, s. 1.

(*b*) See 7 & 8 Geo V. c. 64, s. 47, Sched. 8

(*c*) *Toms* v. *Cuming* (1845), 14 L. J. C. P. 67; *Lewis* v. *Roberts*, 31 L. J. C. P. 51.

(*d*) *Cuming* v. *Toms* (1844), 14 L. J. C. P. 54.

(*e*) 5 & 6 Will. IV. c. 76, s. 32, repealed 45 & 46 Vict. c. 50,

valid reason for supposing that the Legislature did not intend to give effect to the rule, *qui facit per alium facit per se*, in the case of the mere delivery. The knowledge of the servant may be constructively that of the master within the meaning of an Act, even when making the master penally responsible (*a*). An Act (18 & 19 Vict. c 121) (repealed except as to London) which authorises justices to summon a person by whose act a nuisance arises, or, if that person cannot be ascertained, the occupier of the premises in which it exists, was held to authorise the summoning of the occupier, if the person who had actually done the act was his servant, since in law the act of the latter is that of the former (*b*).

On the same principle it has been held that s. 3, Truck Act, 1831, which provides that the entire amount of wages earned by an artificer shall be actually paid to him in the current coin of the

s. 5, which latter Act is modified by 7 & 8 Geo. V. c. 64; *R.* v. *Tart* (1859), 28 L. J. Q. B. 173. See also *Monks* v. *Jackson*, 46 L. J. C. P. 162.

(*a*) *Core* v. *James*, L. R. 7 Q. B. 135, *per* Lush J. (But see *Pain* v. *Boughtwood*, 59 L. J. M. C. 45); *R.* v. *Stephens*, L. R. 1 Q. B. 702. See also Stroud's Judicial Dict. & Supp., tit. "Knowingly," and Clerk and Lindsell on Torts, chap. 2, 6th ed., pp. 62—66.

(*b*) *Barnes* v. *Ackroyd*, 41 L. J. M. C. 110. For the converse of this, see *Sherras* v. *De Rutzen*, [1895] 1 Q. B. 918; a case of supplying liquor to a constable on duty.

realm, would be satisfied by payment being made to his authorised agent (*a*).

On the other hand, the Statute of Frauds Amendment Act, 1828, 9 Geo. IV. c. 14, which requires an acknowledgment "signed by the party chargeable thereby," to take a debt out of the Statute of Limitation, has been held to require personal signature, and not to admit of a signature by an agent (*b*). But this construction was based partly on the circumstance that another Statute of Limitation made express mention of an agent (*c*). Where an Act required that notices should be signed by certain public trustees, or by their clerk, it was held that the signature of the clerk of their clerk, who had a general authority from his employer to sign all documents issuing from his office, was not a compliance with the Act (*d*). And a lithographic indorsement of a

(*a*) 1 & 2 Will. IV. c. 37; *Hewlett* v. *Allen*, [1894] A. C. 383; as to when a "set off" is admissible, see *Williams* v. *North's Navigation Collieries*, [1904] 2 K. B. 44, at p. 55, C. A.; see also *Summerlea Iron Co.* v. *Thomson* (1913), S. C. (J.) 34. As to what is an illegal contract under the Act, see *Kemp* v. *Lewis*, [1914] 3 K. B. 543.

(*b*) *Hyde* v. *Johnson* (1836), 2 Bing. (N. C.) 776. See also *Swift* v. *Jewsbury*, L. R. 9 Q. B. 301; *Williams* v. *Mason*, 28 L. T. 232; *Barwick* v. *English Joint Stock Bank*, L. R. 2 Ex. 259; *Hirst* v. *West Riding Union Banking Co.*, [1901] 2 K. B. 560; *Citizens Life Assurance Co.* v. *Brown*, [1904] A. C. 423, P. C.

(*c*) Sup. pp. 68–69.

(*d*) *Miles* v. *Brough*, 32 B. 845; 61 R. R. 409; *Inglis* v.

solicitor's name is not a compliance with the provision of the County Court Rules that he should "indorse on the particulars his name or firm," but the solicitor's name written by his authorised clerk will suffice (*a*).

Again, where the statute required that the act should be done by the party "himself," it would hardly admit of its being done by an agent, as in the case of the provision that a nomination paper of a candidate for municipal office should be delivered to the town clerk by the candidate himself, or his proposer or seconder (*b*). A statute which provides that a person not a party to an election petition, who is charged with corrupt practices, shall have an opportunity of being heard "by himself" and of calling witnesses, does not authorise his appearing by counsel or solicitor (*c*). So, where an Act required a special qualification

G. N. Ry. (1852), 16 Jur. 895, H. L. (Sc.); and see *Brown* v. *Tombs*, [1891] 1 Q. B. 253.

(*a*) Order VI. r. 9, County Court Rules, 1903–1918; so hold *per* Fry L.J., *R.* v. *Fitzroy-Cowper* (1890), 59 L. J. Q. B. 265 Lord Esher M.R. dissenting.

(*b*) *Monks* v. *Jackson*, 46 L. J. C. P. 162, distinguished in *Harford* v. *Linskey* (1899), 1 Q. B. 852, at p. 861. The much amended Municipal Corp. Act, 1882, omits "himself"; in the repealed 3rd Schedule, part 2, s. 7. For present provisions as to voting by proxy, see 7 & 8 Geo. V. c. 84, and 3rd Schedule.

(*c*) 46 & 47 Vict. c. 51, s. 38; *R.* v. *Mansel Jones*, 23 Q. B. D. 29; see also *Monks* v. *Jackson*, 46 L. J. C. P. 162.

for doing anything. As, for example, under the Pharmacy Act, 1868, which by s. 15 prohibited under a penalty the sale of poisons by unqualified persons, the shopman of a qualified employer, not himself qualified, was held liable to a penalty for selling, except under the personal supervision of his employer (*a*); but an unqualified person who receives an order for poison and forwards it to a manufacturer who supplies it directly to the customer, has not the conduct and management of the sale so as to constitute him the seller within the meaning of the Act (*b*).

The statute which enacts that in any contract for letting a house for habitation by persons of the working classes there shall be an implied "condition" that the house is fit for habitation, has been construed as importing a promise by the landlord to that effect, and so giving the tenant a right to sue on it, for the purpose of giving effect to the intention (*c*). And this principle is amplified by 9 Edw. VII. c. 44, s. 14.

(*a*) 31 & 32 Vict. c. 121, s. 15; and see 32 & 33 Vict. c. 117, repealing in part the first 15 sections of the earlier Act; see also 8 Edw. VII. c. 55, s. 2; *Pharmaceutical Socy.* v. *Wheeldon*, 24 Q. B. D. 683; see also *Pharmaceutical Socy.* v. *Nash* (1911), 80 L. J. K. B. 416; *Comp. Lewis* v. *Weston-super-Mare* (1888), 58 L. J. Ch. 39; 40 Ch. D. 55.

(*b*) *Pharmaceutical Socy.* v. *White*, 70 L. J. K. B. 386.

(*c*) 48 & 49 Vict. c. 72, s. 12; *Walker* v. *Hobbs*, 59 L. J. Q. B. 93.

Sometimes the governing principle of the remedial enactment has been extended to cases not included in its language, to prevent a failure of justice and consequently of the probable intention. Thus, s. 50, Common Law Procedure Act, 1854, which empowered a Court (upon the application of either party to a cause supported by the affidavit of such party, of his belief that a material document was in the possession of his opponent) to order its production, though at one time it did not admit the affidavit of the solicitor of the party, even when the party was abroad (*a*), was satisfied by the solicitor's affidavit, where the party was a corporation, and consequently incapable of making an affidavit, or, perhaps of forming a belief (*b*), and this power is now extended to persons other than solicitors (*c*). The governing principle being that all suitors should have power of getting discovery (*d*); and as a corporation conld make no affidavit, or could formerly make one only by their solicitor, the affidavit

(*a*) *Christophersen* v. *Lotinga* (1864), 33 L. J. C. P. 121; *Frederici* v. *Vanderzee* (1877), 46 L. J. C. P. 194; *Herschfield* v. *Clark*, 25 L. J. Ex. 113. Now any one who can positively testify to the requisite facts is accepted as a competent deponent, *Hallett* v. *Andrews* (1897), 42 L. J., p. 68.

(*b*) *Kingsford* v. *G. W. R. Co.*, 16 C. B. N. S. 761.

(*c*) *Pathé Frères Cinema, Ltd.* v. *United Electric Theatres, Ltd.*, [1914] 3 K. B. 1253, C. A.

(*d*) *Per* Erle C.J., Id.

of the latter was considered a substantial compliance with the Act.

A provision of 3 & 4 Will. IV. c. 42, which, after depriving the parties to a reference under a rule of Court or judge's order of the power which they formerly had of revoking the authority of their arbitrator, enacted that a judge might from time to time enlarge the time for the arbitrator to make his award, was at first thought confined to cases where a revocation had been attempted (*a*); or, at all events, applicable only where the arbitrator had no power to enlarge the time, or had not yet made his award (*b*); but it was afterwards held that a judge had power to enlarge the time in all references made by judicial order (*c*); and to do so even when the arbitrator issued his award after the time to which he was limited had expired, and the award was consequently, so far, a nullity (*d*).

The beneficial spirit of construction is also well illustrated by cases where there is so far a conflict between the general enactment and some of its

(*a*) *Potter* v. *Newman* (1836), 5 L. J. Ex. 93*n*.

(*b*) *Per* Tindal C.J., *Lambert* v. *Hutchinson*, 2 M. & Gr. 858, and *per* Patteson J., *Doe* v. *Powell*, 7 Dowl. 539.

(*c*) *Leslie* v. *Richardson*, 17 L. J. C. P. 324.

(*d*) *Re Ward*, 32 L. J. Q. B. 53; *Lord* v. *Lee* (1868), 37 L. J. Q. B. 121; *Knowles & Sons, Ltd.* v. *Bolton Corporation*, [1900] 2 Q. B., at p. 257. See also R. S. C., Order LXIV. r. 14*a*.

subsidiary provisions, that the former would be limited in the scope of its operation if the latter were not restricted. An Act which, after authorising the imposition of a local rate on all occupiers of land in a parish, gives a dissatisfied ratepayer an appeal, but at the same time requires the appellant to enter into recognisances to prosecute the appeal, presents such a conflict. Either it excludes corporations from the right of appeal, because a corporation is incapable of entering into recognisances; or it extends the right to them, without compliance with that special requirement. And the latter would be unquestionably the beneficial way of interpreting the statute. The general and paramount object of the Act would receive full effect by giving to corporate bodies the same right of appeal against the burthen imposed on them; and the subsidiary provision would be understood as applicable only to those who were capable of entering into recognisances (*a*).

The Act De Prerogativa Regis, which provides that the lands and tenements of lunatics "shall in no wise be aliened," does not prohibit the Court from giving up an interest in the real estate of a lunatic in order to acquire for him a larger and more valuable estate. The statute was passed with the object of preserving the estates of lunatics,

(*a*) *Cortis v. Kent Waterworks* (1827), 7 B. & C. 314.

and a contrary interpretation would not have carried out that intention (*a*).

The Charitable Uses Act, 1735, 9 Geo. II. c. 36, which prohibited the disposition of lands to a charity by other means than by a deed executed a year before the donor's death, was open to the construction that it applied only to lands which passed by deed, and therefore not to lands of copyhold tenure (*b*). But as the object of the statute was, manifestly, to include all lands of whatever tenure in its prohibition, the only consequence that would have followed, if it had been thought impossible that the mode of conveyance provided by the statute should operate to transfer copyholds, would have been that copyholds would have fallen within the general prohibition absolutely, and would have been incapable of passing to a charity by any mode of conveyance (*c*).

Except in some cases where a statute has fallen under the principle of excessively strict construction, the language of a statute is generally extended to new things which were not known and

(*a*) 17 Edw. II. c. 10; *Re Sefton*, [1898] 2 Ch. 378; see also *S. S. B., In re*, [1906] 1 Ch., at pp. 724, 725; and *Gaskell and Walters Contract, In re*, [1906] 2 Ch. C. A., at p. 10.

(*b*) *Comp. Smith* v. *Adams* (1855), 24 L. J. Ch. 258.

(*c*) *Per* Lord Tenterden, *Doe* v. *Waterton*, 3 B. & Ald. 151. As to the presumption of enrolment in such cases, see *Haigh* v. *West*, [1893] 2 Q. B. C. A., Lindley L.J., at p. 31.

could not have been contemplated by the Legislature when it was passed. This occurs when the Act deals with a genus, and the thing which afterwards comes into existence is a species of it (*a*). Thus, the provision of Magna Charta which exempts lords from the liability of having their carts taken for carriage was held to extend to degrees of nobility not known when it was made, as dukes, marquises, and viscounts (*b*). The partially repealed Poor Relief Act, 1743, which gave parishioners the right of inspecting the accounts of churchwardens and overseers under the poor law of Elizabeth, was held to extend to those of guardians, officers who were created by Gilbert's Act (22 Geo. III.), passed in 1,83 (*c*). 13 Eliz. c. 5, which made void (as against creditors) transfers of lands, goods, and chattels (*d*), did not originally apply to copyholds or choses in action,

(*a*) *Per* Bovill C.J., *R.* v. *Smith* (1870), L. R. 1 C. C. 720; *per* Holt C.J., *Lane* v. *Cotton* (1701), 12 Mod. 485, 1. Ld. Raymond, 746; referred to in *Mersey Dock Trustees* v. *Gibbs* (1866), L. R. 1 H. L., at p. 124, and *Bainbridge* v. *Postmaster General*, [1906] 1 K. B. C. A., at p. 186.

(*b*) 1 Inst. 35.

(*c*) 17 Geo. II. c. 38; 22 Geo. III. c. 83 (repealed S. L. R., 1871); *R.* v. *Great Farringdon*, 9 B. & C. 541; *Bennett* v. *Edwards*, 7 B. & C. 586; 6 Bing. ~.

(*d*) For cases held not to be within the statute, see *Denny, Trustee of* v. *Denny*, [1919] 1 K. B. 583; *David and Ackland, In re*, [1914] 2 K. B. 691; *Pearce* v. *Bulteel*, [1916] 2 Ch. 544.

as these were not seizable in execution (*a*); but when they were made subject to be so taken (1 & 2 Vict. c. 110), they fell within the operation of the Act (*b*). The Act of Geo. II., which protected copyright in engravings by a penalty for piratically engraving, etching, or otherwise, or "in any other manner" copying them, extends to copies taken by photography (*c*). A telegram may be a forged instrument according to the true interpretation of the Forgery Act (*d*). The telephone is a "telegraph" within the meaning of the Telegraph Acts, 1863 and 1869, though not invented or contemplated in 1869 (*e*). Every company (including a private company) (*f*) registered

(*a*) *Sims* v. *Thomas*, 12 A. & E. 536.

(*b*) *Norcutt* v. *Dodd* (1841), 54 R. R. 224; *Barrack* v. *McCulloch*, 26 L. J. Ch. 105; *R.* v. *Smith*, L. R. 1 C. C. 270, *per* Bovill C.J.; *Edmunds* v. *Edmunds*, [1904] P. 362.

(*c*) 8 Geo. II. c. 13; see 1 & 2 Geo. V. c. 46, and note; *Gambart* v. *Ball*, 32 L. J. C. P. 166; *Graves* v. *Ashford*, L. R. 2 C. P. 410; *A.-G.* v. *Lockwood*, 9 M. & W. 378; *Comp. Hanfstaengl* v. *Empire Palace*, [1894] 2 Ch. 1; *Id.* v. *Newnes*, [1894] 3 Ch. 109; note also cases cited inf. Chap. X., Sec. I; for an exhaustive *resumé* of the subject in Clerk and Lindsell on Torts, Chap. XXI.

(*d*) 24 & 25 Vict. c. 98, s. 38, partially repealed and re-enacted by the Forgery Act, 1913, 3 & 4 Geo. V. c. 27; *R.* v. *Riley*, 65 L. J. M. C. 74.

(*e*) 26 & 27 Vict. c. 112; 32 & 33 Vict. c. 73; *A.-G.* v *Edison Telephone Co.*, 6 Q. B. D. 244; *Postmaster General* v. *National Telephone Co.*, [1907] 1 Ch. 621.

(*f*) *White, In re*, [1913] 1 Ch. 231.

under the Companies Acts is a "public company" within s. 5, Appointment Act, 1870 (*a*).

It is hardly necessary to remind the reader that beneficial construction is not to be strained so as to include cases plainly omitted from the natural meaning of the words (*b*). For instance, the repealed Sunday Closing (Wales) Act, which required that public-houses should be closed at certain hours on Sundays, was held incapable of being construed as extending to Christmas Day (*c*), but this incapacity is now remedied by the 6th Schedule to the Licensing (Consolidation) Act, 1910. And in like manner the anomaly resulting from the decision of the Court of Appeal (*d*) that the statutory rule directing that applications for new trials in cases tried by a jury should be made to the Court of Appeal, could not be extended to cases tried by an official referee has now been cured by legislation (*e*).

(*a*) 33 & 34 Vict. c. 35; *Re Lysaght*, [1898] 1 Ch. 115; *Raven, In re* (1915), 111 L. T. 938.

(*b*) Sup. pp. 25–26.

(*c*) 44 & 45 Vict. c. 61, s. 1; *Forsdike* v. *Colquhoun*, 11 Q. B. D. 71.

(*d*) 53 & 54 Vict. c. 44, s. 1; *Gower* v. *Tobitt*, 39 W. R. 193.

(*e*) 62 Vict. c. 6, s. 1.

CHAPTER III.

CONSEQUENCES TO BE CONSIDERED — PRESUMPTION AGAINST ANY ALTERATION OF THE LAW BEYOND THE SPECIFIC OBJECT OF THE ACT—MENS REA IN CRIMINAL LAW.

Before adopting any proposed construction of a passage susceptible of more than one meaning, it is important to consider the effects or consequences which would result from it (*a*), for they often point out the real meaning of the words (*b*). There are certain objects which the Legislature is presumed not to intend; and a construction which would lead to any of them is therefore to be avoided. It is not infrequently neoessary therefore to limit the effect of the words contained in an enactment (especially general words), and sometimes to depart, not only from their primary and literal meaning, but also from the rules of grammatical construction in cases where it seems highly improbable that the words in their wide primary or grammatical meaning actually express the real

(*a*) Grot. de B. & P. b. 2, c. 16, s. 4; *U. S.* v. *Fisher*, 2 Cranch, 390.

(*b*) Puff. L. N. b. 5, c. 12, s. 8.

intention of the Legislature; it being more reasonable to hold that the Legislature expressed its intention in a slovenly manner, than that a meaning should be given to them which could not have been intended.

One of these presumptions is that the Legislature does not intend to make any substantial alteration in the law beyond what it explicitly declares (*a*), either in express terms or by clear implication; or, in other words, beyond the immediate scope and object of the statute. In all general matters beyond, the law remains undisturbed. It is in the last degree improbable that the Legislature would overthrow fundamental principles, infringe rights, or depart from the general system of law, without expressing its intention with irresistible clearness (*b*); and to give any such effect to general words, simply because they have that meaning when used either in their widest, their usual or their natural sense, would be to give them a meaning other than that which was actually intended. General words and phrases, therefore, however wide and comprehensive they may be in their literal sense, must, usually, be construed as being limited to the actual objects

(*a*) *Per* Trevor J., *Arthur* v. *Bokenham*, 11 Mod. 150; see also *Harbert's Case*, 3 Rep. 13b; the above passage cited by counsel, *Cory* v. *France*, 80 L. J. K. B. 346; and see inf. p. 313.

(*b*) 2 Cranch, 390.

of the Act, and as not altering the law beyond (*a*).

Thus, a statute which authorised "any" or "the nearest" justice of the peace to try certain cases, would not authorise a justice to try any such cases out of the territorial limits of his own jurisdiction (*b*); or any in which he had a disqualifying interest or a bias (*c*); or which he was incapacitated from hearing by any other general principle of law (*d*); still less to hear them by any other course of proceeding than that established by law (*e*). So, the Debtors Act, 1869, empowering "any (inferior) Court" to commit for default of payment of a debt, in pursuance of an order or judgment of "that or any other competent Court," did not authorise such a

(*a*) See *per* Sir J. Romilly, *Minet* v. *Leman*, 20 Beav. 278; *River Wear Commissioners* v. *Adamson*, 1 Q. B. D. 564, *per* Mellish L.J., 2 App. Cas. 743; *St. A.-G.* v. *Exeter Corp.* (1911), 80 L. J. K. B. 636.

(*b*) 1 Hawk. P. C. c. 65, s. 45; *The Peerless*, 1 Q. B. 153; *R.* v. *Fylingdales*, 7 B. & C. 438; *Sv. per* Darling J., *Re Bros.* (1911), 80 L. J. K. B. 147.

(*c*) *R.* v. *Cheltenham*, 55 R. R. 321; *R.* v. *Meyer* (1876), 1 Q. B. D. 173; *R.* v. *L. C. C.*, 61 L. J. M. C. 75. *R.* v. *Gt. Yarmouth JJ.* (1882), 8 Q. B. D. 525.

(*d*) *Bonham's Case*, 8 Rep. 118a; *Great Charte* v. *Kennington*, 2 Stra. 1173; *R.* v. *Sainsbury* (1791), 2 R. R. 433; *Lawson* v. *Reynolds*, [1904] 1 Ch. 718.

(*e*) Dalt. c. 6, s. 6; *Guerin, In re* (1888), 53 J. P. 468; *comp. Dutton, Exp.* (1911), 75. J. P. 558.

Court to commit, unless the debtor was subject to its general jurisdiction by residence or business (*a*). An Act which authorised a distress would not authorise a seizure of goods *in custodiâ legis* (*b*). The provision in s. 25 (8), Judicature Act, 1873, that the Court might grant an injunction in all cases in which it should consider it "just and convenient" that such an order should be made, did not extend the authority of the Court beyond cases where there was an invasion of recognised legal or equitable rights (*c*). The provisions in R. 1, Order LV, R. S. C. 1875 (now R. 1, Ord. LXV, R. S. C.) and the repealed (*d*) s. 28, Railway & Canal Traffic Act, 1873, that the costs of and incidental to proceedings should be in "the discretion of the Court" was construed as giving no wider discretion than had always been exercised by the Court of Chancery, and therefore as not authorising an order on a successful defendant to pay a portion of the plaintiff's costs (*e*).

(*a*) 32 & 33 Vict. c. 62; *Washer* v. *Elliott*, 45 L. J. C. P. 144, explained in *Ives, In re* (1886), 16 Q. B. D. 665, at pp. 669, 670.

(*b*) 17 & 18 Vict. c. 104, s. 523; repealed and re-enacted by 57 & 58 Vict. c. 60, s. 693; *The Westmoreland* (1845), 2 Rob. W. 394.

(*c*) *Beddow* v. *Beddow*, 9 Ch. D. 89; *Day* v. *Brownrigg*, 48 L. J. Ch. 173; and *per* Lord Hatherley, *Reuss* v. *Bos*, L. R. 5 H. L. 193. See also *Jackson* v. *Barry Railway Co.*, [1893] 1 Ch. 238 C. A., at p. 249.

(*d*) Repealed by 51 & 52 Vict. c. 25.

(*e*) *Foster* v. *G. W. R. Co.* (1882), 8 Q. B. D. 515; *Mills'*

"Fresh evidence" within the meaning of s. 7, Summary Jurisdiction (Married Women) Act, 1895, which gives magistrates jurisdiction to rescind a separation order previously made under s. 4 of that Act, means the same sort of evidence as that upon which a new trial would in the ordinary course be granted (*a*).

An Act which provided that a mayor should not be, by reason of his office, ineligible as a town councillor or alderman, would not make him eligible when he acted in the judicial capacity of returning officer at the election; for it would not be a just construction of the language used, or a legitimate inference from it, that the Legislature had intended to repeal by a mere side-wind the principle of law that a man cannot be a judge in his own case (*b*). So, an Act which directed the election of officers, would be understood as autho-

Estate, Re, 34 Ch. D. 24; *Lambton* v. *Parkinson* (1887), 35 W. R. 545.

(*a*) 58 & 59 Vict. c. 39; *Johnson* v. *Johnson*, 69 L. J. P. D. & A. 13; *Dodd* v. *Dodd*, [1906] P. 189, at p. 199. As to what is "fresh evidence," see *Timmins* v. *Timmins*, [1919] P. 75. As to the character of evidence which a justice should require when making an order, see *Terry* v. *Terry* (1915), 32 T. L. R. 167. *Comp. Murtagh* v. *Barry*, 24 Q. B. D. 632, inf. p. 519.

(*b*) *R.* v. *Owens* (1859), 28 L. J. Q. B. 316; *R* v. *Tewkesbury*, 37 L. J. Q. B. 285; *R.* v. *Milledge*, 4 Q. B. D. 332, S. C. nom. *R.* v. *Weymouth*, 48 L. J. M. C. 139; *R.* v. *Henley*, [1892] 1 Q. B. 504; *R.* v. *Morton*, [1892] 1 Q. B. 39.

rising such election only on a lawful day, and not on a Sunday (*a*); and if the statute declared that the candidate who had the majority of votes should be deemed elected, it would be construed as not intending to override the general principle, that voters who vote for a person whom they know to be ineligible, throw away their votes (*b*).

In the same way, a statute requiring a recognisance would not be understood as giving competency to minors and married women to bind themselves by such an instrument (*c*). But since the passing of the Married Women's Property Acts married women possessed of separate estate may enter into recognisances, and it would seem that the rule in the case of infants is not of universal application (*d*). The Statute of Westminster 2, which gave a judgment creditor the writ of elegit to take half the lands of his debtor, did not authorise the issue of the writ against the

(*a*) *R.* v. *Butler*, 1 W. Bl. 649; *R.* v. *Bridgewater* (1774), 1 Cowp. 139.

(*b*) *R.* v. *Coaks* (1854), 23 L. J. Q. B. 133, discussed in *Pritchard* v. *Bangor Corp.* (1888), 13 A. C. 241; *Beresford-Hope* v. *Sandhurst* (1889), 58 L. J. Q. B. 316; see 7 & 8 Geo. V. c. 64, s. 4; *R.* v. *How*, 33 L. J. M. C. 53; *R.* v. *St. Matthew*, 32 L. T. 558; *R.* v. *Wimbledon Loc. Board*, 51 L. J. Q. B. 219.

(*c*) *Bennett* v. *Watson*, 3 M. & S. 1; *Barrow, Exp.*, 3 Ves. 554; *Hussey's Case*, 9 Rep. 73.

(*d*) *Williams, Exp.* (1824), 13 Price. 673.

heir of the debtor during his minority (*a*). So, s. 7, 43 Eliz. c. 2, in making the mother and grandmother of an illegitimate child liable to maintain it, did not reach them when under coverture (*b*); and an Act which punished "every person" who deserted his or her children would not apply to a married woman, without separate estate, whom her husband had deserted (*c*).

And now by virtue of the Married Women's Property Acts a married woman is entitled to renounce or disclaim a gift by will of personal property notwithstanding it is bequeathed subject to a restraint on anticipation (*d*).

Again, the enactment which gave a vote for the election of town councillors to every "person" of full age who had occupied a house for a certain time, and provided that words importing the masculine gender should include females for all purposes relating to the right to vote, was held, having regard to the general scope of the Act, to remove only that disability which was founded on sex, but not to affect that which was the result of marriage as well as sex, and therefore not to give

(*a*) 2 Inst. 395.

(*b*) *Custodes* v. *Jinkes*, Styles, 283; *Draper* v. *Glenfield*, 2 Bulstr. 345; *Coleman* v. *Birmingham*, 50 L. J. M. C. 92; but see s. 21, Married Women's Property Act, 1882.

(*c*) *Peters* v. *Cowie*, 46 L. J. M. C. 177.

(*d*) *Wimperis, In re*, [1914] 1 Ch. 502.

the right of voting to married women (*a*), but this disability is now removed by the Representation of the People Act, 1918. An Act which simply left the determination of a matter to a majority of vestrymen "present at the meeting" would not affect the common law right of the minority to demand a poll; and the "meeting" would therefore be understood as continuing until the end of the poll (*b*). R. 7, Order XXXVII, R. S. C., under which the Court has power in any cause or matter at any stage of the proceedings to order the attendance of any person for the purpose of producing any documents which the Court may think fit to be produced, and which such person could be compelled to produce at the trial, does not authorise an order for the production of documents in the case of a person not a party to the litigation, when there is no trial or application pending, and the production is not necessary for carrying out an order already made (*c*).

(*a*) 32 & 33 Vict. c. 55, s. 9; *R.* v. *Harrald*, 41 L. J. Q. B. 173; see *Chorlton* v. *Lings*, 38 L. J. C. P. 25; *Re March*, 54 L. J. Ch. 143; *Beresford-Hope* v. *Sandhurst*, sup. p. 153.

(*b*) 5 & 6 Will. IV. c. 76, s. 18, repealed by 45 & 46 Vict. c. 50; *R.* v. *How*, 33 L. J. M. C. 53; *White* v. *Steele*, 32 L. J. C. P. 1; *R.* v. *St. Mary*, 47 R. R. 613; *R.* v. *D'Oyly*, 12 Ad. & E. 139; 54 R. R. 553; *Re Chillington Iron Co.* (1885), 54 L. J. Ch. 624. See *R.* v. *Wimbledon Loc. Board* (1882), 51 L. J. Q. B. 219.

(*c*) *Elder* v. *Carter*, 25 Q. B D. 194; *O'Shea* v. *Wood*, [1891]

In making copyholds devisable, the Wills Act, 1837, 1 Vict. c. 26, was construed as not intending to interfere with the relation of lord and tenant; and consequently the devised copyholds did not vest immediately in the devisee, but remained in the customary heir until the devisee's admittance (*a*). So, 39 Eliz. c. 5, which gave to "all persons" seised of lands in fee, power to found hospitals, was construed as not conferring that power on corporate bodies which were disabled from alienation; though the word "persons" was wide enough to include corporations, and indeed extended to those corporate bodies which possessed the power of alienation, such as municipalities (*b*). Again, the Wills Act of Hen. VIII. (*c*) which empowered "all persons" to devise their lands, did not legalise a devise of land to a corporation (*d*), nor would it have enabled lunatics or minors to make a will, even if the 34 & 35

P. 237, 286; *Straker* v. *Reynolds* (1888), 22 Q. B. D. 262. But *secus* under 42 Vict. c. 11, s. 7; *Howard* v. *Beall* (1889), 23 Q. B. D. 1.

(*a*) *Garland* v. *Mead*, 40 L. J. Q. B. 179; *Everingham* v. *Ivatt* (1872), L. R. 7 Q. B., at p. 685. See as to choses in action, *Bishop* v. *Curtis* (1852), 88 R. R. 819; 18 Q. B. 878.

(*b*) 2 Inst. 721; *Newcastle Corp.* v. *A.-G.*, 12 Cl. & F. 402.

(*c*) Repealed by 7 Will. IV. and 1 Vict. c. 26, s. 2.

(*d*) 32 Hen. VIII. c. 1; *Jesus College Case*, Duke, Charit. Uses, 78; *Braneth* v. *Havering*, Id. 83; *Christ's Hospital* v. *Hawes*, Id. 84.

Hen. VIII. c. 1 (*a*), had not been passed to prevent a different construction (*b*). The object of the Legislature was, obviously, only to confer a new power of disposition on persons already of capacity to deal with their property and not to abolish an existing disability from disposing or taking those who were under such incapacity.

A statute which enacted that "every conveyance" in a particular form should be "valid," would not thereby cure an initial defect of title (*c*).

So, the Tithe Act, 1836, in declaring maps made under its provisions, "satisfactory evidence" of the matters therein stated, as not necessarily evidence on a question of title between landowners, that being a matter foreign to the scope of the Act (*d*). But such evidence has been held admissible in the case of a "manor map" made long anterior to the date of action by a deceased

(*a*) Repealed by 1 Edw. VI. c. 12.

(*b*) *Beckford* v. *Wade*, 17 Ves. 91. *Comp. O'Shanassy* v. *Joachim*, 1 App. Cas. 82; and see *Tooth* v. *Power*, [1891] A. C., at p. 291. And as to married women, before the 45 & 46 Vict. c. 75, see *Willock* v. *Noble*, L. R. 7 H. L. 580; *Doe* v. *Bartle*, 5 B. & Ald. 492.

(*c*) *Ward* v. *Scott*, 3 Camp. 284. See also *Whidborne* v. *Eccles. Com.*, 47 L. J. Ch. 129; *Forbes* v. *Eccles. Com.*, 42 L. J. Ch. 97.

(*d*) 6 & 7 Will. IV. c. 71, s. 64; *Wilberforce* v. *Hearfield*, 46 L. J. Ch. 584.

person conversant with the district (*a*). So, a ship built in England for a foreigner would not be a "British ship" within the provisions requiring registration and transfer by bill of sale, even while still the property of the English builder (*b*). Sec. 126, Bankruptcy Act, 1869 (*c*), which made a composition accepted under certain circumstances by creditors binding on all creditors "whose names are shown in the debtor's statement," with the proviso that it "shall not affect any other creditor," excluded only non-assenting creditors, but not creditors whose names were not stated in the debtor's statement, who, in fact, assented; for it was understood as not intending to interfere with the general principle that it is competent to a person to bind himself by such an assent (*d*). 12 Car. II. c. 17 (*e*), which enacted that all persons presented to benefices in the time of the Commonwealth, and who should confirm as directed by the Act, should be confirmed therein, "notwithstanding any act or thing whatsoever," was obviously not

(*a*) *Smith* v. *Lister* (1895), 64 L. J. Q. B. 154.

(*b*) *Union Bank* v. *Lenanton*, 47 L. J. C. P. 409. See s. 1, Merchant Shipping Act, 1894.

(*c*) 32 & 33 Vict. c. 71, repealed by 46 & 47 Vict. c. 52, s. 169. For present rules as to compositions, see 4 & 5 Geo. V. c. 59, s. 16.

(*d*) *Campbell* v. *Im Thurn*, 45 L. J. C. P. 482, discussed in *Breslauer* v. *Brown* (1878), 3 A. C., at p. 689.

(*e*) Repealed S. L. R., 1863.

intended to apply to a person who had been simoniacally presented (*a*). It is evident that a literal construction would, in these cases, have carried the operation of the Act far beyond the intention.

So, s. 6, Habeas Corpus Act, 1679, which, for the prevention of unjust vexation by reitorated commitments for the same offence, enacts that no person who has been discharged on habeas corpus shall be imprisoned again for "the same offence," except by the Court wherein he is bound by recognisances to appear, or other Court having jurisdiction in the cause, would not extend to a case where the discharge was made on the ground that the commitment had been made without jurisdiction, though the offence for which he was arrested on the second occasion was the same; for this was obviously beyond the object of the Act (*b*).

So, it was held that s. 26, Real Property Limitation Act, 1833, 3 & 4 Will. IV. c. 27, which deprives the owner of lands of the right of suing in equity for their recovery, on the ground of fraud, from a purchaser who did not know or have reason to believe that any such fraud had been committed, should be construed as subject to the presumption that the Legislature did not intend,

(*a*) *Crawley* v. *Phillips*, 1 Sid. 222.

(*b*) 31 Car. II. c. 2; *A.-G.* v. *Kwok-a-Sing*, 42 L. J. P. C. 64; *R.* v. *Brixton Prison* (*Govr*) *Slattmann, Exp.*, [1912] 3 K. B. 424.

by its general language, to subvert the established principles of equity on the subject of constructive notice; and was therefore to be read as meaning that the purchaser did not know or have reason to believe, either by himself, or by some agent whose knowledge or reason to believe is, in equity, equivalent to his own (*a*). Sec. 47, Fines and Recoveries Act, 1833, which excludes the jurisdiction of the Court of Chancery in regard to curing defects in the execution of the powers of disposition given by the Act to tenants in tail, and the rectifying under any circumstances of the want of execution of such powers of disposition, has been held not to exclude the jurisdiction of the Court from amending a deed made under the Act so as to make it effect the intention of the parties. The object of the Act being to prevent the application of equitable doctrines so as to alter the effect of a deed executed according to the intention of the parties, and not to exclude the power of the Court to rectify a deed which, by an error, did not conform to that intention (*b*).

The Act which exempts Dissenters from prosecution in the Ecclesiastical Courts for not

(*a*) *Vane* v. *Vane* (1872), L. R. 8 Ch. 383.

(*b*) 3 & 4 Will. IV. c. 74, s. 47; *Hall Dare* v. *Hall Dare*, 31 Ch. D. 251. See also *Bankes* v. *Small*, 36 Ch. D. 716; *Montague, In re*, [1896] 1 Ch. 549; *Meeking* v. *Meeking*, [1916] W. N. 367.

conforming to the Church of England, does not exempt a clergyman of the Church who has seceded from it, from prosecution in those Courts for performing the Anglican Church service in a dissenting chapel not licensed by the bishop; for this is a breach of discipline, and not within the scope and object of the Act (*a*). 27 Geo. III. c. 44, s. 2, which enacted that no suit should be commenced in any Ecclesiastical Court for incontinence or brawling after the expiration of eight months from the commission of the offence, would apply only to suits which might be brought against laymen as well as against clergymen. It would therefore apply to a suit against a clergyman, when its object was the reformation of his manners, or his soul's health; but it would not apply to a suit for deprivation for the same offences, for this is a matter of Church government, foreign to the object and scope of the statute (*b*). The Factors Act, 1889, enacts *inter alia* by s. 2 (1) that any mercantile agent entrusted with goods or the documents of title to goods shall be entitled to pledge the same provided they are in his possession with the consent

(*a*) 1 Will. IV. c. 18, s. 4, repealed in part by 34 & 35 Vict. c. 48; *Barnes* v. *Shore* (1846), 15 L. J. Q. B. 296. By the Clerical Disabilities Act, 1870 (33 & 34 Vict. c. 91), a clergyman can now relinquish his office.

(*b*) *Free* v. *Burgoyne*, 31 R. R. 2; 5 B. & C. 400.

of the owner. But this proviso is confined to transactions entered into by a mercantile agent in the ordinary course of his business *qua* mercantile agent, and consequently does not validate a pledge of household furniture, not in the way of trade, made by an agent to whose possession it had been entrusted (*a*). So a Colonial Insolvent Act, which provided that no distress for rent should be levied after an order of sequestration had been made, was construed as limited to distress on the goods of the insolvent. To apply it to the goods of a stranger taken on the insolvent's premises, would have extended the operation of the Act to effects and consequences beyond the policy (*b*). The exception does not, however, apply in England or, to a modified extent in Ireland (*c*). It has been decided that an Act which empowered the directors of an incorporated company to make contracts and bargains with workmen, agents, and undertakers, would be construed as conferring on them authority to bind the company by such transactions without consulting their shareholders; but not as so altering the general law as to dispense with those formalities

(*a*) *Waddington* v. *Neale* (1917), 96 L. T. 786 Div.; *Cole* v. *North Western Bank* (1875), L. R. 10 C. P. 354, p. 372.

(*b*) *Railton* v. *Wood*, 59 L. J. C. P. 84. See *Brocklehurst* v. *Lawe*, 26 L. J. Q. B. 107.

(*c*) See 8 Edw. VII. c. 53.

by which alone a corporation can bind itself to contracts, that is, by writing under the corporate seal (*a*), but this has since been overruled (*b*), and it is now enacted by 8 Edw. VII. c. 69, s. 76, that any contract made on behalf of a joint stock company, within the scope of its business, is valid provided it be made in the manner which if it were the contract of a private person would render the same kind of contract valid against him. So, s. 1 (2), Married Women's Property Act, 1882, 45 & 46 Vict. c. 75, that "a married woman shall be capable of suing and being sued in all respects as if she were a feme sole," is limited to actions relating to herself personally, and does not make her competent to act as a next friend or guardian *ad litem* (*c*).

The provision in the repealed Friendly Societies Act, 1829, which required a reference to arbitration of "every matter in dispute" between a society and any of its members was, on the same principle, held to be confined to disputes with members, as members; and a breach of covenant by a member to repay a sum borrowed from his society was therefore regarded as not falling within the arbitration clause, the dispute being with the

(*a*) *East London Waterworks Co.* v. *Bailey*, 4 Bing. 283.
(*b*) *South of Ireland Colliery Co.* v. *Waddle* (1868), 37 L. J. C. P. 211; *Wells* v. *Corp. Kingston-on-Hull* (1875), 44 L. J. C. P. 257.
(*c*) *Re Duke of Somerset* (1887), 56 L. J. Ch. 733.

member as debtor, not as member (*a*): And it seems clear law in cases within s. 2 of the Building Society Act, 1884, that the remedy is by action and not by reference to arbitration (*b*). Sec. 52, National Debt Act, 1870, which directs the Bank of England to keep a list of unclaimed stock, which is to be "open for inspection at the usual hours of business," would not entitle a person who has no *bonâ fide* interest in any unclaimed stock to inspect such list (*c*). An Act of the Manx Legislature, intituled for amending the criminal law, which declared that its provisions should not affect the right of the Courts to punish contempts as before, and that the House of Keys, the Clerk of the Rolls, and the registrars of Ecclesiastical Courts, should, "when in the execution of their respective offices," have the power of punishing contempts in the same manner as a Court, was

(*a*) 10 Geo. IV. c. 56, s. 27; *Morrison* v. *Glover*, 19 L. J. Ex. 20. See also *Prentice* v. *London*, 44 L. J. C. P. 353; *Willis* v. *Wells*, 61 L. J. Q. B. 606; *Palliser* v. *Dale*, 66 L. J. Q. B. 236; *Fleming* v. *Self* (1854), 24 L. J. Ch. 29; *Mulkern* v. *Lord*, 48 L. J. Ch. 745. But *comp. Wright* v. *Monarch Invest. Socy.*, 46 L. J. Ch. 649, and *Hack* v. *London Provid. Building Socy.* (1883), 52 L. J. Ch. 542; *Municipal Building Socy.* v. *Kent*, 53 L. J. Q. B. 290.

(*b*) 47 & 48 Vict. c. 41; *Western Suburban &c. Building Socy.* v. *Martin* (1886), 55 L. J. Q. B. 382; 17 Q. B. D. 609, C. A.

(*c*) 33 & 34 Vict. c. 71; *R.* v. *Bank of England*, 60 L. J. Q. B. 497.

construed as limiting this power to the House of Keys only when exercising judicial, not legislative functions. To give it that power when exercising the latter was obviously foreign to the object of the Act, though the language, in its primary and full sense, included it (*a*). On similar grounds a conveyance of property, knowingly (*b*) made solely for the purpose of giving a vote contrary to s. 7, 7 & 8 Will. III. c. 25, which declares such conveyances "void and of none effect," is void so far as to prevent the right of voting being acquired (*c*), which is the whole aim of the Act; but it is in other respects valid between the parties, so as to pass the property (*d*).

Sec. 19, Judicature Act, 1873, which gives the Court of Appeal jurisdiction to hear appeals from "any judgment or order" save as thereinafter (s. 47) mentioned, was held not to give an appeal against an order of discharge of a prisoner on habeas corpus (though the order was not within the exception), on the ground partly that as no provision was made for enforcing an order of the

(*a*) *Re Brown* (1864), 33 L. J. Q. B. 193, 280.

(*b*) *Marshall* v. *Bowen*, 14 L. J. C. P. 129; but see *Hoyland* v. *Bremner* (1846), 69 R. R. 417; 15 L. J. C. P. 133.

(*c*) This section seems to be repealed by 7 & 8 Geo. V. c. 64

(*d*) *Phillpotts* v. *Phillpotts* (1850), 20 L. J. C. P. 11; referred to in *Badische Anilin und Soda Fabrik* v. *Hickson*, [1906] A. C., at p. 427

Court of Appeal for re-arresting the prisoner, the order would therefore be futile, and partly that so important a change of the law was not contemplated by the Legislature (*a*). And the provisions of Rules 1 and 14, Order XXXI, R. S. C., which entitle a defendant to interrogate a plaintiff, and to discovery of documents, were held at one time not to extend to the case of infant plaintiffs who were not subject to such discovery in Chancery proceedings before the Judicature Acts were passed (*b*). But the law is now altered by Order XXXI, r. 29.

In 24 & 25 Vict. c. 96, which consolidates the law relating to larceny and analogous offences, the provision (s. 23) which imposes a penalty for "unlawfully and wilfully" killing a pigeon under circumstances not amounting to larceny, was construed as not applying to a man who had intentionally and without legal justification shot his neighbour's pigeons which were in the habit of feeding upon his land; his object being to prevent a recurrence of the trespass. His act was "unlawful," in the sense that it was actionable; and it was

(*a*) *Cox* v. *Hakes* (1890), 15 App. Cas. 506; *per* Lords Halsbury L.C., Watson, Bramwell, and Macnaghten; *diss.* Lords Morris and Field; see also *Seaman* v. *Busley*, [1896] 2 Q. B. 344, C. A.

(*b*) *Mayor* v. *Collins*, 24 Q. B. D. 361. See *Redfern* v. *Redfern*, [1891] P. 139; *Curtis* v. *Mundy*, [1892] 2 Q. B. 178.

undoubtedly "wilful" also; but as the object and scope of the Act were to punish crimes and not mere civil injuries, the word "unlawfully" was construed as "against the criminal law" (*a*). So, an Act which visited with fine and dismissal a road surveyor who demanded or wilfully received higher fees than those allowed by the Act, would not affect a surveyor who, under an honest mistake of fact, demanded a fee to which he was not entitled (*b*); and a sheriff, whose officer had made an overcharge by mistake, would not be liable to the penalty imposed by s. 29, Sheriffs Act, 1887, upon any sheriff, etc., who takes or demands any money or reward, under any pretence whatever, other than the fees or sums allowed (*c*). An Act which empowered inspectors to inspect the scales, weights and measures of persons offering goods for sale, and of seizing any found "light and unjust," was construed as limited to cases where the injustice was prejudicial to the buyer, but as not applying to a balance which gave seventeen ounces

(*a*) *Taylor* v. *Newman* (1863), 32 L. J. M. C. 186; *Comp. Hudson* v. *McRae* (1863), 33 L. J. M. C. 65. See also *Kenyon* v. *Hart*, 34 L. J. M. C. 87; *Daniel* v. *Janes*, 2 C. P. D. 351; *Spicer* v. *Barnard*, 28 L. J. M. C. 176; *Miles* v. *Hutchings* (1903), 72 L. J. K. B. 775.

(*b*) *R.* v. *Badger*, 25 L. J. M. C. 81.

(*c*) 50 & 51 Vict. c. 55; *Lee* v. *Dangar*, 61 L. J. Q. B. 780; *Bagge* v. *Whitehead*, 61 L. J. Q. B. 778. See also *Bowman* v. *Blyth*, 26 L. J. M. C. 57.

to the pound, that is, which was unjust against the seller; since the object and scope of the Act were limited to the protection of the former (*a*). So, where a statute makes it an offence in certain cases for any person to intimidate any other person, but provides that nothing in the Act shall apply to seamen, it has been held that the proviso only operates where the offence is committed *by* a seaman, and not where it is committed against a seaman (*b*). And the enactment in s. 12, Bills of Sale Act (1878) Amendment Act, 1882, that a bill of sale shall be no protection in respect of chattels which but for such bill of sale would have been liable to distress for rates and taxes, must be restricted to cases of distress for such rates and taxes, and has no application where proceedings by way of execution have been taken in the County Court under s. 261, Public Health Act, 1875, or any section of like character in any subsequent Act, as it could not possibly have been intended that a bill of sale should be no protection against

(*a*) *Brooke* v. *Shadgate* (1873), L. R. 8 Q. B. 352; *East Gloucestershire R. Co.* v. *Bartholomew*, L. R. 3 Ex. 15.

(*b*) 38 & 39 Vict. c. 86, ss. 7, 16; *Kennedy* v. *Cowie* (1891), 60 L. J. M. C. 170. A seaman within these sections is a person actually employed on board ship; and persons whose calling is the sea, but who are not actually so employed, are not within the exception; *R.* v. *Lynch* (1898), 67 L. J. Q. B. 59. See also *R.* v. *City of London Court*, 59 L. J. Q. B. 429.

an execution on a judgment if the goods seized were liable to distress for non-payment of rates (*a*).

An Act, which, after appointing trustees to pull down and rebuild a parish church, authorised them to allot the pews, and to sell the fee simple of such of them as were not appropriated by the Act to the inhabitants of the parish, with power to the owners to dispose of them, was held not to authorise a conveyance of the soil and freehold of the land on which the pews stood, but only the grant of an easement, or right to sit in the pew during divine service (*b*). And where a church was built, under a similar Act, by subscribers in whom the freehold was vested, and the trustees had power to sell the pews; and a subsequent Act, reciting that doubts had arisen as to the estate and interest which the subscribers and proprietors had in the pews, enacted that the fee simple should be vested in them, it was held that it was not the freehold interest in the soil that was vested in them, but a special interest created by Parliament in the easement (*c*). So, the Public

(*a*) 45 & 46 Vict. c. 43, s. 14; *Wimbledon Loc. Board* v. *Underwood*, [1892] 1 Q. B. 836.

(*b*) *Hinde* v. *Chorlton*, L. R. 2 C. P. 104; *Wadmore* v. *Dear* (1871), L. R. 7 C. P., at p. 224.

(*c*) *Brumfitt* v. *Roberts*, 39 L. J. C. P. 95. See also *Smith* v. *Lancaster* (1869), L. R. 5 C. P. 246; *Brewer* v. *M'Gowen*, L. R. 5 C. P. 259.

Health Act, 1875, 38 & 39 Vict. c. 55, and the Metropolis Management Act, 1855, 18 & 19 Vict. c. 120, which enacted that the streets should "vest" in the local authority, were construed as intending not that the soil and freehold should vest, but only the surface of the soil, and as much of it in depth as was necessary for doing all that was reasonably and usually done in streets (*a*), and for so long only as it continued to be a street (*b*). And it is now definitely provided by 41 & 42 Vict. c. 77, s. 27, that all mines and minerals under any highway shall continue to belong to the persons entitled thereto although the surface may have become vested in an urban authority. A local authority has therefore no power under those Acts to excavate the soil and erect lavatories below the surface of a street (*c*), or to prevent wires being carried over the street at a height which precludes any interference with the user of the street, and the fact that the street was originally constructed by turnpike trustees to whom the fee simple of the site was conveyed

(*a*) *Coverdale* v. *Charlton* (1878), 48 L. J. Q. B. 128. *Comp. Wandsworth Board of Works* v. *United Telephone Co.*, 53 L.J.Q.B. 449; *Tunbridge Wells* v. *Baird*, [1896] A. C. 434; *Battersea Vestry* v. *Provincial Electric Co.*, 68 L. J. Ch. 238. See also *A.-G.* v. *Dorking*, 51 L. J. Ch. 585.

(*b*) *Rolls* v. *St. George, Southwark*, 14 Ch. D. 785.

(*c*) *Tunbridge Wells* v. *Baird*, sup.

makes no difference (*a*). But, on the other hand, there can be little doubt that actual property (*e.g.* drain pipes or things analogous in character) as distinguished from an easement pass to the urban authority (*b*).

Sec. 12, 35 & 36 Vict. c. 86, which enacts that no action entered in a local Court of record shall be removed into a Superior Court except by leave of a judge of a Superior Court in cases which shall appear to such judge "fit" to be tried in a Superior Court, would not authorise such removal unless the action were more fit to be tried in the superior than the inferior Court (*c*).

The same general principle appears to govern the class of cases which establish that enactments requiring railway or other companies to make, to persons interested in hereditaments taken or "injuriously affected" by the companies, full compensation not only for the land but for all damage sustained by reason of the exercise of such parliamentary powers, are limited to cases where the damage would have been actionable but for the Act. The general principle relates, therefore, not

(*a*) *Finchley Electric Light Co.* v. *Finchley U. D. C.* (1903), 71 L. J. Ch. 450; 72 Id. 297.

(*b*) *Ystradyfodwg &c. Sewerage Bd.* v. *Benstead*, [1906] 1 K. B. 294.

(*c*) *Banks* v. *Hollingsworth* (1893), 62 L. J. Q. B. 239; *Donkin* v. *Pearson*, [1911] 2 K. B. 412; 80 L. J. K. B. 1069.

to the person or business of the party prejudiced by the user of the railway in the way authorised by the Act after it is opened to the public, but only to damage resulting from the construction of the railway and works, to his estate or right in the land in its original condition, without regard to any use to which it might be put (*a*). In other words, the object of the enactments is not to create new rights, but to give compensation for actual injury (*b*) where the right of action has been taken away. And this right being taken away only when the powers are in all respects duly exercised, the provisions for compensation do not extend to cases

(*a*) See *per* Cockburn C.J., *New River Co.* v. *Johnson* (1860), 2 E. & E. 435, p. 442; *per* Willes J., *Beckett* v. *Midland R. Co.*, L. R. 3 C. P. 94; *Hammersmith R. Co.* v. *Brand* (1868), L. R. 4 H. L. 171; *Chamberlain* v. *West End & Crystal Pal. R. Co.*, 2 B. & S. 617; *Senior* v. *Metropolitan R. Co.*, 32 L. J. Ex. 225; *R.* v. *Metropolitan Board of Works*, 38 L. J. Q. B. 201; *Caledonian R. Co.* v. *Walker's Trustees* (1882), 7 App. Cas. 259. *Comp. Metrop. Board* v. *MacCarthy*, L. R. 7 H. L. 243; *Glasgow R. Co.* v. *Hunter*, L. R. 2 Sc. App. 78. But see the exception, *Re Stockport R. Co.*, 33 L. J. Q. B. 251, upheld by H. L. in *Cowper-Essex* v. *Acton* (1889), 58 L. J. Q. B. 594, applied in *Gower's Walk Schools* v. *London, Tilbury & Southend R. Co.*, 59 L. J. Q. B. 162, and illustrated by *Horton* v. *Colwyn Bay U. C.*, 77 L. J. K. B. 215. See also Stroud's Judicial Dicty. and Supp., tit. "injuriously affected."

(*b*) *R.* v. *Poulter* (1887), 57 L. J. Q. B. 138; *Mercer* v. *Liverpool &c. R.* (1903), 72 L. J. K. B. 128.

where injury has been done through their improper or negligent exercise (*a*).

The repealed Bills of Sale Act which required the registration of bills of sale of "personal chattels," under which expression fixtures were expressly included, gave rise to several decisions governed by the principle in question. The object of the enactment obviously did not extend to requiring the registration of every mortgage under which fixtures might happen to pass, for this would include most mortgages of real property; and it has been held that the Act applied only to cases where the fixtures were dealt with as separate things. Accordingly, a mortgage of a house for a term of years, with such a separate assignment of the fixtures that the mortgagee might sever and deal with them as distinct from the house, required registration (*b*); but a mortgage for a term of years

(*a*) *Clothier* v. *Webster*, 12 C. B. N. S. 790; *Gibbs* v. *Liverpool Docks*, 27 L. J. Ex. 321; *Ruck* v. *Williams* (1858), 27 L. J. Ex. 357. See the cases collected in *Whitehouse* v. *Fellowes* (1861), 10 C. B. N. S. 780.

(*b*) 17 & 18 Vict. c. 36 (repealed by 41 & 42 Vict. c. 31, s. 23). See also 45 & 46 Vict. c. 43, 53 & 54 Vict. c. 53, 54 & 55 Vict. c. 35; *Hawtrey* v. *Butlin* (1878), 42 L. J. Q. B. 103; explained in *Southport Banking Co.* v. *Thompson* (1887), 57 L. J. Ch. 114; *Exp. Daglish*, 42 L. J. Bank. 102; *Waterfall* v. *Penistone*, 26 L. J. Q. B. 100, on which see *Walmsley* v. *Milne*, 29 L. J. C. P. 97; *Re Trethowan*, 46 L. J. Bank. 43; *Re Eslick*, Id. 30; *Climpson* v. *Coles*, 58 L. J. Q. B. 346; *Small* v. *Nat. Prov. Bank*, 63

of a house with its fixtures, and with a general power of sale over the mortgaged property, not authorising a separate dealing by the mortgagee with the fixtures, did not require registration (*a*). Sec. 10, Judicature Act, 1875, which provides that in the administration of the assets of a person dying insolvent, the same rules shall be applied as to the respective rights of secured and unsecured creditors, and as to the debts provable, as are in force in bankrupcy, has similarly been the subject of several decisions limiting the scope of its operation (*b*).

The Metropolitan Building Act, 1855 (*c*), which gave a right to raise any party structure authorised by the Act, on condition of "making good all damage" occasioned thereby to the adjoining premises, was held not to authorise the raising of a structure which obstructed the ancient lights of

L. J. Ch. 270. See also *Marsden* v. *Meadows*, 50 L. J. Q. B. 536.

(*a*) *Barclay, Exp.*, 43 L. J. Ch. 449; *Mather* v. *Fraser*, 25 L. J. Ch. 361; *Yates, Re*, 57 L. J. Ch. 697, and see *Johns* v. *Ware*, [1899] 1 Ch. 359.

(*b*) See *Maggi, Re*, 51 L. J. Ch 560, and the cases cited there, but this case was in great part overruled by *Whitaker, Re* (1900), 70 L. J. Ch. 6; *M'Causland* v. *O'Callaghan*, [1904] 1 I. R. 376, See also *Whitaker, In re Whitaker* v. *Palmer*, [1904] 1 Ch. 299; *Leng, Re*, 64 L. J. Ch. 468.

(*c*) Repealed by London Building Act, 1894, 57 & 58 Vict. c. ccxiii.

the adjoining premises; for the only damage contemplated by the Act was structural, and not that which resulted from the invasion of a right. And, having regard to the scope of the enactment, the expression "making good" was understood to mean that the adjoining premises were to be restored to their original state, not that pecuniary compensation should be made (*a*).

Some decisions on the construction of s. 74, Harbours, Docks, and Piers Clauses Act, 1847, illustrate the principle under consideration. That section enacts that the owner of a vessel is to be answerable for any damage done by it, or by any person employed in it, to a harbour, pier or dock, except when the vessel is in charge of a duly licensed pilot, compulsorily taken. Construed literally, as it was by the Queen's Bench (*b*), it made an owner responsible for the injury done by his ship to a pier, after she had been driven aground and necessarily abandoned by her crew and was dashed by the storm against the pier. But *e converso* House of Lords held, that the owner was not liable, on the ground that the general scope and object of the Act were merely to collect the clauses which Parliament usually inserted in local harbour bills, and to give facilities

(*a*) *Crofts* v. *Haldane*, L. R. 2 Q. B. 194.

(*b*) 10 & 11 Vict. c. 27; *Dennis* v. *Tovell* (1872), 42 L. J. M. C. 33.

of procedure to the undertakers of such works; and that the section did not create a new liability, but only facilitated proceedings against the registered owner when damages were recoverable (*a*).

On this general principle of construction, a statute which made in unqualified terms an act criminal or penal, would be understood as not applying where the act was excusable or justifiable on grounds generally recognised by law. Thus, a statute which imposed three months' imprisonment and the forfeiture of wages on a servant who "absented himself from his service" before his term of service was completed, would necessarily be understood as confined to cases where there was no lawful excuse for the absence (*b*). A statute which made it felony "to break from prison," would not apply to a prisoner who broke out from the prison on fire, not to recover his liberty, but to save his life (*c*); and one which declared it piracy to "make a revolt in a ship," would not include a revolt necessary to restrain the master from unlawfully killing persons on board (*d*), even if it could be justly called a revolt.

(*a*) *River Wear Commissioners* v. *Adamson*, 2 App. Cas. 743.

(*b*) 4 Geo. IV. c. 34, s. 3 (repealed by 38 & 39 Vict. c. 86, s. 17); *Turner, Re*, 15 L. J. M. C. 140. But see *Rider* v. *Wood*, 29 L. J. M. C. 1. See also 21 Hen. VIII. c. 13; Gibs. Cod. 887.

(*c*) 2 Inst. 560.

(*d*) 11 & 12 Will. III. c. 7, s. 9; *R. v. Rose*, 2 Cox, 329; *The Shepherdess*, 5 Rob. C. 262.

And a seaman would not be guilty of "deserting," who was driven by the cruelty of his officers to leave his ship (*a*). The sheriff who arrests under a warrant the driver of the mails, is not indictable for knowingly and wilfully obstructing and retarding the mail (*b*).

As MENS REA, or a guilty mind, is with some exceptions, an essential element in constituting a breach of the criminal law, a statute, however comprehensive and unqualified it be in its language, is usually understood as silently requiring that this element should be imported into it, unless a contrary intention be expressed or implied; "the general rule is that, unless the contrary is expressed, *Mens Rea* enters into every offence" (*c*). A statute, for instance, which in general terms enacted that every person who committed a certain act should be adjudged a felon, would not include a child under seven, or an idiot, or a lunatic during the loss of his reason (*d*) whether caused by intoxication or any

(*a*) *Edward* v. *Trevellick*, 24 L. J. Q. B. 9; *Limland* v. *Stephens* (1801), 3 Esp. 269.

(*b*) *U. S.* v. *Kirby*, 7 Wallace, 482.

(*c*) *Per* Lord Russell of Killowen C.J., *Williamson* v. *Norris* (1899), 68 L. J. Q. B. 34.

(*d*) 1 Hale, 706; *Eyston* v. *Studd*, Plowd. 459*a*; Bac. Ab. Stat. (I.) 6. See *Exp. Stamp*, 1 De Gex, 345.

other voluntary act (*a*); for it would be unreasonable to infer from the mere use of an unqualified term and intention to repeal the general principle that such persons are not capable of a criminal intention. Drunkenness, although producing temporary insanity, is no defence to a crime (*b*), but where the crime is such that the intention of the accused is a constituent element, it may be taken into consideration in determining whether the accused formed the intention necessary to constitute the crime in question (*c*).

On the same principle, an act done under an honest and reasonable belief in the existence of a state of things, which if true would have afforded a complete justification both legally and morally for such act, would not, in general, fall within a statute which prohibited it under a penalty (*d*). Thus, a woman who married a second time within seven years after she had been deserted by her husband, under a *bonâ fide* belief on reasonable grounds that he was dead, would not be guilty of bigamy (*e*). A licensed victualler who supplies

(*a*) *R.* v. *Moore*, 3 C. & K. 319.

(*b*) 1 Hale, 32; but see *R.* v. *Meade* (1909), 78 L. J. (K. B.) 476.

(*c*) *R.* v. *Doherty* (1887), 16 Cox, 306. *Comp. West* v. *Francis*, inf. p. 290.

(*d*) See ex. gr. *Lee* v. *Simpson* (1847), 16 L. J. C. P. 105; *Reade* v. *Conquest* (1862), 11 C. B. N. S. 479.

(*e*) 24 & 25 Vict. c. 100, s. 57; *R.* v. *Tolson* (1889), 58 L. J. M. C. 97.

liquor to a police constable whom he *bonâ fide* believes to be off duty, is not guilty of supplying liquor to a police constable while on duty within s. 16 (2), Licensing Act, 1872, repealed by s. 78 (1*b*), Licensing (Consolidation) Act, 1910 (*a*). And under a statute which made it felony for persons tumultuously assembled to demolish a church or dwelling, they could not be convicted if the demolition was done in the *bonâ fide* assertion of a legal right, though there was a riot in doing it (*b*). So, if a man cut down a tree or demolished a house standing on land of which he was in undisturbed possession, and believed himself to be the owner, he would not be punishable under statutes which prohibited such acts in general terms; though it turned out that his title was bad and that the property was not his (*c*). If he demanded goods with threats, *bonâ fide* believing that they belonged to him, he would not be guilty of robbery, though civilly liable (*d*). If he forcibly took

(*a*) *Sherras* v. *De Rutzen*, [1895] 1 Q. B. 918: but *comp.* *Cundy* v. *Le Cocq*, inf. p. 186, and *Mullins* v. *Collins*, inf. p. 190.

(*b*) *R.* v. *Phillips*, 2 Moo. C. C. 252; *S. C.* nom. *R.* v. *Langford*, Car. & M. 602. See *R.* v. *Badger*, sup. p. 167.

(*c*) *R.* v. *Burnaby*, 2 Lord Raym. 900.

(*d*) *R.* v. *Hall* (1828), 3 C. & P. 409. See also *R.* v. *Knight*, 73 J. P. 15. In *R.* v. *Ford* (1907), 12 Canada Cr. Cas. 555, it was held no robbery forcibly to retake money won from the defendant at cards in the *bonâ fide* belief that prosecutor had cheated.

a girl under sixteen from the oustody of her guardian, in the honest but mistaken belief that he was, himself, invested with that character, and acted simply in the exercise of his right as guardian, he would not be guilty of the criminal offence of abduotion, though that is defined as "unlawfully taking a girl under sixteen out of the possession and against the will of the person having the lawful care of her" (*a*). A man who fished in a tidal river, in the assertion of the general right which the law gives to fish in such rivers (*b*), and in ignorance or in oontestation of the exclusive right of fishing in it olaimed by another, would not be liable to conviction for "unlawfully and wilfully" fishing in the private fishery of another (*c*). On this prinoiple may perhaps rest the general rule of law that the jurisdiotion given to justioes of the peace, to try an offenoe summarily, is ousted when a olaim of right or title is set up on reasonable grounds (*d*);

(*a*) *R.* v. *Tinkler* (1859), 1 F. & F. 513. But see *R.* v. *Prince*, 44 L. J. M. C. 122, inf. p. 181.

(*b*) *Carter* v. *Murcot*, 4 Burr. 2163.

(*c*) *R.* v. *Stimpson*, 32 L. J. M. C. 208. See sup. pp. 166-167. But see *Hudson* v. *M'Rae*, 33 L. J. M. C. 65.

(*d*) *Per* Blackburn J., *White* v. *Feast*, L. R. 7 Q. B. 353; *Reece* v. *Miller*, 51 L. J. M. C. 64; *Mann* v. *Nurse* (1901), 17 T. L. R. 569; and as to the whole question, see *Mussell* v. *Burch* (1876), 35 L. T. N. S. 486.

though their duty in such cases is, not to acquit, but to forbear from adjudicating.

But how far ignorance or erroneous belief of a fact which is essential to the offence is material, is a question which has given rise to some controversy and conflict of decisions. The substance of these decisions is, however, that it is necessary to look at the object of each Act that is under consideration to see whether and how far knowledge is of the essence of the offence created (*a*). Thus, the offence of unlawfully taking a girl under sixteen out of the possession and against the will of her parents, would be committed, although the offender believed, from her appearance and asseverations, contrary to the fact, that she was older (*b*). The object of the Legislature being to prevent a scandalous and wicked invasion of parental rights, it must be supposed that they intended that the wrongdoer should act at his peril (*c*). If, as it has been held, a person would not fall under the enactment which punishes the pursuit of game on the land of another without the consent of the owner, if he had the consent of the person whom he honestly and reasonably

(*a*) *Per* Stephen J., *Cundy* v. *Le Cocq*, 13 Q. B. D. 207.

(*b*) *R.* v. *Prince*, sup. p. 180. See also *R.* v. *Tinkler*, sup. p. 180.

(*c*) *Per* Stephen J., *R.* v. *Tolson* (1889), 23 Q. B. D. 190.

believed to be the owner (*a*), he would yet be liable to conviction if he trespassed on land which he believed to be part of the property over which he had the license, but which was in fact the property of a different person (*b*), the statute infringed not being a mere criminal statute, but one passed for the purpose of protecting the peculiar rights of those entitled to shoot game (*c*). The Contagious Diseases (Animals) Act, 1869, and an Order in Council under it, which imposed a penalty on any person having in his possession an animal affected with a contagious disease who did not give notice of it "with all practicable speed" to a constable, was held to apply only where the person knew that the animal was diseased (*d*). Where a railway Act which "for the better prevention of accidents or injury which might arise" on the railway "from the unsafe and improper carriage of certain goods," enacted that every person who should send gunpowder or similarly dangerous articles by the railway should mark or declare their nature, under a penalty enforceable by imprisonment, it was held that guilty knowledge was

(*a*) 1 & 2 Will. IV. c. 32, s. 30; *R.* v. *Cridland*, 27 L. J. M. C. 28.

(*b*) *Morden* v. *Porter*, 29 L. J. M. C. 313. As to what will constitute a valid defence, see *Dickinson* v. *Ead* (1914), 78 J. P. 326.

(*c*) *Watkins* v. *Major*, 44 L. J. M. C. 164.

(*d*) *Nicholls* v. *Hall*, 42 L. J. M. C. 105. For the converse of this proposition, see *Mousell Bros.* v. *L. & N. W. R. Co.*, [1917] 2 K. B. 837.

essential to a conviction, and that an agent who had sent some cases of dangerous goods by a railway, without mark or declaration, not only in ignorance of their nature, but misinformed of it by his principal in answer to his inquiries, had not incurred the penalty; on the ground that his ignorance, under such circumstances, proved the absence of *mens rea* (*a*); and yet he was under no legal duty to send the goods, and he might have refused to do so without actual inspection. A similar conclusion was come to where, although there was no knowledge, there were means of knowledge which were neglected. Under 9 & 10 Will. III. c. 41 (*b*), which after reciting that convictions for embezzling Government stores were found impracticable, because direct proof of the immediate taking could rarely be made, but only that the goods were found in the possession of the accused, and that they bore the King's mark, enacted that the person in whose possession goods so marked should be found, should forfeit the goods and £200, unless he produced at the trial an official certificate of the occasion of their coming into his possession; it was held by the Court for

(*a*) *Hearne* v. *Garton*, 28 L. J. M. C. 216. For the converse of this proposition, see *Mousell* v. *L. & N. W. Ry. Co.*, [1917] 2 K. B. 837.

(*b*) Repealed and re-enacted with amplifications, 38 & 39 Vict. c. 25 (Public Stores Protection Act).

Crown Cases Reserved, that such a person was not liable to conviction, in the absence of proof that he knew (though he had reasonable means of knowing) that the goods bore the Government mark (*a*). This decision, however, might be questioned on the authority of another case, which was not cited, where the Court of Exchequer held that a dealer in tobacco was liable to the penalty imposed by the statute for having adulterated tobacco in his possession, though ignorant of the adulteration (*b*). It may be doubted whether the literal construction of the language, enforcing vigilance for the protection of the public from danger or robbery, by visiting negligence (*c*) as well as misdeed with penal consequences, would not

(*a*) *R.* v. *Sleep*, 30 L. J. M. C. 170; *R.* v. *Willmett* (1848), 3 Cox, 281; *R.* v. *Cohen*, 8 Cox, 41. See *Aberdare* v. *Hammett*, 44 L. J. M. C. 49. See also *Hopton* v. *Thirlwall*, 9 L. T. N. S. 327, where a person found to "have in his possession the young of salmon," in contravention of s. 15, Salmon Fishery Act, 1861, 24 & 25 Vict. c. 109, was held not liable to conviction, who, though he knew he was in possession, did not know the fish was salmon.

(*b*) 5 & 6 Vict. c. 93; amended by 41 & 42 Vict. c. 15, s. 25; *R.* v. *Woodrow* (1846), 16 L. J. M. C. 122. See also *per* Parke B., *Burnby* v. *Bollett*, 16 M. & W. 644; *R.* v. *Trew*, 2 East, P. C. 821; *R.* v. *Dixon*, 15 R. R. 381.

(*c*) *Compare R.* v. *Stephens* (1866), 35 L. J. Q. B. 251; *Coppen* v. *Moore* (*No.* 2), [1898] 2 Q. B. 306; *Commissioners of Trade &c.* v. *Bell* (1902), 71 L. J. P. C. 109, A. C.; *Mousell* v. *L. & N. W. R.* (1917), 87 L. J. K. B. 82.

have been more in harmony with the intention, and have more completely promoted the object of the Legislature. The innocent possession of spirits which, owing to natural causes, have exuded from the wood and collected at the bottom of a cask, does not render the owner liable under the Finance Act, 1898, which provides that "a person shall no subject any cask to any process for the purpose of extracting any spirits absorbed in the wood thereof; or have on his premises any cask which is being subjected to any such process, or any spirits extracted from the wood of any cask" (*a*).

At the present time there is a large body of municipal law which has been framed in such terms as to make an act criminal without any *mens rea*. By-laws which impose regulations in the interest of the health or convenience of the public are generally so conceived, and the mere breach of them is sufficient to constitute an offence. Under s. 117, Public Health Act, 1875, which empowers a justice to order the destruction of unwholesome meat which is exposed for sale and intended for food, and to impose a fine or imprisonment on the person to whom it belongs, the Court decided that in order to support a conviction of the owner under the section it was not necessary that there should be any proof that

(*a*) 61 & 62 Vict. c. 10, s. 4 (1); *Robinson* v. *Dixon*, 72 L. J. K. B. 717.

he had actual personal knowledge of the condition of the meat, the object of the enactment being that people should not be exposed to the danger of eating poison (*a*). So the sale of an article of food or a drug not of the nature, substance, and quality of the article demanded, is to the prejudice of the purchaser and is an offence under s. 6, Sale of Food and Drugs Act, 1875, though the seller (who may be a corporation) was unaware of the fact (*b*). On similar grounds it has been held that a publican would be guilty of an offence against s. 13, Licensing Act, 1872 (repealed, s. 75, Licensing (Consolidation) Act, 1910), if he sold liquor to a drunken person, even though the purchaser had given no indication of intoxication, and the publican did not know that he was intoxicated (*c*). He would not, however, in such a

(*a*) 38 & 39 Vict. c. 55 (extended by 53 & 54 Vict. c. 59); *Blaker* v. *Tillstone*, [1894] 1 Q. B. 345; see also *Hobbs* v. *Winchester Corp.*, (1910), 79 L. J. K. B. 1123; and see the interesting case of *Williams* v. *Allen*, [1916] 1 K. B. 425.

(*b*) 38 & 39 Vict. c. 63; *Betts* v. *Armstead* (1888), 20 Q. B. D. 771; *Pearks Gunston* v. *Ward*, [1902] 2 K. B. 1; *Pain* v. *Boughtwood*, 24 Q. B. D. 353; *Dyke* v. *Gower*, [1892] 1 Q. B. 220; *Spiers & Pond* v. *Bennett*, [1896] 2 Q. B. 65; *Parker* v. *Adler*, [1899] 1 Q. B. 20; *Goulder* v. *Rook*, [1901] 2 K. B. 290. In *Smithies* v. *Bridge*, [1902] 2 K. B. 13, the appellant was held to have been rightly convicted for selling new milk deficient in fat, although the milk had not been adulterated: see also *Fitzpatrick* v. *Kelly*, inf. p. 562.

(*c*) *Cundy* v. *Le Cocq*, 13 Q. B. D. 207; but *comp. Sherras* v.

case be guilty of permitting drunkenness on his premises (*a*). But if a servant, within the general scope of his employment, sells liquor to a drunken person, though in the absence of and contrary to the orders of the publican, the publican is guilty of an offence under that section (*b*). The offence of receiving two or more lunatics in an unlicensed house is committed, though the persons were received in the belief, based on reasonable grounds, that they were not lunatics (*c*). The honest belief by a licensee that a bottle is properly sealed, is no defence to an information under s. 2, Intoxicating Liquors (Sale to Children) Act, 1901 (repealed, s. 68, Licensing (Consolidation) Act, 1910), which renders the sale of liquors to children under fourteen illegal, unless in corked and sealed vessels, if in fact the bottle is not properly sealed (*d*). But a license holder who has not delegated his authority, nor concurred at a sale, cannot be convicted under the same section by reason of a barman selling to

De Rutzen, [1895], sup. pp. 137 & 179. See, however, *Scatchard* v. *Johnson*, sup. p. 125.

(*a*) *Somerset* v. *Wade* (1894), 63 L. J. M C. 126.

(*b*) *Commissioner of Police* v. *Cartman* (1896), 65 L. J. M. C. 113. See also *Collman* v. *Mills* (1896), 66 L. J. Q. B. 170.

(*c*) 8 & 9 Vict. c. 100, s. 44, repealed and re-enacted by 53 Vict. c. 5, s. 315; *R.* v. *Bishop* (1880), 49 L. J. M. C. 45.

(*d*) *Brooks* v. *Mason*, [1902] 2 K. B. 743. See also *Mitchell* v. *Crawshaw*, 72 L. J. K. B. 389; *Macey* v. *McKenzie*, 67 J. P. 251; *Jones* v. *Shervington*, 77 L. J. K. B. 771.

a person under fourteen (*a*). Under a special Act which empowered a gas company to make the necessary works for its business, subject to a penalty if it should "suffer any washings to be conveyed or to flow" into any stream or place, corrupting or fouling the water, the company was held liable to the penalty in a case where the washings percolated through the bottom of its gas tank and polluted a well, without the knowledge of its servants (*b*).

The principle that unless the Legislature has indicated the contrary intention, the infliction of penalties is to be presumed to be confined to cases where the offender has the *mens rea*, is well illustrated by those cases in which it has been sought to render a master penally responsible for the acts of his servant. Thus a sheriff, though unquestionably liable in damages for the act of his officer in seizing things exempt from seizure, would not be liable to the penalty imposed by s. 29, Sheriffs Act, 1887, in respect of such wrongful act (*c*); and a surveyor could not be convicted of having caused a heap of stones to be laid upon a highway, and of

(*a*) *Emary* v. *Nolloth* (1903), 72 L. J. K. B. 629. As to exclusion of children from bars of licensed houses, see Childrens Act, 1908, s. 120; *Pitkington* v. *Ross*, [1914] 3 K. B. 321.

(*b*) *Hipkins* v. *Birmingham Gas Co.*, 30 L. J. Ex. 60.

(*c*) 50 & 51 Vict. c. 55, s. 29; *Bagge* v. *Whitehead*, sup. p. 167, following *Lee* v. *Dangar*, sup. p. 167.

having allowed it to remain there at night to the danger of any person thereon, where the stones had been laid and allowed to remain there by a carter acting under the orders of a person to whom the surveyor had given general directions as to repairing the road, the surveyor having no personal knowledge of the fact (*a*). So, under the repealed Act, 16 & 17 Vict. c. 128, ss. 1, 2, in order to support a criminal charge against an owner or occupier of trade premises within the metropolis of negligently using a furnace employed thereon so that the smoke was not effectually consumed, it was held that evidence of personal negligence was essential, and that evidence of negligence on the part of a servant was insufficient (*b*). No doubt the legal presumption is that whatever a servant does in the course of the employment with which he is entrusted, and as part of it, is the master's act, unless the contrary be shown (*c*), and a master may consequently be penally responsible for the act of his servant as if it were his own act, unless he can show that what was done

(*a*) 5 & 6 Will. IV. c. 50, s. 56; *Hardcastle* v. *Bielby* (1892), 61 L. J. M. C. 101; but see contra *Taylor* v. *Greenhalgh*, 24 W. R. 311; *Pendlebury* v. *Greenhalgh*, 45 L. J. Q. B. 3, C. A.

(*b*) *Chisholm* v. *Doulton* (1889), 58 L. J. M. C. 133. But see *Drummond* v. *Nicholson* (1915), 79 J. P. 525.

(*c*) *A.-G.* v. *Siddon*, 35 R. R. 701; *Barnes* v. *Akroyd* (1872), L. R. 7 Q. B. 474.

was in contravention of his orders. On this ground a baker has been held liable to a penalty for selling bread in which his servant had mixed alum (*a*); and a carrier, whose waggoner had carried in the carrier's waggon game not sent by a qualified person (when the 5 & 6 Anne, c. 14, was in force), was properly convicted of carrying the game (*b*); a licensed victualler was held penally responsible, under s. 16, 35 & 36 Vict. c. 94 (repealed, s. 78 (1*b*) Licensing (Consolidation) Act, 1910), for the act of his servant in knowingly supplying liquor to a constable on duty (*c*), the act being within the scope of the servant's employment (*d*); and where gaming had taken place upon licensed premises to the knowledge of a servant who had been placed in charge of the premises, it was held that the licensed person had "suffered" gaming to be carried on on the premises within the meaning of s. 17, Licensing Act, 1872 (repealed, s. 79, Licensing (Consolidation) Act, 1910), though he had no knowledge of the gaming, and had not connived

(*a*) *R.* v. *Dixon* (1814), 15 R. R. 381; 3 M. & S. 11.

(*b*) *R.* v. *Marsh*, 2 B. & C. 717; but see *per* Brett J., *R.* v. *Prince* (1875), 44 L. J. M. C. 122.

(*c*) *Mullins* v. *Collins* (1874), 43 L. J. M. C. 67. See also *Brown* v. *Foot*, 61 L. J. M. C. 110; but see *Sherras* v. *De Rutzen* (1895), sup. p. 186.

(*d*) *Per* A. L. Smith J., *Newman* v. *Jones*, 17 Q. B. D. 137.

at it (*a*); and under the Merchandise Marks Act, 1887, a master is criminally liable, if his servants, within the general scope of their employment, sell goods to which a false trade-mark or false description has been applied, although contrary to their master's orders; unless the master can show that he has acted in good faith and done everything he reasonably could to prevent the commission of offences by his servants. That is to say, under this Act the burden of proof is shifted, and is not in accordance with the ordinary rules and principles of criminal law, in that the prosecution has not to prove a *mens rea*; but if the defendant is able to prove an absence of any *mens rea*, then he is to be acquitted (*b*). The decisions in these and other like cases were based upon the view of the Court that, having regard to the language, scope, and objects of the Acts, the Legislature intended to fix criminal responsibility upon the master for acts done by his servants in the course of their employment, although such acts were not authorised, and might have been

(*a*) *Bond* v. *Evans* (1888), 57 L. J. M. C. 108; *Bosley* v. *Davies*, 45 L. J. M. C. 27; *Redgate* v. *Haynes*, Id. 65; *Crabtree* v. *Hole*, 43 J. P. 799.

(*b*) 50 & 51 Vict. c. 28, s. 2 (2); *Coppen* v. *Moore* (*No.* 2), [1898] 2 Q. B. 306; *Christie* v. *Cooper*, [1900] 2 Q. B. 522; *Lemy* v. *Watson*, [1915] 3 K. B. 731; *Holmes* v. *Pipers*, [1914] 1 K. B. 57.

expressly forbidden. But as soon as it appears that there is no delegation of authority to the servant (*a*), his act cannot be considered as that of the master, and it is necessary to show that the latter had personal knowledge of the incriminating circumstances in order to ensure conviction. Thus the committee of a club cannot properly be convicted of selling liquor without a proper license, where the sale has been by the steward contrary to the express orders of the committee, and without their knowledge or assent (*b*); and where gaming had taken place upon licensed premises to the knowledge of a servant who was employed upon the premises, but there was no evidence to show any connivance or wilful blindness on the part of the licensed person, and it did not appear that the servant was put in charge of the premises, it was held that the justices were right in refusing to convict the licensed person of suffering gaming on the premises (*c*). Where, however, the facts are such as to constitute *primâ*

(*a*) See *per* Collins J., *Somerset* v. *Wade*, [1894] 1 Q. B. 576, referring to the judgment of Stephen J., in *Bond* v. *Evans* (1888), 21 Q. B. D. 249, at p. 255; 57 L. J. M. C. 105.

(*b*) *Newman* v. *Jones*, 17 Q. B. D. 132; but the person actually selling is liable, *Caldwell* v. *Bethell*, [1913] 1 K. B. 119.

(*c*) 35 & 36 Vict. c. 94, s. 17, repealed, s. 79, Licensing (Consolidation) Act, 1910; *Somerset* v. *Hart* (1884), 53 L. J. M. C. 77. See also *Massey* v. *Morris*, 63 L. J. M. C. 185; and *comp. Somerset* v. *Wade*, [1894] 1 Q. B. 574.

facie a case, which though not amounting to positive proof of knowledge on the part of the licensed person, nevertheless indicate connivance, such indication is evidence upon which a magistrate may find knowledge (*a*). But, on the other hand, it may be remarked that a master would not be liable to be convicted for an unauthorised false representation made by his servant as to the weight of sacks of coal (*b*); *secus*, if the representation was made by the servant in the course of his employ (*c*).

There is a class of cases where the absence of *mens rea* does not control the language of a statute; and that is where the offence has been committed in ignorance or misapprehension of the law, and the statute prohibiting the act does not expressly make malice or wilfulness or other intent an essential element of the offence (*d*). For instance, though a person in possession of naval stores is not liable to conviction unless he knows that they bear the Government mark, he would not escape on the ground that he did not know that the possession of such marked goods was prohibited. A man who

(*a*) *Lee* v. *Taylor* (1912), 23 Cox, C. C. 220.

(*b*) 52 & 53 Vict. c. 21, s. 29 (2); *Roberts* v. *Woodward*, 59 L. J. M. C. 129.

(*c*) *Baker* v. *Herd*, 58 J. P. 413; and see *Franklin* v. *Godfrey* (1894), 63 L. J. 239.

(*d*) See *Ellis* v. *Kelly*, 30 L. J. M. C. 35; *Daniel* v. *Jones*, 2 C. P. D. 351; *Hunter* v. *Clare*, [1899] 1 Q. B. 635.

unlawfully fished in a non-tidal river, or trespassed on land in search of game, would not escape conviction because he honestly believed that the public was entitled to fish or shoot there (*a*); such a right not being known to the law. An apprentice who absented himself from his master's service, did not escape the penal consequences by proving that he had done so in the honest though erroneous belief, founded on his lawyer's advice, that his indentures were void, and that he was consequently at liberty to leave his service (*b*). So, a cabman who persists in placing his cab on the premises of a railway company, after being requested to remove it, is penally liable for "wilfully trespassing and refusing to quit," though he was under the persuasion, which was unfounded, that there existed a legal right to place his vehicle there (*c*).

It is necessary, as regards *mens rea*, not to

(*a*) *Hudson* v. *McRae*, 33 L. J. M. C. 65; *Smith* v. *Cooke* (1915), 79 J. P. 245; *Leatt* v. *Vine*, 30 L. J. M. C. 207; *Hargreaves* v. *Diddams*, 44 L. J. M. C. 178; *Watkins* v. *Major*, Id. 164; *Pearce* v. *Scotcher*, 9 Q. B. D. 162. See also *The Charlotta*, 1 Dod. 387.

(*b*) 4 Geo. IV. c. 34, s. 3; repealed by 38 & 39 Vict. c. 86, s. 17. *Cooper* v. *Simmons* (1862), 31 L. J. M. C. 138, an apprenticeship to a corporation is valid: *Burnley &c. Society* v. *Carson*, [1891] 1 Q. B. 75.

(*c*) *Foulger* v. *Steadman*, 42 L. J. M. C. 3. *Comp. Jones* v. *Taylor*, 1 E. & E. 20. There are no longer privileged cabs at London railway stations.

confound a guilty mind in the legal sense of the expression, with a guilty conscience, for an intention to do an act prohibited by the penal provisions of a statute constitutes *mens rea*. On the other hand, the absence of *mens rea* really consists in an honest and reasonable belief in the existence of facts which, if true, would make the act innocent (*a*). A statute which prohibited an act would be violated, though the act were done without evil intention, or even under the influence of a good motive. Thus, in order to constitute the offence of applying a false trade description to goods with intent to defraud, within the meaning of the Merchandise Marks Act, 1887, s. 2 (1), it is not necessary that there should be any fraud, in the sense of intent to supply a worthless or inferior article, but it is sufficient that an article is intended to be supplied of a different description from that which the customer intends to purchase, and believes he is purchasing (*b*). So a man who sells an obscene publication is subject to the penalty imposed therefor by 20 & 21 Vict. c. 83, although his object was not to deprave the mind

(*a*) *Sherras* v. *De Rutzen*, sup. p. 179; *Bank of N. S. Wales* v. *Piper*, [1897] A. C. 383.

(*b*) 50 & 51 Vict. c. 28; *Starey* v. *Chilworth Gunpowder Co.* (1889), 59 L. J. M. C. 13; *Wood* v. *Burgess*, 59 L. J. M. C. 11; *Kirshenboim* v. *Salmon & Gluckstein* (1898), 67 L. J. Q. B. 601; *North Eastern Breweries* v. *Gibson* (1904), 68 J. P. 356.

of the reader, but to expose the tenets of a religious sect (*a*). The master of a ship who, under general instructions to complete his cargo on the best terms, traded with the enemy, would be guilty of the crime (*b*) of barratry, though he acted solely under the motive of serving his employer to the best advantage (*c*). A railway company which had suffered a weighing machine in its possession to continue out of repair for a fortnight, so that it indicated more than the true weight, was held to fall within the enactment which imposed a penalty for being found in possession of a weighing machine incorrect or otherwise unjust; although its servants had orders to make a due allowance for the defect, when using it (*d*). So under s. 31 of the repealed Bankruptcy Act, 1883, which enacted that where an undischarged bankrupt obtained credit to the

(*a*) *R.* v. *Hicklin* (1868), 37 L. J. M. C. 89; *Steele* v. *Brannan*, 41 L. J. M. C. 85. *Comp. Lewis* v. *Fermor*, 18 Q. B. D. 532, questioned by Hawkins J., in *Ford* v. *Wiley*, 23 Q. B. D. 203; as to publication of obscene pictures or advertisements, see *R.* v. *De Marney*, [1907] 1 K. B. 388.

(*b*) *Vallejo* v. *Wheeler*, 1 Cowp. 143. As to meaning of the word *enemy*, see *Société Anonyme Belge des Mines d'Aljustrel* v. *Anglo-Belgian Agency* (1915), 84 L. J. Ch. 849, C. A.

(*c*) *Earle* v. *Rowcroft*, 9 R. R. 385, 8 East. 126.

(*d*) 5 & 6 Will. IV. c. 63, s. 28 (repealed), 41 & 42 Vict. c. 49, s. 25; *G. W. R. Co.* v. *Bailie* (1864), 34 L. J. M. C. 31. See also *Lane* v. *Rendall*, [1899] 2 Q. B. 673; *London C. C.* v. *Payne* (*No.* 2), [1905] 1 K. B. 410.

extent of £20 and upwards from any person, without informing such person that he was an undischarged bankrupt, he should be guilty of a misdemeanour, it was no defence to show that there was no intention to defraud (*a*).

Probably, it may now be said that in construing the operative verb of a prescribed offence, in a case not covered by authority, it is not unusual to see whether that verb is controlled by such a word as "knowingly"; if it is, the doctrine of *Mens Rea* applies, but if it is not, the better opinion is the exclusion of that doctrine.

Sometimes, to keep the Act within the limits of its object, and not to disturb the existing law beyond what the object requires, it is construed as operative between certain persons, or under certain states of facts, or for certain purposes only, though the language expresses no such circumscription of the field of its operation (*b*). The partially repealed Act of 1854 (*c*), for instance, which required, among other things, that where a Bill of Sale was made subject to a declaration of trust, the declaration should be registered as

(*a*) 46 & 47 Vict. c. 52; *R.* v. *Dyson*, [1894] 2 Q. B. 176. The sum is now reduced to £10, see 4 & 5 Geo. V. c. 59, s. 155.

(*b*) For some illustrations, in addition to those which immediately follow, see Chap. VII, Sec. III.

(*c*) 17 & 18 Vict. c. 36, s. 2.

well as the bill, on pain of invalidity against the assignee in the event of execution or bankruptcy, was held to apply only to declarations of trust by the grantee for the grantor, but not to trusts declared by the grantee in favour of other persons. The object of the Act being only to protect creditors against sham bills of sale, and such object being completely attained by requiring the registration of the first-mentioned trusts, while the registration of any others would have been foreign to the purposes of the Act (*a*). Sec. 13, Bills of Sale Act, 1882, which prohibits the removal of the goods for five days after seizure, is confined to the protection of the person giving the bill, and gives the landlord no right to complain of an earlier removal (*b*); and s. 3, 11 Geo. II. c. 19, which gives to landlords a right of action to recover double the value of goods fraudulently carried off the premises to avoid a distress, applies to goods of the tenant only, and not to those of a stranger (*c*). So, the provision in 8 & 9 Vict. c. 109, which, after making all wagers null and

(*a*) *Hills* v. *Shepherd* (1858), 1 F. & F. 191; *Robinson* v. *Collingwood*, 34 L. J. C. P. 18. See also *Hodson* v. *Sharpe*, 10 R. R. 324.

(*b*) 45 & 46 Vict. c. 43; *Lane* v. *Tyler* (1887), 56 L. J. Q. B. 461; *Tomlinson* v. *Consolidated Credit Corp.* (1890), 24 Q. B. D. 135.

(*c*) *Tomlinson* v. *Consolidated Credit Corp.*, sup.

void, enacts that no suit shall be maintained to recover money won on a wager or deposited to abide the event, was construed as only preventing a party to the wager from suing to recover his winning, but not to prevent him from suing the stakeholder to recover his deposit before it has been actually appropriated (*a*), and the Gaming Act, 1892, has not altered the law in this respect (*b*). Moreover an action will be by one partner in a betting business against the other for an account of the partnership dealings (*c*). So, the general language of s. 299, Merchant Shipping Act, 1854 (repealed, s. 419 (3), Merchant Shipping Act, 1894), which provided that, if damage should arise to person or property from non-observance of the sailing rules, it should be considered as the "wilful default" of the person in charge of the deck at the time, was confined, by a due regard to the object in view, to the regulation of the rights of the owners of ships in cases of collision, and was therefore held not to affect the relations between the master and his owners, so as to make the

(*a*) *Hampden* v. *Walsh*, 45 L. J. Q. B. 238; *Diggle* v. *Higgs* (1877), 46 L. J. Ex. 721, C. A. See also *Strachan* v. *Universal Stock Exchange* (*No.* 2), 65 L. J. Q. B. 178; *Universal Stock Exchange* v. *Strachan*, 65 L. J. Q. B. 429.

(*b*) 55 & 56 Vict. c. 9; *Burge* v. *Ashley & Smith*, 69 L. J. Q. B. 538; *Barclay* v. *Pearson* (1893), 62 L. J. Ch. 636; *Shoolbred* v. *Roberts*, [1899] 2 Q. B. 560, varied, [1900] 2 Q. B. 497, C. A.

(*c*) *Keen* v. *Price*, [1914] 2 Ch. 98.

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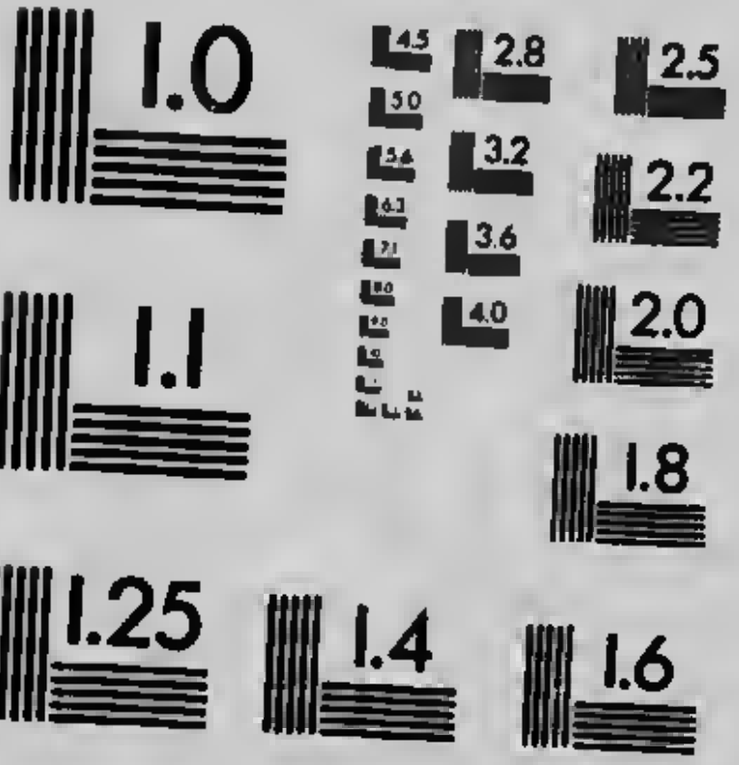

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former guilty of barratry, which would have been altogether foreign to the scope of the Act (*a*). The 16 & 17 Vict. c. 30, which, after reciting that it was expedient to make provision for preventing the vexatious removal of indictments into the Queen's Bench, enacted that whenever a certiorari to remove one should be awarded at the instance of the prosecutor, he should enter into a recognisance to pay the costs if unsuccessful, and that if the recognisance was not entered into, the indictment should be tried in the Court below, was held inapplicable to a prosecutor who removed an indictment against a corporate body which was unable to appear by attorney in the inferior Court. In such a case, the removal of the indictment was a matter of necessity, not option, for it could not be tried by the inferior Court, since the defendant could not appear there; and it would have been unjust to extend the provision to a case clearly beyond the scope of the Act, which, by its preamble showed, was only to check vexatious removals (*b*). The words of the Arbitration Act, 1889, which enact that in certain cases an award is to be

(*a*) *Grill* v. *General Iron Screw Co.* (1866), 35 L. J. C. P. 321, 37 Id. 205; *Price* v. *Union Lighterage Co.* (1903), 72 L. J. K. B. 374.

(*b*) *R.* v. *Manchester*, 26 L. J. M. C. 65. See also *Craven* v. *Smith* (1869), 38 L. J. Ex. 90. Overruled as to power of undersheriff to certify for costs, *Cox* v. *Hill* (1892), 67 L. T. 26.

"equivalent to the verdict of a jury," have been construed as not importing all the incidents of a verdict, *ex. gr.* the right of appeal on the ground that it is against the weight of evidence, but only the immediate consequences, *ex. gr.* the mode of execution (*a*).

The enactment (16 & 17 Vict. c. 59, s. 19) which made presentment of any draft on a banker payable to order or on demand, if purporting to be indorsed (though a forgery) by the payee, a sufficient authority to the banker to pay the amount, was in the same way limited in its effect, as in its object, to the relations between banker and customer; and did not prevent the latter from recovering his money from the person who received it (*b*). But, on the other hand, s. 3, Truck Act, 1831, which provides that the entire amount of wages earned by any artificer shall be actually paid to him in the current coin of the realm, constitutes a bar to a deduction from the wages of a debt due from the workman to his employer (*c*). Sec. 16,

(*a*) 52 & 53 Vict. c. 49, ss. 14, 15; *Darlington Wagon Co.* v. *Harding* (1891), 60 L. J. Q. B. 110; *Glasbrook* v. *Owen*, 7 Times Rep. 62; *Carr* v. *Dougherty*, 67 L. J. Q. B. 371.

(*b*) *Ogden* v. *Benas*, 43 L. J. C. P. 259; *Arnold* v. *Cheque Bank, Ltd.* (1876), 45 L. J. C. P. 562; *Fine Art Society* v. *Union Bank of London* (1886), 56 L. J. Q. B. 70, C. A. See now s. 60, Bills of Exchange Act, 1882, 45 & 46 Vict. c. 61; *Gordon* v. *London City & Midland Bank* (1902), 71 L. J. K. B. 215, C. A.

(*c*) 1 & 2 Will. IV. c. 37; *Williams* v. *North's Navigation*

Companies Clauses Consolidation Act, 1845, which provides that no shareholder shall be entitled to transfer any share after a call, until he has paid up all calls due on all his shares, is only a protection to the company, giving it a lien or charge upon the shares; but it does not affect the validity of a transfer as regards the creditors of the company, if the company has assented to it (*a*). So it has been held that the provisions of a Railway Act which placed the management of the company's affairs in the hands of a certain number of directors, were intended for the protection of the shareholders merely, and that it was not open to a stranger to object that they had not been complied with (*b*). Sec. 153, Companies Act, 1862 (repealed, s. 205, Companies (Consolidation) Act, 1908), which declares "void" every transfer of shares in a company which is being wound up, unless the Court otherwise orders, was held not to prevent a broker who had bought and paid for shares in a

Collieries (1906), 75 L. J. K. B. 334; *Summerlee Iron Co.* v. *Thomson* (1913), S. C. (J.) 34, H. L. But see *Keates* v. *Lewis Merthyr Collieries*, 79 L. J. K. B. 722.

(*a*) 8 & 9 Vict. c. 16; *Littledale, Exp.* (1853), 43 L. J. Ch. 529; discussed in *Société Générale de Paris* v. *Tramway Unions Co.* (1884), 14 Q. B. D., at p. 455.

(*b*) *Thames Haven Co.* v. *Rose* (1842), 4 M. & Gr. 552, which case was criticised in *Alma Spinning Co., Re* (1880), 50 L. J. Ch. 171.

company so situated from recovering from his principal the money so paid (*a*).

Sec. 23, Bankruptcy Act, 1869, which enacted that the trustee in bankruptcy might disclaim any interest of the bankrupt, and that the property disolaimed was to be deemed surrendered on the day of the adjudioation, was held to be limited to the relief of the bankrupt and the trustee in bankruptcy from liability; but not to affect the rights and liabilities of the lessor and original lessee or underlessee (*b*). Sec. 38, Companies Act, 1867 (repealed by s. 81, Companies (Consolidation) Act, 1908), whioh requires that every prospectus shall specify all contracts entered into by the company or by its promoters, before the issue of the prospectus, and declares every prospectus which does not specify them fraudulent on the part of the promoters and directors who knowingly issued it, as regards persons taking shares, is, literally, wide enough to include every contract made by a promoter even regarding his own private affairs; but it was limited in construction to the object of the

(*a*) *Chapman* v. *Shepherd*, 36 L. J. C. P. 113; discussed in *Coles* v. *Bristowe* (1868), L. R. 6 Eq., at p. 160.

(*b*) 32 & 33 Vict. c. 71; now s. 54, Bankruptcy Act, 1914 (4 & 5 Geo. V. c. 59); *Smyth* v. *North*, L. R. 7 Ex. 242; *Exp. Walton*, 17 Ch. D. 746; *Hill* v. *E. & W. I. Dock Co.*, 53 L. J. Ch. 842. See under Act of 1914, *Castle, In re*, [1917] 2 K. B. 725; 87 L. J. K. B. 753.

Act, which was the protection of shareholders. It was held, therefore, to include only such contracts as were calculated to influence persons in applying for shares (*a*); and apparently does not create any duty towards bondholders (*b*).

So, the Stamp Acts, which enacted that unstamped documents should not be pleaded or given in evidence, or be available in law or equity, were construed as meaning only that such documents should be unavailable for the purpose of recovering any debt or property (*c*). The prohibition was, however, held not to extend to cases where the validity of the document was impugned on the ground of fraud or illegality (*c*). So, s. 93 of 54 & 55 Vict. c. 39 (reproducing sec. 7, 30 & 31 Vict. c. 23), which invalidates all contracts of sea assurance unless expressed in a policy, and (s. 95 (2)) which prohibits giving in evidence any policy not duly stamped, does not prevent the admission of the slip in evidence, on a collateral question of fraud or misrepresentation (*d*).

(*a*) *Twycross* v. *Grant*, 46 L. J. C. P. 636; discussed and explained in *Macleary* v. *Tate*, [1906] A. C. 24, at p. 29.

(*b*) *Cornell* v. *Hay* (1873), 42 L. J. C. P. 136.

(*c*) *R.* v. *Hawkesworth*, 1 T. R. 450; *R.* v. *Gompertz*, 9 Q. B. 824; *Ponsford* v. *Walton*, L. R. 3 C. P. 167. An unstamped promissory note may be handed to a witness in order to challenge his recollection, *Birchall* v. *Bullough* (1896), 65 L. J. Q. B. 252.

(*d*) *Ionides* v. *The Pacific Insurance Co.*, 41 L. J. Q. B. 190;

In the same spirit, the operation of 7 Anne, c. 12, which, with the view of securing the inviolability accorded to ambassadors by the law of nations, enacted that all processes whereby an ambassador or his servant might be arrested, or his goods seized, should be null and void (*a*), was held not to extend beyond what might be necessary for the protection of the rank, duties, and religion of the ambassador; and not to protect his servant, who rented a house, part of which he let in lodgings, from having his goods taken by distress for non-payment of a parochial rate. Upon the principle that, a house of that character not being absolutely necessary for the servant's residence, to extend the operation of the Act to such a case would have been to cover ground foreign to its scope and object (*b*).

Citizen Insurance Co., Canada v. *Parsons* (1881), 7 A. C., at 125.

(*a*) *Republic of Bolivia, In re*, [1914] 1 Ch. 139.

(*b*) *Novello* v. *Toogood*, 25 R. R. 507. See also *Parkinson* v. *Potter* (1885), 16 Q. B. D., at p. 161.

CHAPTER IV.

SECTION 1.—CONSTRUCTION TO PREVENT EVASION.

"I NEVER understood what is meant by an 'evasion' of an Act of Parliament; either you are within the Act of Parliament or not. If you are not within it you have a right to avoid it, to keep out of the prohibition; if you are within it, say so, and then the course is clear" (*a*). The above is perhaps the dictum of a purist in language. In ordinary life, in courts of law and sometimes even in statutes the phrase "evasion" of an Act of Parliament really connotes an attempt to avoid compliance therewith.

"Everybody agrees that 'evade' is capable of being used in two senses: (1) which suggests underhand dealing, (2) which means nothing more than the intentional avoidance of something disagreeable" (*b*).

As regards the first of these senses, it does not really involve a question of verbal construction

(*a*) *Per* Lord Cranworth L.C., *Edwards* v. *Hall*, 25 L. J. Ch. 84. See post, p. 218.

(*b*) *Simms* v. *Registrar of Probates*, 69 L. J. C. P. 56.

of a statute at all. It is simply fraud—it is no more than a flagitious attompt to pass off an existing state of things as being something other than that whioh it really is. Words, of course, may be used for the purpose of helping to assist in the illusion, though it is rarely that the meaning of suoh words will be called in question; the question will be, Is an evasion being attempted? If so, the Court will make short work of it. But when the second method of avoidance or technical "evasion" is under consideration it merits careful though not necessarily favourable scrutiny, and if the result of such investigation shows that the avoidance is not, in fact, within the misohief contemplated by the statute, it is in a legal sense neither an evasion nor blameworthy. The author being proved to have done nothing outside his right. In either case it may be said that there was an attempt at evasion; but the attitude of the Court towards the one will be very different from that as regards the other.

It is the duty of the judge to adopt suoh a construction as shall avoid the possibility of any untruthful evasion which might perpetuate the misohief (*a*). To carry out effectually the object of a statute, it must be so construed as to defeat all attempts to do, or avoid doing in an indirect or circuitous manner that which it has prohibited

(*a*) *Magdalen College Case*, 11 Rep. 71b.

or enjoined (*a*). *In fraudem legis facit, qui, salvis verbis legis, sententiam ejus, circumvenit* (*b*); and a statute is understood as extending to all such circumventions, and rendering them unavailing. *Quando aliquid prohibetur, prohibetur et omne, per quod devenitur ad illud* (*c*). "Whenever it can be shown that the acts of the parties are adopted for the purpose effecting a thing which is prohibited, and the thing prohibited is in consequence effected, the parties have done that which they have purposely caused, though they may have done it indirectly" (*d*). When the thing done is substantially that which was prohibited, it falls within the Act, simply because, according to the true construction of the statute, it is the thing thereby prohibited (*e*). Whenever Courts see such attempts at concealment, "they brush away the cobweb varnish," and show the transaction in its true light (*f*). They see things as ordinary men do (*g*), and so see through them. Whatever might be the form or colour of the transaction, the law

(*a*) Bac. Ab. Statute (J.); Com. Dig. Parlmt. (R.) 28.

(*b*) 3 Dig. 1, 3, 29.

(*c*) 2 Inst. 48.

(*d*) *Per* Blackburn J., *Jeffries* v. *Alexander* (1860), 31 L. J. Ch. 14; discussed in *Robson, In re* (1881), 18 Ch. Div., p. 163.

(*e*) *Per* Lord Cranworth, L.C., *Philpott* v. *St. George's Hospital*, 6 H. L. Cas. 338.

(*f*) *Per* Wilmot C.J., *Collins* v. *Blantern*, 2 Wils. 349.

(*g*) *Per* Lord Brougham, *Warner* v. *Armstrong*, 3 Myl. & K. 45.

looks to the substance (*a*). For this purpose the Courts go behind the documents and formalities, and inquire into the real facts. They may, and therefore must, inquire into the real nature of that which was done. An Act is not to be evaded by putting forward documents which give a false description of the matter (*b*). In all such cases, it is, in truth, rather the particular transaction than the statute which is the subject of construction; and if it is found to be in reality within the statute, it is not suffered to escape from the operation of the law by means of the disguise under which its real character is masked.

Thus, when either of the Acts against Usury (*c*) was in force, it was said that if the contract really was an usurious loan of money, the wit of man could not find a shift to take it out of the Act (*d*); and accordingly transactions which were ostensibly a sale of land (*e*), of goods (*f*), or of stock (*g*), or

(*a*) *Per* Lord Tenterden, *Solarte* v. *Melville*, 1 Man. & Ry. 204.

(*b*) *Watson, Re* (1890), 59 L. J. Q. B. 394; *Madell* v. *Thomas* (1891), 60 L. J. Q. B. 227.

(*c*) For a list of them, see 17 & 18 Vict. c. 90—by which Act they were all repealed.

(*d*) *Per* Lord Mansfield, *Floyer* v. *Edwards*, 1 Cowp. 114.

(*e*) *Doe* v. *Gooch*, 3 B. & Ald. 664; *Doe* v. *Chambers*, 4 Camp. 1.

(*f*) *Floyer* v. *Edwards*, sup.; *Davis* v. *Hardacre*, 2 Camp. 375; *Harvey* v. *Archbold*, 3 B. & C. 626.

(*g*) *Tate* v. *Wellings*, 3 T. R. 531; *Boldero* v. *Jackson*, 11 East, 512; *White* v. *Wright*, 3 B. & C. 273.

a lease (*a*), or an agency (*b*), or a partnership (*c*), when in reality usurious loans, were held to fall within the Act. So, if a contract be a wager in substance, no matter how the end is brought about, it would be void, though the object were concealed in the form given to the transaction (*d*). And whether a document ought to be registered under the Bills of Sale Acts is not concluded by its terms or form, but depends on the evidence as to the real nature of the transaction, as to the real intention of the parties. Thus, if A be the real owner of goods, and B the pretended owner, and B by a document purports to let the goods

(*a*) *Bedo* v. *Sanderson*, Cro. Jac. 440; *Jestons* v. *Brooke*, 2 Cowp. 793.

(*b*) *Harris* v. *Boston*, 2 Camp. 348.

(*c*) *Enderby* v. *Gilpin*, 5 Moo. 571.

(*d*) *Grizewood* v. *Blane* (1857), 11 C. B. 538. *Comp. Phillips, Exp.*, 30 L. J. Bkcy. 1; *per* Wilde B., *Jeffries* v. *Alexander*, 8 H. L. Cas. 594; *Thacker* v. *Hardy*, 4 Q. B. D. 685. See also *Read* v. *Anderson*, 52 L. J. Q. B. 219; 53 Id. 532; *Caminada* v. *Hulton*, 60 L. J. M. C. 116, with which *comp. R.* v. *Stoddart*, 70 L. J. K. B. 189; see also *Hyams* v. *Stuart King*, 77 L. J. K. B. 794; *Re Deerhurst*, 60 L. J. Q. D. 411. For recent decisions, see *Bottomley* v. *Director Public Prosecutions* (1916), 84 L. J. K. B. 354. Note especially the remarks of Darling J., at p. 356: *Minty* v. *Sylvester* (1916), 84 L. J. K. B. 1982; *Jackson* v. *Roth* (1916), 35 T. L. R. 59. As to evasion of Truck Acts, *Gould* v. *Haynes*, 59 L. J. M. C. 9. See *Higginson* v. *Simpson*, 46 L. J. C. P. 192; *Summerlee Iron Co.* v. *Thomson* (1913), S. C. (J.), 34.

to A with liberty to B in a certain event to seize, this may be construed as a license by A, the real owner, to B. If it be found as a fact that it was so given, then however absolute in form the document may be, it comes within the operation of the Act; and if it be not registered, it is void (*a*). An Act which prohibited under a penalty the performance of plays without license, would extend to a performance where the actors did not come on the stage, but acted in a chamber below it, and their figures were reflected by mirrors so as to appear to the spectators to be on the stage (*b*). Sec. 4, Libel Act, 1843, which requires, under certain circumstances, the insertion of a full apology in a newspaper for a libel, would not be complied with, if the apology, however suitable in its terms, was printed in such type or in such a part of the paper as would be likely to escape the attention of ordinary readers (*c*). An assignment of leaseholds to a trustee with the object of protecting

(*a*) 41 & 42 Vict. c. 31, s. 4; 45 & 46 Vict. c. 43, ss. 3, 9; see also 53 & 54 Vict. c. 35; 54 & 55 Vict. c. 35; *Beckett* v. *Tower Assets Co.*, 60 L. J. Q. B. 493; *Maas* v. *Pepper* (1905), 74 L. J. K. B. 452; *Johnson* v. *Rees* (1915), 84 L. J. K. B. 1276.

(*b*) 6 & 7 Vict. c. 68, s. 2; *Day* v. *Simpson* (1865), 34 L. J. M. C. 149; see also 53 & 54 Vict. c. 59, s. 51, and *Syers* v. *Conquest*, 37 J. P. 342.

(*c*) 6 & 7 Vict. c. 96; *Lafone* v. *Smith* (1859), 28 L. J. Ex. 33. As to the measure of punishment under s. 5 of this Act, see *Rex* v. *Trueman*, [1913] W. N. 198.

the mortgagee of them from liability to the covenants, after the trustee in bankruptcy had disclaimed, was treated as an attempt to evade the repealed Bankruptcy Act, 1883, and was a sham and therefore void (*a*). The repealed Act of 1854 which required the registration of bills of sale of personal chattels was held to extend to agreements for a bill of sale, constituting an equitable assignment (*b*). And where the grantor of a bill of sale of furniture remained in possession as the servant of the grantee, with leave to use the furniture as part of his salary, it was held that the grantee was not in possession by his servant, but that the grantor was in possession within the meaning, for the case was within the mischief, of the Act (*c*). The Acts which protected the monopoly of the Bank of England by prohibiting bodies of more than six

(*a*) 46 & 47 Vict. c. 52, s. 55 (6); see 4 & 5 Geo. V. c. 59, s. 54 (6); *Smith, Re*, 59 L. J. Q. B. 554.

(*b*) 17 & 18 Vict. c. 36, and 45 & 46 Vict. c. 43; *Mackay, Exp.*, 42 L. J. Bank. 68; *Edwards* v. *Edwards*, 45 L. J. Ch. 391; *Brantom* v. *Griffits* (1877), 46 L. J. C. P. 408; *Odell, Exp.*, 48 L. J. Bank. 1; see, however, *Allsopp* v. *Day*, 31 L. J. Ex. 105; *Eyerley* v. *Prevost*, L. R. 5 C. P. 144; *Marsden* v. *Meadows*, 50 L. J. Q. B. 536; *Woodgate* v. *Godfrey*, 5 Ex. D. 24; *Watson, Re*, 59 L. J. Q. B. 394; *Madell* v. *Thomas*, sup. p. 209; *Cochrane* v. *Matthews*, 10 Ch. D. 80 n.

(*c*) *Pickard* v. *Marriage*, 45 L. J. Ex. 594. See also *Gibbons* v. *Hickson*, 55 L. J. Q. B. 119; *Exp. Lewis*, L. R. 6 Ch. 626. See also *Stallard* v. *Marks*, 3 Q. B. D. 412.

persons "to borrow, owe, or take up money on their bills or notes, payable at less than six months from the borrowing," were construed to make it illegal for such a body of bankers to accept a customer's bill at less than six months: for the effect of such a transaction would admit of competition with the Bank of England by the issue of bills and notes (*a*). And they were also held to prohibit a joint stock bank from engaging with a foreign bank that their manager, who was not a partner, should accept the bills of the foreign bank, and that they should provide funds for their payment (*b*). All such transactions were held to come more or less directly within the prohibition to "owe, borrow, or take up money on bills or notes" (*c*).

A tenant who covenanted not to assign his lease without his landlord's license, would be held to have broken his covenant by giving a warrant of attorney to confess judgment, if he gave it for the express purpose of enabling the judgment creditor to take the lease in execution; for this was, in affect and intention, an assignment of the lease (*d*). The transaction would be unobjection-

(*a*) *Bank of England* v. *Anderson*, (1837), 7 L. J. Ch. 265.

(*b*) *Booth* v. *Bank of England*, 7 Cl. & F. 509; *Exp. Randleson*, 1 Mont. & M'Arth. 86.

(*c*) See also *O'Connor* v. *Bradshaw* (1850), 20 L. J. Ex. 26.

(*d*) *Doe* v *Carter*, 4 R. R. 586. See, however, *Croft* v. *Lumley* (1858), 6 H. L. Cas. 739.

able if divested of the intent to break the covenant (*a*). A similar warrant of attorney, given by an insolvent to enable a favoured oreditor to take his goods in execution, would, in the same way, be within the provisions against fraudulent transfers of property (*b*).

The Charitable Uses Aot, 1735, 9 Geo. II. c. 36 (*c*), which prohibited the disposition to a charity of land, or money to be laid out in the purchase of land, otherwise than by deed exeouted twelve months before the donor's death, to be enrolled within six months from its execution, and to take effect immediately, and without power of revocation or any reservation for the benefit of the donor, has frequently been the subjeot of such experiments. Thus, a bequest of money to the committee of a school, on condition that they would provide land for a charitable purpose, would fall within the Aot; for such a transaction differs but in name from a purohase of the land and a

(*a*) *Bills* v. *Smith*, 34 L. J. Q. B. 68; *Vautin, In re*, [1900] 2 Q. B. 325.

(*b*) *Sharpe* v. *Thomas*, 6 Bing. 416; *Croft* v. *Lumley*, 6 H. L. Cas. 672. See 32 & 33 Vict. c. 71, s. 92; (repealed, s. 48, 46 & 47 Vict. c. 52); repealed 4 & 5 Geo. V. c. 59, s. 44; *Griffith, Exp.*, 52 L. J. Ch. 717; *Re Goldsmid*, 56 L. J. Q. B. 195. For an exception to thie rule, see *New's Trustee* v. *Hunting*, [1897] 1 Q. B. 607; 66 L. J. Q. B. 554, C. A.

(*c*) Repealed save s. 5 by 51 & 52 Vict. c. 42, s. 13.

devise of it (*a*). The testator did not, indeed, directly devise the land; but he gave money in consideration of land being given to a charity, which was substantially the same thing. So, money bequeathed to be laid out in building houses, where there was no land already in mortmain (*b*) to build them on, would have been construed as an indirect instruction to purchase land for the purpose (*c*). So a legacy to trustees of a chapel to be applied by them towards the discharge of a mortgage on the said chapel is void (*d*). Where the owner of land, with the object of evading the statutes, executed a deed, which he kept concealed till his death, whereby he covenanted that he or his executors would pay to trustees for certain charitable purposes, a large sum of money, which would necessarily have to

(*a*) *A.-G.* v. *Davies*, 9 Ves. 535. See also judgment of Lord Cranworth, L.C., *Philpott* v. *St. George's Hospital* (1857), 6 H. L. Cas. 349; 27 L. J. Ch. 70, also sup. p. 208, and inf. p. 221. See, however, Mortmain and Charitable Uses Act, 1891. Provision of s. 5 no longer applies to land assured by will for the purpose of an elementary school-house; 2 Edw. VII. c. 42, s. 23 (5).

(*b*) *Comp. Brodie* v. *Chandos*, 1 Bro. C. C. 444 n.; and *Pritchard* v. *Arbouin*, 27 R. R. 106.

(*c*) *A.-G.* v. *Tyndall*, Ambl. 614; *Mather* v. *Scott* (1837), 44 R. R. 229; 6 L. J. Ch. 380; *Giblett* v. *Hobson*, 41 R. R. 144, but *e converso* for a reason therein specified, see *Biggar* v. *Eastwood* (1886), 19 L. R. Ir., at p. 65.

(*d*) *Corbyn* v. *French* (1799), 4 Vesey, 418.

be raised out of his land, this was held to fall within the prohibition of the statute. The creation of a fictitious debt on which execution might issue, and the land be taken, was but an indirect mode of making a gift of the land (*a*).

So, a settlement, under the Poor Law, by renting a tenement, was not obtained where the renting was colourable or fraudulent (*b*). It has been held that where a woman pregnant with an illegitimate child was fraudulently removed by the officers of the parish in which she was settled (*c*) to another parish, the child's place of settlement was not the parish where it was born, but that in which it would, but for the fraudulent removal, have been born (*d*). Indeed, it has been held that where an unmarried woman was removed to a parish by order of justices, and gave birth to a child there, and the order was quashed on appeal, the child was to be regarded as born in the parish where he ought to have been, and not where he

(*a*) *Jeffries* v. *Alexander*, 8 H. L. Cas. 594; and *per* Cur., *Attree* v. *Hawe*, 47 L. J. Ch. 863. *Comp. Robson, Re*, 51 L. J. Ch. 337.

(*b*) *R.* v. *Woodland*, 1 T. R. 261; *R.* v. *Tillingham*, 1 B. & Ad. 180; *R.* v. *St. Sepulchre*, Id. 924.

(*c*) See *R.* v. *Astley*, 4 Doug. 389.

(*d*) *Masters* v. *Child*, 3 Salk. 66; *Tewkesbury* v. *Twyning*, 2 Bott. 3. *Compare R.* v. *Mattersey*, 4 B. & Ad. 211; *R.* v. *Halifax*, 2 B. & Ad. 211; and *R.* v. *Birmingham*, 32 R. R. 332.

actually was born (*a*). Where a woman, after failing to obtain a bastardy order where she resided, removed to a neighbouring borough for the avowed purpose of trying to get the order there, it was held that the justices of the borough had no jurisdiction to make it, under the Act which gives such authority to justices of the place where the woman "resides" (*b*). It would have been different if she had not removed for the sole object of getting into another jurisdiction (*c*).

On this general principle, the Courts have repeatedly refused to review by Mandamus, or otherwise, the proceedings of an inferior Court, in a matter within its jurisdiction, when a writ of Certiorari is not granted (*d*). Where the payment of rates constitutes a personal qualification, the Act would not be complied with if they were paid by another person on behalf of him who claims the qualification (*e*).

(*a*) *Much Waltham* v. *Peram*, 2 Salk. 474; *Westbury* v. *Coston*, Id. 532; *R.* v. *Great Salkeld*, 6 M. & S. 408.

(*b*) *R.* v. *Myott* (1863), 32 L. J. M. C. 138; *R.* v. *Allendale*, 3 T. R. 382, 385.

(*c*) *R.* v. *Hughes*, 26 L. J. M. C. 133; *Massey* v. *Burton*, 27 L. J. Ex. 101.

(*d*) *R.* v. *Yorkshire* (1834), 5 B. & Ad. 1003, and 1 A. & E. 563; *R.* v. *Eaton*, 1 R. R. 436.

(*e*) *R.* v. *Bridgnorth* (1839), 50 R. R. 334; 8 L. J. M. C. 86; *Durant* v. *Withers*, 43 L. J. C. P. 113. But *compare R.* v. *Bridgewater*, 3 T. R. 550; *Hughes* v. *Chatham* (1843), 13

It is, however, essential not to confound what is actually or virtually prohibited or enjoined by the language, with what is really beyond the enacting part, though it may be within the policy, of the Act; for it is only to the former case that the prinoiple under oonsideration applies, and not to oases where, however manifest the object of the Act may be, the language is not co-extensive with it. An Act of Parliament is always subject to evasion in this sense; for there is no obligation not to d. what the Legislature has not really prohibited, and it is not evading an Act to keep outside of it (*a*). This is strikingly illustrated by a case from Australia decided by the Privy Council and in which the very word "evade" came in question (*b*). By s. 27 (South Australia), Succession Duties Act, 1893 (which corresponds with s. 8 (English) Succession Duty Act, 1853, 16 & 17 Vict. c. 51), property comprised in any

L. J. C. P. 44; *R.* v. *S. Kilvington*, 13 L. J. M. C. 3. See *Chinnery* v. *Evans* (1864), 11 H. L. Cas. 115; *Harlock* v. *Ashberry* (1882) 19 Ch. D. 539.

(*a*) See *per* Lord Cranworth, *Edwards* v. *Hall* (1853), sup. p. 206, and *per* Lord Selborne, *Macbeth* v. *Ashley* (1874), L. R. 2 Sc. App. 359.

(*b*) *Simms* v. *Registrar of Probates* (1900), 69 L. J. P. C. 51. See also *Bullivant* v. *A.-G. for Victoria* (1901), 70 L. J. K. B. 645; *Payne* v. *Regem*, 71 L. J. P. C. 128; *Commr. for Stamp Duties* v. *Byrnes*, [1911] A. C. 386; 80 L. J. P. C. 114. See also *A.-G.* v. *Seacombe*, 80 L. J. K. B. 913.

non-testamentary disposition, or representing any debt inourred, "with intent to evade the payment" of Suocession Duty, was rendered liable to double duty. In the Colonial Court from whom the appeal to the Privy Counoil oame, Way C.J., said that, in that provision, "evade, means some devioe or stratagem, some arrangement, trust, or other devioe (whether concealed or apparent) by whioh what is really part of tho estate of the deoeased is made to appear to belong to somebody else in order to escape payment of Duty." That ruling was upheld by the Privy Council, and, acoordingly, it was held that a covenant by the deceased in that case to pay £200,000 to his children whioh conferred on them a oomplete ownership of the debt, and whioh (not having been paid during his life) diminished by that amount his net assets liable to Duty (even though the covenant was a "disposition of property" within the meaning of tho Act), was not entered into "with intent to evade" the Duty, there being no evidence to show that the covenant was not a genuine transaction, or anything to impeaoh its *bonâ fides*.

So, a lately deceased Duke of Richmond, being minded that his successors should esoape Estate Duty, conoeived the idea to and did disentail and acquire the fee simple of certain estates in Scotland, and procured a valuation of the present duke's interest in the estates which came to £415,000,

and another of the present duke's son's interest which came to £287,000. These sums with interest thereon were charged on the estates and were assigned by the present duke and his son to trustees upon trust to pay the income thereof to the present duke for life and after his death to his son. No interest, however, was paid on them, and the late duke from time to time gave bonds for such interest amounting to £88,314. When the duke died in 1903, the Inland Revenue claimed Estate Duty in respect of these estates; but it was held that none was payable, because the said sums and interest amounted in the aggregate to more than the value of the said estates that passed on the death of the late duke (*a*)

A hiring for a few days less than a year, though avowedly for the purpose of preventing the servant from acquiring a settlement, was not regarded as any evasion of the Act, which gave a settlement on a year's service (*b*). Where a testator after devising a piece of land in a certain hamlet in fee simple, directed that if any person should, within twelve months after the testator's decease,

(*a*) *A.-G.* v. *Duke of Richmond* (1909), 78 L. J. K. B. 1, in H. L. Id. 998; Lord Shaw (one of the two dissenting Lords) said: "I do not think that the scheme was in this case accomplished without a contravention of the letter, as well as a very plain violation of the spirit, of the statute."

(*b*) *R.* v. *Little Coggeshall*, 6 M. & S. 264; *R.* v. *Mursley*, 1 T. R. 694.

at his or her own expense, purchase and give a suitable piece of land for almshouses, the trustees of the will should pay a sum of money to the charity so instituted, but so that no part should be laid out in the purchase of land; it was held that the bequest was valid, and did not fall within the Charitable Uses Act, 1735 (*a*). And again, where a testator devised land to two persons absolutely, and signed an unattested paper expressing a desire, with which they were unacquainted until after his death, that it should be applied to charitable purposes, it was held that the devise was valid, and did not fall within that Act; for there was no binding trust for charitable purposes (*b*).

Although a beershop-keeper who is licensed to sell beer only to be drunk off the premises, evades the Act if he sells beer to be drunk on a bench which he provides for his customers close to his shop, the intention making it, virtually, a sale for consumption on the premises (*c*); a mere sale through a window, to a person who stood on the road outside, has been held not to be an evasion,

(*a*) *Philpott* v. *St. George's Hospital*, 6 H. L. Cas. 338, sup. p. 215; *Dent* v. *Allcroft*, 30 Beav. 335. See also *Edwards* v. *Hall*, 25 L. J. Ch. 82.

(*b*) *Wallgrave* v. *Tebbs*, 25 L. J. Ch. 241; *Jones* v. *Badley* (1867), L. R. 3 Eq. 635.

(*c*) *Cross* v. *Watts*, 32 L. J. M. C. 73. See also *Brigden* v. *Heighes* (1876), 45 L. J. M. C. 58.

though the buyer drank the beer immediately on receiving it (*a*). A licensee is not authorised to sell liquor during prohibited hours for consumption off the premises, by s. 10, Licensing Act, 1874 (repealed, s. 61 (3), Licensing (Consolidation) Act, 1910), which allows the sale of liquor at any time to *bonâ fide* travellers, by a person licensed to sell liquor on the premises (*b*). The occupier of a field adjoining a turnpike does not evade, though he avoids, payment of toll, by making a semicircular road between two gaps in his hedge, one on each side of the toll bar, and driving by it instead of along that part of the highway which forms its chord (*c*). Nor does a shipowner evade harbour dues charged on goods landed in it, by landing his goods a few yards outside the boundary of the harbour (*d*).

An enactment which imposed a duty on legacies, did not extend to a gift to take effect on the donor's death, made by a deed which contained a power of revocation; though such a gift had all the essential

(*a*) *Deal* v. *Schofield* (1867), 37 L. J. M. C. 15; a doubtful case decided on particular facts, and probably nullified by s. 66 (1), Licensing (Consolidation) Act, 1910.

(*b*) 37 & 38 Vict. c. 49; *Mountifield* v. *Ward*, 66 L. J. Q. B. 246.

(*c*) *Harding* v. *Headington*, 43 L. J. M. C. 59; *Veitch* v. *Exeter*, 27 L. J. M. C. 116.

(*d*) *Wilson* v. *Robertson*, 24 L. J. Q. B. 185; *Harvey* v. *Lyme Regis*, 38 L. J. Ex. 141.

incidents of a legacy (*a*). A statute which imposes a tax, indeed, is always construed strictly; but the above decision which is no longer law shows that if legislation closes only one of two doors, it is no evasion to use the other, which may have been left open. So, s. 87 of the (repealed) Bankruptcy Act, 1869, which provided that the sheriff should retain for fourteen days the proceeds of goods sold in execution when exceeding £50, and, if he received notice of the debtor's bankruptcy, should pay them to the trustee in bankruptcy, did not prevent a creditor for more than £50 from signing judgment for less than that amount, though he did so avowedly to escape from the operation of the Act (*b*). An agreement that the rent of demised premises should be reduced when and as soon as the income tax was abolished, was held not to fall within the prohibition contained in s. 73 of the Income Tax Act, 1842, of all contracts binding the tenant to pay the income tax without deducting it from his rent (*c*). But a contract by a tenant to reimburse his landlord the amount paid in respect of tithe

(*a*) *Tompson* v. *Browne* (1835), 3 M. & K. 32; 5 L. J. Ch. 64. See, however, 44 & 45 Vict. c. 12, s. 38, and 52 & 53 Vict. c. 7, s. 11.

(*b*) *Reya, Exp.*, 46 L. J. Bank. 122. See *Abbott, Exp.*, 50 L. J. Ch. 80; and see 4 & 5 Geo. V. c. 59, s. 41.

(*c*) *Colbron* v. *Traverse* (1862), 31 L. J. C. P. 257; *Davies* v. *Fitton*, 90 R. R. 885. See also *Lamb* v. *Brewster*, 48 L. J. Q. B. 277, 421.

rent-charge has been held to be prohibited by the Tithe Act, 1891 (*a*). A railway company, prevented from raising money by loan, may yet procure money by a sale of a portion of its rolling stock for the sum which it requires, retaining the stock by hiring it for a term, on payment of an annual sum which repays the purchase-money with interest (*b*).

A warrant of attorney which authorised the issue of a writ of sequestration on a rectory as often as an annuity granted by the incumbent was in arrear, was held invalid; as this would amount to a charging of a benefice to pay the annuity, contrary to 13 Eliz. c. 20 (repealed 57 Geo. III. c. 99, s. 1) (*c*). But where the warrant of attorney purported to be merely to secure the payment of an annuity mentioned in a bond which had been given for its payment, the Court refused to set aside the judgment entered up on the warrant, as it was not a charging of the benefice; although it appeared, by affidavit, that the object of the parties was, that the judgment should enable the annuitant to obtain a sequestration of the grantor's

(*a*) 54 & 55 Vict. c. 8, s. 1 (1); *Ludlow* v. *Pike*, [1904] 1 K. B. 531; *Tuff* v. *Draper's Co.* (1913), 82 L. J. K. B. 174.

(*b*) *Yorkshire Railway Wagon Co.* v. *Maclure*, 21 Ch. D. 309; *comp. Wauthier* v. *Wilson* (1911), 27 T. L. R. 582.

(*c*) *Flight* v. *Salter*, 85 R. R. 413; *Saltmarshe* v. *Hewett*, 40 R. R. 436.

living, if the annuity should fall into arrear (*a*). The Act which required that all bills of sale of personal chattels should be registered within 21 days from execution, on pain of being void against creditors, was held not to invalidate an arrangement by which a fresh bill of sale was to be given every 21 days, and none were to be registered until the debtor got into difficulties. Although such an arrangement was considered to be detrimental to the interests of the revenue, and to be calculated to defeat and delay creditors, and so was contrary to the general policy of the Act, since it left the debtor apparently the owner of property which he had transferred; it was held not to be prohibited by its language, and the last bill of sale, which was duly registered, was held valid against an execution creditor (*b*). This device, however, is now rendered nugatory by 41 & 42 Vict. c. 31, s. 9.

It has been found necessary to suffer an evasion or breach of an Act, where intolerable inconvenience would otherwise result. Though s. 17,

(*a*) *Colebrook* v. *Layton* (1833), 2 L. J. K. B. 95; 38 R. R. 314. *Comp. Doe* v. *Carter*, 8 T. R. 300, and *Jeffries* v. *Alexander*, 8 H. L. Cas. 594, sup. pp. 208, 209.

(*b*) *Smale* v. *Burr*, 42 L. J. C. P. 20. *Comp. Exp. Cohen*, 41 L. J. Bank. 17; *Exp. Stevens*, L. R. 20 Eq. 786; *Ramsden* v. *Lupton*, 43 L. J. Q. B. 17; but see *Sales Agency* v. *Elite Theatres*, [1917] 2 K. B. 164, C. A.

33 & 34 Vict. c. 97 (repealed and re-enacted 54 & 55 Vict. c. 39, s. 14), enacted that no document which is not properly stamped should be receivable in evidence, and (s. 54, now s. 38, Stamp Act, 1891) that a person who received a bill of exchange or cheque not duly stamped could not recover upon it, or make it available for any purpose whatever; it has been held that if the cheque sued upon has a stamp sufficient on its face, the fact that it was post-dated to the knowledge of the holder, and so was not sufficiently stamped, did not affect its admissibility in evidence; on the ground that a different decision would have introduced the greatest difficulty in the administration of justice, involving an interruption of the trial by collateral inquiries as to facts accompanying the giving of the instrument (*a*).

SECTION II.—CONSTRUCTION TO PREVENT ABUSE OF POWERS.

On the same general principle, enactments which confer powers are so construed as to meet all attempts to abuse them, either by exercising them in cases not intended by the statute, or by refusing

(*a*) *Gatty* v. *Fry*, 2 Ex. D. 265. See *per* Blackburn J., *Austin* v. *Bunyard*, 6 B. & S. 687; *Royal Bank of Scotland* v. *Tottenham*, [1894] 2 Q. B. 715. But *compare Clarke* v. *Roche* (1877), 3 Q. B. D. 170.

to exercise them when the occasion for their exercise has arisen (*a*). Though the act done was ostensibly in execution of the statutory power, and within its letter, it would nevertheless be held not to come within the power, if done otherwise than honestly, and in the spirit of the enactment. For instance, the power given by Bankruptcy Acts to a majority of creditors to make arrangements with their debtor (*b*); which were made by statute binding on the non-assenting minority, would not be validly exercised so as to have this binding effect, if the conduct of the majority were tainted with fraud; or even if, from motives of benevolence, the majority had agreed to a composition disproportioned to the assets (*c*). So, the creditor who voted for a composition with his debtor under s. 126 of the repealed Bankruptcy Act, 1869, was bound to vote *bonâ fide* for the benefit of the creditors; and if it appeared that he gave his vote for the benefit of the debtor, and not for that

(*a*) See *per* Turner L.J., *Biddulph* v. *St. George's Vestry*, 33 L. J. Ch. 411; and see *Vernon* v. *St. James' Vestry* (1880), 16 Ch. D. 449.

(*b*) See 4 & 5 Geo. V. c. 59, s. 16.

(*c*) *Cowen, Exp.* (1867), L. R. 2 Ch. 563. See *per* Lord Cairns, 570; *Russell, Exp.*, 44 L. J. Bank. 42; *Page, Re*, 45 L. J. Bank. 119; *Terrell, Re*, 4 Ch. D. 293; *Aaronson, Exp.*, 7 Ch. D. 713; *Ball, Exp.*, 51 L. J. Ch. 911. As to powers of Court to approve a scheme of arrangement, see *Webb, In re, Board of Trade, Exp.* (1914), 83 L. J. K. B. 1386.

of the creditors, it would have been rejected (*a*). Malpractice by the debtor in obtaining a single vote sufficed to vitiate a creditor's resolution for liquidation by arrangement, under the Bankruptcy Act of 1869 (*b*).

Where, as in a multitude of Acts, something is left to be done according to the discretion of the authority on whom the power of doing it is conferred, the discretion must be exercised honestly and in the spirit of the statute, otherwise the act done would not fall within the statute. "According to his discretion" means, it has been said, according to the rules of reason and justice, not private opinion (*c*); according to law and not humour; it is to be, not arbitrary, vague and fanciful, but legal and regular (*d*); to be exercised not capriciously but on judicial grounds and for substantial reasons (*e*). And it must be exercised within the limits to which an honest man competent to the discharge of his office ought to

(*a*) *Cobb, Exp.* (1873). 42 L. J. Bank. 63; and see *McHenry, Exp.* (1883), 24 Ch. Div. 35, C. A.

(*b*) *Baum, Re* (1878), 7 Ch. D. 719, C. A.

(*c*) *Rooke's Case*, 5 Rep. 100a; *Keighley's Case*, 10 Rep. 140a; *Lee* v. *Bude R. Co.*, L. R. 6 C. P. 580, 581, *per* Willes J.

(*d*) *Per* Lord Mansfield, *R.* v. *Wilkes* (1769), 4 Burr. 2527; and *per* Lord Halsbury L.C., *Sharp* v. *Wakefield*, [1891] A. C. 179.

(*e*) *Per* Jessel M.R., *Taylor, Re*, 4 Ch. D. 160; and *per* Lord Blackburn, *Doherty* v. *Allman*, 3 App. Cas. 728.

confine himself (*a*); that is, within the limits and for the objects intended by the Legislature. These dicta may be summed up in the statement of Lord Esher that the discretion must be exercised without taking into account any reason which is not a legal one. If people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion (*b*).

Thus, it was long ago settled that the power given by the 43 Eliz. to the overseers of parishes to raise a poor rate by taxation of the parishioners in such competent sums as they thought fit, did not authorise an arbitrary rate on each parishioner, but required that the rates should be equal and proportionate to the means of the contributors (*c*). So, the Highway Act, 1835, 5 & 6 Will. IV. c. 50, which provided that if any complaint was made against the road surveyor's accounts, the justices at special highway sessions should hear it, and

(*a*) *Per* Lord Kenyon, *Wilson* v. *Rastall*, 4 T. R. 757; *R.* v. *Audly*, Salk. 526; *R.* v. *Wavell*, 1 Doug. 115.

(*b*) *R.* v. *St. Pancras* (1890), 24 Q. B. D. at p. 375. See, however, *R.* v. *Board of Education* (1910), 79 L. J. K. B. 595.

(*c*) *Earbyes Case*, 2 Bulstr. 354; *Marshall* v. *Pitman*, 9 Bing. 595. See *Jones* v. *Mersey Docks* (1864), 35 L. J. M. C. 1; and *Whitchurch* v. *Fulham Board* (1866), 35 L. J. M. C. 145.

"make such order thereon as to them should seem meet," would not authorise them to allow illegal expenses, such as a charge for the use of the surveyor's horses, contrary to s. 46, which are expressly forbidden to be incurred at all (*a*). So, overseers, who were required by s. 2 of 3 & 4 Vict. c. 61 (*b*), to certify whether applicants for beer licenses were real residents and ratepayers of the parish, were not entitled to refuse the certificate on the ground that in their opinion there were already too many public-houses, or that the beer-shop was not required. They had no right to shut their eyes to the facts, and to refuse to certify, when they were satisfied that the applicant possessed the qualifications required by the Act (*c*). Under a repealed enactment which provided that no license should be refused by justices except on one or more of four specified grounds, it was held that justices, in refusing, were bound to state on which of the grounds they based their refusal, as otherwise they might, in abuse of their powers, refuse on other grounds than those to which they were limited (*d*). The power to

(*a*) *Barton* v. *Piggott*, 44 L. J. M. C. 5.

(*b*) Repealed in part 32 & 33 Vict. c. 27, s. 21.

(*c*) *R.* v. *Withyham*, 2 Com. Law Rep. 1657. See, however, *R.* v. *Kensington* (1847), 17 L. J. Q. B. 332, in which it was held that the giving of a certificate was not compulsory.

(*d*) 32 & 33 Vict. c. 27, s. 8; *R.* v. *Sykes*, 1 Q. B. D. 52; *Exp.*

take certain lands for the purpose of their undertaking, given to railway and other companies, or to municipalities for their public works, constitutes them sole judges as to whether they will take the lands, but they must act *bonâ fide* for the purposes authorised by the Act, and not for a collateral purpose (*a*); and the lands must only be used for the purposes for which they were taken (*b*), unless authoritative sanction be given to their being otherwise used (*c*); and, *semble*, the powers are not assignable (*d*).

Smith, 3 Q. B. D. 374. See *Gorman, Exp.*, [1894] A. C. 23. See 10 Edw. VII. and 1 Geo. V. c. 24, s. 112, Sched. 7.

(*a*) *Stockton Ry. Co.* v. *Brown* (1860), 9 H. L. Cas. 246; *Lewis* v. *Weston Loc. Bd.*, 40 Ch. D. 55; *Stroud* v. *Wandsworth Board of Works*, 63 L. J. M. C. 88; *Tracey* v. *Pretty*, 70 L. J. K. B. 234; and *compare Goldberg* v. *Liverpool Corp.* (1900), 82 L. T. 362.

(*b*) *London County Council* v. *A.-G.*, 71 L. J. Ch. 268; *A.-G.* v. *Mersey, R.*, 76 L. J. Ch. 568; *Eccles Corp.* v. *South Lancashire Tramways Co.* (1910), 79 L. J. Ch. 759; *A.-G.* v. *West Gloucestershire Water Co.*, 78 L. J. Ch. 746; *A.-G.* v. *Leicester Corp.*, 80 L. J. Ch. 21.

(*c*) *A.-G.* v. *Hanwell* (1900), 69 L. J. Ch. 626; *A.-G.* v. *Pontypridd* (1905), 75 L. J. Ch. 578.

(*d*) *Edinburgh Street Tramways Co.* v. *Edinburgh* (1894), 63 L. J. Q. B. 769; *Eccles Corp.* v. *South Lancashire Tramways Co.*, sup., in which case Cozens-Hardy M.R. said: "A parliamentary franchise of this kind is not a bit of property which the owner can dispose of just as he might a stick or a table or an acre of land."

Although where the discretion has been settled by practice, it seems right that this should not be departed from without strong reason (*a*); yet in cases where a statute confers a discretionary power, an exercise of it in the fetters of self-imposed rules of practice, purporting to bind in all cases, would not be within the Act (*b*). Thus, where an Act gave the Court of Quarter Sessions power, if it thought fit, to give costs in every poor law appeal, it would be bound to exercise a fair and honest discretion in each case, and would not be entitled to govern itself by a general resolution, or rule of practice, to give nominal costs in all cases (*c*); for this would be in effect to repeal the provision of the Act. So, a licensing Act, now repealed (*d*), which empowered justices to grant licenses to innkeepers and others, to sell liquors, as in the exercise of their discretion they deemed proper, would not justify a general resolution to refuse licenses in a certain locality (*e*), or to persons who did not consent to take out an excise license for the sale of spirits, in addition to the license for

(*a*) 2 Inst. 298. See *R.* v. *Chapman* (1838), 8 C. & P. 558. See also *Codd* v. *Cabe* (1876), 1 Ex. D. 352, C. A.

(*b*) See *A.-G.* v. *Emerson* (1889), 24 Q. B. D. 56.

(*c*) *R.* v. *Merioneth* (1844), 6 Q. B. 163; *R.* v. *Glamorganshire* (1850), 19 L. J. M. C. 172.

(*d*) See 10 Edw. VII. and 1 Geo. V. c. 24, s. 112, Sched. 7.

(*e*) *R.* v. *Walsall* (1854), 3 Com. L. R. 100.

the sale of beer (*a*), or in consideration of the grant of the license to pay a sum of money for a public purpose (*b*). But, on the other hand, it has been held that a licensing authority may in the exercise of their discretion impose a condition that the applicant shall not apply to another authority for a different species of license (*c*).

So, where a similar Act, after fixing the hours within which intoxicating liquors might be sold, authorised the licensing justices to alter the hours in any particular locality, within the district, requiring other hours; it was held that they had no right to alter the time in every case by virtue of a general resolution to which they had come (*d*). And though their resolution was limited to a portion of the locality, yet as this portion comprised every licensed house of the whole district, the limitation was regarded as a mere attempt to evade the Act. The statute required them to decide, in the honest and *bonâ fide* exercise of their judgment, what particular localities required hours for opening and closing other than those specified by the Act; and they were bound to satisfy themselves as to those special circumstances of the

(*a*) *R.* v. *Sylvester* (1862), 2 B. & S. 322; 31 L. J. M. C. 93 discussed in *Sharp* v. *Wakefield*, [1891] A. C., at p. 180.
(*b*) *R.* v. *Bowman*, [1898] 1 Q. B. 663.
(*c*) *R.* v. *West Riding C. C.*, [1896] 2 Q. B. 386.
(*d*) *Macbeth* v. *Ashley* (1874), L. R. 2 Sc. App. 352.

particular locality, which by taking them out of the general rule laid down by Parliament, required that an exception should be made (*a*). The statute laid down a general rule, and permitted an exception; but here the exception had swallowed up the rule; and that which might fairly have been an exercise of discretion, became no exercise of the kind of discretion meant by the Act (*b*).

(*a*) See judgment of Lord Selborne L.C., 2 Sc. App. 359.
(*b*) *Per* Lord Cairns L.C., Id. 357,

CHAPTER V.

SECTION 1.—PRESUMPTIONS AGAINST OUSTING ESTABLISHED, AND CREATING NEW, JURISDICTIONS.

It is, perhaps, on the general presumption against an intention to disturb the established state of the law, or to interfere with the vested rights of the subject (*a*), that so strong a leaning now exists against construing a statute so as to oust or restrict the jurisdiction of the Superior Courts; although this feeling may owe its origin to the pecuniary interests of the Judges in former times, when their emoluments depended mainly on fees (*b*). It is supposed that the Legislature would not make so important an innovation, without a very explicit expression of its intention. It would not be inferred, for instance, from the grant of a jurisdiction to a new tribunal over certain cases, that the Legislature intended to deprive the Superior Court of

(*a*) See *Jacobs* v. *Brett*, L. R. 20 Eq. 1.

(*b*) *Per* Lord Campbell, *Scott* v. *Avery*, 5 H. L. Cas. 811; *Oram* v. *Brearey* (1877), 2 Ex. Div. 346. So in construing contracts, *Scott* v. *Avery*; *Tredwen* v. *Holman*, 1 H. & C. 72; *Edwards* v. *Aberayron Insurance Socy.*, 1 Q. B. D. 563; *Dawson* v. *Fitzgerald*, 45 L. J. Ex. 893.

the jurisdiction which it already possessed over the same cases. Thus, an Act which provided that if any question arose upon taking a distress, it should be determined by a commissioner of taxes, would not thereby take away the jurisdiction of the Superior Court to try an action for an illegal distress (*a*). Nor would that Court be ousted of its preventive jurisdiction to stop by injunction the misapplication of poor rates, by reason of the statutory power given to the poor law commissioners to determine the propriety of all such expenditure (*b*). Nor did it follow in either case, that because authority was given to the commissioners, it was taken away from the Court.

Acts which gives justices and other inferior tribunals jurisdiction in certain cases are not only generally understood, when silent on the subject, not to affect the power of control and supervision which the Superior Court exercises over the proceedings of such tribunals; but are even strictly construed when their language is doubtful. Thus enactments to the effect that "no Court shall intermeddle" in the cases (*c*), or that the case

(*a*) 43 Geo. III. c. 99 (repealed 43 & 44 Vict. c. 19, s. 4); *Shaftesbury* v. *Russell* (1823), 25 R. R. 534. See also *Rochdale Canal Co.* v. *King*, 14 Q. B. 122.

(*b*) *A.-G.* v. *Southampton*, 17 Sim. 6. See *Birley* v. *Chorlton*, 3 Beav. 499 *Smith* v. *Whitmore*, 1 Hem. & M. 576.

(*c*) *R.* v. *Morcley*, 2 Burr. 1041.

shall be "heard and finally determined" below (*a*), would not be construed as prohibiting such interference; and enactments which expressly provide that such proceedings shall not be removed by Certiorari to the Superior Court have no application when the lower tribunal has overstepped the limits of its jurisdiction in making the order (*b*), or is not duly constituted (*c*), or where the party who obtained the order, obtained it by fraud (*d*), for the prohibition obviously applied only to cases which had been entrusted to the lower jurisdiction.

The saying has been attributed to Lord Mansfield that nothing but express words can take away the jurisdiction of the Superior Courts (*e*); but it seems also it may certainly be taken away by

(*a*) *R.* v. *Plowright*, 3 Mod. 95; 2 Hawk. P. C. c. 27, s. 23. See *Jacobs* v. *Brett*, L. R. 20 Eq. 1; *Chambers* v. *Green*, Id. 552; *Hawes* v. *Paveley*, 1 C. P. D. 418; *Bridge* v. *Branch*, Id. 633; *Chadwick* v. *Ball*, 54 L. J. Q. B. 396.

(*b*) *R.* v. *Derbyshire*, 2 Kenyon, 299; *R.* v. *Somersetshire*, 5 B. & C. 816; *R.* v. *St. Albans*, 22 L. J. M. C. 142; *R.* v. *Wood*, 5 E. & B. 49; *R.* v. *S. Wales R. Co.* (1849), 13 Q. B. 988; *Re Penny*, 7 E. & B. 660; *R.* v. *Hyde*, 7 E. & B. 859 n.; *Bradlaugh, Exp.*, 3 Q. B. D. 509.

(*c*) *R.* v. *Cheltenham* (1841), 55 R. R. 321; 1 Q. B. 467; and see *Colonial Bank of Australia* v. *Willan* (1874), 5 L. R. P. C., at pp. 443, 444.

(*d*) *R.* v. *Cambridge*, 4 A. & E. 121, *per* Lord Denman; *R.* v. *Gillyara*, 12 Q. B. 527; *Colonial Bank of Australia* v. *Willan*, L. R. 5 P. C. 417.

(*e*) *R.* v. *Abbot* (1780), Doug. 553.

implication (*a*). Thus, a provision that if any dispute arises between a society and any of its members it shall be lawful to refer it to arbitration, ousts the jurisdiction of the Courts over such disputes (*b*). It is obvious that the provision, from its nature, would be superfluous and useless, if it did not receive a construction which made it compulsory, and not optional, to proceed by arbitration. On similar grounds it was held that no action lay in the Superior Courts on a County Court judgment. The provisions made by the County Court Act for enforcing such judgments would have been defeated, if the jurisdiction of the Superior Courts to entertain such an action had not been ousted (*c*).

Where an Act vested in the trustees of a loan society all its money and effects, and the right of

(*a*) *Per* Ashhurst J., *Cates* v. *Knight*, 3 T. R. 445, and *Shipman* v. *Henbest*, 4 T. R. 116; *per* Jessel M.R., *Jacobs* v. *Brett*, L. R. 20 Eq. 6; *per* Pollock B., *Oram* v. *Brearey*, 2 Ex. D. 346. See also *Chadwick* v. *Ball*, 14 Q. B. D. 855, which overrules the last case.

(*b*) *Crisp* v. *Bunbury*, 34 R. R. 747. See also *Marshall* v. *Nicholls* (1852), 18 Q. B. 882; *Wright* v. *Monarch Investment Socy.* (1877), 46 L. J. Ch. 649; *Hack* v. *London Provident Bldg. Socy.* (1883), 52 L. J. Ch. 541; *Municipal Bldg. Socy.* v. *Kent* (1884), 9 App. Cas. 260.

(*c*) 9 & 10 Vict. c. 95, repealed 51 & 52 Vict. c. 43, s. 188; *Berkeley* v. *Elderkin* (1853), 1 E. & B. 805. See *Austin* v. *Mills*, 9 Ex. 288; *Moreton* v. *Holt* (1855), 10 Ex. 707. *Compare Edwards* v. *Coombe*, 41 L. J. C. P. 202. Under s. 151, County Courts Act, 1888, a judgment may be removed into the High Court.

bringing and defending actions touching the property and rights of the society, and, after enabling them to lend money under certain circumstances, and to take notes for such loans in the name of their treasurer for the time being, to secure repayment, authorised a justice, at the suit of the treasurer to enforce payment by distress; it was held that the treasurer was limited to that remedy (*a*). He had no rights but such as the statute gave him, and therefore could not sue except in the manner directed (*b*). But another Court held that the trustees might sue on such notes in the Superior Courts (*c*). Where an Act imposed penalties and took away the Certiorari; and a subsequent one, after increasing the penalties and extending the restrictions of the first, provided that all "the powers, provisions, exemptions, matters and things" contained in the earlier statute should, except as they were varied, be as effectual for carrying out the latter Act as if re-enacted therein it; it was held that the clause which took away the Certiorari was incorporated

(*a*) *Dundalk Ry. Co.* v. *Tapster* (1841), 1 Q. B. 667. *Compare Mulkern* v. *Lord* (1879), 4 App. Cas. 182, for limitations on the proportion discussed in the text.

(*b*) *Timms* v. *Williams*, 11 L. J. Q. B. 210; *Prentice* v. *London* (1875), L. R. 10 C. P. 679; *Willis* v. *Walls*, [1892] 2 Q. B. 225; *Palliser* v. *Dale*, [1897] 1 Q. B. 257, C. A.

(*c*) *Albon* v. *Pyke*, 11 L. J. C. P. 266.

in the new Act, and consequently that the jurisdiction of the Superior Courts was ousted (*a*).

Where, indeed, a new duty or cause of action is created by statute, and a special jurisdiction out of the course of the common law is prescribed, there is no ouster of the jurisdiction of the ordinary Courts, for they never had any. Thus, where a repealed Act (*b*) created penalties of £50 and £10; and, after enacting that the former should be recovered in the Superior Courts, authorised justices to impose the latter, with powers of mitigation; it was held that the Superior Courts had no jurisdiction in respect of the lower penalty (*c*). Where it was enacted, by the Metropolis Management Act, 1855, that the owners of the houses which formed a street should pay the vestry the estimated cost of paving it, and that the amount should, in case of dispute, be ascertained by, and recovered before, justices; it was held that the pecuniary obligation and the mode of enforcing it were so indissolubly united, that no direot action lay against an owner for his contribution (*d*).

(*a*) *R.* v. *Fell* (1830), 1 B. & Ad. 380.

(*b*) 25 Geo. III. c. 51, repealed 2 & 3 Will. IV. c. 120, s. 1.

(*c*) *Cates* v. *Knight*, 3 T. R. 442. *Compare Shipman* v. *Henbest*, 4 T. R. 109; *Leigh* v. *Kent*, 3 T. R. 362; *Balls* v. *Attwood*, 1 H. Bl. 546.

(*d*) 18 & 19 Vict. c. 120; *St. Pancras* v. *Batt-bury* (1857), 26 L. J. C. P. 243. See also *Blackburn* v. *Parkinson* (1858), 28 L. J. M. C. 7.

The repealed 11 & 12 Vict. c. 123 (*a*), which enacted that if the owner of the offensive premises does not remove the nuisance, the guardians may do so; and that the costs and expenses incurred by them shall be deemed money paid for the use of the owner, and may be recovered as such by them in the County Court, or before two justices, was held to give exclusive jurisdiction to those tribunals (*b*), though now by the Public Health Act, 1875, action may be taken in a Superior Court. But as it is not to be presumed that the Legislature would in any case oust the jurisdiction of a Superior Court without a distinct expression of its intention, a construction which would impliedly have this effect is to be avoided; especially when it would have the effect of depriving the subject of his freehold, or of any common law right, such as the right of trial by jury, or of creating an arbitrary procedure (*c*). It has been said that the words conferring such a jurisdiction must be clear and unambiguous (*d*); and that an inferior Court is not to

(*a*) Repealed by 29 & 30 Vict. c. 90, s. 69.

(*b*) *Hertford Union* v. *Kimpton* (1855), 25 L. J. M. C. 41.

(*c*) *Warwick* v. *White*, Bunb. 106; *R.* v. *Baines*, 2 Lord Raym. 1269, cited by Lord Denman, *Fletcher* v. *Calthrop* (1845), 6 Q. B. 891; *per* Best C.J., questioned in *Cureton* v. *Regina* (1861), 30 L. J. M. C. 149; *Looker* v. *Halcomb*, 4 Bing. 188. See *R.* v. *Cotton*, 1 E. & E. 203; *Exp. Story*, 3 Q. B. D. 166.

(*d*) *Per* Keating J., *James* v. *S. W. R. Co.*, L. R. 7 Ex. 296.

be construed into a jurisdiction (*a*). An Act, for instance, which, in providing that compensation should be made to all who sustained damage in carrying out certain works, enacted that "in case of dispute as to the amount," it should be settled by arbitration, has been held to be confined strictly to cases where the amount only was in dispute, and would not authorise a reference to arbitration, where the liability to make any compensation was in dispute (*b*). However, effect must of course be given to the intention, where the Act, without conferring jurisdiction in express terms, does so by plain and necessary implication. Thus, an Act which, without expressly empowering any tribunal to try the offence, imposed penalties on any person who exposed diseased animals for sale, unless he showed, "to the justices before whom he is charged," that he was ignorant of the condition of the animals, and gave him an appeal if he felt aggrieved "by the adjudication of justices," was construed as plainly giving justices jurisdiction over the offence (*c*). But where a statute gives a right to recover expenses in a

(*a*) *Per* Fortescue J., *Pierce* v. *Hopper*, 1 Stra. 260.

(*b*) *R.* v. *Metrop. Com. Sewers*, 1 E. & B. 694. But see *Brierley Hill Local Board* v. *Pearsall* (1884), 54 L. J. Q. B. 25 (H. L.).

(*c*) *Cullen* v. *Trimble* (1872), L. R. 7 Q. B. 416; *Johnson* v. *Colam*, L. R. 10 Q. B. 544; *R.* v. *Worcestershire*, 23 L. J. M. C. 113.

Court of summary jurisdiction from a person not otherwise liable the jurisdiction of the High Court is ousted except by way of appeal (*a*).

One enactment has been considered as granting jurisdiction by implication, in a remarkable manner. The 31 & 32 Viot. o. 71, after reciting that it was desirable that some County Courts should have Admiralty jnrisdiction, and authorising the Queen in council to confer such jurisdiction on any of those Courts, empowered them to try certain classes of cases over which the Court of Admiralty had jurisdiction; directing the judge to transfer any case to the Admiralty, where the amount claimed exceeded £300, and giving also to the latter Court, in all casos, not only an appeal, but power to transfer to itself any suit instituted in the lower Court. By a supplementary Act passed in the following session (32 & 33 Vict. c. 51), the County Courts on which Admiralty jurisdiction had been thus conferred, were further authorised to try any claim arising out of any agreement made in relation to the use or hire of any ship, or in relation to the carriage of any goods in any ship, where tho claim does not exceed £300. The Court of Admiralty had no jurisdiction over these cases before the Act was passed, but it followed that in thus giving the County Court this jurisdiction, the statute also gave, by mere implication,

(*a*) *Barraclough* v. *Brown*, [1897] A. C. 615.

to the Admiralty Court, not only appellate, but original jurisdiction also; besides introducing the anomaly of dealing with small cases on different principles of law from large ones; while the apparent object of the enactments was merely to distribute the existing Admiralty jurisdiction (*a*).

SECTION II.—THE CROWN NOT AFFECTED IF NOT NAMED.

On, probably, similar grounds rests the rule commonly stated in the form that the Crown is not bound by a statute unless named in it. It has been said that the law is *primâ facie* presumed to be made for subjects only (*b*); at all events, the Crown is not reached except by express words or by necessary implication, in any case where it would be ousted of an existing prerogative or interest (*c*). It is presumed that the Legislature does not intend

(*a*) See *The Alina* (1880), 5 Ex. D. 227; *Everard* v. *Kendall*, L. R. 5 C. P. 428; *Cargo, ex Argos* (1873), L. R. 5 P. C. 134; *Gaudet* v. *Brown* (1872), L. R. 5 P. C. 134, and the cases there cited. See also *The Zeta*, [1893] A. C. 468; *The Theta* (1894), 63 L. J. Adm. 160; and note *Davidsson* v. *Hill* (1901), 70 L. J. K. B. 788. The claims formulated in the following cases have been held *outside* the jurisdiction, *R.* v. *City of London Court* (1) (1883), 53 L. J. Q. B. 28; *The Zeus* (1888), 13 P. D. 188; *R.* v. *City of London Court*, [1892] 1 Q. B. 273; 61 L. J. Q. B. 337.

(*b*) *Willion* v. *Berkley*, Plowd. 236; *per* Cur., *A.-G.* v. *Donaldson*, 62 R. R. 540

(*c*) Inst. 191, *A.-G.* v. *Allgood*, Parker, 3; Bac. Ab. Prerogative (E.) 5 (*c*); Co. Litt. 43b; Chit. Prerogative, 382; *Ascough's*

to deprive the Crown of any prerogative, right or property, unless it expresses its intention to do so in explicit terms, or makes the inference irresistible. Where, therefore, the language of the statute is general, and in its wide and natural sense would divest or take away any prerogative or right from the Crown, it is construed so as to exclude that effect (*a*). When the King has any prerogative estate, right, title, or interest, he shall not be barred of them by the general words of an Act of Parliament (*b*). Thus, the Land Transfer Act, 1879 (60 & 61 Vict. c. 65), which vests the legal estate in the personal representatives of a deceased, does not bind the Crown, and the legal estate in escheated land does not, under s. 1, vest in the Solicitor to the Treasury as the Crown's nominee (*c*). And the compulsory clauses of Acts of Parliament, which authorise the taking of lands for railway or other purposes, such as are contained in the Lands Clauses Consolidation Act, 1845, would not apply to Crown property, unless made so applicable in express terms or by necessary inference (*d*). Nor

Case, Cro. Car. 526; *Huggins* v. *Bambridge*, Willes, 241; *R.* v. *Wright* (1834), 1 A. & E. 434 n., p. 437; *Perry* v. *Eames* (1891), 60 L. J. Ch. 345.

(*a*) Bac. Ab. Prerog. (E.) 5; *Crooke's Case*, Show. 208.

(*b*) *Magdalen College Case*, 11 Rep. 74b, and see *Perry* v. *Eames* (1891), 60 L. J. Ch. 345.

(*c*) 60 & 61 Vict. c. 65; *Hartley, Re*, 68 L. J. P. D. & A. 16.

(*d*) 8 & 9 Vict. c. 18; *Cuckfield Board, Re* (1854), 24 L. J. Ch. 585.

would a provision in a local Act ordering that the revenue of a corporation should be expended in a specified way, and "should not be applied for any other purpose whatsoever," take away the duty of paying income tax to the Crown in the absence of express words to that effect (*a*). Again, as it is a prerogative of the Crown not to pay tolls or rates, or other burdens in respect of property, it was long since established that the Poor Act of Elizabeth, which authorises the imposition of a poor rate on every "inhabitant and occupier" of property in the parish, did not apply to the Crown, or to its direct and immediate servants, whose occupation is for the purposes of the Crown exclusively, and so is, in fact, the occupation of the Crown itself (*b*). Thus, property occupied by the servants of the Crown exclusively for public purposes, as the Post Office (*c*), the Horse Guards (*d*), the Admiralty (*e*),

(*a*) *Mersey Docks* v. *Lucas* (1883), 8 App. Cas. 891; *Paddington Burial Board* v. *Inland Revenue Commissioners* (1884), 53 L. J. Q. B. 224.

(*b*) 43 Eliz. c. 2. *Per* Lords Westbury and Cranworth, *Mersey Docks Co.* v. *Cameron* (1864), 11 H. L. Cas. 443; *Amherst* v. *Sommers*, 2 T. R. 372; *R.* v. *Harrogate* (1850), 15 Q. B. 1012; *R.* v. *St. Martin's*, L. R. 2 Q. B. 493.

(*c*) *Smith* v. *Birmingham* (1857), 26 L. J. M. C. 105; note remarks of Fry L.J., in *Bray* v. *Lancaster JJ.* (1889), 58 L. J. M. C., at p. 55.

(*d*) *Amherst* v. *Sommers* (1788), 1 R. R. 497; *R.* v. *Jay*, 27 L. J. M. C. 25.

(*e*) *R.* v. *Stewart*, 27 L. J. M. C. 81.

by a volunteer corps (*a*), by a County Association under Territorial and Reserve Forces Act, 1907 (*b*), and even by local police (*c*), by the judges, as lodgings at the assizes (*d*), by a county court (*e*), or for a sessions house (*f*), or a jail (*g*), or by the commissioners of public works and buildings in respect of a toll-bridge of which they were in occupation as servants of the Crown (*h*), was held exempt from poor rate (*i*). And property in the

(*a*) *Pearson* v. *Holborn Union*, [1893] 1 Q. B. 389; but a volunteer drill hall is not exempt from the operation of the sanitary provisions of the Metropolis Management Act, 1855: *Westminster Vestry* v. *Hoskins*, [1899] 2 Q. B. 474.

(*b*) *Wixon* v. *Thomas*, 80 L. J. K. B. 104.

(*c*) *Lancashire* v. *Stretford*, 27 L. J. M. C. 209. *Comp. Showers* v. *Chelmsford Union*, [1891] 1 Q. B. 339.

(*d*) *Hodgson* v. *Carlisle*, 8 E. & B. 116; *Coomber* v. *Berks Justices*, 9 App. Cas. 81.

(*e*) *R.* v. *Manchester*, 23 L. J. M. C. 48.

(*f*) *Nicholson* v. *Holborn Assessment Committee*, 18 Q. B. D. 161. *But see Worcestershire C. C.* v. *Worcester Union*, 66 L. J. Q. B. 323.

(*g*) *R.* v. *Shepherd*, 1 Q. B. 170; *Beds* v. *St. Paul*, 21 L. J. M. C. 224; *Gambier* v. *Lydford*, 3 E. & B. 346. See judgments of Blackburn J. and Lord Cranworth C., *Mersey Docks Co.* v. *Cameron*, 11 H. L. Cas. 443; *Leith Comm.* v. *Poor Inspectors*, L. R. 1 Sc. Ap. 17; *Tunnicliffe* v. *Birkdale*, 20 Q. B. D. 450; *Bray* v. *Lancashire Justices*, 22 Q. B. D. 484; *Durham C. C.* v. *Chester-le-Street*, [1891] 1 Q. B. 330.

(*h*) *R.* v. *McCann*, L. R. 3 Q. B. 677.

(*i*) *Compare Bute* v. *Grindall*, 1 T. R. 338; *R.* v. *Ponsonby*, 61 R. R. 128; *R.* v. *Shee*, 62 R. R. 266; *R.* v. *Stewart*, 27

occupation of the sovereign would, also, not be liable to the common law burden of sewers rate; one reason assigned being that they could not be enforced (*a*). So, the Royal Dockyards at Deptford were held not assessable to the land tax (*b*). The Crown is not bound by s. 150, Public Health Act, 1875, and therefore is not liable for the cost of paving a street on which property in its occupation abuts (*c*). But if the tax attached to the land, and not to its owner or occupier, this rule would not be applicable; and land charged with it in the hands of a subject would not become exempted on vesting in the sovereign (*d*).

On the same general principle, the numerous Acts of Parliament which have, at various times, taken away the writ of Certiorari, have always been held not to apply to the Crown (*e*). So, s. 5, 13 Geo. II. c. 18 (*f*), which limits the time for

L. J. M. C. 81. See Bro. Ab. Prerog. du Roy, 112; *R.* v. *Cook*, 3 T. R. 519; *Westover* v. *Perkins*, 28 L. J. M. C. 227.

(*a*) *Per* Dr. Lusbington, *Smith* v. *Keats*, 4 Hagg. 279; *A.-G.* v. *Donaldson*, 10 M. & W. 117.

(*b*) *A.-G.* v. *Hill* (1836), 2 M. & W. 160. As to cases where on the facts this rule does not apply, see *Colchester* (*Ld.*) v. *Kewney* (1867), 36 L. J. Ex. 172.

(*c*) 38 & 39 Vict. c. 55; *Hornsey U. D. C.* v. *Hennell*, [1902] 2 K. B. 73.

(*d*) *Colchester* (*Ld.*) v. *Kewney* (1866), 36 L. J. Ex. 172.

(*e*) See, for example, *R.* v. *Cumberland*, 3 B. & P. 354; *R.* v. *Allen*, 15 East, 333; *R.* v. *Boultbee*, 43 R. R. 412.

(*f*) Repealed S. L. R. 1888.

issuing that writ to six months from the date of the conviction (*i*), and s. 5, 12 & 13 Vict. c. 45, which authorises the Quarter Sessions to give costs to the successful party in any appeal (*k*), do not apply to the Crown (the prosecutor), but only to the defendant. Although now by virtue of the Summary Jurisdiction Acts a Court of Summary Jurisdiction has power to award costs for or against the Crown in proceedings taken by the Crown under any of the Inland Revenue Statutes (*c*). But apparently the right of the Crown as to proceedings in the Exchequer touching the revenue or property of the Crown is not affected by the County Court, or Judicature, or Companies (1862) Acts (*d*). The Statutes of Limitation (*e*) and Bankruptcy (*f*) have always been held not to bind

(*a*) *R.* v. *Farewell*, 2 Stra. 1209; *R.* v. *James*, 1 East, 304 n.; *R.* v. *Berkley*, 1 Kenyon, 80.

(*b*) *R.* v. *Beadle* (1857), 26 L. J. M. C. 111.

(*c*) *Thomas* v. *Pritchard*, [1903] 1 K. B. 209.

(*d*) *Mountjoy* v. *Wood*, 1 H. & N. 58; *A.-G.* v. *Constable*, 48 L. J. Ex. 455; *A.-G.* v. *Barker*, 41 L. J. Ex. 57. See also *Stanley* v. *Wild* (1900), 69 L. J. Q. B. 318; *Re Henley* (1878), 9 Ch. D. 469. See also *Oriental Bank, In re; The Crown, Exp.* (1884), 54 L. J. Ch. 327.

(*e*) 11 Rep. 68b and 74b; *Lambert* v. *Taylor*, 4 B. & C. 138, 6th point; *Rustomjee* v. *R.*, 1 Q. B. D. 487; 2 Q. B. D. 69.

(*f*) *Russell, Exp.*, 19 Ves. 163; *Postmaster-Gen., Exp.*, 10 Ch. D. 595. See *Re Thomas*, 57 L. J. Q. B. 574. It is now, however, provided by 4 & 5 Geo. V. c. 59, s. 151, that "... the provisions of this Act relating to the remedies against the property of a

the Crown; so, also, the Debtors Act, 1869 (*a*), and 5 & 6 Edw. VI. c. 16, against the sale of offices (*b*). The Interpleader Act, 1 & 2 Will. IV. c. 58, was held not to apply to cases where the Crown was interested (*c*). The provision of the Statute of Frauds, which made writs of execution binding on the goods of the judgment debtor only from the time of the delivery of the writ to the sheriff for execution, was held not to affect the earlier rule of law (which bound the goods from the teste of the writ), where an extent was issued at the suit of the Crown (*d*). The Statute of Amendments of 4 Edw. III. s. 1, c. 6, which provided that clerical errors in records should be amended at once, without giving advantage to "the party" who had challenged the misprision, did not include the Crown; for, it was said, it had never been named "a party" in any Act of Parliament (*e*). The Locomotives Act, 1865, which

debtor, the priorities of debts, the effect of a composition or scheme of arrangement and the effect of discharge, shall bind the Crown."

(*a*) *Re Smith*, 2 Ex. D. 47.

(*b*) *Huggins* v. *Bambridge*, Willes, 241.

(*c*) Repealed 46 & 47 Vict. c. 49, s. 3, but see s. 7; *Candy* v. *Maugham*, 13 L. J. C. P. 17.

(*d*) *R.* v. *Wynn*, Bunb. 39; *R.* v. *Mann*, 2 Stra. 754; *Burden* v. *Kennedy*, 3 Atk. 739; *Giles* v. *Grover*, 1 Cl. & F. 72; *Uppom* v. *Sumner*, 2 W. Bl. 1251; *R.* v. *Edwards* (1853), 23 L. J. Ex. 42.

(*e*) *R.* v. *Tuchin*, 2 Lord Raym. 1066. See also *Tobin* v. *R.*, 32 L. J. C. P. 216, and *Thomas* v. *R.* (1874), 44 L. J. Q. B. 9.

regulates the speed of locomotives on highways, does not bind the Crown (*a*).

The Crown, however, is sufficiently named in a statute, within the meaning of the maxim, when an intention to include it is manifest. For instance, 20 & 21 Vict. c. 43, which entitles (by s. 2) either party, after the hearing, by a justice, of "any information or complaint" which he has power to determine, to apply for a case for the opinion of one of the Superior Courts; and after authorising (by s. 4) the justice to refuse the application, if he deems it frivolous, provides that it shall never be refused when made by, or under the direction of, the Attorney-General, and directs (by s. 6) the Superior Court, not only to deal with the decision appealed against, but to make such order as to costs as it deems fit, was held by the Queen's Bench to include the Crown, and to authorise an order against it for the payment of costs. The language of the 2nd section was wide enough to include the Crown; and as the 4th referred to the Crown as plainly as if it had spoken expressly of Crown cases, the language of the 6th authorising costs was construed as applying to such cases also, as well as to cases between subject and subject (*b*).

(*a*) 28 & 29 Vict. c. 83, s. 4; *Cooper* v. *Hawkins*, [1904] 2 K. B. 164. See also Motor Car Act, 1903 (3 Edw. VII. c. 36, s. 16).

(*b*) *Moore* v. *Smith* (1859), 28 L. J. M. C. 126. See *Theberge* v.

A Court of Summary Jurisdiction has, by reason of the Summary Jurisdiction Acts, power to award costs for or against the Crown in proceedings taken under the Revenue Acts (*a*). But, although the Crown be named in some sections of a statute, this does not necessarily extend to it the operation of other parts thereof (*b*).

It is said that the rule does not apply when the Act is made for the public good, the advancement of religion and justice, the prevention of fraud, or the suppression of injury and wrong (*c*); "for religion, justice, and truth are the sure supporters of the crowns and diadems of kings" (*d*): but it is probably more accurate to say that the Crown is not excluded from the operation of a statute where neither its prerogative, rights, nor property, are in question. The Statute de Donis (*e*); the

Laudry, 2 App. Cas. 102, and *Cushing* v. *Dupuy*, 5 App. Cas. 409; *Tennant* v. *Union Bank of Canada*, [1894] A. C. 31; *Moses* v. *Parker*, [1896] A. C. 245.

(*a*) 11 & 12 Vict. c. 43, s. 18, and 42 & 43 Vict. c. 49, s. 53; *Thomas* v. *Pritchard*, [1903] 1 K. B. 209.

(*b*) *Exp. Postmaster-General*, 10 Ch. D. 595; *Perry* v. *Eames*, [1891] 1 Ch. 658; *Wheaton* v. *Maple & Co.*, [1893] 3 Ch. 48; 62 L. J. Ch. 963.

(*c*) *Case of Ecclesiastical Persons*, 5 Rep. 14a; *Magdalen College Case*, 11 Rep. 70b–73a; *R.* v. *Armagh* (*Archbp.*), Stra. 516; Bac. Ab. Prerogative (E.) 5.

(*d*) 5 Rep. 14b.

(*e*) 13 Edw. I.; *Willion* v. *Berkley*, Plowd. 223; 11 Rep. 72a.

Statute of Merton, against usury running against minors (*a*); the 52 Hen. III. c. 22 (Marlbridge), against distraining freeholders to produce their title deeds (*b*); the 32 Hen. VIII., concerning discontinuances (*c*); the 31 Eliz., against simony (*d*); the 13 Eliz. c. 10, respecting ecclesiastical leases (*e*), were held to apply to the Crown, though not named in them (*f*). So, 11 Geo. IV. & 1 Will. IV. c. 70, which was passed for the better administration of justice, and enacted that writs of error upon judgments given in any of the Superior Courts, should be returned to the Exchequer Chamber, was held to apply to a judgment on an indictment (*g*), and on a petition of right (*h*); although the Crown was not named or referred to in the Act. No prerogative was effected by this construction (*i*). Although by common law the Crown has power to dismiss at pleasure a civil

(*a*) 20 Hen. III., repealed as to E. S. L. R., 1863, as to Ir. S. L. R. (I.), 1872; 2 Inst. 89.

(*b*) Repealed as to E. S. L. R., 1863, as to Ir. S. L. R. (I.) 1872; 2 Inst. 142.

(*c*) 2 Inst. 681.

(*d*) Co. Litt. 120a, note 3.

(*e*) 5 Rep. 14a; 11 Rep. 68b; *R.* v. *Armagh* (*Archbp.*), Stra. 16.

(*f*) See Bac. Ab. Prerog. (E) 5.

(*g*) *R.* v. *Wright*, 1 A. & E. 434.

(*h*) *De Bode* v. *R.*, 13 Q. B. 364.

(*i*) *Per* Cur., Id. 379.

or military officer, a colonial statute (*a*) manifestly intended for the benefit of officers, and inconsistent with such a condition, restricts the power of the Crown (*b*).

The Crown can direct the Treasury Solicitor to act for a subject in any matter in which the Crown has an interest, and if he so acts he becomes the solicitor for the subject and is entitled to recover any costs awarded the subject, notwithstanding the fact that he has no certificate under the Solicitors Act (*c*).

(*a*) *New South Wales Civil Service Act*, 1884.

(*b*) *Gould* v. *Stuart*, [1896] A. C. 575.

(*c*) *R.* v. *Canterbury* (*Archbp.*), [1903] 1 K. B. 289; s. 12, Attorneys and Solicitors Act, 1874, 37 & 38 Vict. c. 68, references to "attorney" in this section repealed from "provided always," S. L. R. (2), 1893.

CHAPTER VI.

SECTION I.—PRESUMPTION AGAINST INTENDING AN EXCESS OF JURISDICTION.

ANOTHER general presumption is that the Legislature does not intend to exceed its jurisdiction.

Primarily, the legislation of a country is territorial. The general rule is, that *extra territorium jus dicenti impune non paretur; leges extra territorium non obligant* (*a*). The laws of a nation apply to all its subjects and to all things and acts within its territories, including in this expression not only its ports and waters which form, in England, part of the adjacent country, but its ships, whether armed or unarmed, and the ships of its subjects on the high seas or in foreign tidal waters, and foreign private ships within its ports. They apply also to all foreigners within its territories (not privileged like sovereigns and ambassadors) as regards criminal (*b*), police, and, indeed, all other matters

(*a*) Dig. 2, 1, 20.

(*b*) So that an American committing a crime in Holland and flying to England is regarded as a Dutch subject for the purposes of extradition: *R.* v. *Ganz*, 51 L. J. Q. B. 419. See also *A.-G.* v. *Kwok-a-Sing*, L. R. 5 P. C. 179; *The Indian Chief*, 3 Rob. C. 12. See also *Piot, Exp.* (1883), 48 L. T. 120, and note especially *R.* v. *Governor Holloway Prison* (1912), 76 J. P. 310.

except some questions of personal status or capacity, in which, by the comity of nations, the law of their own country, or the *lex loci actûs* or *contractûs*, applies (*a*). This does not, indeed, comprise the whole of the legitimate jurisdiction of a State; for it has a right to impose its legislation on its subjects natural or naturalised (*b*), in every part of the world (*c*); and on such matters as personal status or capacity it is understood always to do so (*d*);

(*a*) See *Niboyet* v. *Niboyet*, 4 P. D. 1, *per* Brett L.J.; *San Teodoro* v. *San Teodoro*, 5 P. D. 79; *comp. Worms* v. *De Valdor*, 49 L. J. Ch. 261; *Le Sueur* v. *Le Sueur*, 1 P. D. 139; *Firebrace* v. *Firebrace*, 4 P. D. 63; *Re Goodman's Trusts*, 50 L. J. Ch. 425, and note *Le Mesurier* v. *Le Mesurier* (1895), L. J. P. C. 97, disapproving *Niboyet* v. *Niboyet*, *supra*.

(*b*) Co. Litt. 129a; Story, Confl. L. s. 21; *Sussex Peerage*, 11 Cl. & F. 85, 146; *Mette* v. *Mette*, 28 L. J. P. & M. 117.

(*c*) Our law has at different times made treason, treason-felony, burning the King's ships and magazines, breaches of the Foreign Enlistment Act, homicide, bigamy, procuration (see 48 & 49 Vict. c. 69, s. 2, amended by 2 & 3 Geo. V. c. 20, s. 1), and slave-dealing, punishable when committed by British subjects in any part of the world; also any offences committed by them on board any foreign ship to which they do not belong (57 & 58 Vict. c. 60); also, offences by them in or in relation to native States in India (5 & 6 Geo. V. c. 61, ss. 124–129), in Turkey, China, Siam, and Japan, and such other States as are within the provisions of 53 & 54 Vict. c. 37; and in some parts of Africa and Polynesia (34 & 35 Vict. c. 8; 35 & 36 Vict. c. 19; 38 & 39 Vict. c. 51).

(*d*) See ex. gr. *Brook* v. *Brook*, 27 L. J. Ch. 401; 9 H. L. Cas. 193; Story, Confl. L. s. 114; *Lolley's Case*, Russ. & Ry. 237.

but, with that exception, in the absence of an intention clearly expressed or to be inferred either from its language, or from the object or subject matter, or history of the enactment, the presumption is that Parliament does not design its statutes to operate on its subjects beyond the territorial limits of the United Kingdom (*a*). They are, therefore, to be read, usually, as if words to that effect had been inserted in them (*b*). Thus, a woman who married in England, and afterwards married abroad during her husband's life, was held not indictable under the repealed statute of James I. against bigamy; for the offence was committed out of the kingdom, and the Act did not in express terms extend its prohibition to subjects abroad (*c*). But s. 57, Offences against the Person Act, 1861, which enacts that "whomsoever being married shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in England or Ireland or elsewhere, shall be guilty of felony":

See also Story, Confl. L. s. 100 *et seq.*; Wheat. El. Internat. L., pt. 2, c. 2, ss. 6, 7.

(*a*) *Rose* v. *Himely*, 4 Cranch, 241, *per* Marshall C.J.; *The Zollverein*, Swab. 96, *per* Dr. Lushington; *Cope* v. *Doherty*, 4 K. & J. 367; *Poll* v. *Dambe*, [1901] 2. K. B. 579.

(*b*) *Per* Pollock C.B., *Rosseter* v. *Cahlmann*, 8 Ex. 361; and *per* Cur., *The Amalia*, 1 Moo. P. C. N. S. 471.

(*c*) 1 Jac. I. c. 11; 1 Hale P. C. 692; *Macleod* v. *A.-G. for N. S. Wales*, [1891] A. C. 455.

extends to a second marriage celebrated beyond the King's dominions (*a*). An act of bankruptcy by a British subject committed abroad, such as an assignment by a trader of all his effects, did not make him liable to the bankrupt laws until they were amended by extending them expressly to acts whether within the realm or elsewhere (*b*). But the power conferred on the Court by s. 27, Bankruptcy Act, 1883, now repealed and replaced by s. 25 (6) of the Bankruptcy Act, 1914, to order that any person who, if in England, would be liable to be brought before it under the section, shall be examined in Scotland or Ireland, "or in any other place out of England," does not apparently extend to places abroad which are not within the jurisdiction of the British Crown (*c*). A statute which authorised a Court to make an order against a British subject after he had been served with a summons, was held not to give jurisdiction to make it when the service had been effected abroad (*d*). And it has also been held that a provision that service may be effected by leaving

(*a*) 24 & 25 Vict. c. 100; *R.* v. *Russell*, [1901] A. C. 446.

(*b*) *Ingliss* v. *Grant*, 5 T. R. 530; *Norden* v. *James*, 2 Dick. 533. See 6 Geo. IV. c. 16, s. 3; 32 & 33 Vict. c. 71, s. 6; 46 & 47 Vict. c. 52, s. 4; and see as to existing law, 4 & 5 Geo. V. c. 59.

(*c*) *Drucker*, *Re* (*No.* 2), [1902] 2 K. B. 210.

(*d*) 7 & 8 Vict. c. 101; *R.* v. *Lightfoot* (1856), 25 L. J. M. C. 115.

the summons at the "last place of abode" of the person to be served, is not to be interpreted as meaning that the summons may be left at his last place of abode in England, where he had subsequently obtained a place of abode abroad (*a*). The alleged father of a bastard child who left England before the child's birth and did not return till the child was more than twelve months old, was held to have "ceased to reside in England within twelve months after the birth of such child," so as to give the justices jurisdiction to adjudicate upon a summons taken out within twelve months after his return (*b*). 5 & 6 Will. IV. c. 63 (repealed and re-enacted by 41 & 42 Vict. c. 49, ss. 15 and 86), which prohibits the sale of liquids otherwise than by imperial measure, would not be considered as affecting a contract between British subjects for the sale of palm oil to be measured and delivered on the coast of Africa (*c*). A different construction would have involved the absurd supposition that the Legislature intended that English subjects should carry English

(*a*) 35 & 36 Vict. c. 65, s. 4; *Berkeley* v. *Thompson*, 54 L. J. M. C. 57; *R.* v. *Farmer*, [1892] 1 Q. B. 637; *Burbury* v. *Jackson*, [1917] 1 K. B. 16; *Grocock* v. *Grocock*, [1919] W. N. 163. But *aliter* where he has not obtained a place of abode abroad; *R.* v. *Webb*, [1896] 1 Q. B. 487.

(*b*) *R.* v. *Evans*, [1896] 1 Q. B. 228.

(*c*) *Rosseter* v. *Cahlmann*, 8 Ex. 361.

measures abroad (*a*); besides setting aside, by a side-wind, the general principle that the validity of a contract is determined by the law of the place of its performance. Under that general principle, any statute which regulated the formalities and ceremonials of marriage, would, in general, be limited similarly in effect to the territorial jurisdiction of Parliament (*b*).

But a different intention may be readily collected from the nature of the enactment. The whole aim and object of the Royal Marriages Act, 1772 (12 Geo. III. c. 11), for instance, which was, according to the preamble, to guard against members of the royal family marrying without the consent of the sovereign, and which makes null and void the marriage of every descendant of George II. without the consent of the reigning sovereign, would have been defeated, if a marriage of such a descendant in some place out of the British dominions had not fallen within it. It was accordingly held that the statute imposed an incapacity, which attached to the person and followed him all over the world (*c*); though the marriage were valid according to the law of the country where it was celebrated (*d*). So, the Marriage Act, 1835 (5 & 6

(*a*) *Per* Parke B., *Rosseter* v. *Cahlmann*, at p. 363.

(*b*) *Scrimshire* v. *Scrimshire*, 2 Hagg. Cons. 395; Story, Confl. L. s. 221.

(*c*) *The Sussex Peerage*, 11 Cl. & F. 85.

(*d*) *Swift* v. *Kelly*, 3 Knapp, 257.

Will. IV. c. 54), which declared "all marriages between persons within the prohibited degrees" null and void, was held to create a personal incapacity in all British subjects domiciled in the United Kingdom, though married in a country where such marriages are valid (*a*). Where an Englishman, after marrying an Englishwoman in England, became domiciled in America, it was held that he continued subject to the Matrimonial Causes Act, 1857 (*b*). The Fatal Accidents Acts, 1846 and 1864, apply for the benefit of the representatives of a deceased foreigner, who while on the high seas in a foreign ship sustains a fatal injury owing to the negligence of a British ship (*c*). The rule of the Elementary Education Act, 1870, which vacates the seat at the board of any member who had been punished with imprisonment for any crime, includes crimes committed against the Crown out of England (*d*).

This wider effect has been given even to a

(*a*) *Brook* v. *Brook*, 27 L. J. Ch. 401; 9 H. L. Cas. 193. See Story, Confl. L. s. 86, and also s. 100; 7 Edw. VII. c. 47, validates marriage with a deceased wife's sister.

(*b*) *Deck* v. *Deck* (1860), 29 L. J. P. M. & A. 129; see *Bond* v. *Bond* (1860), Id. 143; and see *Niboyet* v. *Niboyet* (1878), P. D. 1, C. A.

(*c*) 9 & 10 Vict. c. 93; 27 & 28 Vict. c. 95; *Davidsson* v. *Hill*, [1901] 2 K. B. 606.

(*d*) 33 & 34 Vict. c. 75, Sched. II., Pt. I., r. 14; *Conybeare* v. *London School Bd.*, [1891] 1 Q. B. 118.

criminal statute, where such must have been manifestly its intention. The Slave Trade Act, 1824 (5 Geo. IV. c. 113), which made it felony for "any person" to deal in slaves, or to transport them, or equip vessels for their transport, was held to apply to British subjects committing any such offences on the coast of Africa, the notorious scene of the crimes which it was the object of the Act to suppress (*a*); if not in every other part of the world also (*b*); though it was not in express terms declared to be applicable abroad. As the Courts of British Colonies were empowered by Act of Parliament to punish certain offences committed at sea with, among other things, transportation, the Act which abolished transportation and substituted penal servitude, was held to extend to the Colonies, though it made no mention of them (*c*).

SECTION 11.—PRESUMPTION AGAINST A VIOLATION OF INTERNATIONAL LAW.

Under the same general presumption that the Legislature does not intend to exceed its jurisdiction, every statute is to be so interpreted and

(*a*) *R.* v. *Zulueta*, 1 Car. & K. 215; *Santos* v. *Illidge*, 28 L. J. C. P. 317; overruled on another point, 29 L. J. C. P. 348.

(*b*) See *per* Bramwell B., 29 L. J. C. P. 352.

(*c*) 12 & 13 Vict. c. 96 (amended 23 & 24 Vict. c. 88, s. 1); 20 & 21 Vict. c. 3; *R.* v. *Mount*, L. R. 6 P. C. 283.

applied, as far as its language admits, as not to be inconsistent with the comity of nations, or with the established rules of international law (*a*). If, therefore, it designs to effectuate any such object, it must express its intention with irresistible clearness, to induce a Court to believe that it entertained it; for if any other construction is possible, it would be adopted, in order to avoid imputing such an intention to the Legislature (*b*). All general terms must be narrowed in construction to avoid it (*c*).

For instance, although foreigners are subject to the criminal law of the country in which they commit any breach of it, and also, for most purposes, to its civil jurisdiction, a foreign sovereign, an ambassador, the troops of a foreign nation, and its public property are, by the law of nations, not subject to them (*d*), and statutes would be read as

(*a*) *Per* Maule J., *Leroux* v. *Brown*, 12 C. B. 801; Bluntschli, Voelkerrecht, s. 847; *per* Dr. Lushington, *The Zollverein*, Swab. 96, and *The Annapolis*, Lush. 295. See also *Rochefoucauld* v. *Boustead* (1896), 66 L. J. Ch. 75.

(*b*) *Per* Cur., *U. S.* v. *Fisher*, 2 Cranch, 390, and *Murray* v. *Charming Betsy*, Id. 118.

(*c*) *Per* Lord Stowell, *Le Louis* (1817), 2 Dods. 229.

(*d*) Wheat. Elem. Int. L., pt. 2, c. 2; see the cases collected in *The Parlement Belge* (1880), 5 P. D. 197; *The Constitution* (1879), 4 P. D. 39. See also *The Ripon City* (1897), 66 L. J. P. 110; and as to the general principle, *Mighell* v. *Sultan of Johore* (1893), 63 L. J. Q. B. 593.

tacitly embodying this rule. Hence whilst the ambassador of a foreign State is in this country, and accredited to the sovereign, the Statute of Limitation does not begin to run against his creditors, as he could not be served with process during that period (*a*). So, it is an admitted principle of public law that, except as regards pirates *jure gentium*, and, perhaps, nomadic races and savages who have no political organisation (*b*), a nation has no jurisdiction over offences committed by a foreigner out of its territory, including its ships and waters as already mentioned (*c*); and the general language of any criminal statute would be so restricted in construction as not to violate this principle. Thus, s. 8 of the repealed 9 Geo. IV. c. 31 (re-enacted by s. 10, 24 & 25

(*a*) 21 Jac. I. c. 16; 4 & 5 Anne, c. 16, s. 19; 7 Anne, c. 12, s. 3; *Musurus Bey* v. *Gadban*, [1894] 2 Q. B. 352; *Republic of Bolivia Exploration Syndicate, In re* (1914), 83 L. J. Ch. 226.

(*b*) See ex. gr. Ortolan, Dipl. de la Mer, i. 285. By 34 & 35 Vict. c. 8, offences committed within 20 miles from our West African Settlements on British subjects, or residents within the settlements, by persons not the subjects of any civilised power, are made cognisable by the Superior Courts of the Settlements.

(*c*) Sup. 255. See Wheaton's Elem. Internat. L., pt. 2, c. 2, s. 9; *The Parlement Belge*, 5 P. D. 197; *R.* v. *Anderson*, L. R. 1 C. C. 161; *R.* v. *Seberg*, Id. 264; *R.* v. *Carr*, 10 Q. B. D. 76; *R.* v. *Lopes*, 27 L. J. M. C. 48; *R.* v. *Lesley*, 29 L. J. M. C. 97. See as to ships, the judgment of Lindley J., *R.* v. *Keyn*, 2 Ex. D. 63; but see *Carr* v. *Fracis Times & Co.*, [1902] A. C. 176.

Viot. c. 100), which enacted that when any person, feloniously injured abroad or at sea, died in England, or receiving the injury in England, died at sea or abroad, the offence should be dealt with in the country where the death or injury occurred, would not authorise the trial of a foreigner who inflicted a wound at sea in a foreign ship, of which the sufferer afterwards died in England (*a*). So, it has been repeatedly decided in America that an Act of Congress which enacted that any person committing robbery in "any vessel on the high seas" should be guilty of piracy, applied only to robbery in American vessels, and not to robbery in foreign vessels even by an American citizen (*b*). An Act of Parliament which authorised the commanders of our ships of war to seize and prosecute "all ships and vessels" engaged in the slave trade was construed as not intended to affect any right or interest of foreigners contrary

(*a*) *R.* v. *Lewis*, 26 L. J. M. C. 104. See also *R.* v. *Depardo*, 9 R. R. 693; *R.* v. *De Mattos*, 7 C. & P. 458; *Nga Hoong* v. *R.*, 7 Cox, 489; *R.* v. *Bjornsen*, 34 L. J. M. C. 180. As to offences committed within Territorial Waters, see 41 & 42 Vict. c. 73. Sec. 267 Merc. Shipping Act, 1854 (repealed by Merc. Shipping Act, 1894), would seem to have been limited to British subjects. See also s. 527; *Harris* v. *Franconia*, 2 C. P. D. 173.

(*b*) *U. S.* v. *Howard*, 3 Wash. 340; *U. S.* v. *Palmer*, 3 Wheat. 610; *U. S.* v. *Klintock*, 5 Wheat. 144; *U. S.* v. *Kessler*, Bald. 15, cited by Cockburn C.J., *R.* v. *Keyn*, 2 Ex. D. 172.

to the law of nations (*a*). Though speaking in just terms of indignation of the traffic in human beings, it spoke only in the name of the British nation. Its prohibition of the trade as contrary to the principles of justice, humanity, and sound policy, applied only to British subjects; it did not render it unlawful as regarded foreigners (*b*). It was even held that a foreigner who was not prohibited by the law of his own country from carrying it on, was entitled to recover in an English Court damages for the seizure of a cargo of his slaves by a British man-of-war; for, our Courts being open to all aliens in amity with us, and the act of the man-of-war being wrongful, the only question was what injury the plaintiff had sustained from it (*c*).

But a British subject resident in an enemy country is not empowered by s. 6 of the repealed Naturalisation Act, 1870, to become naturalised in that enemy country during time of war with this country, and the act of becoming naturalised under such circumstances constitutes the crime of high treason (*d*).

(*a*) *Le Louis*, 2 Dods. 214; *St. Juan Nepomuceno*, 1 Hagg. 265; *The Antelope*, 10 Wheat. 66. See also *R.* v. *Serva*, 1 Den. 104. *Compare The Amedie*, 1 Acton, 240.

(*b*) *Per* Best J., 3 B. & Ald. 358.

(*c*) *Madrazo* v. *Willes*, 22 R. R. 422. See also *Santos* v. *Illidge*, 29 L. J. C. P. 348. *Compare Forbes* v. *Cochrane*, 22 R. R. 402.

(*d*) 33 & 34 Vict. c. 14; practically re-enacted by 4 & 5

Although a foreigner residing in England (*a*) who contracts debts, even abroad (*b*), and commits an act of bankruptcy in England, would be liable to the English bankrupt laws; he would not fall within them if he committed the act of bankruptcy abroad, although the enactment made it an act of bankruptcy, whether committed "in England or elsewhere" (*c*). The Rules of Court, 1883 (now cancelled), directing how writs were to be served on persons sued in the name of their firm, did not give jurisdiction over foreign firms whose location was abroad (*d*). So an English Court would have

Geo. V. c. 17. See *R.* v. *Lynch* (1903), 72 L. J. K. B. 167. See also *Dawson* v. *Meuli* (1918), 16 L. G. R. 308, and *Rex* v. *Commanding Officer Middlesex Regiment*, [1917] 2 K. B. 129.

(*a*) 46 & 47 Vict. c. 52, s. 6 (1 *d*); repealed by 4 & 5 Geo. V. c. 58, s. 368, Sched. 6: *Re Norris*, 5 M. B. R. 111.

(*b*) *Exp. Pascal*, 45 L. J. Bank. 81.

(*c*) *Cooke* v. *Vogeler*, [1901] A. C. 102; *Blain, Exp.*, 12 Ch. D. 522; *Pearson, Re*, [1892] 2 Q. B. 263. See also *Smith, Exp.*, cited in *Alexander* v. *Vaughan*, 1 Cowp. 402; *Bulkeley* v. *Schutz*, L.R. 3 P. C. 764; *Bateman* v. *Service*, 6 App. Cas. 386; *O'Loghlen, Exp.*, 40 L. J. Bank. 18; *Davis* v. *Park*, 42 L. J. Ch. 673; *Exp. Crispin*, 42 L. J. Bank. 65.

(*d*) Order IX., r. 6, cancelled; see for present practice Order 48A, rr. 1, 3 & 4 R. S. C., 1891; *Western Nat. Bank* v. *Perez*, [1891] 1 Q. B. 304; *Russell* v. *Cambefort*, 23 Q. B. D 526; *Dobson* v. *Festi*, [1891] 2 Q. B. 92; *Grant* v. *Anderson*, [1892] 1 Q. B. 108. See also *Lysaght* v. *Clark*, [1891] 1 Q. B. 552; *Heinemann* v. *Hale*, [1891] 2 Q. B. 83; *St. Gobain Co.* v. *Hoyermann's Agency*, [1893] 2 Q. B. 96; *Worcester Banking Co.* v. *Firbank*, [1894] 1 Q. B. 784; *MacIver* v. *Burns*, [1895] 2 Ch. 630.

no jurisdiction to wind up a foreign company having no branch in England (*a*). And s. 17, 4 & 5 Geo. V. c. 17, replacing s. 2, Naturalisation Act, 1870, which enacts that "real and personal property of every description may be taken, acquired, held, and disposed of by an alien in the same manner in all respects as by a natural-born British subject," has been held in a case decided under the earlier Act not to entitle a Will to probate here which was made by an alien whose domicile of origin was English, but who was domiciled abroad at the time of making such Will and of her death, the Will having been executed according to the forms required by English law, but not in manner required by the law of the country of her domicile (*b*). And an Act which gave the Court of Admiralty jurisdiction over "all claims whatsoever" relating to salvage reward for saving lives has been held not to extend to the salvage of life on a foreign ship or the supply of necessaries when the vessel is more than three marine miles from our shore (*c*).

(*a*) *Lloyd Italiano, Re*, 29 Ch. D. 219; *Bulkeley* v. *Schutz*, L. R. 3 P. C. 764. See *Colquhoun* v. *Heddon*, 25 Q. B. D. 129.

(*b*) 24 & 25 Vict. c. 114; *Bloxam* v. *Favre*, 53 L. J. P. D. & A. 26; *Lyne's Settlement Trusts, Gibbs, In re*, [1919] 1 Ch. 80; *Simpson, In re*, [1916] 1 Ch. 502.

(*c*) 17 & 18 Vict. c. 104, ss. 458, 476; *The Johannes*, Lush. 182. But see Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 544 (1); *The Pacific*, [1898] P. 170, on which see *Jörgensen* v.

So, as it is a rule of all systems of law that real property is exclusively subject to the laws of the State within whose territory it lies, any Act which dealt in general terms with the real estate of a bankrupt or lunatic testator, for instance, would be construed as not extending to his lands abroad (*a*), or in our Colonies, unless it clearly appeared that the Act was intended to reach them (*b*). But a statute which imposed a stamp duty on all conveyances of land executed in England would obviously not be so limited in construction (*c*).

It being also a general principle that personal property has, except for some purposes, such as probate (*d*), no other *situs* than that of its owner, the right and disposition of it are governed by the law of the domicile of the owner, and not by the law of their local situation (*e*). The Bankruptcy

Neptune Co., 4 Fraser, 992. See also *Laws* v. *Smith* (1883), 9 A. C. 356 (P. C.).

(*a*) *Selkrig* v. *Davis*, 2 Rose, 311; *Cockerell* v. *Dickens*, 3 Moo. P. C. 133. See *Sill* v. *Worswick*, 1 H. Bl. 665; *Phillips* v. *Hunter*, 2 Id. 402; *Hunter* v. *Potts*, 2 R. R. 353; *Blithman, Re*, L. R. 2 Eq. 23; *Freke* v. *Carbery*, L. R. 16 Eq. 461; *Waite* v. *Bingley*, 21 Ch. D. 674; *Duncan* v. *Lawson*, 41 Ch. D. 394; *Hawthorne, Re*, 23 Ch. D. 743; *Pepin* v. *Bruyère* (1902), 71 L. J. Ch. 39; Story, Confl. L. ss. 428, 551, etc.

(*b*) See *Hewitt's Estate, Re*, 6 W. R. 537. *Comp. International Pulp Co., Re*, 45 L. J. Ch. 446.

(*c*) *Wright, Re* (1855), L. J. Ex. 49.

(*d*) See *Hart* v. *Herwig*, L. R. 8 Ch. 860.

(*e*) Story, Confl. L. s. 376. See ex. gr. *Elliott, Re*, 39 W. R. 297.

Acts, therefore, which affect an assignment of a bankrupt's personal property, would properly be construed as applying to such property elsewhere (*a*).

When an Act imposes a burden in respect of personal property, it would be construed, as far as its language permitted, as not intended to contravene the general principle (*b*). Thus, 36 Geo. III. c. 52, which imposed a duty on every legacy given by any "will of any person out of his personal estate," and the Succession Duty Act, 1853 (16 & 17 Vict. c. 51), which imposed a duty on every "disposition of property" by which "any person" became "entitled to any property on the death of another," were held not to apply where the deceased was a foreigner, or even a British subject domiciled abroad, though the property was in England (*c*). But they would affect personal property abroad, if the deceased was domiciled

(*a*) See *Atkinson, Re*, 21 Ch. D. 100.

(*b*) See ex. gr. *Grenfell* v. *Inl. Rev.*, 45 L. J. Ex. 465.

(*c*) *Re Bruce*, 2 Cr. & J. 436; *Arnold* v. *Arnold*, 39 R. R. 222; *Thomson* v. *The Adv.-Gen.* (1848), 12 Cl. & F. 1; discussed in *Lawson* v. *Inl. Rev. Commissioners*, [1896] 2 Ir. R. 418, and approved in *Harding* v. *Queensland Commissioner of Stamps* (1898), 67 L. J. P. C. 144; *Sully* v. *A.-G.*, 29 L. J. Ex. 464; *Re Atkinson*, sup. *Comp. A.-G.* v. *Campbell*, L. R. 5 H. L. 524; *Re Cigala's Settlement*, 7 Ch. D. 351; *Colquhoun* v. *Brooks*, 14 App. Cas. 493; *London Bank of Mexico* v. *Apthorpe*, [1891] 2 Q. B. 378; *San Paulo Ry. Co.* v. *Carter*, [1896] A. C. 31.

in England, though a foreigner (*a*). Foreigners residing abroad but carrying on business in England by agents obtaining orders in England, are liable to income tax on profits so made (unless all contracts for the sale and all deliveries of the merchandise to customers are made in a foreign country) (*b*), Schedule D of 16 & 17 Vict. c. 34, imposing liability to assessment on persons resident abroad, but deriving profit from trade carried on in this country. The old jurisdiction of Interpleader did not empower our Courts to bar the claim of a foreigner residing abroad (*c*).

It is hardly necessary to add, however, that if the language of an Act of Parliament, unambiguously and without reasonably admitting of any other meaning applies to foreigners abroad, or is otherwise in conflict with any principle of international law, the Courts must obey and administer it as it stands, whatever may be the

(*a*) *A.-G.* v. *Napier*, 20 L. J. Ex. 173; *Blackwood* v. *Reg.* (1882), 52 L. J. P. C. 10.

(*b*) *Pommery* v. *Apthorpe* (1886), 56 L. J. Q. B. 155; *Werle* v. *Colquhoun*, 57 L. J. Q. B. 323; *Grainger* v. *Gough*, [1896] A. C. 325. But see *Kodak, Lim.* v. *Clarke*, 72 L. J. K. B. 369; *Gramophone Co.* v. *Stanley*, 77 L. J. K. B. 834; *Goerz* v. *Bell*, 73 L. J. K. B. 448; *De Beers Mines* v. *Howe*, 75 L. J. K. B. 858.

(*c*) *Paterni* v. *Campbell*, 13 L. J. Ex. 85; *Lindsey* v. *Barron*, 6 C. B. 291. But see *Credits Gerundeuse* v. *Van Weede*, 12 Q. B. D. 171, on which see *Re Busfield*, 55 L. J. Ch. 467, approved in *Dubout* v. *Macpherson* (1889), 58 L. J. Q. B. 496.

responsibility inourred by the nation to foreign powers in executing such a law (*a*); for the Courts cannot question the authority of Parliament, or assign any limits to its power (*b*). They could not, therefore, properly put a construotion upon a statute different from that whioh they would otherwise give to it, merely beoause its language would otherwise fail to give to a foreigner the full advantage of the provisions of a treaty (*c*).

Seo. 4, Statute of Frauds, which enaots that "no action shall be brought" in respect, among others, of contracts not to be performed within a year, unless they be in writing, was construed literally as regulating the procedure of our Courts, and, therefore, as prohibiting a suit in England on a contract made in France and in accordance with Frenoh Law, but not in conformity with the

(*a*) *Per* Cur., *The Marianna Flora*, 11 Wheat. 40; *The Zollverein*, Swab. 96; *The Johannes*, Lush. 182; *The Amalia*, 32 L. J. P. M. & A. 191; *Ellis* v. *McHenry* (1871), 40 L. J. C. P. 109, 115. As to the Hovering Acts (39 & 40 Vict. c. 36, s. 179 (amended hy 50 & 51 Vict. c. 7), embodying the 16 & 17 Vict. c. 107, s. 212), see *Le Louis*, 2 Dods. 245; *Church* v. *Hubbart*, 2 Cranch, 187. See also 2 & 3 Vict. c. 73, repealed by Slave Trade Act, 1873.

(*b*) *Comp. Bonham's Case* (1609), 8 Rep. 118a, commented on in *Kemp* v. *Neville* (1861), 31 L. J. C. P. 158. See alsc *Day* v. *Savadge*, Hoh. 87; *London* (*City of*) v. *Wood*, 12 Mod. 688; 1 Kent Comm. 447.

(*c*) *Californian Fig Syrup Co., Re*, 40 Ch. D. 620.

formalities required by our law (*a*). But this construction has been questioned (*b*); and having regard to the principle under consideration, the enactment might reasonably have been confined to those contracts which it was within the province of Parliament to regulate.

SECTION III.—HOW FAR STATUTES CONFERRING RIGHTS AFFECT FOREIGNERS.

It may be added, in connection with this topic, that as regards the question how far statutes which confer rights or privileges are to be construed as extending to foreigners abroad, the authorities are less clear. It has been said, indeed, that when personal rights are conferred, and persons filling any character of which foreigners are capable are mentioned, foreigners would be comprehended in the statute (*c*). On the other hand, it has been laid down that, in general, statutes must be understood as applying to those only who owe obedience

(*a*) *Leroux* v. *Brown*, 22 L. J. C. P. 3, recognised by Lush and Mellor JJ., *Jones* v. *Victoria Graving Dock*, 2 Q. B. D. 323.

(*b*) See *Williams* v. *Wheeler* 8 C. B. N. S. 299; *Gibson* v. *Holland*, L. R. 1 C. P. 8, *per* Wules J.; and the notes to *Birkmyr* v. *Darnell*, and *Mostyn* v. *Fabrigas*, 1 Sm. L. C., 12th ed., p. 699. See also Story, Confl. L. s. 285 n., observing on *Acebal* v. *Levy*, 38 R. R. 469.

(*c*) *Per* Maule J., *Jefferys* v. *Boosey*, 4 H. L. Cas. 895; commented on and explained in *Fairley* v. *Boosey* (1879), 48 L. J. Ch. 697; note especially judgment of Lord Blackburn.

to the Legislature which enacts them, and whose interests it is the duty of that Legislature to protect; that is, its own subjects, including in that expression, not only natural born and naturalised subjects, but also all persons actually within its territorial jurisdiction; but that as regards aliens resident abroad, the Legislature has no concern to protect their interests, any more than it has a legitimate power to control their rights (*a*). In this view, it would be presumed, in interpreting a statute, that the Legislature did not intend to legislate either as to their rights or liabilities; and to warrant a different conclusion, the words of the statute ought to be express, or the context of it very clear (*b*). On this principle, mainly, it was held that the Act of Anne, which gave a copyright of fourteen years to "the author of any work," did not apply to a foreign author resident abroad (*c*). The decision would probably have been different if the author had been in England when his work

(*a*) See *per* Jervis C.J., *Jefferys* v. *Boosey*, 4 H. L. Cas. 946; *per* Lord Cranworth, Id. 955; *per* Wood V.C., *Cope* v. *Doherty*, 4 K. & J. 367; *per* Lord Esher M.R., *Colquhoun* v. *Heddon*, 25 Q. B. D. 135. See also *Adam* v. *British and Foreign Steamship Co.* (1898), 67 L. J. Q. B. 844. *Comp. per* Lord Westbury, *Routledge* v. *Low*, L. R. 3 H. L. 119.

(*b*) *Per* Turner L.J., *Cope* v. *Doherty* (1858), 27 L. J. Ch. 609; and see *R.* v. *Keyn* (1876), 46 L. J. M. C. 17, at p. 54.

(*c*) 8 Anne, c. 19; *Jefferys* v. *Boosey*, 4 H. L. Cas. 815; dubitante Lord Cairns, *Routledge* v. *Low*, L. R. 3 H. L. 107.

was published (*a*). It is now provided by s. 35, ss. 4 of the Copyright Act, 1911, that where in the case of an unpublished work, the making of which extended over a considerable time, the conditions of the Act conferring copyright shall apply if the author was during any substantial part of that period a British subject or a resident within the parts of His Majesty's dominions to which the Act extends (*b*). It was held that a foreigner was entitled to maintenance, and to gain a settlement, under the poor laws (*c*). And it has been decided that the Fatal Accidents Act, 1846 (9 & 10 Vict. c. 93), which gives a right of action to the personal representative of a person killed by a wrongful and actionable act or neglect, extends to the representative of a foreigner who has been killed on the high seas, in a foreign ship, in a collision with an English vessel (*d*).

On the other hand, it has been held that the 7 & 8 Vict. c. 101, which empowered the mother of a natural child to sue its putative father for its maintenance, did not extend to a foreign woman who had become pregnant in England, but had given birth to the child abroad (*e*). The history,

(*a*) *Per* Lord Cranworth C., *Jefferys* v *Boosey*, sup. p. 274.
(*b*) And see Clerk and Lindsell on Torts, tit. "Copyright."
(*c*) *R.* v. *Eastbourne*, 4 East, 103.
(*d*) *Davidsson* v. *Hill*, cited sup. p. 261.
(*e*) *R.* v. *Blane*, (1849), 13 Q. B. 769.

as well as the language of the enactment, showed that the liability arose from the birth of the child in this country (*a*). But, on the other hand, the mere fact that the child was born abroad does not prevent an order being made when it is shown the status of the child is not governed by foreign law (*b*), and in the converse case of conception abroad and birth in England, the law would extend to the mother (*c*). The benefit of those enactments which, prior to the repealed Merchant Shipping Act Amendment Act, 1862 (*d*), limited the liability of shipowners for damage done (*e*), without their own fault, by their servants, to other ships, was held not to extend to foreign vessels (*f*); one reason being that the object of the Legislature, in giving such a privilege, was to encourage the national shipping only, by removing the terrors of a liability commensurate with the damage done (*g*). But they were held to protect

(*a*) *Per* Coleridge J., Id. 773.

(*b*) *R.* v. *Humphreys Ward, Exp.*, [1914] 3 K. B. 1237.

(*c*) *Hampton* v. *Rickard*, 43 L. J. M. C. 133.

(*d*) Repealed by 57 & 58 Vict. c. 60, s. 745.

(*e*) See 57 & 58 Vict. c. 60, s. 502; *Asiatic Petroleum Co.* v. *Lennard's Carrying Co.*, [1914] 1 K. B. 419, C. A.; *Ingram & Royle* v. *Services Maritimé du Trèport*, [1914] 1 K. B. 541, C. A.

(*f*) But see now 57 & 58 Vict. c. 60, s. 503: *The Oscar II.*, [1919] P. 171.

(*g*) *The Carl Johann* (1821), cited, 1 Hagg. Adm. 113; *Cope* v. *Doherty* (1858), 4 K. & J. 367. See notes on this case,

a British ship in a suit by a foreign ship, whether the collision took place in British waters (*a*) or on the high seas (*b*).

In the latter case, the protecting enactment applied in express terms to foreign as well as British shipowners; and thongh it would probably have been read as if the words "within British jurisdiction" had been inserted (*c*), if the Act had been considered as exceeding the legislative powers of Parliament to control the natural rights of foreigners, there was, in fact, no such encroachment on its full operation. For the nature and extent of legal remedies are governed by the *lex fori*; and it is no breach of international law, or any interference with the rights of foreigners, to determine what redress is to be given to suitors who resort to our Courts (*d*). A foreigner, for instance, was liable to arrest in this country for a debt contracted abroad, though it would have

R. v. *Keyn*, 46 L. J. M. C., p. 95; *The Wild Ranger*, 32 L. J. P. M. & A. 49; *The Leon* (1881), 50 L. J. Adm. 59. See *The Saxonia*, Lush. 410.

(*a*) *General Iron Screw Co.* v. *Schurmanns*, 29 L. J. Ch. 877.

(*b*) *The Amalia* (1863), 1 Moo. P. C. N. S. 471.

(*c*) See *The Dumfries*, Swab. 63.

(*d*) *The Amalia*, sup.; *The Vernon*, 1 Rob. W. 316; *Bank of U. S.* v. *Donnally*, 8 Peters, 361. See *Jackson* v. *Spittall*, L. R. 5 C. P. 542; *Re Haney's Trusts*, L. R. 10 Ch. 275; *Chartered Merc. Bk.* v. *Netherlands Steam Navig. Co.*, 10 Q. B. D. 521; *Jacobs* v. *Crédit Lyonnais*, 12 Q. B. D. 589.

exposed him to no such peril there; and he would be barred in our Courts by our Statute of Limitation, though he was not by the prescription of his own country (*a*). The provisions of the Admiralty Court Act, 1861 (*b*), which give (by ss. 4 and 5) to the Court of Admiralty jurisdiction over any claims, for the building of any ship, and also for necessaries supplied to any ship elsewhere than in the port to which she belongs, unless the owner be domiciled in England, were at one time held to be confined to British ships, on the ground of the improbability that the British Parliament had intended to legislate for foreigners in foreign ports (*c*), but this no longer represents the law (*d*). And the seamen of a ship of any nation are entitled to sue for wages in the Admiralty Court, under s. 10 of the same Act, which gives that Court jurisdiction over any claim by a seaman of any ship for wages (*e*). It has been held that as

(*a*) *De la Vega* v. *Vianna*, 35 R. R. 298; *Don* v. *Lippmann*, 5 Cl. & F. 1; *Gen. Steam Navig. Co.* v. *Guillou*, 11 M. & W. 877; *Lopez* v. *Burslem*, 4 Moo. P. C. 300; *British Linen Co.* v. *Drummond*, 34 R. R. 595; *Huber* v. *Steiner*, 43 R. R. 598; *Finch* v. *Finch*, 45 L. J. Ch. 816; *Alliance Bank of Simla* v. *Carey*, 49 L. J. C. P. 781; *Re Reuss Kostritz*, 49 L. J. P. & M. 67; *The Leon*, 6 P. D. 148.

(*b*) 24 Vict. c. 10.

(*c*) *The India* (1863), 32 L. J. P. M. & A. 185.

(*d*) *The Mecca* (1894), 64 L. J. P. D. & A. 40.

(*e*) *The Nina*, 37 L. J. Adm. 17. For provisions as to relief

the English sailing rules are not binding on foreign ships on the high seas, a foreign ship was precluded, in a collision suit, from imputing to the British ship with which the collision occurred, a breach of any of those rules; on the ground that it had no right to the benefit of rules by which it was not, itself, bound (*a*).

and repatriation of distressed seamen and seamen left behind abroad, see 6 Edw. VII. c. 48, ss. 28 *et seq.*

(*a*) *The Zollverein*, Swab. 96.

CHAPTER VII.

SECTION 1.—REPUGNANCY—REPEAL BY IMPLICATION—ACTS IN, OR INVOLVING, THE NEGATIVE.

An author must be supposed to be consistent with himself; and, therefore, if in one place he has expressed his mind clearly, it ought to be presumed that he is still of the same mind in another place, unless it clearly appears that he has changed it (*a*). In this respect, the work of the Legislature is treated in the same manner as that of any other author; and the language of every enactment must be construed, as far as possible in accordance with the terms of every other statute which it does not in express terms modify or repeal (*b*). The law, therefore, will not allow the revocation or alteration of a statute by construction when the words may be capable of proper operation without it (*c*). But it is impossible to construe absolute contradictions; consequently

(*a*) Puff. L. N. b. 5, c. 12, s. 9.

(*b*) See sup. p. 61. As to Repeal, see inf. p. 727 *et seq.*

(*c*) *Per* Bridgman C.J., *Lyn* v. *Wyn*, Bridg. Rep. by Bannister, 122, inf. p. 318. *Per* A. L. Smith J., *Kutner* v. *Phillips*, [1891] 2 Q. B. 272; and see *Felton* v. *Bowers*, [1900] 1 Q. B. 598.

if the provisions of a later Act are so inconsistent with, or repugnant to, those of an earlier Act that the two cannot stand together (*a*) the earlier stands impliedly repealed by the later (*b*). *Leges posteriores priores contrarias abrogant. Ubi duæ contrariæ leges sunt, semper antiquæ abrogat nova* (*c*).

A difference, indeed, has been said to exist in this respect between the effect of a Saving Clause or Exception, and a Proviso in a statute. When the proviso appended to the enacting part is repugnant to it, it unquestionably repeals the enacting part (*d*); but it is said by Lord Coke that when the enactment and the saving clause (which reserves something which would be otherwise included in the words of the enacting part (*e*)), are repugnant—as where a statute vests a manor in the King, saving the rights of all persons, or vests in him the manor of A. saving the rights of A.—the saving clause is to be rejected, because otherwise the enactment would have been made

(*a*) *West Ham* v. *Fourth City Building Society*, [1892] 1 Q. B. 654. See *O'Flaherty* v. *McDowell* (1857), 6 H. L. Cas. 142, dictum of Lord St. Leonards.

(*b*) Co. Litt. 112; Shep. Touchst. 88; Grot. b. 2, c. 16, s. 4; *Sims* v. *Doughty*, 5 Ves. 243; *Constantine* v. *Constantine* (1801), 6 Ves. 100; *Morrall* v. *Sutton*, 65 R. R. 434; *Brown* v. *G. W. R. Co.* (1885), 9 Q. B. D. 753, *per* Field J.

(*c*) Livy, b. 9, c. 34.

(*d*) *A.-G.* v. *Chelsea Waterworks*, Fitzg. 195.

(*e*) Co. Litt. 47a; Shep. Touchst. 78.

in vain (*a*). One authority which he cites for this proposition is the case of the reversal of the Duke of Norfolk's attainder, by an Act of Mary. That Act declared that the earlier statute of 38 Hen. VIII., which had attained the Duke, was no Act, but utterly void, providing, however, that this reversal should not take from the grantees of Henry VIII. or Edward VI. any lands of the Duke which those Kings had granted to them; and this provision was held inoperative to save the rights of the grantees. But this resulted, it is said, not because the saving clause was repugnant to the enacting part, but because the latter in declaring the attainder void, in effect established also that the lands of the Duke had never vested in the Crown; that none, consequently, had ever passed to the grantees; and that there was thus no interest to be saved on which the clause could operate (*b*).

The illustrations given by Coke are cases of conveyance of land; and the rule as regards the construction of repugnant passages in a conveyance by deed has always been that the earlier of them prevails (*c*). But it may be questioned

(*a*) *Alton Woods Case*, 1 Rep. 47. See *Yarmouth* v. *Simmons* (1878), 10 Ch. D. 518; *Clelland* v. *Ker* (1843), 6 Ir. Eq. Rep. 35, affirmed 6 Ir. Eq. Rep. 288.

(*b*) *Walsingham's Case*, Plowd. 565. See *Savings Institution* v. *Makin*, 23 Maine, 370.

(*c*) Co. Litt. 112; Shep. Touchst. 81; *Cother* v. *Merrick*, Hard.

whether there is any solid ground for this distinction between a saving clause and a proviso in a statute. The later of two passages in a statute, being the expression of the later intention, should prevail over the earlier; as it unquestionably would, if it were embodied in a separate Act.

It has been held that where a statute merely re-enacts the provision of an earlier one, it is to be read as part of the earlier statute, and not of the re-enacting one, if it is in conflict with another passed after the first, but before the last Act; and therefore does not repeal by implication the intermediate one (*a*). Where a passage in a schedule appended to a statute was repugnant to one in the body of the statute, the latter was held to prevail (*b*). Where (as often happens) a proviso is inserted to protect persons who are unreasonably apprehensive as to the effect of an enactment where there is really no question of its application

94; *Furnivall* v. *Coombes* (1843), 63 R. R. 455; explained in *Williams* v. *Hathaway* (1877), 6 Ch. D. 544.

(*a*) *Morisse* v. *Royal British Bank*, 1 C. B. N. S. 87, *per* Willes J., citing *Wallace* v. *Blackwell*, 3 Drew. 538. See also *R.* v. *Dove*, 3 B. & Ald. 596.

(*b*) *R.* v. *Baines*, 12 A. & E. 227; *Allen* v. *Flicker*, 10 A. & E. 640, *per* Patteson J.; *R.* v. *Russell*, 18 L. J. M. C. 106; *Dean* v. *Green*, 8 P. D. 79; *Cox, Exp.* (1887), 56 L. J. Q. B. 532. See *Clarke* v. *Gaut*, 22 L. J. Ex. 67. As to Statutory Rules, see *Institute of Patent Agents* v. *Lockwood*, [1894] A. C. 360, sup. p. 93.

to their case, the enactment is not to be construed against the intention of the Legislature so as to impose a liability upon people who were not so apprehensive (*a*).

When the later of two general enactments is couched in negative terms, it is difficult to avoid the inference that the earlier one is impliedly repealed by it. For instance, if a general Act exempts from licensing regulations the sale of a certain kind of beer, and a subsequent one enacts that "no beer" shall be sold without a license, it would obviously be impossible to save the former from the repeal implied in the latter (*b*). The Highway Act, 1835, which enacted that "no action" for anything done under it should be begun after three months from the cause of action, was so clearly inconsistent, as regards actions against justices, with the 24 Geo. II. which limited the time to six months, that it necessarily repealed the latter (*c*).

But even when the later statute is in the

(*a*) *West Derby Guardians* v. *Metropolitan Life Assurance*, [1897] A. C. 647.

(*b*) *Read* v. *Storey*, 30 L. J. M. C. 110; remedied by 24 & 25 Vict. c. 21, s. 3, now repealed by 10 Edw. VII. c. 8, s. 96, and Sched. 6.

(*c*) 5 & 6 Will. IV. c. 50, s. 109; (repealed by 56 & 57 Vict. c. 61), s. 2; 24 Geo. II. c. 44, s. 8; *Rix* v. *Borton*, 12 A. & E. 470.

affirmative, it is often found to involve that negative which makes it fatal to the earlier enactment (*a*). The requirements of 3 & 4 Will. IV. c. 74, s. 40, which empowered a married woman to dispose by deed of land which she held in fee, provided she did so with the concurrence of her husband and by deed acknowledged, were impliedly repealed by the Married Women's Property Act, 1882, which enables her in general terms to dispose of all real property as if she were a *feme sole* (*b*). If an Act requires that a juror shall have £20 a year, and a new one enacts that he shall have 20 marks, the latter necessarily implies, on pain of being itself inoperative, that the earlier qualification shall not be necessary, and thus repeals the first Act (*c*). An Act empowering a railway company to erect a station on any scheduled lands within the limits of deviation would override the provisions of the earlier Metropolis Management Amendment Act, 1862, s. 75, which forbade the erection of buildings beyond the general line of buildings in a street (*d*),

(*a*) Bac. Ab. Stat. (D); *Foster's Case*, 5 Rep. 59. See Lord Blackburn's judgment, *Garnett* v. *Bradley*, 48 L. J. Ex. 186. See, however, inf. p. 329 *et seq.*

(*b*) 45 & 46 Vict. c. 75; and see 7 Edw. VII. c. 18, s. 3; *Re Drummond* (1891), 60 L. J. Ch. 258.

(*c*) Jenk. 2nd Cent. Case, 73; 1 Bl. Comm. 89.

(*d*) 25 & 26 Vict. c. 102, s. 75; s. 75 repealed by 57 & 58 Vict. c. ccxiii, s. 215, Sched. 4; *City & South London Ry.* v.

but this rule is not necessarily of universal application (*a*). The 53 Geo. III. c. 127, giving power to two justices to enforce the payment of a church rate when its validity was undisputed and the sum due was under ten pounds (provided that where the validity was disputed, the justices should forbear from adjudicating), entirely takes away the jurisdiction of the Ecclesiastical Courts over complaints for non-payment of church rates where the amount claimed does not exceed £10 in spite of the proviso that nothing in the Act should alter or affect the jurisdiction of the Ecclesiastical Courts to decide cases touching the validity of the rate (*b*). Sec. 16, 5 & 6 Vict. c. 22 (*c*), which authorised the Secretary of State to remove to Bethlehem Hospital any prisoner confined in the Queen's prison who was of unsound mind, was held, as regards such prisoners, to repeal impliedly the earlier enactment of 1 & 2 Vict. c. 110, s. 102, which provided that a prisoner for debt of unsound mind should be discharged after certain inquiries

London C. C., [1891] 2 Q. B. 513; *London C. C.* v. *London School Bd.*, [1892] 2 Q. B. 606; *Uckfield U. D. C.* v. *Crowborough Water Co.*, [1899] 2 Q. B. 664.

(*a*) *London County Council* v. *Wandsworth & Putney Gas Co.* (1900), 82 L. T. 562.

(*b*) *Richards* v. *Dyke* (1842), 3 Q. B. 256; *Ricketts* v. *Bodenham*, 43 R. R. 384.

(*c*) Repealed by S. L. R. (No. 2), 1888.

and formalities (*a*). Where an Act of Charles II. enabled two justices of the peace, "whereof one to be of the quorum," to remove any person likely to be chargeable to the parish in which he comes to inhabit; and another, after reciting this provision, repealed it, and enacted that no person should be removable until he became chargeable, in which case "two justices of the peace" were empowered to remove him; it was held that the later Act dispensed with the qualification of being of the quorum (*b*).

The provision of 43 Eliz. which gave an appeal without any limits as to time against overseers' accounts, was impliedly repealed by a subsequent Act, which gave power to appeal to the next Quarter Sessions (*c*).

The repealed Nuisances Removal and Diseases Prevention Act, 1848, in providing that the costs of obtaining and executing an order of justices under the Act against an owner of premises should be recoverable in the County Court, impliedly repealed, as regards such cases, the enactment of the County Courts Act, that those Courts should

(*a*) *Gore* v. *Grey*, 32 L. J. C. P. 106.

(*b*) 13 & 14 Car. II. c. 12, and 35 Geo. III. c. 101; *R.* v. *Llangian*, 4 B. & S. 249, dissentiente Cockburn C.J.

(*c*) 43 Eliz. c. 2, s. 6 (repealed in part by 31 & 32 Vict. c. 122, s. 6), and 17 Geo. II. c. 38, s. 4; *R.* v. *Worcestershire*, 17 R. R. 397.

not take cognisance of cases where title to real property was in question; for it would have been inoperative if the Court could not decide the question of ownership (*a*), and this ruling still represents the law (*b*). So, where justices were empowered to punish summarily acts of malicious damage to property, except when done "under a fair and reasonable supposition" of a right, it was held that this proviso impliedly repealed, *pro tanto*, the general principle which ousts the jurisdiction of justices when a *bonâ fide* claim of right is asserted; and that the justices were not bound to abstain from adjudicating until satisfied that the act had been done under a fair and reasonable supposition of right (*c*): So, where one Act empowered justices to enforce the payment of costs given by the Queen's Bench on appeal against convictions, except where the party liable was under recognisances to pay such costs; and a later one authorised the Quarter Sessions to give costs in "any appeal," to be recovered in the manner provided by the first Act; it was held that the exception in that Act was impliedly repealed,

(*a*) 11 & 12 Vict. c. 123, s. 3 (repealed by 29 & 30 Vict. c. 90, s. 69), and 9 & 10 Vict. c. 95, s. 58 (repealed by 51 & 52 Vict. c. 43, s. 188); *R.* v. *Harden* (1852), 22 L. J. Q. B. 299.

(*b*) *Fordham* v. *Akers* (1864), 33 L. J. Q. B. 67.

(*c*) *White* v. *Feast* (1872), L. R. 7 Q. B. 353; *Brooks* v. *Hamlyn* (1899), 79 L. T. 734.

and that a distress warrant had been properly issued against the party liable, though he was under recognisances (*a*). An order made under the authority of the Judicature Act, 1875, enacting that the costs of all proceedings in the High Court shall be in the discretion of the Court, and that where an action is tried by a jury the costs shall follow the event unless the Judge at the trial, or the Court, otherwise orders, was held to repeal so much of the Act of 21 Jac. I. c. 16, as deprived a successful plaintiff of costs in an action of slander when he did not recover as much as forty shillings damages (*b*). An enactment that the Custos Rotulorum shall nominate a fit person to be Clerk of the Peace *quamdiu bene se gesserit*, impliedly repealed an earlier one which authorised the appointment *durante bene placito*; for a grant under the former would be inconsistent with one under the latter of the above Acts (*c*). Where a statute made it actionable to sell a pirated copy of a work with knowledge that it was pirated,

(*a*) 11 & 12 Vict. c. 43, s. 27 (repealed in part by 47 & 48 Vict. c. 43, ss. 4, 5); 12 & 13 Vict. c. 45, s. 5; *Freeman* v. *Read*, 30 L. J. M. C. 123.

(*b*) *Garnett* v. *Bradley*, sup. p. 285; *Rockett* v. *Clippingdale*, [1891] 2 Q. B. 293. See also *per* Jessel M.R., *Mersey Docks* v. *Lucas* (1881), 51 L. J. Q. B. 116; *Gardner* v. *Whitford*, 4 C. B. N. S. 665.

(*c*) *Owen* v. *Saunders*, 1 Lord Raym. 158. See also *Re North Wales Gunpowder Co.*, [1892] 2 Q. B. 220.

and a subsequent Act contained a similar provision but without any mention of guilty knowledge, it was held that the earlier Act was so far abrogated that an action was maintainable for a sale made in ignorance of the piracy (*a*). Where one Act imposed a penalty of 5*s*. for killing or selling a wild bird between March and August, unless it was proved that the bird had been brought from abroad before March; and a later one, after reciting that this enactment was insufficient for the protection of wild birds during the breeding season, imposed a penalty of 20*s*. for killing or "possessing" a wild bird between February and July, it was held that the later Act impliedly repealed the proviso of the earlier Act, which admitted the excuse that the bird had been imported (*b*). Where an Act required that a consent should be given in writing attested by two witnesses, and a subsequent Act made the consent valid if in writing, but made no mention of witnesses, this silence was held

(*a*) *West* v. *Francis*, 5 B. & Ald. 737; *Gambart* v. *Sumner*, 29 L. J. Ex. 98. For disquisition on Copyright Act, 1911, see Clerk and Lindsell on Torts, Chap. XXI. See *Mens Rea*, sup. p. 177.

(*b*) 35 & 36 Vict. c. 78, and 39 & 40 Vict. c. 29 (repealed by 43 & 44 Vict. c. 35, s. 7); *Whitehead* v. *Smithers*, 2 C. P. D. 553. See 43 & 44 Vict. c. 35; *Harris* v. *Lucas*, [1919] 2 K. B. 291; and 44 & 45 Vict. c. 51; *Taylor* v. *Rogers*, 50 L. J. M. C. 132. For later protective legislation, see 57 & 58 Vict. c. 24; 4 Edw. VII. c. 4; 8 Edw. VII. c. 11, s. 2.

to repeal by implication the provision which required them (*a*). 1 Eliz. c. 1, which empowered the Queen to authorise ecclesiastical persons to administer *ex officio* oaths to supposed offenders, was impliedly repealed by 16 Car. I., which took away the oaths (*b*). Where an Act exempted from impressment all seamen employed in the Greenland fisheries, and a later one exempted seamen embarked for those fisheries whose names were registered and who gave security, it was held that the earlier was repealed *pro tanto* by the later Act (*c*).

A curious complication of legislation involving a repeal by implication is afforded by the Judicature Act, 1873, and the County Courts Acts of 1875 and 1888. Under the Judicature Act, 1873, s. 45, which came into operation in 1875, it was enacted that from a decision of a Divisional Court on appeal from a County Court there should be no further appeal without the leave of the Divisional Court. But the County Courts Act, 1875, which came into operation the following day, enacted that there should be an appeal without leave from the Divisional Court, if the latter "altered" the

(*d*) *Cumberland* v. *Copeland*, 31 L. J. Ex. 353; *per* Jervis C.J., *Jefferys* v. *Boosey*, 4 H. L. Cas. 943; and *per* Lord Wensleydale, *Kyle* v. *Jeffreys*, 3 Macq. 611. See *Hodgson* v. *Bell*, 24 Q. B. D. 525; *Derby* v. *Bury Commissioners*, inf. p. 310.

(*b*) *Birch* v. *Lake*, 1 Mod. 185.

(*c*) *Exp. Caruthers*, 9 East, 44.

judgment of the County Court in an Admiralty cause, and consequently *pro tanto* repealed s. 45 of the Judicature Act. The County Courts Act, 1888, repealed the provision of the County Courts Act, 1875, referred to, but provided that the repeal should not revive any enactment not in force when it was passed. This express repeal consequently did not revive s. 45, Judicature Act, 1873, so far as it was impliedly repealed by the County Courts Act, 1875 (*a*).

Where a statute contemplates in express terms that its enactments will repeal earlier Acts, by their inconsistency with them, the chief argument or objection against repeal by implication is removed, and the earlier Acts may be more readily treated as repealed. Thus, after a local Act had directed the trustees of a turnpike to keep their accounts and proceedings in books to which "all persons" should have access, the Turnpike Roads Act, 1822, 3 Geo. IV. c. 126, which recited the great importance of one uniform system being adhered to in the laws regulating turnpikes, and enacted that former laws should continue in force, except as they were thereby varied or repealed, directed that the trustees should keep their accounts in a book to be open to the inspection of

(*a*) 36 & 37 Vict. c. 66; 38 & 39 Vict. c. 50, s. 10; 51 & 52 Vict. c. 43, s. 188; *The Dart*, [1893] P. 33. See also *The Delano*, [1895] P. 40.

the trustees or creditors on the tolls, and that the book of their proceedings should be open to the inspection of the trustees; it was held that the power of inspection of the proceedings given by the first Act to "all persons" was repealed (*a*).

Again, if the co-existence of two sets of provisions would be destructive of the object for which the later was passed, the earlier would be repealed by the later. Thus, when a local Act empowered one body to name the streets, and to number the houses in a town, and another local Act gave the same power to another body, the earlier would be superseded by the later Act; for to leave the power with both would be to defeat the object of the Legislature (*b*). But if one Act imposed a toll, payable to turnpike trustees, for passing along a road, and another transferred the duty of repairing the road to another body, prohibiting also the trustees from repairing it, the toll would not be thereby impliedly repealed (*c*).

A later Act which conferred a new right, would repeal an earlier one, if the co-existence of the

(*a*) *R.* v. *Northleach*, 5 B. & Ad. 978.

(*b*) *Daw* v. *Metropolitan Board*, 31 L. J. C. P. 223. See *Cortis* v. *Kent Waterworks* (1827), 7 B. & C. 314; *R.* v. *Middlesex*, 2 B. & Ad. 818; *Bates* v. *Winstanley*, 4 M. & S. 429.

(*c*) *Phipson* v. *Harvett*, 1 Cr. M. & R. 473. *Comp. Brown* v. *G. W. R. Co.*, 51 L. J. Q. B. 529. See also *Tabernacle Bldg. Socy.* v. *Knight*, [1892] A. C. 298; *Re Kirkleatham Local Board*, [1893] 1 Q. B. 375.

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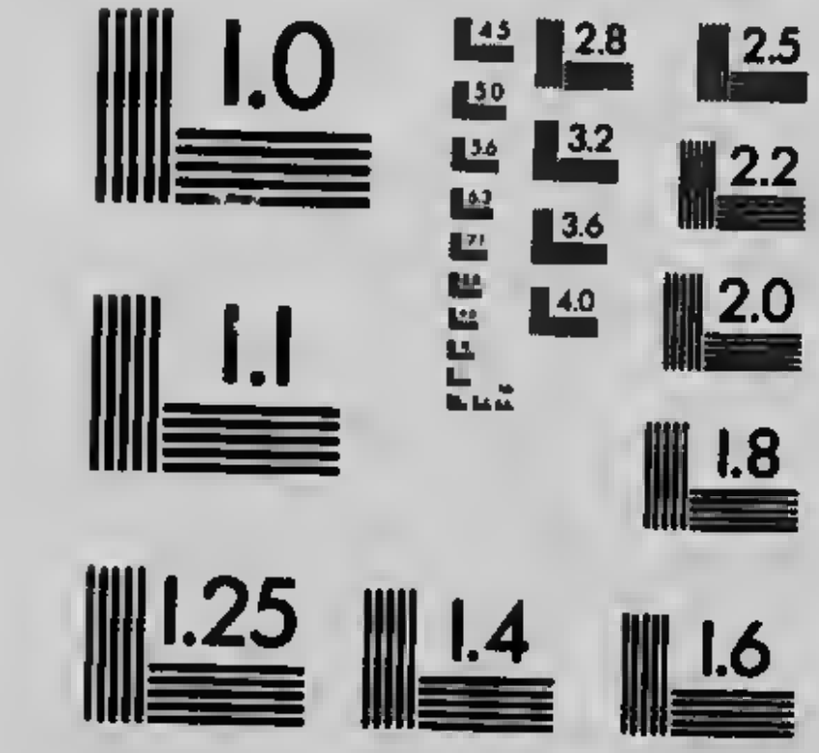

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right which it gave would be productive of inconvenience; for the just inference from such a result would be that the Legislature intended to take the earlier right away (*a*). Thus, the Country Bankers Act, 1826 (7 Geo. IV. c. 46), which, besides limiting and varying the common law liabilities of members of banking companies, provided that suits against such companies should and lawfully might be instituted against the public officer, was held to take away by implication the common law right of suing the individual members (*b*), for from the nature of the case, this must have been what the Legislature intended (*c*).

In other circumstances, also, the inconvenience or incongruity of keeping two enactments in force has justified the conclusion that one impliedly repealed the other, for the Legislature is presumed not to intend such consequences. Thus the repealed 9 Geo. IV. c. 61, which prohibited keeping open public-houses during the hours of afternoon divine service, was held repealed by implication *pro tanto* by 18 & 19 Vict. c. 118, which prohibited

(*a*) See inf. Chap. VIII., Sec. I.

(*b*) *Steward* v. *Greaves*, 12 L. J. Ex. 109; *Chapman* v. *Milvain*, 19 L. J. Ex. 228; *Davison* v. *Farmer*, 20 L. J. Ex. 177; *O'Flaherty* v. *McDowell*, 6 H. L. Cas. 142. See also *Green* v. *R.*, 1 App. Cas. 513; *Roles* v. *Rosewell* and *Hardy* v. *Bern*, 5 T. R. 538.

(*c*) *Per* Lord Cranworth, *O'Flaherty* v. *McDowell*, 6 H. L. Cas. 157. See *Cowley* v. *Byas*, 5 Ch. D. 944.

the sale between three and five o'clock p.m., the usual hours of afternoon divine service. If both Acts had co-existed, it would have been in the power of the clergyman of every parish to close the public-houses for four hours instead of two, by beginning the afternoon service at one or at five p.m., an intention too singular to be lightly attributed to the Legislature (*a*). So, the charges contained in the Distress for Rent Rules, 1888 (made under s. 8, Law of Distress Amendment Act, 1888, 51 & 52 Vict. c. 21), have superseded the charges in the schedule to the Distress (Costs) Act, 1817, 57 Geo. III. c. 93 (*b*).

An intention to repeal an Act may be gathered from its repugnancy to the general course of subsequent legislation. Thus 7 Geo. I. c. 21, which prohibited bottomry loans by Englishmen to foreigners on foreign ships engaged in the Indian trade, was held to have been silently repealed by the subsequent enactments which put an end to the monopoly of the East India Company, and

(*a*) *R.* v. *Whiteley*, 3 H. & N. 143; *Whiteley* v. *Heaton*, 27 L. J. M. C. 217, S. C. See *Harris* v. *Jenns*, 30 L. J. M. C. 183; *R.* v. *Senior*, L. & C. 401; *R.* v. *Bucks*, 2 E. & B. 447; *R.* v. *Knapp*, 22 L. J. M. C. 139, S. C. See examples of a similar kind in *Manchester* (*Mayor*) v. *Lyons*, 22 Ch. D. 287, and *New Windsor Corporation* v. *Taylor*, [1899] A. C. 41. The present Statutory Closing Hours are those prescribed by 10 Edw. VII. 1 Geo. V. c. 24, Sched. 6.

(*b*) *Walker* v. *Retter* (1911), 80 L. J. K. B. 623.

threw its trade open to foreign as well as to all British ships (*a*).

SECTION 11.—CONSISTENT AFFIRMATIVE ACTS.

But repeal by implication is not favoured (*b*). A sufficient Act ought not to be held to be repealed by implication without some strong reason (*c*). It is a reasonable presumption that the Legislature did not intend to keep really contradictory enactments on the statute-book, or, on the other hand, to effect so important a measure as the repeal of a law without expressing an intention to do so. Such an interpretation, therefore, is not to be adopted, unless it be inevitable. Any reasonable construction which offers an escape from it is more likely to be in consonance with the real intention.

It is sometimes found that the conflict of two statutes is apparent only, as their objects are different, and the language of each is therefore

(*a*) *The India* (*No.* 2), 33 L. J. P. M. & A. 193. See also *R.* v. *Northleach*, 5 B. & Ad. 978; *West Ham* v. *Fourth City Building Socy.*, [1892] 1 Q. B. 654. *Comp. per* Ex. Ch., *Shrewsbury* v. *Scott*, 6 C. B. N. S. 1. See other illustrations in *Yearwood's Trusts, Re*, 5 Ch. D. 545; *R.* v. *Inl. Rev.*, 21 Q. B. D. 569; *R.* v. *West Riding*, [1891] 1 Q. B. 722.

(*b*) *Foster's Case*, 11 Rep. 63a.

(*c*) *Per* Lord Bramwell, *G. W. Ry.* v. *Swindon & Cheltenham Ry.*, 9 App. Cas., at p. 809.

restricted, as pointed out in the preoeding ohapter, to its own objeot or subjeot. When their language is so confined, they run iu parallel lines, without meeting. Thus the Real Property Limitation Act, 1833 (3 & 4 Will. IV. c. 27), whioh limits the time for suing for the recovery of land (which is defined to inolude tithes) to 20 years after the right accrued, was found not to affeot the provision of the Act of the preceding session, 2 & 3 Will. IV. c. 100, whioh enaots that claims to exemption from tithes shall be valid after non-payment for thirty years; for the former Act dealt with oonflicting claims to the right of receiving tithes whioh are admittedly payable; while the latter related to the liability to pay them (*a*). In the one case, tithe was real property; in the other, a chattel (*b*).

So, s. 13, 1 & 2 Vict. c. 110, which enaoted that a judgment against any person shculd operate as a charge on "lands, rectories, advowsons, tithes," and hereditaments in which the judgment debtor had an interest, was held to be limited to the

(*a*) *Ely (Dean of)* v. *Cash*, 15 L. J. Ex. 341.

(*b*) *Ely (Dean of)* v. *Bliss*, 2 De G. M. & G. 459. See also *R.* v. *Everett*, 1 E. & B. 273; *Adey* v. *Trinity House*, 22 L. J. Q. B. 3, S. C.; *Hunt* v. *Gt. Northern Ry. Co.*, 20 L. J. Q. B. 349; *Grant* v. *Ellis*, 9 M. & W. 113; *Manning* v. *Phelps*, 24 L. J. Ex. 62; *Hordon* v. *Hesketh*, 4 H. & N. 175. *Comp. R.* v. *Everett*, sup.; *Re Knight*, 17 L. J. Ex. 168; *Irish Land Commission* v. *Grant* (1884), 10 App. Cas. 14.

property of debtors who had the power of charging their property, that is, to lay rectories, advowsons, and tithes, and so did not conflict with or repeal by implication 13 Eliz. c. 10, which makes void all chargings of ecclesiastical property in ecclesiastical hands (*a*). The Act which provides one course of proceeding for the habitual neglect to send a child to school, does not conflict with another which provides a different mode of proceeding for a neglect which was not habitual but occasional only, and both therefore can stand (*b*). 55 Geo. III. c. 137, s. 6 (*c*), which imposed a penalty of £100, recoverable by the common informer by action, on any parish officer who, for his own profit, supplied goods for the use of a workhouse, or for the support of the poor, was held unaffected by s. 77, 4 & 5 Will. IV. c. 76, which inflicted a fine of £5, recoverable summarily, half for the informer and half for the poor rates, on any such officer who supplied goods for his profit to an individual pauper (*d*). It had been decided before the passing of the later Act (which, indeed, was

(*a*) *Hawkins* v. *Gathercole* (1854), 24 L. J. Ch. 338; and see *Ashburton* (*Ld.*) v. *Nocton*, [1915] 1 Ch. 274, C. A.

(*b*) 39 & 40 Vict. c. 79, s. 11 (amended by 7 Edw. VII. c. 43, s. 14 (1)); *Murphy, Re* (1877), 46 L. J. M. C. 193. See also *Attwater, Exp.*, 46 L. J. Bank. 41.

(*c*) Section repealed 31 & 32 Vict. c. 122, s. 44.

(*d*) *Robinson* v. *Emerson*, 4 H. & C. 352. See, however, sup. p. 98.

passed in oonsequence of that decision), that the earlier enactment applied only to a supply for the poor generally, but not to the supply of an individual pauper (*a*). The prohibition contained in the Trade Union Aot, 1871, against a Court entertaining any legal proceedings for the purpose of enforcing an agreement for the application of the funds of a trade union to provide benefits for members, has been held not to be impliedly repealed by the provision of the Trade Union Act Amendment Act, 1876, that a member may nominate any person to receive any moneys due to such member from his trade union on his decease, and that the trade union shall pay such sum to the nominee; the objeot of the later enactment being, not to depart from the policy of the earlier one, but to enable members to give away small sums due to them, without incurring the trouble of making a Will, or the expense of probate (*b*).

The 56 Geo. III. c. 50 (relating to the sale of farm stock in execution), in providing that no assignee in bankruptoy or under a bill of sale, and no purchaser of farm stock, should be entitled to dispose of any stock intended for use on the land

(*a*) *Proctor* v. *Manwaring*, 3 B. & Ald. 145.

(*b*) 34 & 35 Vict. c. 31, s. 4, and 39 & 40 Vict. c. 22, s. 10 (extended by 46 & 47 Vict. c. 47, ss. 2, 3, etc.); *Crocker* v. *Knight*, [1892] 1 Q. B. 702; 67 L. J. Q. B. 466.

in any other manner than that by which the tenant ought to have disposed of it, was limited in construction to the purchases from tenants; but was regarded as not affecting 2 & 3 W. & M. c. 5, which imposes on the landlord the obligation of selling distrained goods at the best price, and therefore as not justifying him in selling under the conditions of the 56 Geo. III. c. 50, s. 1 (*a*). The later Act showed no intention to modify the law of distress.

So, an Act (*b*) which imposed, for police purposes, a penalty for retailing excisable liquors without a magistrate's license, would not be affected by an excise Act of later date, which, after imposing a duty on persons licensed by magistrates, provided that nothing contained therein should prohibit a person duly licensed to retail beer, from carrying on his business in a booth or tent, at a fair or race (*c*). 1 Will. IV. c. 64, which imposed on beer retailers licensed by the Excise a penalty of from £10 to £20 on conviction before justices, for selling beer made otherwise than of malt and

(*a*) *Ridgway* v. *Stafford* (1851), 20 L. J. Ex. 226; *Wilmot* v. *Rose*, 23 L. J. Q. B. 281; *Hawkins* v. *Walrond*, 1 C. P. D. 280.

(*b*) 48 Geo. III. c. 143, s. 5, repealed by S. L. R., 1872 (No. 2).

(*c*) *R.* v. *Hanson* (1821), 4 B. & Ald. 519; *R.* v. *Downes*, 3 T.R. 560. See *Buckle* v. *Wrightson*, 34 L. J. M. C. 43; *Ash* v. *Lynn*, 35 L. J. M. C. 159.

hops, or for mixing any drugs with it, or for diluting it, was held not to affect 56 Geo. III. c. 58, which punished with a penalty of £200 any retailer of beer who had in his possession, or put into his beer, any colouring matter or preparation in lieu of malt and hops; partly because the objects of the two enactments were not identical, the later one having solely a sanitary object in view, and the protection of the consumer; while the earlier was aimed as much at the repression of frauds on the revenue (*a*). It is to be added, also, that 56 Geo. III. c. 58, was expressly kept in force by 1 Will. IV. c. 51 (*b*), passed a week before 1 Will. IV. c. 64.

Where a general intention is expressed, and also a particular intention which is incompatible with the general one, the particular intention is considered an exception to the general one (*c*). Even when the later, or later part of the enactment is in the negative, it is sometimes reconcilable with the earlier one by so treating it. If, for instance, an Act in one section authorised a corporation to sell a particular piece of land, and in another

(*a*) *A.-G.* v. *Lockwood* (1842), 9 M. & W. 378. See *Palmer* v. *Thatcher*, 3 Q. B. D. 346.

(*b*) Repealed, except ss. 22–24, by 43 & 44 Vict. c. 20, s. 49.

(*c*) *Per* Best C.J., *Churchill* v. *Crease*, 5 Bing. 180. See also ex. gr. *Pilkington* v. *Cooke*, 17 L. J. Ex. 141; *Taylor* v. *Oldham*, 4 Ch. D. 395.

prohibited it from selling "any land," the first section would be treated not as repealed by the sweeping terms of the other, but as being an exception to it (*a*). In this manner two Acts passed in 1833 were construed as reconcilable. Sec. 42, 3 & 4 Will. IV. c. 27, which provided that no action for rent, or for interest on money charged on land, should be brought after 6 years, and the 3 & 4 Will. IV. c. 42, passed three weeks later, which provided that no action for rent reserved by lease under seal, or for money secured by bond or other specialty, should be brought after 20 years (now by s. 8, Real Property Limitation Act, 1874, 12 years), were construed as reconcilable, by holding that the later enactment was an exception out of the former. And the effect of the conjoined enactments (which do not repeal the statute of James (*b*) so far as relates to simple contract debts charged on land, but stand with it) is, that no action to enforce a simple contract debt, whether charged on land or not, shall be brought after 6 years, unless interest has been paid or an acknowledgment given; and as to any specialty debt, whether charged on land or not, no action shall be brought after 12 years, either on a covenant or for a remedy against land, unless

(*a*) *Per* Romilly M.R., *De Winton* v. *Brecon*, 28 L. J. Ch. 600.

(*b*) The Limitation Act, 1623 (21 Jac. I. c. 16).

interest has been paid or an acknowledgment given (*a*).

It may be observed, also, that two statutes expressed in negative terms may be affirmative *inter se*, and not contradictory, though negative as regards a third at which they are avowedly aimed. They may make two holes in the earlier Act, which can stand side by side without merging into one (*b*). For instance, 12 Anne, st. 2, c. 16 (*c*), having made void all loans at more than 5 per cent. interest, the 3 & 4 Will. IV. c. 98, enacted that "no" bill or note payable at three months or less should be void for usury; and the 2 & 3 Vict. c. 37 (*d*), that "no" bill or note payable at 12 months or less should be void on that ground, but with the additional provision that the Act was not to apply to loans on real security; and it was

(*a*) *Hunter* v. *Nockolds*, 19 L. J. Ch. 177 (but see *Sutton* v. *Sutton*, 22 Ch. D. 511, *per* Cotton L.J., at p. 518); *Barnes* v. *Glenton*, [1899] 1 Q. B. 885; *Paget* v. *Foley*, 42 R. R. 698; *Sims* v. *Thomas*, 12 A. & E. 536; *Humfrey* v. *Gery*, 7 C. B. 567. See also *Fearnside* v. *Flint*, 52 L. J. Ch. 479; *Kirkland* v. *Peatfield*, 72 L. J. K. B. 351; *Smith*, *Re*, [1893] 2 Ch. 1; *Deere*, *Re*, 44 L. J. Bank. 120; *Richens* v. *Wiggens*, 32 L. J. M. C. 144. Rent is a specialty debt within the 32 & 33 Vict. c. 46, in the administration of assets, *Talbot* v. *Shrewsbury*, 42 L. J. Ch. 877; *Re Hastings*, 47 L. J. Ch. 137.

(*b*) *Per* Maule J., *Clack* v. *Sainsbury*, 11 C. B. 695.

(*c*) Repealed by S. L. R., 1867.

(*d*) Id. (No. 2), 1874.

held that the last-mentioned Act did not repeal 3 & 4 Will. IV. The negative words, in which both were expressed, had reference to the Act of Anne; but *inter se*, they were affirmative statutes, and the proviso of the later one, therefore, did not affect the short loans dealt with by the Act of Will. IV. (*a*).

Further, it is laid down generally, that when the later enactment is worded in affirmative terms only, without any negative expressed or implied, it does not repeal the earlier law (*b*). Thus, an Act which authorised the Quarter Sessions to try a certain offence, would involve no inconsistency with an earlier one which enacted that the offence should be tried by the Queen's Bench or the Assizes, and would therefore not repeal it by implication (*c*). The statute which made it a misdemeanour to carnally know a girl above twelve and under thirteen, with or without her consent, did not prevent a conviction for rape, under an earlier enactment, upon a girl between those ages (*d*). Sec. 4, 7 & 8 Will. III. c. 34 (*e*), which

(*a*) *Clack* v. *Sainsbury*, sup. p. 303; *Nixon* v. *Phillips*, 21 L. J. Ex. 88; *Exp. Warrington*, 22 L. J. Bank. 33.

(*b*) Co. Litt. 115a; *Anon.*, Lofft, 465.

(*c*) *Muir* v. *Hore* (1877), 47 L. J. M. C. 17.

(*d*) 24 & 25 Vict. c. 100, s. 48, and 38 & 39 Vict. c. 94, s. 4 (repealed, 48 & 49 Vict. c. 69, s. 19); *R.* v. *Ratcliffe*, 10 Q. B. D. 74.

(*e*) Still on the Statute Book.

provided that when a Quaker refused to pay tithe or church rates, it should be lawful for two justices to order and enforce payment if the sum due was under £10, was held not to repeal 27 Hen. VIII. c. 20 (*a*), which gave jurisdiction to the Ecclesiastical Courts in such matters (*b*). Sec. 11, Lunacy Regulation Act, 1862 (repealed, 53 & 54 Vict. c. 5, s. 342), which enabled the Lord Chancellor to make an order for the payment of the expenses incidental to the presentation of a petition for an inquiry as to the sanity of an alleged lunatic, and to order that such expenses be paid by the parties who either present or oppose the petition, or out of the estate of the alleged lunatic, did not take away the right of a person to sue a lunatic, so found by inquisition, and his committee, for the recovery of expenses so incurred, without having obtained any order (*c*). So, an Act which imposes a liability on certain persons to repair a road,

(*a*) Repealed (with saving), S. L. R., 1887.

(*b*) *R.* v. *Sanchee*, 1 Lord Raym. 323. Many of the clergy, in the 18th century, persisted, in consequence, in suing Quakers in the Ecclesiastical Courts for such trivial sums as 4*s.* or 5*s.* in order to inflict heavy costs and imprisonment. Walpole tried to alter the law, but the Church cried out that it would be persecution to compel the clergy to recover before magistrates a due of divine origin; Lecky, Hist. Eng., in 18th Cent., vol. i. p. 260.

(*c*) See s. 109 Lunacy Act, 1890, and *Brockwell* v. *Bullock* (1889), 22 Q. B. D. 567; a decision under the repealed Act.

would not be construed as impliedly exonerating the parish from its common law duty to do so (*a*). A by-law which authorised the election of "any person" as Chamberlain of the City of London was not deemed inconsistent with an earlier one which required of the candidates a certain qualification, but was limited to eligible persons (*b*). A local Act, in directing that the chimneys of buildings should be built of such materials as the Corporation approved, did not affect the provisions of the earlier general Act (3 & 4 Vict. c. 85, s. 6), (*c*) which required that chimneys should be built of stone or brick (*d*). A by-law made under s. 74, Elementary Education Act, 1870, requiring children to attend school as long as it was open (which was at least 30 hours in the week), did not repeal the provision in the Workshop Regulation Act, 1867, which requires that children under thirteen employed in a workshop shall be sent to school for at least 10 hours weekly (*e*). An Act which

(*a*) *R.* v. *St. George's, Hanover Square*, 13 R. R. 792; *R.* v. *Southampton*, 21 L. J. M. C. 201; *Gibson* v. *Preston*, 39 L. J. Q. B. 131.

(*b*) *Tobacco Pipe Makers* v. *Woodroffe* (1826), 7 B. & C. 838; *R.* v. *Saddlers' Co.* (1863), 32 L. J. Q. B. 337.

(*c*) Repealed as regards Metropolis by 7 & 8 Vict. c. 84, s. 1, which is itself repealed by 18 & 19 Vict. c. 122, s. 109.

(*d*) *Hill* v. *Hall* (1876), 45 L. J. M. C. 153.

(*e*) 30 & 31 Vict. c. 146, s. 14 (repealed by 41 & 42 Vict. c. 16, s. 107; *Bury* v. *Cherryholm*, 1 Ex. D. 457.

provided that if a person suffered bodily injury from the neglect of a mill-owner to fence dangerous machinery, after notice to do so from a factory inspector, the mill-owner should be liable to a penalty, recoverable by the inspector, and applicable to the party injured or otherwise, as the Home Secretary should determine, would not affect the common law right of the injured party to sue for damages for the injury (*a*). A bond by a collector, with one surety, good under the ordinary law, would not be deemed invalid because the Act which required it enacted that the collector should give good security by a joint and several bond with two sureties at least (*b*).

The repealed 30 & 31 Vict. c. 142, which authorised a judge of the Superior Court in which an action is brought, to send the case for trial to a County Court, was construed as not impliedly repealing the earlier enactment of 11 Geo. IV. c. 70, which authorised any judge of the Superior Courts to transact the chamber business of the other Courts as well as his own; but the later Act was read with the earlier, and the expression "judge of

(*a*) 7 & 8 Vict. c. 15 (repealed; for the present law on the subject, see ss. 10 and 136, Factory and Workshop Act, 1901); *Caswell* v. *Worth*, 25 L. J. Q. B. 121. See *Ambergate Ry. Co.* v. *Midland Ry. Co.*, 23 L. J. Q. B. 17.

(*b*) *Peppin* v. *Cooper* (1819), 2 B. & Ald. 431. See *Austen* v. *Howard*, 7 Taunt. 28, 327.

the Court in which the action was brought," was thus construed as equivalent to any judge of any of the Superior Courts of law (*a*). Sec. 52, 55 Geo. III. c. 184 (*b*), which directed that all affidavits required by existing or future Acts for the verification of accounts should, unless when otherwise expressly provided, be made before the Commissioners of Stamps, was held unaffected by 9 Geo. IV. c. 23, s. 7, which empowered justices of the peace to administer the oath in similar cases. Although the later Act did "otherwise provide," it did not make the provision inconsistent with the earlier Act (*c*). The Highway Act, 1835, 5 & 6 Will. IV. c. 50, which enacted that no action for anything done under it should be begun until 21 days' notice of action had been given, did not repeal (as regards the notice of action to justices) s. 1, 24 Geo. II. c. 44 (*d*), which gave justices the privilege of a month's notice when sued for anything done in the execution of their office (*e*); though, as already mentioned, it was at the same time held to repeal the provision

(*a*) *Owens* v. *Jones*, 37 L. J. Q. B. 159. For County Court Rules in remitted cases, see Order XXXIII., Rules 1913–1918.

(*b*) Repealed by 54 & 55 Vict. c. 38, s. 28, and replaced by s. 24.

(*c*) *R.* v *Greenland*, 36 L. J. M. C. 37.

(*d*) Repealed. See Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61).

(*e*) *Rix* v. *Borton* (1840), 12 A. & E. 470. See sup. 284.

of the same Act which limited the time to six months.

The 28 Hen. VIII. c. 11, which gave the curate who served during a vacancy an action for his stipend against the next incumbent, remained unaffected by 1 & 2 Vict. c. 106, which enacted that on the avoidance of a benefice, the stipend of the curate during the vacancy, fixed by the bishop, should be paid by the sequestrator; both Acts being in the affirmative, and not so inconsistent as to be incompatible with both standing (*a*); though the later Act suggested ground for contending that as a Court of law could not determine what the salary should be, it was not competent to assist the curate in recovering any (*b*). Where one Bankruptcy Act empowered the Court to make the bankrupt an allowance, and a later one enacted that the creditors should determine whether any and what allowance should be made to him, it was held that the former power was still in force when the creditors did not exercise that given them by the later Act (*c*). Sec. 2, 32 Hen. VIII. c. 9 (*d*), which prohibited on pain of

(*a*) *Dakins* v. *Seaman* (1842), 9 M. & W. 777.

(*b*) *Per* Parke B., Id. 789.

(*c*) *Ellerton, Exp.*, 33 L. J. Bank. 32. As to the present law on this point, see s. 58, Bankruptcy Act, 1914, and *Gordon, Exp.*, 44 L. J. Bank. 97.

(*d*) Repealed by 60 & 61 Vict. c. 65, s. 11.

forfeiture the sale of any "pretended" rights or titles to land (which included all rights of entry, for these were not transferable at common law), was not impliedly repealed as regards fictitious rights of entry by s. 6, 8 & 9 Vict. c. 106, which enacted that rights of entry might be disposed of by deed. But it was so far repealed as to cease to affect good and real rights of entry (*a*).

Where a power was given by a local Act to commissioners to make drains through private lands, after giving 28 days' public notice, with power to the persons interested to appeal; and the subsequently passed Nuisances Removal Act for England, 1855 (18 & 19 Vict. c. 121, ss. 21 & 22) (*b*), gave the same power to the same commissioners, without requiring notice, it was held that they were at liberty to act under either statute. The notice was not a right given to the parties interested, but a mere restriction; and there was no more inconsistency in the co-existence of the two powers than in the co-existence of the ordinary covenants in a lease to repair simply, and to repair after a month's notice (*c*). Where an Act (13 & 14 Vict. c. 97)

(*a*) *Jenkins* v. *Jones*, 51 L. J. Q. B. 438.

(*b*) Repealed by 38 & 39 Vict. c. 55, s. 343, as regards England (excluding London). Repealed as regards London by 54 & 55 Vict. c. 76, s. 142.

(*c*) *Derby* v. *Bury Commissioners* (1868), 38 L. J. Ex. 100.

imposed a duty of 35*s*. on the transfer of a mortgage, and a seoond (24 & 25 Viot. o. 91, s. 30) provided that when the transfer was made by several deeds, only 5*s*. should be oharged on all but the first, and a third Aot (28 & 29 Viot. o. 96, s. 17) repealed the first by imposing a stamp of sixpenoe per £100, it was held that the second Act was not impliedly repealed by the third (*a*).

The Thames Conservanoy Act, 1857 (20 & 21 Vict. o. oolvii), which by s. 96 makes the owner of a vessel navigating the Thames responsible for damage done to the Conservators' property, by any of the boatmen "or other persons belonging to or employed in" the vessel, was held not to affeot the provision of s. 388, Merchant Shipping Act, 1854 (repealed and re-enaoted by s. 633 Merchant Shipping Act, 1894), whioh proteoted owners from liability, where the damage was occasioned by the fault of a oompulsorily employed pilot, who, therefore, was not inoluded in the words "other persons" (*b*). The 33 Geo. III. c. 54 (now obsolete), whioh protected members of friendly

Comp., however, such cases as *Cumberland* v. *Copeland*, sup. p. 291.

(*a*) *Foley* v. *Inl. Rev.*, 37 L. J. Ex. 109. All these Acts are repealed by 33 & 34 Vict. c. 99, and Schedule. The existing duty on transfer of mortgage (except marketable securities) is 6*d*. for each £100.

(*b*) *Thames Conservators* v. *Hall* (1868), 37 L. J. C. P. 163.

societies from poor law removal until they became actually chargeable, was not impliedly repealed by 35 Geo. III. c. 101, which extended that protection to all poor persons; for though the latter seemed to supersede the former by making it unnecessary, yet it differed from it in declaring that an unmarried woman pregnant was to be deemed chargeable, while under the earlier Act, the pregnant daughter of a member of a friendly society was not removable (*a*). Sec. 4, 17 Geo. II. c. 38, which empowered the Quarter Sessions, upon an appeal against a poor rate, to order costs to be paid to the successful party, was held unrepealed by s. 5, 12 & 13 Vict. c. 45, which, in substance, empowered the Quarter Sessions to direct the unsuccessful party to pay the costs of the successful party to the clerk of the peace, who was to pay them over to the successful party; so that the order for costs might be made in either form (*b*).

The 43 Eliz. c. 6, 21 Jac. c. 16, and 22 & 23 Car. II. c. 9, having provided that a plaintiff in an action for slander, who recovered less than 40*s.* damages, was to be entitled only to as much costs as the damages amounted to; the 3 & 4 Vict. c. 24, after expressly repealing the first and third

(*a*) *R.* v. *Idle* (1818), 2 B. & Ald. 149.

(*b*) *R.* v. *Huntley*, 23 L. J. M. C. 106; *Gay* v. *Matthews*, 4 B & S. 425; *Cox* v. *R.* v. *Hellier*, 21 L. J. M. C. 3.

of those Acts, without mentioning the second, enacted that a plaintiff who, in such cases, recovered less damage than 40*s*., should not be entitled to any costs, unless the presiding judge certified that the slander was malicious; and it was held that this later enactment did not impliedly repeal 21 Jac. c. 16, and that the effect of the judge's certificate was merely to remit the plaintiff to the rights which that statute gave him (*a*). The 5 Vict. c. 27, which, after reciting that it would be advantageous to ecclesiastical benefices if incumbents were empowered to grant leases with the consent and under the restrictions mentioned in the Act, gave them power to grant, with the consent of the patron, leases for 14 years at the best rent, and with numerous special covenants by the lessee, was held not to abridge the power which every parson had at common law, as modified by 13 Eliz. c. 10, to grant leases for 21 years or three lives, the lease being confirmed by the patron (*b*).

SECTION III.—GENERALIA SPECIALIBUS NON DEROGANT.

It is but a particular application of the general presumption against an intention to alter the law

(*a*) *Evans* v. *Rees*, 30 L. J. C. P. 16; *Marshall* v. *Martin*, 39 L. J. Q. B. 85. See also *Davies* v. *Griffiths*, 8 L. J. Ex. 70; *Wrightup* v. *Greenacre*, 10 Q. B. 1.

(*b*) *Green* v. *Jenkins*, 29 L. J. Ch. 505. See other illustrations in *R.* v. *Medway Union*, L. R. 3 Q. B. 383; *Northwich* v. *St.*

beyond the immediate scope of the statute (sup. p. 149), to say that a general Act is to be construed as not repealing a particular one, that is, one directed towards a special object or a special class of objects (*a*). A general later law does not abrogate an earlier special one by mere implication (*b*). *Generalia specialibus non derogant* (*c*); or, in other words, "where general words in a later Act are capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation . . . that earlier and special legislation is not to be held indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so" (*d*). In such

Pancras, 22 Q. B. D. 164; *Mitford Union* v. *Wayland Union*, 25 Q. B. D. 164; *Pollock* v. *Lands Improvement Co.*, 37 Ch. D. 661.

(*a*) *Per* Lord Hatherley, *Garnett* v. *Bradley*, 3 App. Cas. 950.

(*b*) *Per* Page-Wood V.-C., *London & Blackwall Ry.* v. *Limehouse*, 3 K. & J. 123; *Thorpe* v. *Adams*, L. R. 6 C. P. 125; R. v. *Champneys*, Id. 384; *Kutner* v. *Phillips*, *per* A. L. Smith J., [1891] 2 Q. B. 272; *Ashton-under-Lyne* v. *Pugh*, [1898] 1 Q. B. 45; *Baird* v. *Tunbridge Wells*, 64 L. J. Q. B. 151; *Lodge* v. *Huddersfield Corp.* (*No.* 1) (1898), 67 L. J. Q. B. 568. See S. C. (No. 2), 67 L. J. Q. B. 571.

(*c*) Jenk. 3rd Cent. 41st Case.

(*d*) *Seward* v. *The Vera Cruz*, *per* Lord Selborne C., 10 App. Cas., at p. 68; *Hawkins* v. *Gathercole*, *per* Turner L.J., 6 De M. & G., at p. 31; *Lyn* v. *Wyn*, Bridg. 122, inf. p. 318, *per* M. Smith J.; *Thames Conservators* v. *Hall*, L. R. 3 C. P. 421, and *per* Bramwell B., *Dodds* v. *Shepherd*, 1 Ex. D. 75.

cases it is presumed to have only general cases in view, and not particular cases which have been already otherwise provided for by the special Act, or, what is the same thing, by a local custom (*a*). Having already given its attention to the particular subject, and provided for it, the Legislature is reasonably presumed not to intend to alter that special provision by a subsequent general enactment, unless that intention is manifested in explicit language (*b*), or there be something which shows that the attention of the Legislature had been turned to the special Act, and that the general one was intended to embrace the special cases provided for by the previous one (*c*); or something in the nature of the general one making it unlikely that an exception was intended as regards the special Act. The general statute is read as silently excluding from its operation the cases which have been provided for by the special one.

Thus, the rules of the Supreme Court as to

(*a*) Co. Litt. 115a; *Harbert's Case*, 3 Rep. 13b, note U.; *Gregory's Case*, 6 Rep. 19b; *R.* v. *Pugh*, 1 Doug. 188; *Hutchins* v. *Player*, Bridg. 272; *Platt* v. *Sheriffs of London*, Plowd. 36.

(*b*) *Per* Wood V.-C., *Fitzgerald* v. *Champneys*, 2 Jo. & H. 54; and *per* Lord Hobhouse, *Barker* v. *Edger*, [1898] A. C. 754.

(*c*) *Per* Lord Hatherley, *Garnet* v. *Bradley*, 3 App. Cas. 950. See also *per* Cur., *R.* v. *Poor Law Com.*, 6 A. & E. 48; and see *The Dragoman* (1895), 11 T. L. R. 428, *per* Bruce J., at p. 428.

costs do not operate to repeal the provisions of special statutes giving special costs in particular cases (*a*). And in like manner the language of the Bills of Sale Acts requiring the registration of agreements by which a right to a charge or security on personal chattels is conferred, although clearly wide enough to include debentures of a joint stock company, were held not to include such instruments, as the registration of them had been otherwise provided for by the Companies Clauses Consolidation Act, 1845, and the repealed Companies Act, 1862 (*b*). Sec. 7, Admiralty Court Act, 1861, which gives jurisdiction to that Court "over any claim for damage done by any ship," has been held not to authorise an action for damages for loss of life under Fatal Accidents Act, 1846 (9 & 10 Vict. c. 93); actions under that Act being in respect of a special class of claims involving numerous and important considerations, which the Legislature cannot be supposed to have had in contemplation in using words of so general

(*a*) *Reeve* v. *Gibson*, [1891] 1 Q. B. 652; *Hasker* v. *Wood* (1885), 54 L. J. Q. B. 419. See also *Quinn* v. *M'Kinlay*, [1902] 2 K. B. Ir. 315.

(*b*) 41 & 42 Vict. c. 31, 45 & 46 Vict. c. 43, 8 & 9 Vict. c. 16, 25 & 26 Vict. c. 89, s. 43; *Re Standard Manufacturing Co.*, 60 L. J. Ch. 292. The present law as to registration of mortgages, charges, etc., is contained in s. 93 of the Companies (Consolidation) Act, 1908.

a character (*a*), and in no case does it apply for the benefit of aliens abroad, it being clear law that an Act of the Britis Parliament is not an allocution addressed *urbi et orbi* (*b*). Again, where a local Act, for completing a bridge across the Thames, exempted the owners of the adjoining ground, which was to be embanked at their expense, from all taxes and assessments whatsoever, it was held that later general Acts imposing taxes and rates in respect of lands and houses, did not repeal that exemption (*c*), but this apparently is no longer good law (*d*). After 13 Eliz. c. 10 (sup. p. 313), had declared all leases of ecclesiastical property void, other than for 21 years or three lives, leases of house property in towns were excepted from its operation by 14 Eliz. c. 11; and when, 4 years later, 18 Eliz. c. 11, after reciting that a practice had already begun of granting reversionary leases of Church property, enacted that "all leases hereafter to be made," by ecclesiastics, of Church "lands, tenements

(*a*) 24 & 25 Vict. c. 10; *Seward* v. *The Vera Cruz* (1884), 54 L. J. P. D. & A. 9.

(*b*) *Adam* v. *British and Foreign Steamship Co.* (1898), 67 L. J. Q. B. 844.

(*c*) *Williams* v. *Pritchard* and *Eddington* v. *Borman* (1790), 4 T. R. 2 and 4.

(*d*) *Perchard* v. *Heywood*, 53 R. R. 128, and *Duncan* v. *Scottish N. E. Ry. Co.*, L. R. 2 Sc. App. 20. See *Sion College* v. *London Corp.* (1901), 70 L. J. K. B. 369; [1901] 1 K. B. 617, at p. 621.

and hereditaments," should be void, if the old lease was not expired or determined within 3 years from the grant of the new; it was held that this last Act did not apply to the property dealt with by 14 Eliz. (*a*). So the general provision of the Married Women's Property Act, 1882, which gave power to a married woman to dispose by Will of any real or personal property in the same manner as if she were a *feme sole*, has been held not to override the special provision of 43 Geo. III. c. 108 (repealed as to Ireland by 14 & 15 Vict. c. 71), which enacts that the powers conferred by that Act of making a gift by Will for the purpose of erecting a church shall not extend to the case of a married woman acting without the concurrence of her husband (*b*).

Where an Act took away the right of bringing an action respecting certain disputes which were referred to the summary adjudication of justices, it was held that the subsequently established County Courts acquired no jurisdiction to try such cases, under the general authority to try "all pleas" (*c*).

(*a*) *Per* Sir O. Bridgman, *Lyn* v. *Wyn*, Bridg. R. by Bannister, 122. This case is not reported in the original edition of Bridgman's judgments, and the Court seems to have been equally divided.

(*b*) 45 & 46 Vict. c. 75, s. 1; *Smith's Estate, Re*, 35 Ch. D. 589.

(*c*) *Payne, Exp.* (1849), 18 L. J. Q. B. 197. See also *Brown* v. *L. & N. W. Ry.* (1863), 32 L. J. Q. B. 318.

The provision of the Judicature Act, 1875, that except where it is otherwise provided by the Act or the rules annexed to it, the judgment of the Court shall be obtained by motion, was held not to affect the (repealed) County Courts Act of 1856 (re-enacted s. 65, County Courts Act, 1888), which, after authorising the Superior Courts to send certain cases to the County Courts for trial, had directed that the judgment might be signed in accordance with the result as certified by the registrar (*a*). The general provisions of Order LIX., rr. 9, 17, as to appeals to the Queen's Bench Division from inferior Courts, do not repeal the special provisions of s. 8, Mayor's Court of London Procedure Act, 1857, as to imposing the obligation on the party appealing from that Court in certain cases to give security for costs (*b*).

The Turnpike Roads Act, 1822, 3 Geo. IV. c. 126, which empowered turnpike trustees to let the tolls, and provided that all contracts for letting them should be valid, though not by deed, "any Acts of Parliament or law to the contrary thereof notwithstanding," was held unaffected by 8 & 9 Vict. c. 106, which in the most general

(*a*) 38 & 39 Vict. c. 77, Order 40, r. 1; 19 & 20 Vict. c. 108, s. 26; *Scutt* v. *Freeman*, 2 Q. B. D. 177; *Johnson* v. *Wilson* (1882), 46 L. T. 647.

(*b*) 20 & 21 Vict. c. clvii, s. 8; *Morgan* v. *Bowles* (1893), 63 L. J. Q. B. 84.

terms declares that "a lease, required by law to be in writing, of any tenements and hereditaments, shall be void unless made by deed." It was not to be supposed that the Legislature intended by the later Act to interfere with the policy of the earlier one, which was emphatically that a deed should not be required for turnpike tolls (*a*), though necessary by the general law of the land (*b*). An Act which declared all debtors to be subject to the bankruptcy laws, would include debtors who had the privilege of Parliament from personal arrest (*c*); but any provisions of those Acts which authorised the arrest of bankrupts would be held inapplicable to a person entitled to the privilege. Unless it expressed a contrary intention plainly, it would be presumed that the Legislature did not intend to interfere with it (*d*).

Personal Acts and local customs affecting only certain persons in their rights, privileges, or property, offer other illustrations of this rule, that special enactments are unaffected by the general words of a more general enactment. Thus, the Act abolishing Fines and Recoveries (3 & 4

(*a*) *Shepherd* v. *Hodsman* (1852), 21 L. J. Q. B. 263.

(*b*) *R.* v. *Salisbury* (1838), 8 A. & E. 716.

(*c*) For existing law on this point, see 4 & 5 Geo. V. c. 59, s. 128.

(*d*) *Newcastle* v. *Morris* (1870), L. R. 4 H. L. 661, inf. p 546.

Will. IV. c. 74), which, in the most comprehensive terms, authorises "every tenant in tail" to bar his entail in a certain manner, does not apply to the tenant in tail of property entailed by special Act of Parliament, such as the Shrewsbury, Marlborough, Wellington, and other special Parliamentary entails (*a*). And in the same way, 1 & 2 Vict. c. 110, which in general terms enacted that a judgment of a Superior Court shall operate as a charge on the lands of the debtor from the time of its registration in the Common Pleas, was held not to repeal by implication the Middlesex Registration Act, which had enacted that no judgment should bind lands in Middlesex, but from the time of its registration in the register office for Middlesex (*b*). An Act which authorised "any person" to sell beer, who obtained a license for the purpose, would not be construed as repealing the custom or local law of a borough which disqualified all persons who were not burgesses from selling beer (*c*). An Act which required all persons to

(*a*) *Per* Wood V.-C., *Fitzgerald* v. *Champneys*, 2 Jo. & H. 54. See *Abergavenny* v. *Brace*, L. R. 7 Ex. 145; and *comp. Cuckfield Board, Re*, 19 Beav. 153, inf. p. 325.

(*b*) 1 & 2 Vict. c. 110, ss. 13 & 19 (partially repealed 63 & 64 Vict. c. 26, s. 5, Sched.); 7 Anne, c. 20, s. 18; *Westbrook* v. *Blythe*, 23 L. J. Q. B. 386. See also *Dale's Case*, 6 Q. B. D. 376; *Enraght* v. *Ld. Penzance*, 7 App. Cas. 240; *Fritz* v. *Hobson* (1880), 14 Ch. D. 542.

(*c*) *Leicester* v. *Burgess*, 5 B. & Ad. 246; 11 Geo. IV. & 1

serve as jurors of the county, in general terms, would not be construed as extending to a hundred, when those who served as jurors in the hundred were by custom exempted from service in the county (*a*). So, the repealed 50 Geo. III. c. 41 (*b*), which empowered licensed hawkers to set up in any trade in the place where they resided, was held not to give them that privilege in a borough where, by custom or by-law, strangers were not allowed to trade (*c*). Where a railway company had authority, under a special Act, to take certain lands in the metropolis for executing works on them, it was held that its powers were unaffected by the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), which was passed shortly afterwards, giving the same powers to a public body (*d*). So, an Act which authorised the lord of a manor and his heirs to break up the pavement of the streets

Will. IV. c. 64, s. 29; *comp.* ***Huxham*** v. ***Wheeler***, 33 L. J. M. C. 153; ***Hutchins*** v. ***Player***, Bridg. 272.

(*a*) *R.* v. ***Pugh***, Doug. 188; *R.* v. ***St. James's, Westminster***, 5 A. & E. 391; *R.* v. ***Johnson***, 6 Cl. & F. 41.

(*b*) See 51 & 52 Vict. c. 33, s. 8 (this section is now repealed by S. L. R., 1908).

(*c*) ***Simson*** v. ***Moss***, 2 B. & Ad. 543; ***Llandaff Market Co.*** v. ***Lyndon***, 30 L. J. M. C. 105.

(*d*) ***London & Blackwall Ry. Co.*** v. ***Limehouse*** (1856), 26 L. J. Ch. 164; *comp.* ***Daw*** v. ***Metrop. Board***, 12 C. B. N. S. 161, sup. p. 293. For Modern Legislation, see 62 & 63 Vict. c. 14, and 3 Edw. VII. c. 39.

of a town, for the purpose of laying down water-pipes to convey water to and through the town, from his estate, would not be affected by a subsequent Act which vested the same streets and pavements in a public body, and empowered it to sue any person who broke them up (*a*).

In all these cases, the general Act seemed intended to apply to general cases only; and there was nothing to rebut that presumption. But if there be in the Act or in its history something showing that the attention of the Legislature had been turned to the earlier special Act, and that it intended to include the special cases within the general Act, or something in the nature of either Act, to render it unlikely that any exception was intended in favour of the special Act, the maxim under consideration ceases to be applicable. The Prescription Act, 1832 (2 & 3 Will. IV. c. 71), for example, in giving an indefeasible right to light after an enjoyment of twenty years, "notwithstanding any local custom," plainly abolished the custom of London which authorised the owner of an ancient house to build a new one on its old foundations to any height, though thereby obscuring the ancient lights of his neighbour (*b*).

(*a*) *Goldson* v. *Buck* (1812), 15 East, 372.

(*b*) *Salters' Co.* v. *Jay*, 11 L. J. Q. B. 173; *R.* v. *London (Mayor)*, 16 L. J. Q. B. 185; *Merchant Taylors* v. *Truscott* (1856), 25 L. J. Ex. 173.

It has been held that the Dower (*a*) and Inclosure (*b*) Acts apply to gavelkind lands, though this local customary tenure is not expressly mentioned in either Act.

By Charters granted by King Henry II. and subsequent sovereigns, confirmed by Acts of Parliament, the Corporation of Exeter were entitled to receive and did receive (*inter alia*) the Revenue Fines imposed within their borough, but, though not mentioned in the Act, that right was taken away by the general enactment of s. 33 (1), Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), which enacted that "all Fines, Penalties, and Forfeitures incurred under any Act relating to Inland Revenue, which are not otherwise legally appropriated, shall be applied to the use of Her Majesty" (*c*).

Though the sheriffs of the Counties Palatine of Lancaster and Durham were expressly forbidden by the 7 & 8 Geo. IV. c. 71, to arrest on mesne process issuing from the Courts of Westminster for less than £50, this enactment was held repealed by the 1 & 2 Viot. c. 110, s. 3, which, after abolishing generally all arrests for debt, gave a judge power, under certain circumstances, to order such an arrest in every action for any sum

(*a*) *Farley* v. *Bonham*, sup. p. 52.
(*b*) *Minet* v. *Leman*, 24 L. J. Ch. 547.
(*c*) *A.-G.* v. *Exeter Corporation* (1911), 80 L. J. K. B. 636.

for £20 or upwards (*a*). The Charitable Uses Act, 1735 (9 Geo. II. c. 36 (*b*), was held to extend to a corporate body which had been empowered by an earlier Act to take land by devise and without license, in mortmain (*c*). So, the Lands Clauses Consolidation Act, 1845, and other Acts of a like character, which authorise the compulsory taking of lands for works of public utility, such as railways, and give corresponding powers to tenants in tail or for life, to convey the lands so required, would apply to tenants in tail under special Parliamentary entails, such as the Abergavenny entail (*d*). The County Courts acquired jurisdiction, under their general authority to hear "all pleas" where the debt or damage did not exceed £20, to enforce the payment of a rate imposed under a local Act passed before those Courts were established, and which had made such rates recoverable

(*a*) *Brown* v. *McMillan* (1846), 7 M. & W. 196; but see 32 & 33 Vict. c. 83, now repealed, save as to pending business of Insolvent Court by S. L. R. (No. 2), 1893.

(*b*) Repealed by the Mortmain Act, 1888 (51 & 52 Vict c. 42), which see.

(*c*) *Luckraft* v. *Pridham*, 46 L. J. Ch. 744. See also *Morrison* v. *Genl. Steam Navig. Co.*, 22 L. J. Ex. 233; *per* Jessel M.R., *Mersey Docks* v. *Lucas*, 51 L. J. Q. B. 116; *Gardner* v. *Whitford*, 4 C. B. N. S. 665; and note *Webster* v. *Southey*, 36 Ch. Div. 9, at p. 22.

(*d*) *Re Cuckfield Board* (1854), 24 L. J. Ch. 585; *comp.* *Fitzgerald* v. *Champneys*, sup. p. 321.

only by action in the Superior Courts (*a*). A local Act which provided that the prisoners of the borough to which it applied, and which had a separate Quarter Sessions, should be maintained in the county jail on certain specified terms, was held to be superseded by 5 & 6 Vict. c. 95, which enacted that every borough, which had Quarter Sessions, should, when its prisoners were sent to the county jail, pay the county the expenses, including those of repairs and improvements (*b*). The provision in s. 129 of the Metropolis Management Act, 1855 (*c*), that the magistrate's decision on matters under that Act shall be final and conclusive was impliedly repealed by the Summary Jurisdiction Act, 1879, which authorises any person questioning a decision of a Court of Summary Jurisdiction to apply for a case to be stated (*d*).

Where a City gas company had been precluded by its private Act from charging more than four shillings for every thousand feet of gas of a certain quality, and the Metropolis Gas Act, 1860 (*e*),

(*a*) *Stewart* v. *Jones* (1852), 22 L. J. Q. B. 1. As to the summary recovery of rates under the Public Health Act, 1875, see 38 & 39 Vict. c. 55, s. 256.

(*b*) *Bramston* v. *Colchester*, 25 L. J. M. C. 73.

(*c*) 18 & 19 Vict. c. 120, repealed by 54 & 55 Vict. c. 76.

(*d*) See 42 & 43 Vict. c. 49, s. 33; *R.* v. *Bridge*, 24 Q. B. D. 609; *Goodwin* v. *Sheffield Corporation*, [1902] 1 Q. B. 629.

(*e*) 23 & 24 Vict. c. 125.

required the City gas companies to supply a better and more expensive gas at the rate prescribed by it, which might amount to five shillings and sixpence (s. 40) per thousand feet; it was held that the later provision impliedly repealed the earlier prohibition. Here, however, the general Act avowedly applied to the company; and it would have been unreasonable that the better gas which it required should be supplied at the price mentioned in the special Act, merely because the latter had not been repealed in express terms (*a*).

The Metropolitan Police Courts Act, 1839 (2 & 3 Vict. c. 71), s. 47, which provided that penalties under existing and future Acts, which should be adjudged by police magistrates, should be paid to the receiver of the police district, and the subsequent Act, 17 & 18 Vict. c. 38 (against gaming houses), which enacted that the penalties which it inflicted should be recoverable before two justices (or before a police magistrate, since he has the same jurisdiction as two justices), and should be paid to the overseers of the poor of the parish in which the offence was committed, were construed so as to be consistent with each other, by limiting the application of the penalties under the later Act, to cases where they were imposed by justices, and applying them in conformity

(*a*) *Great Central Gas Co.* v. *Clarke* (1862), 32 L. J. C. P. 41. See also *Parry* v. *Croydon Gas Co.*, 15 C. B. N. S. 568.

with the earlier statute, where they were adjudged by a police magistrate (*a*).

When a general Act is incorporated into a special one, the provisions of the latter would prevail over any of the former with which they were inconsistent (*b*). It may be added also, that when an Act on one subject, such as highways, incorporates some of the provisions comprised in another relating to a different subject, such as poor rates, it does not thereby incorporate the modifications of those provisions which are subsequently made in the latter Act (*c*).

It has been said to be a rule that one private Act of Parliament cannot repeal another except by express enactment (*d*); but necessary implication must, no doubt, be considered as involved in this expression (*e*), if the intention of the

(*a*) *Wray* v. *Ellis*, 28 L. J. M. C. 45. See also *Receiver of Police District* v. *Bell*, 41 L. J. M. C. 153. In *R.* v. *Titterton*, [1895] 2 Q. B. 61, in which *Wray* v. *Ellis* is doubted and distinguished, it was held in cases of prosecutions instituted by a local authority fines must be paid to the officer of such authority.

(*b*) *A.-G* v. *G. E. Ry. Co.*, L. R. 7 Ch. 475, L. R. 6 H. L. 367.

(*c*) *Bird* v. *Adcock*, 47 L. J. M. C. 123. As a result of this decision it seems doubtful whether highway rates are apportionable between outgoing and incoming tenants.

(*d*) *Per* Turner L.J., *Birkenhead Docks* v. *Laird*, 4 De G. M. & G. 732. See ex. gr. *Phipson* v. *Harvett*, sup. p. 293.

(*e*) *Comp.* Lord Mansfield's dictum in *R.* v. *Abbot*, 2 Doug. 553, sup. p. 237.

Legislature be so manifested. If the later of the two Acts be inconsistent with the continued existence of the earlier one, the earlier must inevitably be abrogated (*a*).

SECTION IV.—IMPLIED REPEAL IN PENAL ACTS.

The question whether a new Act impliedly repeals an old one (see sup. p. 284 *et seq.*) has recently arisen in construing Acts which deal anew with existing offences without expressly referring to the past legislation respecting them. The problem often arises whether the manner in which the matter is dealt with in the later Act shows that the Legislature intended merely to make an amendment or addition to the existing law, or to treat the whole subject *de novo*, and so to make a *tabula rasa* of the pre-existing law. Of course, where the objects of the two Acts are not identical, each of them being restricted to its own object, no conflict takes place. Thus, an Act which empowered justices to commit for a month an apprentice guilty of any misconduct in his service, was not repealed by a later one which empowered them to compel an apprentice who absented himself to make compensation for his absence, and to commit him, in default, for three

(*a*) See ex. gr. *Daw* v. *Metrop. Board*, sup. p. 293. See *Green* v. *R.*, 1 App. Cas. 513.

months (*a*). The object of the first Act was to punish the apprentice, while that of the other was to compensate the master. It may be remarked that by virtue of s. 12 of the Employers and Workmen Act, 1875, the summary jurisdiction of justices is now confined to those apprentices upon whose binding a premium not exceeding £25 has been paid.

It would seem that an Act which (without altering the nature of the offence, as by making it felony instead of misdemeanour) imposes a new kind of punishment, or provides a new course of procedure for that which was already an offence, at least, at common law, is usually regarded as cumulative, and as not superseding the pre-existing law. For instance, though 9 & 10 Will. III. c. 35 (*b*), visits the offence of blasphemy with personal incapacities and imprisonment, an offender might also be indicted for the common law offence (*c*). The repealed 2 W. & M., Sess. 2, c. 8, which prohibited keeping swine in houses in London on pain of the forfeiture of the swine so kept, did not abolish the liability to fine and imprisonment on indictment at common law for the nuisance (*d*).

(*a*) *Gray* v. *Cookson* (1812), 16 East, 13. *Comp. R.* v. *Youle*, inf. p. 334.

(*b*) Partially repealed by 53 Geo. III. c. 160.

(*c*) *R.* v. *Carlile*, 3 B. & Ald. 161. See also *Steele* v. *Brannan* (1872), L. R. 7 C. P. 261, at p. 268.

(*d*) *R.* v. *Wigg*, 2 Salk. 460.

So, 3 & 4 W. & M. c. 11, s. 10, in imposing a penalty of £5, recoverable summarily, on parish officers who refused to receive a pauper removed to their parish by an order of justices, was held to leave those officers still liable to indictment for the common law offence of disobeying the order, which the justices had authority to make under 13 & 14 Car. II. c. 12. In such cases, it is presumed that the Legislature knew that the offence was punishable by indictment, and that, as it did not in express terms abolish the common law proceeding, it intended that the two remedies should co-exist (*a*). At all events, the change made by the new law was not of a character to justify the conclusion that there was any intention to abrogate the old; and in most of the examples cited, the presumption against an intention to oust the jurisdiction of the Superior Courts would strengthen it. Where the Metropolitan Police Act, 1839, by one section (s. 57) empowered a magistrate to impose a penalty of not more than 40*s.* for an offence, and by another section (s. 77) empowered him if the penalty was not paid to commit the offender to prison for a month, and a later statute (Metropolitan Police Act, 1864) repealed the former section, and substituted for it one empowering the magistrate to

(*a*) *R.* v. *Robinson* (1759), 2 Burr. 800, *per* Lord Mansfield, at p. 803.

impose the same penalty or to commit to prison for not more than three days, it was held that this did not impliedly repeal the latter section, but it was competent for the magistrate to sentence an offender to pay a penalty of 40*s*., and in default of payment to be imprisoned for a month (*a*).

Under s. 33, Interpretation Act, 1889 (*b*), where an offence is punishable under more than one Act, or under an Act and at common law, the offender, unless the contrary intention appears, may be punished under either, but shall not be punished twice for the same offence.

Where a statute alters the quality and incidents of an offence, as by making that which was a felony merely a misdemeanour, it would be construed as impliedly repealing the old law. Thus, 16 Geo. III. c. 30 (*c*), which imposed a pecuniary penalty merely, on persons who hunted or killed deer with their faces blackened, was held to have repealed so much of the Black Act (9 Geo. I. c. 22), as made that offence capital (*d*).

(*a*) 2 & 3 Vict. c. 47, and 27 & 28 Vict. c. 55, s. 1 (repealed to words "lieu thereof" by S. L. R., 1893); *R.* v. *Hopkins*, 62 L. J. M. C. 57.

(*b*) 52 & 53 Vict. c. 63.

(*c*) Repealed by 7 & 8 Geo. IV. c. 27, s. 1.

(*d*) *R.* v. *Davis*, 1 Leach, 271. See *per* Lord Esher M.R., *Lee* v. *Dangar*, [1892] 2 Q. B. 348; and see 9 Geo. I. c. 22 (repealed by 7 & 8 Geo. IV. c. 27, s. 1).

Again, where the punishment or penalty is altered in degree but not in kind, the later provision would be considered as superseding the earlier one (*a*). Thus, 5 Geo. I. c. 27 (*b*), which imposed a fine of £100 and three months' imprisonment for a first offence, and fine at discretion and twelve months' imprisonment for the second, was held to be impliedly repealed by 23 Geo. II. c. 13 (*c*), which increased the punishment for the first offence to a fine of £500 and twelve months' imprisonment, and for the second to £1,000 and two years' imprisonment (*d*). So, it was held in America that a statute which punished the rescue or harbour of a fugitive slave by a penalty of 500 dollars, recoverable by the owner for his own benefit, and reserved all rights of action for damages, was repealed by a later enactment which imposed for the same offences a penalty of 1,000 dollars on conviction, and gave the party aggrieved 1,000 dollars by way of damages recoverable by action (*e*).

Indeed, it has been laid down generally, that if

(*a*) See *per* Lord Abinger, *Henderson* v. *Sherborne*, 2 M. & W. 236, and *A.-G.* v. *Lockwood*, 9 M. & W. 391; and *per* Martin B., *Robinson* v. *Emerson*, 4 H. & C. 355; *Cole* v. *Coulton*, 29 L. J. M. C. 125. *Comp. Sims* v. *Pay*, 58 L. J. M. C. 39.

(*b*) Repealed 5 IV. c. 97.

(*c*) Repealed S. L. R., 1867.

(*d*) *R.* v. *Cator*, 4 Burr. 2026.

(*e*) *Norris* v. *Crocker*, 13 Howard, 429.

a later statute again describes an offence created by a former one, and affixes a different punishment to it, varying the procedure; giving, for instance, an appeal where there was no appeal before, directing something more or something different, something more comprehensive; the earlier statute is impliedly repealed by it (*a*). The 6 Geo. III. c. 25, which made an artificer or workman who absented himself from his employment, in breach of his contract, liable to three months' imprisonment, was held to be impliedly repealed by 4 Geo. IV. c. 34 (repealed by 38 & 39 Vict. c. 86, s. 17), which punished not only that offence, but also that of not entering on the service, after having contracted in writing to serve, with three months' imprisonment, plus a proportional abatement of wages for the time of such imprisonment; or in lieu thereof, with total or partial loss of his wages and discharge from service (*b*). So s. 11, 54 Geo. III. c. 159, which imposed a penalty of £10, leviable, not by distress but by imprisonment, in default of immediate payment, on any person throwing ballast or rubbish out of a vessel into a harbour or river so as to tend to the obstruction of the navigation,

(*a*) *Per* Cur., *Michell* v. *Brown*, 23 L. J. M. C. 53; *per* Bramwell B., *Re Baker*, 2 H. & N. 219; *per* Martin B., *Youle* v. *Mappin*, 30 L. J. M. C. 237.

(*b*) *R.* v. *Youle*, 6 H. & N. 753; *Youle* v. *Mappin*, 30 L. J. M. C. 234. *Comp. Owens* v. *Jones*, sup. p. 308.

and gave an appeal, was held to repeal by implication the earlier Act, 19 Geo. II. c. 22, which had imposed, without appeal, a penalty of not less than 50*s.* and not more than £5 for the same offence, leviable by distress or imprisonment, in default of distress. The preamble of the later Act, indeed, recited that it was expedient to "extend" the provisions of the earlier one, and though its implied repeal seems to have been thought at variance with such an intention, it may be questioned whether its provisions were not "extended" by what was, in effect, their re-enactment with an increased penalty and a summary method of its recovery (*a*). Where a local Act imposed on "all persons" engaged in making gas, who suffered impure matter to flow into any stream, a penalty of £200, recoverable by a common informer by action, and a further penalty of £20 for every day the nuisance was continued, payable to the informer or to the party injured as the justices thought fit; and the Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), afterwards imposed the same penalty on the "undertakers" of gasworks authorised by special Act, recoverable by the party injured; it was held that the earlier Act was repealed as regarded such undertakers (*b*). So, an Act which imposed

(*a*) *Michell* v. *Brown*, 28 L. J. M. C. 53, and see *Fortescue* v. *St. Matthew Vestry*, [1891] 2 Q. B., at p. 178.

(*b*) *Parry* v. *Croydon Gas Co.*, 15 C. B. N. S. 568.

a penalty of not less than 40*s.* or more than £5 upon any owner or occupier who did not immediately remove certain projections from his house upon notice to do so, was held to be impliedly repealed by a later Act which imposed a penalty not exceeding £5 (without specifying any minimum), and a further penalty of 40*s.* a day for a continuance of the offence, upon any owner or occupier who did not after fourteen days' notice remove such projection (*a*).

It has been observed by the Supreme Court of the United States, that in the interpretation of laws for the collection of revenue, the provisions of which are often very complicated and numerous in order to guard against frauds, it would be a strong proposition to assert that the main provisions of any such law were repealed, merely because in subsequent laws other powers were given, and other modes of proceeding were provided, to ascertain whether any frauds had been attempted. The more natural inference is that such new laws are auxiliary to the old (*b*).

But little weight can attach to the argument,

(*a*) 57 Geo. III. c. xxix. s. 72, 18 & 19 Vict. c. 120, s. 119; *Fortescue* v. *St. Matthew, Bethnal Green*, [1891] 2 Q. B. 170; *Summers* v. *Holborn Board of Works*, [1893] 1 Q. B. 612. But see *Keep* v. *St. Mary's, Newington*, [1894] 2 Q. B. 524, and *comp. Wyatt* v. *Gems*, [1893] 2 Q. B. 225.

(*b*) *Per* Cur., *U. S.* v. *Wood*, 16 Peters, 342.

that because an offence falls within two distinct enactments in their ordinary meaning, a secondary construction is to be sought in order to exclude it from one of the two. Thus, an enactment which prohibited under a penalty any person concerned in the administration of the poor laws from supplying goods ordered for the relief of any pauper, was not construed as excluding a poor law guardian, merely because another provision expressly made such officers liable to a much higher penalty for supplying the parish workhouse with goods (*a*). Where one section of an American Act enacted that no ship from a foreign port should unload any of its cargo but in open day, on pain of forfeiture of both goods and ship; and another prohibited the unloading of any ship bound for the United States, before she arrived at the proper place of discharge of her cargo, on pain of forfeiture of the unladen goods; it was held that a foreign ship bound for New York, and unloading a part of her cargo at night at an intermediate harbour in the United States, did not escape from falling within the former section, merely because it fell also within the latter. It was observed that there was no principle of law or interpretation to authorise a Court to withdraw a case from the express prohibitions of one clause, on the ground that the

(*a*) *Davies* v. *Harvey*, 43 L. J. M. C. 121, inf. p. 455.

offence was also punished by a different penalty in another. Neither could be held nugatory (*a*).

However, where a repealed statute by one section empowered justices to order the abatement of a nuisance, punishing disobedience of their order with a fine of 10*s*. a day, and by another section empowered them to prohibit the recurrence of the nuisance under a penalty of 20*s*. a day, it was held in a case where orders had been made at different times under both sections, and two informations were laid for a breach of both by a fresh act of the same nuisance, that there could be only one conviction (*b*). The general principle being that a person cannot be convicted twice on the same facts.

(*a*) *The Industry*, 1 Gallison, 114.

(*b*) 18 & 19 Vict. c. 121; *Edlestone* v. *Barnes* (1875), 45 L. J. M. C. 73. As to existing law, see for England (except London) 38 & 39 Vict. c. 55; for London 54 & 55 Vict. c. 76.

CHAPTER VIII.

SECTION 1.—PRESUMPTION AGAINST INTENDING WHAT IS INCONVENIENT OR UNREASONABLE.

In determining either the general object of the Legislature, or the meaning of its language in any particular passage, it is obvious that the intention which appears to be most in accord with convenience, reason, justice, and legal principles, should, in all cases of doubtful significance, be presumed to be the true one (*a*). An argument drawn from an inconvenience, it has been said, is forcible in law (*b*); and no less, but rather more, force is due to any drawn from an absurdity or injustice. But a Court of Law has nothing to do with the reasonableness or unreasonableness of a statutory provision, except so far as it may help it in interpreting what the Legislature has said (*c*). The treaty between Louis XII. and the Pope, which gave the King the right of appointing to "all bishoprics vacated by the death of bishops in France," was for

(*a*) The above passage cited by counsel, *Cory* v. *France* (1911), 80 L. J. K. B. 346.

(*b*) Co. Litt. 97a.

(*c*) *Per* Lord Halsbury, *Cooke* v. *Voyeler*, [1901] A. C. 107

instance, properly construed, not as giving him the right of appointing to a foreign bishopric whenever its incumbent happened to die in France, but, more consistently with good sense and convenience, as authorising him to fill the bishoprics of his own kingdom, when their holders died, whether at home or abroad (*a*). A statute which gives an appeal to any person thinking himself aggrieved by any order, conviction, judgment, or determination of a justice, does not apply to a prosecutor complaining of an acquittal. If it did, the person acquitted would be liable to be twice vexed for the same cause. Besides, the prosecutor could not legitimately be considered as aggrieved (*b*). Where there is an appeal from a magistrate's decision, "when the sum adjudged to be paid on conviction shall exceed two pounds," the question whether the penalty only, or the penalty plus the costs were intended, would be decided on similar general considerations of convenience and reason. It would be thought more likely that the Legislature intended to give an

(*a*) Puff. L. N. b. 5, c. 12, s. 8.

(*b*) 5 & 6 Will. IV. c. 50, s. 105 (s. 105 partly repealed by 47 & 48 Vict. c. 43, s. 4); *R.* v. *London Jus.*, 25 Q. B. D. 357. But under the Summary Jurisdiction Acts (20 & 21 Vict. c. 43, and 42 & 43 Vict. c. 49), see *Stokes* v. *Mitcheson*, [1902] 1 K. B. 857; 71 L. J. K. B. 677; and see *Rochdale Building Society* v. *Mayor &c. Rochdale* (1886), 51 J. P. 134.

appeal only when the offence was of some gravity, and not merely where the costs (which would vary according to the distances to be travelled by the parties and their witnesses, the number of the latter, and similar accidental circumstances) happened to swell the amount above the fixed limit (*a*).

An Act regulating local rates, which gave an appeal against any rate to the Quarter Sessions, and provided, for enforcing its payment, that two justices might issue a distress warrant against the goods of the defaulter, if he did not, on being summoned, "prove to them that he was not chargeable with, or liable to pay such rate," would not be construed as authorising the justices to enter upon any inquiry into the validity of the rate, if it was valid on its face; though, literally, the defaulter would unquestionably prove his non-liability, if he proved its invalidity. If question of validity, which was left to the Quarter Sessions, was also open to the justices required to enforce the rate, they might decide against the validity of the rate after it had been adjudged valid by the Quarter Sessions (*b*); a

(*a*) *R.* v. *Warwickshire* (1856), 25 L. J. M. C. 119. And see *R.* v. *Novis* (1905), 74 L. J. K. B. 633. But see s. 49, 42 & 43 Vict. c. 49.

(*b*) *Birmingham* v. *Shaw*, 18 L. J. M. C. 89; *Williams, Re*, 2 E. & B. 84; *R.* v. *Kingston*, 27 L. J. M. C. 199; *R.* v. *Bradshaw*,

conflict which could not readily be supposed to have been intended. It would be otherwise, indeed, if the rate bore invalidity on its face, by not showing that it was made in accordance with the statutory authority given for the purpose; for they could not be required to enforce what did not profess to be a valid demand made by competent authority (*a*).

A constable, authorised by statute at all times to enter licensed premises for the purpose of preventing or detecting violations of the licensing laws, cannot demand admission unless he has some reasonable ground for suspecting a breach of the law (*b*).

An Act which empowered magistrates to make an order that any dog found to be dangerous should "be kept under proper control or destroyed," might, on this principle, be construed

29 L. J. M. C. 176; *R.* v. *Higginson*, 31 L. J. M. C. 189; *Exp. May*, Id. 161; *R.* v. *Linford*, 7 E. & B. 950; *R.* v. *Finnis*, 28 L. J. M. C. 201. See *Wake* v. *Sheffield* (1880), 53 L. J. M. C. 1. The remedy open to a person who deems himself aggrieved by the decision of a local authority under the Public Health Act, 1875, is set out in s. 268 of the Act; and see *Bristol Corp.* v. *Sinnett*, [1918] 1 Ch. 62, C. A.

(*a*) *Eastern Counties Ry. Co., Re*, 25 L. J. M. C. 49. See *R.* v. *Croke*, 1 Cowp. 30

(*b*) 37 & 38 Vict. c. 49, s. 16, repealed by s. 81, Licensing Act, 1910; *Duncan* v. *Dowding*, [1897] 1 Q. B. 575; *R.* v. *Dobbins*, 48 J. P. 182.

as giving the magistrate the option of making an absolute order for the destruction of a dangerous dog; not as requiring that his order should be in the alternative terms of the Act, which would place the option in the hands of the owner of the dog; for this would be much less efficacious and convenient (*a*).

The 24 & 25 Vict. c. 98, which, after making it felony to engrave without authority plates of bank-notes purporting to be notes of the Bank of England or of Ireland, or of any other company, declared in another section that the enactment should not apply to Scotland, except where it was expressly so provided, was held to apply to the engraving of the notes of a Scotch bank; the rational object and meaning of the excluding provision being, not that forgeries against Scotch banks might be committed in England with impunity, but that, when committed in Scotland, they should not fall within the Act (*b*).

Where an Act, after transferring all duties of paving and lighting from existing Commissioners to a Board of Works, provided that all contracts

(*a*) *Pickering* v. *Marsh* (1874), 43 L. J. M. C. 143. As to the meaning of the word "dangerous" in relation to a dog, see the Dogs Act, 1906.

(*b*) *R.* v. *Brackenridge*, 37 L. J. M. C. 86. *Comp. O'Loghlen, Re*, L. R. 6 Ch. 406, and see as to existing law, Forgery Act, 1913 (3 & 4 Geo. V. c. 27, s. 9).

with the former should remain valid, that no action upon them against the Commissioners should abate, and that all liabilities under such contracts should be paid out of rates to be made by the new Board; it was held, on the ground of it's being the more convenient course, than an action on a contract made with the Commissioners might be brought against the Board (*a*). 20 & 21 Vict. c. 43, and 42 & 43 Vict. c. 49, s. 33, which authorise a party aggrieved by a decision of justices to apply within three days for a case, and direct that "at the time of the application," and before the case is delivered to him, he shall enter into recognisances to prosecute the appeal, was, as regards the earlier statute, held substantially complied with if the recognisances were entered into within the three days, though not at the time of the application (*b*). The time for application is now extended to *seven days* under rule 18, Summary Jurisdiction Rules, 1886. It has been repeatedly held that when an Act gives an appeal to the "next" sessions, it means not necessarily the next which takes place in order of time, or an adjournment of it (*c*), but the next to which it is practicable with fair diligence to carry the

(*a*) *Sinnott* v. *Whitechapel* (1858), 27 L. J. C. P. 177.

(*b*) *Chapman* v. *Robinson* (1858), 28 L. J. M. C. 30. As to practice, see *R.* v. *Kettle*, [1905] 1 K. B. 212.

(*c*) *R.* v. *Sussex*, 4 R. R. 390.

appeal (*a*). It is obvious that a stricter construction would often have the effect of taking away the appeal which the Legislature intended to give. When an Act gave any person aggrieved (*b*) by an order of justices, four months "for making his complaint to the Quarter Sessions," it was construed to mean, not that the complaint must be heard within that time, but that the appellant should have that time for notifying his intention to appeal; otherwise he might sometimes be limited to a few weeks, or, if no sessions were held within the four months, he would be deprived of his appeal altogether (*c*).

The Workmen's Compensation Act, 1897 (repealed by Workmen's Compensation Act, 1906), provides that proceedings for the recovery of compensation under the Act shall not be maintainable unless notice of the accident has been given as soon as practicable, and unless "the claim for compensation with respect to such accident has been made

(*a*) As to what is "next practicable" sessions, see *R.* v. *Surrey JJ.* (1880), 50 L. J. M. C. 10. See also *R.* v. *Middlesex JJ.* (1888), 32 Sol. J. 221.

(*b*) *Graves' Case*, L. R. 4 Q. B. 715; *Boyce v. Higgins*, 23 L. J. C. P. 5; *Exp. Learoyd*, 13 Ch. D. 321; *Exp. Thoday*, 2 Ch. D. 229, 797; *Verdin* v. *Wray*, 2 Q. B. D. 608. *Comp. Rochfort* v. *Atherley*, 1 Ex. D. 511; *Re Shaftoe's Charity*, 3 App. Cas. 872.

(*c*) *R.* v. *Essex* (1864), 34 L. J. M. C. 41; *R.* v. *Middlesex*, 6 M. & S. 279. See also inf. p. 360.

within six months from the occurrence of the accident causing the injury." The House of Lords has held "the claim for compensation" to mean a notice of claim for compensation sent to the employer, and not the initiation of proceedings (*a*).

An Act which authorised the Quarter Sessions to give a successful appellant against a conviction, costs against the party appealed against, and directed that the notice of appeal should be served on the convicting justice, was construed as not making the latter a party to the appeal; for it was to be presumed that the Legislature did not intend so great an anomaly as rendering a judicial officer liable to costs for an act done *bonâ fide* in the discharge of his judicial functions (*b*). The respondent, in such a case, is the prosecutor before the magistrate; though this construction involves the hardship of making him liable to the costs of

(*a*) 60 & 61 Vict. c. 37, s. 2 (1); 6 Edw. VII. c. 58, s. 2 (1); *Powell* v. *Main Colliery Co.*, [1900] A. C. 366; the claim need not be in writing (*Lowe* v. *Myers* (1906), 75 L. J. K. B. 651; *Comp. Hughes* v. *Coed Talon Co.* (1910), 78 L. J. K. B. 539), nor need it claim a specific sum (*Thompson* v. *Goold*, 79 L. J. K. B. 905). But apparently a mere notice of accident is not a claim, *Perry* v. *Clements*, [1901] 49 W. R. 669.

(*b*) *R.* v. *Hants*, 1 B. & Ad. 654; *R.* v. *Smith*, 29 L. J. M. C. 216; *R.* v. *Purdey* (1864), 34 L. J. M. C. 4. See *R. v. Bradlaugh*, 2 Q. B. D. 569; 3 Q. B. D. 607; *R.* v. *London Jus.*, [1895] 1 Q. B. 616.

a proceeding of which he has had no notice, or perhaps even knowledge.

The statute which enacts that "a solicitor may make an agreement in writing with his client respecting the amount and manner of his remuneration," was held to require impliedly that the agreement should be signed by the client; as otherwise it would be possible for a solicitor to place a document signed by himself only, and containing terms favourable to him, before his client, and then contend that the latter was bound to it (*a*).

Where one Act authorised the recovery of certain claims before justices of the peace, proceedings before whom are limited to six months, and another Act authorised their recovery, when not exceeding £20, in the County Courts, where the term of limitation was six years, it was held that suits for them in the latter Courts were limited to six months, to avoid imputing to the Legislature the anomalous intention of allowing six years for the recovery of small sums, while giving only six months for large ones (*b*). Similarly,

(*a*) *Lewis, Re*, 1 Q. B. D. 724; but this case and the above-stated reason therefor, were subject to adverse criticism in *Thompson, Re*, 63 L. J. Q. B. 189, 190. See, however, *Bake* v. *French* (1905), 76 L. J. Ch. 605.

(*b*) 11 & 12 Vict. c. 63, s. 39, repealed and re-enacted by s. 196, 38 & 39 Vict. c. 55; 24 & 25 Vict. c. 61, s. 24, repealed

on the ground (among others) that it would be unreasonable to presume that the Legislature intended to impose a more severe penalty on a person who without malice wilfully gathered uncultivated mushrooms than on one who unlawfully and maliciously destroyed cultivated roots or plants used for food, it was held that in view of s. 24, 24 & 25 Vict. c. 97, which imposed a penalty of one month's imprisonment or a fine of £1 for the latter offence, whilst s. 52 of the same Act, made it an offence punishable with two months' imprisonment or a fine of £5 to "wilfully or maliciously commit any damage, injury, or spoil to or upon any real or personal property whatsoever for which no punishment is hereinbefore provided," could not be regarded as applying to a case such as the former (*a*). But a milk carrier who damaged his master's milk, not to injure his master but in order to make a profit for himself, was held to be guilty of an offence under the latter section (*b*). Upon the ground that if an act

and re-enacted by s. 261, 38 & 39 Vict. c. 55. The jurisdiction of County Courts is now extended to claims not exceeding £100. See County Courts Act, 1888, s. 81. *Tottenham Board* v. *Rowell*, 1 Ex. D. 514; *Blackburn (Mayor of)* v. *Sanderson*, [1902] 1 K. B. 794; 71 L. J. K. B. 590. See also *Nicholson* v. *Ellis*, 28 L. J. M. C. 238, and note especially *Bolton Corp.* v. *Scott* (1913), 77 J. P. 193, C. A.

(*a*) *Gardner* v. *Mansbridge* (1887), 19 Q. B. D. 217.

(*b*) *Roper* v. *Knott*, [1898] 1 Q. B. 868; 67 L. J. Q. B. 574.

be done wilfully or wantonly it raises a presumption it is done maliciously (*a*)

The Bankruptcy Acts (*b*) which vested the future as well as the present property of the bankrupt in the assignee or trustee, imported the necessary exception, to save him from starving, of the remuneration which the bankrupt might earn by his labour after his bankruptcy, and the damages which he might recover for any personal injury (*c*); and while establishing the right of the trustee to future property as between himself and the bankrupt, did not affect the right of the latter as between himself and his debtor, unless the trustee interfered, to sue for a debt which accrued due after the vesting of the property in the trustee; and the provision contained in the Acts that the bankrupt should not have power to recover such debts, was similarly limited in effect (*d*). And generally property earned by the personal exertions and skill of the bankrupt do not pass to his

(*a*) *R.* v. *Welch* (1875), 40 J. P. 183.

(*b*) The Bankruptcy Act, 1914 (4 & 5 Geo. V.), practically repeals all earlier statutes.

(*c*) *Beckham* v. *Drake*, 2 H. L. Cas. 579; *Re Wilson* (1878), 8 Ch. D. 364.

(*d*) *Herbert* v. *Sayer*, 13 L. J. Q. B. 209; *Jackson* v. *Burnham*, 22 L. J. Ex. 13; *Jameson* v. *Brick Co.* (1878), 4 Q. B. D. 208; *Cohen* v. *Mitchell*, 25 Q. B. D. 262. But see *Re Clark*, [1894] 2 Q.B. 393; and see 4 & 5 Geo. V. c. 59, s. 38.

trustee (*a*). But in order that such moneys should be immune there must be an element of periodicity in the earnings (*b*). The Act which imposes a penalty on the piracy of a dramatic work, or "any part thereof," would not be broken unless a material and substantial part was pirated. It is not to be supposed that the Legislature intended to punish the misappropriation of what was of no value (*c*).

A construction which facilitated the evasion of a statute would, on similar grounds of inconvenience, be avoided. Thus, an Act which forbade an innkeeper to suffer any gaming "in his house or premises," was construed as extending to gaming by himself and his personal friends in his private rooms in the licensed premises; for a construction which limited the prohibition to the guests in the public rooms would have opened the door to collusion and evasion (*d*), but apparently

(*a*) *Shoolbred* v. *Roberts* (1899), 68 L. J. Q. B. 998.

(*b*) Id. (1899), 2 Q. B., at p. 563.

(*c*) *Chatterton* v. *Cave*, 2 C. P. D. 42; 3 App. Cas. 483; *Pike* v. *Nicholas*, L. R. 5 Ch. 251; *Bradbury* v. *Hotten*, L. R. 8 Ex. 1; *Planché* v. *Braham*, 44 R. R. 642; *D'Almaine* v. *Boosey*, 41 R. R. 273; *Walter* v. *Steinkopff*, 61 L. J. Ch. 521. For an exhaustive disquisition on the Copyright Act, 1911, see Clerk and Lindsell on Torts, Chap. XXI.

(*d*) *Patten* v. *Rhymer* (1860), 29 L. J. M. C. 189; *Corbet* v. *Hoigh*, 5 C. P. D. 50; see also *per* Brett L.J., *Iles* v. *West Ham Union*, 8 Q. B. D. 79. *Comp. Brigden* v. *Heighes*, 1 Q. B. D. 330;

betting upon horse races does not come within the meaning of the word "gaming" (*a*).

And yet, a construction facilitating evasion (see sup. p. 206 *et seq.*), even to the extent of defrauding the revenue, may be justified and required by considerations of convenience, as in the case of Stamp Acts; where the question whether a document, produced on the hearing of a trial, is sufficiently stamped, depends solely on what appears on the face of the document, to the exclusion of all extrinsic evidence to prove the contrary; for to admit evidence to invalidate it, would lead to the intolerable inconvenience of holding a collateral inquiry, to the interruption of the trial of the cause in which the paper was tendered (*b*).

Acts which impose a pecuniary penalty have sometimes given rise to a question, when there were two or more offenders, whether one joint or several separate penalties were intended; and this, where the Act has left it open to doubt, has been said to depend on whether the offence was in its

Tassell v. *Ovenden*, 2 Id. 383; *Lester* v. *Torrens*, Id. 403; *Bosley* v. *Davies*, 1 Id. 84; *Gallagher* v. *Rudd*, [1898] 1 Q. B. 114.

(*a*) *Keep* v. *Stevens* (1909), 73 J. P. 112.

(*b*) *Whistler* v. *Forster* (1863), 32 L. J. C. P. 161; *Austin* v. *Bunyard* (1865), 34 L. J. Q. B. 217; *Gatty* v. *Fry*, 2 Ex. D. 265 (approved in *Royal Bank of Scotland* v. *Tottenham*, [1894] 2 Q. B. 715). *Comp. Clarke* v. *Roche*, 47 L. J. Q. B. 147.

nature joint or several. When the offence is one in which every participator is justly punishable in proportion to the part which he took in it, the inference would obviously be that a separate penalty on each was intended. In the offence of assaulting and resisting a custom-house officer, one may resist, another molest, a third run away with the goods: all are distinct acts, each a separate offence, and each offender would be liable for his own separate offence (*a*); nor does the omission to prosecute one of the parties exonerate the others. So, under the partially repealed Toleration Act (1 W. & M. c. 18, confirmed by 10 Anne, c. 2), which enacts that if any person or persons maliciously disturb a congregation, such "person or persons" shall, on conviction of "the said offence," be liable to a penalty of £20; it was held that every person engaged in such a disturbance would be liable to a separate penalty (*b*).

So, where two men were convicted of an assault and sentenced to pay one penalty, under 9 Geo. IV. c. 31 (*c*), the conviction was quashed; because a penalty ought to have been imposed on each offender severally, the offence being in its nature

(*a*) *Per* Lord Mansfield, *R.* v. *Clark*, 2 Cowp. 610, and see *R.* v. *Littlechild* (1871), 40 L. J. M. C. 137.

(*b*) *R.* v. *Hube*, 2 R. R. 669.

(*c*) Repealed by 24 & 25 Vict. c. 95, s. 1; and see as to existing law, 24 & 25 Vict. c. 100.

several (*a*). And under s. 30, 1 & 2 Will. IV. c. 32, which enacts that if "any person" shall trespass in the daytime on land in search of game, "such person" shall be liable to a penalty of £2, every offender is liable to a separate penalty (*b*).

But it has been said that where the offence is in its nature single, and is punished by a pecuniary penalty, not one penalty can be imposed on all the offenders jointly; upon the ground that if it be the offence, and not the offender, that is visited with punishment by the statute, only one penalty is incurred, however large may be the number of persons who incurred it. Thus, under a statute of Anne (*c*), which enacted that if any unqualified "person or persons" kept or used hounds for destroying game, "the person or persons" so offending should forfeit £5, it was held that to keep or use a greyhound for such a purpose was punishable by one penalty only, whether the dog was kept or used by one or by several persons. Only one dog was kept, it was said, and only one penalty, falling on all the offenders jointly, was imposable (*d*). The decision has been perhaps

(*a*) *Morgan* v. *Brown* (1836), 42 R. R. 422; 5 L. J. M. C. 77.

(*b*) *Mayhew* v. *Wardley*, 14 C. B. N. S. 550; *Pratt* v. *Martin*, (1911), 80 L. J. K. B. 711.

(*c*) 12 Anne c. 14; repealed by S. L. R., 1867.

(*d*) *Hardymann* v. *Whitaker*, 2 East, 573 n.; *R.* v. *Mathews*, 10 Mod. 26; *R.* v. *Bleasdale*, 4 T. R. 809.

better defended on the ground that the Act, in speaking of "persons" in the plural, and providing that for such "offence," in the singular, they should pay £5, and not £5 "each," one joint offence and penalty were contemplated (*a*). In an old case cited in support of this construction, it was held that the statute 1 & 2 Ph. & M. c. 12, which prohibited the impounding of a distress in a wrong place, "upon pain every person offending should forfeit to the party grieved for every such offence" a hundred shillings and treble damages, gave only one penalty against three persons (*b*). But although this decision is said to have been based on the ground that the offence was one only and joint, the penalty was recoverable only by the party grieved, and was consequently to be regarded as a compensation to him, not as a punishment on the offenders (*c*). Viewed in this light, it is clear that only one penalty could be recovered; for the injury was the same, whether it was done by one or by several persons; and it could hardly have been intended that the pecuniary compensation

(*a*) *Per* Alderson B., *R.* v. *Dean*, 12 M. & W. 42. As to the rule against contribution between joint tort-feasors, see *Merryweather* v. *Nixon* (1799), 8 T. R. 186.

(*b*) *Partridge* v. *Naylor*, Cro. Eliz. 480, cited in *R.* v. *Clark* (1777), 2 Cowp. 610; *R.* v. *King*, 1 Salk. 182.

(*c*) See ex. gr. *Stevens* v. *Jeacocke*, 17 L. J. Q. B. 163. For a discussion on this case in which it was distinguisbed, see *Gorres* v. *Scott* (1874), 43 L. J. Ex. 92.

for a wrong should vary in amount with the number of persons concerned in doing it.

In referring to cases of this kind, Lord Mansfield observed that if partridges were netted by night, two or three or more men might draw the net, but still it constituted but one offence; and that killing a hare was but one offence, whether one killed it or twenty, and that it could not be killed more than once (*a*). But however pertinent such considerations might be in measuring the damage done to the owner of the game, they seem less applicable to the question of punishing, on public grounds, a breach of the law. The question whether the offence was joint or several evidently arose, not from the nature of the offence, but from the nature of the penalty. If the penalty had been corporal instead of pecuniary, the distinction between joint and several offences could hardly have occurred; for it would have been found difficult to apply the rule of one joint penalty to two offenders sentenced to five weeks' imprisonment or twenty-five lashes. It would seem that the question whether the penalty is to be understood as separate or joint, where the Act is not explicit, would be better governed by the consideration whether the penalty was intended as compensation for a private wrong, or as a punishment for an offence against public justice.

(*a*) *R.* v. *Clarke*, sup. p. 354.

It is hardly necessary to add that all such considerations are immaterial where the language of the Act is not open to doubt. Thus, where it was enacted that "every person" who assisted in unshipping or concealing prohibited goods should forfeit treble their value or £100, at the election of the Commissioners of Customs, it was held that every person concerned in the offence was liable to a separate penalty (*a*); although undoubtedly the offence was as joint in its nature as in the case of the wrongful removal of the distress (*b*).

SECTION II.—PRESUMPTION AGAINST INTENDING INJUSTICE OR ABSURDITY.

A sense of the possible injustice of an interpretation ought not to induce judges to do violence to well-settled rules of construction, but it may properly lead to the selection of one rather than the other of two reasonable interpretations (*c*). Whenever the language of the Legislature admits of two constructions, and if construed in one way would lead to obvious injustice, the Courts act upon the view that such a result could not have been intended, unless the intention had been

(*a*) 3 & 4 Will. IV. c. 53 (repealed 8 & 9 Vict. c. 84, s. 2); *R.* v. *Dean*, 12 M. & W. 39.

(*b*) *Partridge* v. *Naylor*, sup. p. 354.

(*c*) *Per* Lord Herschell L.C., *Arrow Shipping Co.* v. *Tyne Commissioners*, [1894] A. C. 516.

manifested in express words (*a*). Thus, where a by-law authorised the Poulters' Company to fine "all" poulters in London or "within seven miles round," who refused to be admitted into their company, it was held that, inasmuch as no poulter could legally belong to the company who was not also a freeman of the City, the by-law was to be construed as limited to those poulters who were also freemen; to avoid the injustice of punishing men for refusing to enter into a company to which they could not legally belong (*b*). So, in ss. 112 and 198, Bankrupt Law Consolidations Act, 1849, which protected a bankrupt from arrest by his "creditors" (*c*), this word was contrued as limited to those creditors who had debts provable under the bankruptcy, for it would have been obviously

(*a*) *Per* Lord Campbell, *R.* v. *Skeen* (1859), Bell, C. C. 97, and *R.* v. *Land Tax Com.*, 2 E. & B. 716; *per* Keating J., *Boon* v. *Howard*, L. R. 9 C. P. 308; *per* Brett L.J., *R.* v. *Monck*, 2 Q. B. D. 555; *Smith* v. *G. W. R. Co.*, 3 App. Cas. 165; *per* Lord Blackburn, *Rothes* v. *Kirkcaldy Commissioners*, 7 App. Cas. 702; *per* Lord Cairns, *Hill* v. *East & West India Dock Co.*, 53 L. J. Ch. 845; 9 App. Cas. 456; *Railton* v. *Wood*, 15 App. Cas. 363; *per* Brett M.R., *Plumstead Board of Works* v. *Spackman*, 13 Q. B. D. 878; *per* Lord Esher M.R., *Dunn, Exp.*, 23 Q. B. D. 461.

(*b*) *Poulters' Co.* v. *Phillips* (1840), 6 Bing. N. C. 314; *R.* v. *Saddlers' Co.*, 32 L. J. Q. B. 337. See also *Corbett, Exp.*, 14 Ch. D., *per* Brett L.J., at p. 129.

(*c*) As to present law relating to control over persons and property of an insolvent debtor, see ss. 22–23, Bankruptcy Act, 1914.

unjust and was therefore presumably not intended, that his certificate should protect a bankrupt not only against those creditors who had, or might have proved under the bankruptcy, but also against creditors whose claims were not barred by it (*a*). The provision in s. 2, 50 & 51 Vict. c. 66, that the Court of Bankruptcy should refuse a bankrupt his discharge "in all cases" where the debtor had committed an offence under the Debtors Act, 1869, was held to apply only to cases connected with or arising out of the bankruptcy and not to a misdemeanour committed subsequently to the adjudication, the language used being so wide that if it received its full grammatical meaning it would produce injustice so enormous that the Legislature could not have intended mere general words to lead to such a result (*b*). The Public Authorities Protection Act, 1893, which provides that a judgment for a successful defendant in an action against a public authority "shall carry costs to be taxed as between solicitor and client," does not take away the discretionary power vested

(*a*) *Grace* v. *Bishop*, 25 L. J. Ex. 58; *Phillips* v. *Poland*, L. R. 1 C. P. 204; *Poland*, *Re*, L. R. 1 Ch. 356; *Williams* v. *Rose*, L. R. 3 Ex. 5, *per* Bramwell B.

(*b*) *Brockelbank*, *Re* (1889), 23 Q. B. D. 461; *Jones*, *In re* (1890), 24 Q. B. D. 589; affirmed 59 L. J. Q. B. 331. As to present law relating to discharge of bankrupt, see s. 26, Bankruptcy Act, 1914.

in a judge to deprive the successful defendant of his costs (*a*). The enactment which protected magistrates in India from actions for any wrong or injury done by them in the exercise of the judicial office, was held to exempt them from liability only when acting *bonâ fide* in cases in which, by mistake, they acted without jurisdiction (*b*).

The Merchant Shipping Act, 1873, which enacted that if, "in any case of collision," it was proved that any of the regulations for preventing collisions had been infringed, the ship which infringed them should be deemed in fault, unless the circumstances justified it, was held to apply only to cases where the infringement could have contributed to the collision, but not where it could not possibly have done so (*c*); just as an Act (*d*) which imposed a penalty for piloting a ship down the Thames without license, was evidently limited to piloting

(*a*) 56 & 57 Vict. c. 61; *Bostock* v. *Ramsey U. D. C.*, [1900] 2 Q. B. 616. As to allocation of costs between parties, see *Smith* v. *Northleach Rural District Council*, [1902] 1 Ch. 197; 71 L. J. Ch. 8.

(*b*) 21 Geo. III. c. 70; repealed by 5 & 6 Geo. V. c. 61; *Calder* v. *Halket*, 3 Moo. P. C. 28.

(*c*) 36 & 37 Vict. c. 85, s. 17, repealed by s. 419 (4), Merchant Shipping Act, 1894. *The Englishman*, 3 P. D. 18; *The Magnet*, L. R. 4 A. & E. 417; *The Fanny Carvill* (1875), 13 App. Cas. 455 n.; approved in *The Duke of Buccleuch*, [1891] A. C. 310.

(*d*) 5 Geo. II. c. 20; repealed S. L. R., 1867; 57 & 58 Vict. c. clxxxvii. is the present Thames Conservancy Act.

on a voyage, and would not apply to a person in charge of a ship when merely warping from one wharf to another to unload the cargo (*a*). An imperative requirement that Assessment Sessions should be held so that all appeals should be determined before a certain date would not operate so unjustly as to deprive a person of the right of appeal where, through press of business at the sessions, his appeal could not be heard before that date (*b*). Sec. 106 of 25 & 26 Vict. c. 102 (*c*), which provided that no writ or process should issue for anything done under it but after a month's notice, would not apply to summary relief by injunction; for if it did, the wrong might be irremediable, which could not be intended (*d*). Besides, the object of the provision was only to give the defendant time to make amends before he was sued (*e*). Nor would a similar enactment that "no action" should be brought in which a certain body of shipowners would be liable for any damage to any ship, without a month's notice, apply to proceedings *in rem* in the Admiralty Division, for

(*a*) *R.* v. *Lambe*, 5 T. R. 76.

(*b*) 32 & 33 Vict. c. 67; *R.* v. *London Jus. and L. C. C.*, [1893] 2 Q. B. 476.

(*c*) Repealed by 56 & 57 Vict. c. 61

(*d*) *A.-G.* v. *Hackney Board* (1875), L. R. 20 Eq. 626.

(*e*) *Flower* v. *Low Leyton*, 5 Ch. D. 347. See also *Foat* v. *Mayor of Margate*, 11 Q. B. D. 299

if such a notice were necessary the proceedings might be futile, as the ship might sail away before the expiration of the month and avoid seizure (*a*). Sec. 5, 12 & 13 Vict. c. 92 (*b*), which requires "every person" who impounds an animal, or causes it to be impounded or confined, to supply it with food, would not apply to the keeper of the pound (*c*).

The enactment in the Licensing Act, 1872, that "every person found drunk on licensed premises" should be liable to a penalty, though literally wide enough to include the publican who had got drunk anywhere and was found in that condition in his bed after the house was closed, would be construed, according to the manifest object of the Act, as confined to persons found on the premises while using it as a house for public resort (*d*).

A statute which enacts that a person who has been convicted by justices of an assault, and has suffered the punishment awarded for it, shall be

(*a*) 6 & 7 Will. IV. ch. c. (local and personal), s. 8; *The Longford*, 14 P. D. 34.

(*b*) Repealed and re-enacted by 1 & 2 Geo. V. c. 27, s. 7.

(*c*) *Dargan* v. *Davies*, 46 L. J. M. C. 122.

(*d*) 35 & 36 Vict. c. 94, s. 12; repealed Licensing Act, 1910; see s. 75; *Lester* v. *Torrens*, 2 Q. B. D. 403; *R.* v. *Pelly*, [1897] 2 Q. B. 33. See *Warden* v. *Tye*, 2 C. P. D. 74. *Comp. Patten* v. *Rhymer*, sup. p. 350. For other illustrations, see *Ancketill* v. *Baylis*, 52 L. J. Q. B. 104; *R.* v. *Kent Jus.*, 24 Q. B. D. 181.

released from all other proceedings "for the same cause," would not be construed as exempting him from prosecution for manslaughter, if the party assaulted afterwards died from the effects of the assault; such a construction would defeat the ends of justice (*a*). An Act (*b*) which imposed a penalty on any sheriff or bailiff who carried a person arrested for debt to prison for twenty-four hours, though it might render the former liable for the act of the latter, his servant, as well as for his own, would not be construed to admit of his being sued, after the penalty had been recovered from the bailiff; for this would be to give the plaintiff a second penalty for the same act, after he had been compensated by the first; and would, indeed, make the bailiff liable to pay twice, as he would be bound by the usual bond to indemnify the sheriff (*c*).

The same argument applies where the consequence of adopting one of two interpretations would be to lead to an absurdity. Thus s. 3 (now repealed) of the Newspaper Libel and Registration

(*a*) *R.* v. *Morris* (1867), 36 L. J. M. C. 84. See *Reed* v. *Nutt*, 59 L. J. Q. B. 311; *per* Hawkins J., *R.* v. *Miles* (1890), 59 L. J. M. C. 56; see also *Masper* v. *Brown*, 45 L. J. C. P. 203.

(*b*) 32 Geo. II. c. 28, s. 1, repealed and re-enacted by 50 & 51 Vict. c. 55. See ss. 14 and 39.

(*c*) *Peshall* v. *Layton*, 2 T. R. 712. See *Wright* v. *London General Omnibus Co.*, 2 Q. B. D. 271.

Act, 1881, which enacted that no Criminal Prosecution should be commenced against a newspaper for libel without the fiat of the Director of Public Prosecutions, was held not to apply to a Criminal Information; for to hold otherwise would lead to the absurd and scandalous result that that officer, who was to act under the superintendence of the Attorney-General, might not only overrule the latter, but also the Queen's Bench Division, in the exercise of their power to give leave to file such information (*a*). The provision of s. 54, Public Health Act, 1875, that where a local authority "supply water" within their district, they shall have certain powers as to carrying mains within and without that district, is not to be construed in its literal sense so as to involve the absurdity of requiring that the authority must have begun actually to supply some water before it can take advantage of the powers conferred, but is to be understood as conferring those powers upon the local authority as soon as it undertakes to supply water under the provisions of the Act (*b*). Similarly, a sewer made

(*a*) 44 & 45 Vict. c. 60; see 51 & 52 Vict. c. 64, ss. 2–4; *Yates* v. *R.*, 14 Q. B. D. 648; and as to the protection afforded by s. 4 of the Law of Libel (Amendment) Act, 1888, see *Sharman* v. *Merritt* (1916), 32 T. L. R. 360.

(*b*) 38 & 39 Vict. c. 55; *Jones* v. *Conway Water Supply*, [1893] 2 Ch. 603.

by a landowner for the sole purpose of draining houses erected by him on his own land, is not by reason of its enhancing the value of the houses "made for his own profit," within the meaning of the exception in s. 13, Public Health Act, 1875, so as not to vest in and be under the control of the local authority. It would be absurd to suppose that it was intended that the operation of s. 13, the whole object of which is to vest sewers in the local authority, should be thus practically reduced to a nullity (*a*).

A repealed Act (5 & 6 Vict. c. 39, s. 6) (*b*) which protected a fraudulent agent from conviction, if he "disclosed" his offence on oath, in any examination in bankruptcy, was held not to include a confession made there after commitment by a magistrate, and which was in substance only a repetition of the facts proved before the latter; on the ground that it would have been absurd and mischievous to enable a man to provide an indemnity for himself, by simply making a statement of facts already known and provable *aliunde*,

(*a*) 38 & 39 Vict. c. 55; *Ferrand* v. *Hallas Land Co.*, [1893] 2 Q. B. 135; *Vowles* v. *Colmer* (1895), 64 L. J. Ch. 414; *Croysdale* v. *Sunbury &c. Urban Council* (1898), 67 L. J. Ch. 585. *Comp. Minehead Local Bd.* v. *Luttrell*, [1894] 2 Ch. 178; *Sykes* v. *Sowerby U. D. C.*, [1900] 1 Q. B. 584.

(*b*) For existing law, see 52 & 53 Vict. c. 45 (The Factors Act, 1889).

and not in any way advancing either civil or criminal justice by the alleged "disclosure" (*a*).

Although there is no positive rule of law against a retrospeotive rate (*b*), enactments which authorise the imposition of rates and similar burdens on the inhabitants of a looality have been repeatedly held not to authorise, without express words, a retrospective oharge; on the ground of the injustice of throwing on one set of persons a burden which ought to have been borne by another at a former period (*c*). And where the Act (*d*) makes the occupier rateable at what a tenant from year to year would give for it, it would be understood, where the property was subject by law to restriotions

(*a*) *R.* v. *Skeen*, 28 L. J. M. C. 91; so held by nine judges against five. See *Lewes* v. *Barnett*, 6 Ch. D. 252.

(*b*) See *Harrison* v. *Stickney* (1847), 2 H. L. Cas. 108; *R.* v. *Read*, 18 L. J. M. C. 164; *Jones* v. *Johnson*, 21 L. J. M. C. 102; *R.* v. *Maidenhead*, 9 Q. B. D. 494; *Caistor* v. *N. Kelsey*, 59 L. J. M. C. 102; *Easton & Co.* v. *Nar Valley Drainage Com.* (1892), 8 T. L. R. 649; *R.* v. *Leigh Rural Council* (1898), 67 L. J. Q. B. 562, C. A.; but see *R.* v. *All Saints, Wigan* (1874), L. R. 9 Q. B., at p. 327; affirmed (1876), 1 App. Cas. 611.

(*c*) *Tawny's Case*, 2 Salk. 531; *Newton* v. *Young*, 1 B. & P. N. R. 187; *R.* v. *Maulden*, 32 R. R. 344; *R.* v. *Dursley*, 5 A. & E. 10; *Waddington* v. *London Union*, 28 L. J. M. C. 113; *R.* v. *Stretfield*, 32 L. J. M. C. 236; *Bradford Union* v. *Wilts*, L. R. 3 Q. B. 604; *R.* v. *All Saints, Wigan*, 1 App. Cas. 611. See also *R.* v. *Leigh R. D. C.*, [1898] 1 Q. B. 836.

(*d*) Repealed and re-enacted by 38 & 39 Vict. c. 55, s. 343, Sched. V., Pt. III.

which prevented the occupier from obtaining the full value, that the hypothetical tenant was similarly subject to them (*a*).

An Act which prohibits the negligent use of furnaces in such a manner as not to make them consume smoke "as far as possible," means only so far as the smoke can be consumed consistently with the due carrying on of the business for which the furnace is used, and not as far as it is physically possible to consume it, without regard to the detriment which the business carried on would suffer; the Act not having expressed any intention to interfere with it (*b*). Where a sewer in a street (not being a highway repairable by the inhabitants at large) has become vested in an urban authority under s. 13, Public Health Act, 1875, the powers of the authority under s. 150 of that Act, where such street is not sewered to their satisfaction, to require the frontagers to sewer it, can be exercised by the authority once only, and must be exercised within a reasonable time after the sewer has become vested in them, it being said that any other construction would make the Act unjust and unreasonable (*c*). The

(*a*) *Worcester* v. *Droitwich* (1876), 2 Ex. D. 49.

(*b*) *Cooper* v. *Woolley* (1867), L. R. 2 Ex. 88.

(*c*) 38 & 39 Vict. c. 55; *Bonella* v. *Twickenham Loc. Bd.* (1887), 20 Q. B. D. 63; *Ferrand* v. *Hallas Land and Building Co.* (1893), 62 L. J. Q. B. 479. But a local authority under s. 105 of the

Carriers Act, 1830 (11 Geo. IV. & 1 Will. IV. c. 68), which exempts carriers from responsibility for the loss of certain articles worth more than £10, unless their nature and value are declared, also enacts that the Act shall not affect any special contract of carriage, and this proviso was construed, not literally as making the Act inapplicable whenever any special contract was made, but only as not affecting any special contract inconsistent with the exemption provided by the Act (*a*). The ordinary stipulation in a bill of lading, excepting liability for breakage, leakage and damage, would be similarly limited in construction, as not extending to any such injury caused by the shipowner or his servants (*b*). So

Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), can recover the cost of paving a new street from the frontagers, in spite of the lapse of time since the road became a new st ›et; *Simmonds* v. *Fulham Vestry*, [1900] 2 Q. B. 188. See also *St. Giles, Camberwell* v. *Hunt* (1887), 56 L. J. M. C. 65, but as to what constitutes a new street, see *White* v. *Fulham Vestry* (1896), 74 L. T. 425, and see also *Wandsworth* v. *Golds* (1910), 80 L. J. K. B. 126.

(*a*) *Baxendale* v. *G. E. Ry. Co.* (1869), L. R. 4 Q. B. 244. As to the nature of evidence required by a carrier to bring him within the protection of the Act, see *L. & N. W. Ry.* v. *J. P. Ashton*, [1919] W. N. 234; and see as to "insurance" and "special contract," *Doey* v. *L. & N. W. Ry. Co.*, [1919] 1 K. B. 623. For a disquisition on the liability of carriers under this Act, see Chitty on Contracts, Chap. XV., s. 2.

(*b*) *Phillips* v. *Clark*, 26 L. J. C. P. 168; *Czech* v. *Gen. Steam*

the clause in a bill of lading of goods from Malaga to Liverpool authorising the ship to call at "any port or ports, in any rotation, in the Mediterranean, Levant, Black Sea, or Adriatic; or on the coasts of Africa, Spain, Portugal, France, Great Britain, and Ireland, for any purpose," would be limited to ports in geographical order which were substantially on the course of the voyage (*a*).

It is to be borne in mind that the injustice and hardship which the Legislature is presumed not to intend is not merely such as may occur in individual and exceptional cases only. Laws are made *ad ea quæ frequentius accidunt* (*b*); and individnal hardship not unfreqnently results from enactments of general advantage. The argument of hardship has been said to be always a dangerous one to listen to (*c*). It is apt to introduce bad law (*d*); and has occasionally led to the erroneous

Nav. Co., L. R. 3 C. P. 14; *per* Lindley L.J., *Chartered Bank of India* v. *Netherlands Steam Nav. Co.*, 52 L. J. Q. B. 230. See also *The Pearlmoor*, [1904] P. 286.

(*a*) *Glynn* v. *Margetson*, [1893] 62 L. J. Q. B. 466; *White* v. *Granada S.S. Co.* (1896), 13 T. L. R. 1. As to the use of words "in any order" in bill of lading, see *Hadji Ali Akbar* v. *Anglo Arabian Persian S.S. Co.* (1906), 11 Comm. Cas. 219.

(*b*) Dig. 1. 9. 3–10.

(*c*) *Per* Cur., *Munro* v. *Butt*, 8 E. & B. 754.

(*d*) *Per* Rolfe B., *Winterbottom* v. *Wright*, 10 M. & W. 116; *Brand* v. *Hammersmith R. Co.*, L. R. 2 Q. B. 241; *Adams* v. *Graham*, 33 L. J. Q. B. 71.

interpretation of statutes (*a*). Court ought not to be influenced or governed by any notions of hardship (*b*). They must look hardships in the face rather than break down the rules of law (*c*); and if, in all cases of ordinary occurrence, the law, in its natural construction, is not inconsistent, or unreasonable, or unjust, that construction is not to be departed from merely because it may operate with hardship or injustice in some particular case (*d*).

SECTION III.—CONSTRUCTION AGAINST IMPAIRING OBLIGATIONS, OR PERMITTING ADVANTAGE FROM ONE'S OWN WRONG.

On the general principle of avoiding injustice, and absurdity, any construction would, if possible, be rejected (unless the policy and object of the Act

(*a*) *Comp.* ex. gr., *Perry* v. *Skinner*, 2 M. & W. 471, with *R.* v. *Mill*, 20 L. J. C. P. 16; and *R.* v. *Shiles*, 1 Q. B. 919, and *Welch* v. *Nash*, 9 R. R. 478, with *R.* v. *Phillips* (1866), 35 L. J. M. C. 217. See *Re Palmer's Trade Mark* (1882), 21 Ch. D. 47.

(*b*) *Per* Lord Abinger, *Rhodes* v. *Smethurst*, 4 M. & W. 63; *per* Lord Esher M.R., *Re Perkins*, 24 Q. B. D. 618.

(*c*) *Per* Lord Eldon, *Berkeley Peerage*, 4 Camp. 419, and in *Jesson* v. *Wright*, 2 Bligh, 55; *per* Jessel M.R., *Ford* v. *Kettle*, 9 Q. B. D. 139, and *Kirk* v. *Todd*, 21 Ch. D. 484.

(*d*) See Co. Litt. 97b, 152b; *per* Parke B., *Miller* v. *Salomons*, 21 L. J. Ex. 192, and *Williams* v. *Roberts*, 7 Ex. 628; *per* Lord Blackburn, *Young* v. *Leamington* (*Mayor*), 8 App. Cas. 527, and *per* Lindley L.J., *S.C.*, 51 L. J. Q. B. 297.

required it) which enabled a person to defeat or impair the obligation of his contract by his own act, or otherwise to profit by his own wrong: "a man may not take advantage of his own wrong; he may not plead, in his own interest, a self-created necessity" (*a*). Thus, an Act which authorised justices to discharge an apprentice under certain circumstances, from his indenture, "on the master's appearance" before them, would justify a discharge in his wilful absence. The Act, it was observed, must have a reasonable construction, so as not to permit the master to take advantage of his own obstinacy. It would be very hard that, supposing the master was profligate and ran away, the apprentice should never be discharged (*b*). For similar reasons, an Act (30 & 31 Vict. c. 84) which authorised a justice to summon a parent "to appear with his child" before him, for breach of the Vaccination Act of 1867, and "upon his appearance," to order the vaccination of the child, if he should find that it had not already undergone that operation, was held to authorise such an order without the appearance of the child, when the parent refused to produce it. A literal construction, making the production of

(*a*) *Per* Fletcher Moulton L.J., *Kish* v. *Taylor*, 80 L. J. K. B. 607.

(*b*) *Ditton's Case*, 2 Salk. 490. See *Gordon* v. *G. W. R.*, 8 Q. B. D. 44. *Comp. R.* v. *Bucks.* and *R.* v. *Staffordshire*, sup. p. 15.

the ohild a oondition preoedent to the making of the order, would have involved the supposition that the Legislature had intended to allow the parent to defeat its objeot by disobeying the summons whioh it had ordered (*a*). So, a parent who sent his ohild to the Board Sohool without also sending the sohool fees did not "oause the ohild to attend the sohool" within the meaning of the Elementary Eduoation Aot, 1870, s. 74 (*b*). A trustee in bankruptoy who has received a sum, would be liable to arrest under the provision of the Debtors Act, 1869, whioh makes a trustee liable to imprisonment for disobeying an order to pay a sum "in his possession or his oontrol," though in faot he had spent it all (*c*). The provision of the Real Property Limitation Aot, 1874, that no aotion

(*a*) *Dutton* v. *Atkins* (1871), L. R. 6 Q. B. 373; *R.* v. *Justices of Cinque Ports*, 17 Q. B. D. 191. *Comp. Barnardo* v. *Ford*, [1892] A. C. 326. For exemption from penalties in case of parents' conscientious belief, see Vaccination Act, 1907 (7 Edw. VII. c. 31, s. 1 (1)).

(*b*) 33 & 34 Vict. c. 75; *London School Board* v. *Wright*, 12 Q. B. D. 578; see also *Id.* v. *Wood*, 15 Q. B. D. 415. The obligation of payment under the Act of 1870 is avoided, in certain cases, by 39 & 40 Vict. c. 79, s. 10.

(*c*) 32 & 33 Vict. c. 62, s. 4; *Middleton* v. *Chichester* (1871), L. R. 6 Ch. 152. See *Lewes* v. *Barnett*, 6 Ch. D. 252. The Debtors Act, 1878, by s. 1, gives a Court or Judge discretion to grant or refuse a writ of attachment under s. 4 of the earlier Act.

should be brought to recover certain sums of money but within 12 years next after "a present right to receive the same" shall have accrued to some person capable of giving a discharge for it, must be taken in its ordinary sense, and is not to be interpreted as referring to "a present right to sue for the same," which may be contingent on the doing of some act by the person entitled to receive the sum, and may be delayed by him accordingly (*a*).

Although 9 Anne, c. 14, s. 1 (*b*), enacted that bills and notes, founded on the consideration of money lost at play, should be "utterly frustrate, void, and of none effect, to all intents and purpose," its operation was confined to preventing the drawer (or any person claiming under him (*c*)) from recovering from the loser; but it left the instrument unaffected in the hands of an innocent indorsee for value suing the drawer (*d*). The statute was construed as if the words were voidable against certain persons only, but were valid as regards

(*a*) 37 & 38 Vict. c. 57, s. 8; *Hornsey Loc. Bd.* v. *Monarch Investment Bldg. Socy.* (1889), 24 Q. B. D. 1; 59 L. J. Q. B. 105. See for discussion on this case *Owen, In re,* [1894] 3 Ch., p. 225; 63 L. J. Ch. 749.

(*b*) Amended by 5 & 6 Will. IV. c. 41, ss. 1 and 3.

(*c*) *Bowyer* v. *Bampton,* 2 Stra. 1155.

(*d*) *Edwards* v. *Dick,* 23 R. R. 255.

others, and this still represents the law in the case of a *bonâ fide* holder without notice (*a*).

So, where an Act (*b*) provided that if the purchaser at an auction refused to pay the auction duty, when this was made a condition of sale, his bidding should be "null and void to all intents and purposes," it was held that the object of the enactment was completely attained by making the bidding void only at the option of the seller; thus avoiding the injustice and impolicy of enabling a man to escape from the obligation of his contract by his own wrongful act, which a literal construction would have involved (*c*).

A special Act (*d*) provided that a company should not issue any share, that no share should vest, until one-fifth of its amount was paid up, and that the shareholder who had not paid up one-fifth

(*a*) *Per* Cur., *Hay* v. *Ayling* (1851), 20 L. J. Q. B. 171, p. 174. See also *Woolf* v. *Hamilton*, [1898] 2 Q. B. 337, C. A.

(*b*) 17 Geo. III. c. 50, s. 8 (repealed 33 & 34 Vict. c. 9).

(*c*) *Malins* v. *Freeman* (1838), 7 L. J. C. P. 212. So, the usual stipulation in a lease that if any covenant is broken by the lessee, the lease shall be void, is construed as voidable only at the option of the lessor. The literal construction would enable a lessee to get rid of an onerous lease by wilfully breaking a covenant in it. *Comp. Rickard* v. *Graham*, 79 L. J. Ch. 378; *Doe* v. *Bancke*, 4 B. & Ald. 401; *Rede* v. *Farr*, 18 R. R. 329; and *per* Lord Cairns, *Magdalen Hospital* v. *Knotts*, 4 App. Cas. 332.

(*d*) Incorporating certain sections of the Companies Clauses Act, 1845.

should have no right of property in the shares allotted to him, or capacity to transfer them, was considered as limited in its application to the protection of the public. To construe it as applying also to the benefit of the shareholder, would have been to absolve him from liability to pay up calls until he had paid the requisite proportion; or, in other words, to enable him to profit by his own default; a consequence too unjust and unreasonable to have been intended (*a*).

On similar grounds, probably, enactments which avoid or abridge the effect of conveyances, contracts, and instruments, have generally received a construction more compatible with the obvious object and policy of the Legislature than with the natural meaning of the language. Thus, the Act of Will. III., which declares void all conveyances of property, "in order to multiply voices," does not apply where the vendor is not privy to the illegal object (*b*), and even where there is privity it is valid and effectual as between the parties to it to pass the interest (*c*).

(*a*) *East Gloucestershire Ry. Co.* v. *Bartholomew*, L. R. 3 Ex. 15; *McEwen* v. *West London Wharves &c. Co.* (1871), L. R. 6 Ch. 655. *Comp.*, however, *R.* v. *Staffordshire*, 8 R. R. 668; *McIlroith* v. *Dublin &c. Ry. Co.* (1871), L. R. 7 Ch., at p. 139, and *Exp. Parbury*, 30 L. J. Ch. 513.

(*b*) 7 & 8 Will. III. c. 25, s. 7; *Marshall* v. *Bowen*, 14 L. J. C. P. 129; *Hoyland* v. *Bremner*, 15 L. J. C. P. 133, sup. 165.

(*c*) *Phillpotts* v. *Phillpotts* (1850), 20 L. J. C. P. 11.

Though 13 Eliz. c. 10, made "utterly void and of none effect, to all intents, constructions and purposes," all leases by ecclesiastical persons and bodies, other than for 21 years or three lives, the prohibited leases have always been held valid as against the lessor, when a corporation sole, and even when a corporation aggregate with a head, during the life of its head (*a*); probably on the principle of a personal estoppel by reason of a personal interest in the head of the corporation (*b*). Where, however, there is no head, the Act necessarily receives its primary and natural meaning; and the lease is void *ab initio* (*c*); upon the ground that if it did not make the lease altogether bad, it would be altogether good (*d*); which would be contrary to every possible construction of the Act.

An Act which required that indentures for binding parish apprentices should be for the term of seven years at least, declaring that otherwise they should be "void to all intents and purposes, and not available in any court or place for any purpose whatever," was held, nevertheless, to

(*a*) *Bishop of Salisbury's Case*, 10 Rep. 60b, Co. Litt. 45a; *Lincoln College Case*, 3 Rep. 60a; Bac. Ab. Leases (H). See also *Roberts* v. *Davey*, 38 R. R. 348; *Davenport* v. *R.*, 3 App. Cas. 115.

(*b*) *Per* Lord Cairns, *Magdalen Hosp.* v. *Knotts*, 4 App. Cas., at p. 333.

(*c*) Id. 324.

(*d*) *Per* Cresswell J., *Young* v. *Billiter*, 25 L. J. Q. B. 178.

make an indenture for a shorter term only voidable at the option of the master or apprentice; or at all events to leave it so far valid that service under it sufficed to gain a poor law settlement (*a*). Though the Infants Relief Act, 1874, makes all contracts for the supply to an infant of goods which are not necessaries absolutely void, the infant cannot recover the money he has paid for them if he has used or consumed them (*b*).

3 Hen. VII. c. 4 (*c*), which declared that gifts of goods and chattels in trust for the donor and in fraud of his creditors should be "void and of none effect," was early held to be so only as to those who were prejudiced by the gift, but not as between the parties (*d*). And 13 Eliz. c. 5, would not include a *bonâ fide* conveyance for valuable consideration, though made with intent to defeat an execution creditor (*e*). Even as regards the persons prejudiced, the transaction

(*a*) 5 Eliz. c. 4 (repealed by 38 & 39 Vict. c. 86, s. 17); *R.* v. *St. Nicholas*, 2 Stra. 1066, Ca. Temp. Hardw. 323; *Gray* v. *Cookson*, 16 East, 13; *R.* v. *St. Gregory*, 2 A. & E. 107; *Oakes* v. *Turquand*, L. R. 2 H. L. 325; *Burgess's Case*, 15 Ch. D. 507.

(*b*) 37 & 38 Vict. c. 62, s. 1; *Valentini* v. *Canali*, 24 Q. B. D. 166.

(*c*) Repealed as to E. by S. L. R., 1863, as to Ir., S. L. (1) R., 1872.

(*d*) *Ridler* v. *Punter*, Cro. Eliz. 291; *Bessey* v. *Windham*, 6 Q. B. 166. See *Phillpotts* v. *Phillpotts*, sup. p. 165.

(*e*) *Wood* v. *Dixie*, 68 R. R. 590; *Darvill* v. *Terry*, 30 L. J. Ex. 355.

is not void *ipso facto*, but only voidable at their option (*a*). In the repealed s. 47 of the Bankruptcy Act, 1883, which enacted that voluntary settlements made by a person who became bankrupt within two years after should be void as against the trustee in bankruptcy, "void" has been held to mean "voidable," so that the title of a purchaser from the donee for valuable consideration in good faith before avoidance, could not afterwards be defeated by the trustee (*b*). Sec. 137 of the repealed Bankrupt Law Consolidation Act, 1849 (*c*), which enacted that a judge's order to enter up judgment, made against a trader with his consent, should be "null and void to all intents and purposes whatever," if not filed as required by the Act, was construed as making the judgment void only as against his assignees, but not as against himself. A literal construction would have enabled the trader to treat his creditor who took out execution on the judgment to which he had consented, as a trespasser (*d*). So non-compliance with the requirement of s. 27, Debtors

(*a*) Note the cases in *Young* v. *Billiter*, 6 E. & B. 1, 8 H. L. Cas. 682.

(*b*) 46 & 47 Vict. c. 52; *Brall, Re*, [1893] 2 Q. B. 381; *Carter, and Kenderdine, Re*, 66 L. J. Ch. 408. As to existing law with regard to fraudulent settlements, see Bankruptcy Act, 1914, s. 27.

(*c*) As to existing Bankruptcy Law, see 4 & 5 Geo. V. c. 59.

(*d*) *Bryan* v. *Child*, 82 R. R. 710; *Green* v. *Gray*, 1 Dowl. 350.

Act, 1869, that a judge's order for judgment made by consent of the defendant in a personal action shall be filed in the manner prescribed within 21 days after the making thereof, "otherwise the order and any judgment signed or entered up thereon, and any execution issued or taken out on such judgment shall be void," only renders such an order and judgment void as against the creditors of such defendant, and not as against himself (*a*). On the same ground, a section of an Act (*b*) which declared a warrant of attorney under certain circumstances "void to all intents and purposes," was held to mean only that it was void against the assignees in bankruptcy of the person who had given it; although in another section the warrant was declared to be "void against the assignees" if not filed. The difference in the language of the two sections was considered by the majority of the Court as insufficient to establish any substantial difference of intention, when the consequence would be to enable a person to defeat his own act (*c*).

Though the Sunday Observance Act, 1677, has

(*a*) 32 & 33 Vict. c. 62; *Gowan* v. *Wright*, 18 Q. B. D. 201; *Crawshaw* v. *Harrison*, [1894] 1 Q. B. 79.

(*b*) 3 Geo. IV. c. 39, s. 4. *Cognovit actionem* ext. 6 & 7 Vict. c. 66. Repealed 32 & 33 Vict. c. 62, s. 28.

(*c*) *Morris* v. *Mellin* (1827), 6 B. & C. 446; *Bennett* v. *Daniel*, 10 B. & C. 500. See *Davis* v. *Bryan* (1827), 6 B. & C. 651.

the effect of avoiding contracts made on Sunday by and with tradesmen and other classes of persons, in the course of their ordinary calling, the invalidity affects only those persons who, when contracting with them, knew their calling; but those who dealt with them in ignorance of it would be entitled to sue on the contract (*a*).

In all these cases the intention of the Legislature was considered as completely carried out by the restricted scope given to its enactments. But where, having regard to the general policy of the Act as well as to the language and the structure of the sentence, it would not have that effect, the words abridging or avoiding the effect of instruments, contracts, and dealings would receive their primary and natural meaning. Thus, in the Bills of Sale Act of 1854, assignments not registered were null and void in the full and natural sense of the words (*b*); and in the later Act of 1882, the provision of s. 9, which avoids a bill of sale unless made in accordance with the form in the schedule, has been held to avoid it *in toto*, and not merely as regards the personal chattels comprised in it; so that a covenant contained in it for the payment by the grantee of the principal and

(*a*) *Bloxsome* v. *Williams*, 27 R. R. 337. See also *Drury* v. *Defontaine*, 1 Taunt. 131.

(*b*) See ex. gr., *Richards* v. *James*, 36 L. J. Q. B. 116. *Comp. Exp. Blaiberg*, 52 L. J. Ch. 461.

interest thereby secured was said to be rendered inoperative (*a*). So, in the case cited on an earlier page, where an Act recited the mischiefs occasioned by binding parish apprentices without the sanction of justices, and enacted that no indenture of such apprenticeships should be valid unless approved by two justices, under their hands and seals; it was held that an indenture, approved under hand but not under seal, was absolutely void (*b*). The same effect was given (in an action by the trustees against their lessee for rent which had been made payable to them) to a local Act which provided that every lease of turnpike tolls should make the rent payable to the treasurer, in default of which it should be "null and void" (*c*).

It may, probably, be said that where a statute not only declares a contract void, but imposes a penalty for making it, it is not voidable merely (*d*).

(*a*) 45 & 46 Vict. c. 43; *Davies* v. *Rees*, 55 L. J. Q. B. 363. But see *Heseltine* v. *Simmons* (1892), 62 L. J. Q. B. 5, in which it was held that where a bill is avoided under s. 8 for an untrue statement as to consideration it does not necessarily avoid the covenant to repay under s. 9. See also *Brandon Hill* v. *Lane* (1914), 59 S. J. 75; [1915] 1 K. B. 250; *Rovard, In re* (1916), 58 S. J. K. B. 393.

(*b*) *R.* v. *Stoke Damerel*, sup. p. 10. See also *R.* v. *Bawbergh*, 2 B. & C. 222.

(*c*) 3 Geo. IV. c. 126; *Pearse* v. *Morrice*, 2 A. & E. 84. *Comp. Hodson* v. *Sharpe*, 10 R. R. 324.

(*d*) *Gye* v. *Felton*, 4 Taunt. 876.

The penalty makes it illegal (*a*). In general, however, it would seem that where the enactment has relation only to the benefit of particular persons, the word "void" would be understood as "voidable" only, at the election of the persons for whose protection the enactment was made, and who are capable of protecting themselves; but that when it relates to persons not capable of protecting themselves, or when it has some object of public policy in view which requires the strict construction, the word receives its natural full force and effect (*b*).

SECTION IV.—RETROSPECTIVE OPERATION.—1. AS REGARDS VESTED RIGHTS.—2. AS REGARDS PROCEDURE.

Upon the presumption that the Legislature does not intend what is unjust rests the leaning against giving certain statutes a retrospective operation (*c*). *Nova constitutio futuris formam imponere*

(*a*) But this distinction must now be understood to apply only to cases where the statute enacts that an agreement or deed made in violation of its provisions shall be wholly void. *Per* Gibbs C.J., *Doe* v. *Pitchers* (1815), 6 Taunt. 359, p. 369.

(*b*) See *per* Bayley J., *R.* v. *Hipswell*, 8 B. & C. 471. See also *Betham* v. *Gregg*, 38 R. R. 449, and *Storie* v. *Winchester*, 19 L. J. C. P. 217. See further Stroud's Judicial Dictionary, and Supp., tit. "Void," and see also Money Lenders Act, 1911, and cases thereon, "Chitty on Contracts," Chap. XXII., s. 1.

(*c*) 2 Inst. 292.

debet, non præteritis. They are construed as operating only in cases or on facts which come into existence after the statutes were passed (*a*) unless a retrospective effect be clearly intended. It is a fundamental rule of English law that no statute shall be construed so as to have a retrospective operation, unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication (*b*); and the same rule involves another and subordinate rule to the effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary (*c*). Even in construing a section which is to a certain extent retrospective, the maxim ought to be borne in mind as applicable whenever the line is reached at which the words of the section cease to be plain (*d*).

For it is to be observed that the retrospective effect of a statute may be partial in its operation.

(*a*) *Per* Erle C.J., *Midland Ry. Co.* v. *Pye*, 10 C. B. N. S. 191; *per* Cockburn C.J., *R.* v. *Ipswich*, 2 Q. B. D. 269; *per* Pollock C.B., *Young* v. *Hughes*, 4 H. & N. 76; *Vansittart* v. *Taylor*, 4 E. & B. 910; *Young* v. *Adams*, [1898] A. C. 469.

(*b*) This statement of the fundamental rule was cited and approved by Kennedy L.J., *West* v. *Gwynne*, [1911] 2 Ch. 15. See further, *Smith* v. *Callander*, [1901] A. C. 297.

(*c*) *Per* Lindley L.J., *Lauri* v. *Renad*, [1892] 3 Ch. 421.

(*d*) *Per* Bowen L.J., *Reid* v. *Reid*, 31 Ch. D. 409. See also *Main* v. *Stark*, 15 A. C. 388; *Reynolds* v. *A.-G. Nova Scotia*, [1896] A. C. 240.

Thus it has been said that s. 35, Divided Parishes and Poor Law Amendment Act, 1876, which contains a code of transmitted status in relation to poor-law settlement, is to be considered as fully retrospective for all purposes, except only as regards adjudications made before the commencement of the Act; so that for the purpose of determining the settlement of children born after 1876, it may be that their father's settlement is governed by the section, even though his settlement, for the purposes of his own removal, is not affected by it (*a*).

It is chiefly where the enactment would prejudicially affect vested rights, or the legality of past transactions, or impair contracts, that the rule in question prevails. Every statute, it has been said, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past, must be presumed, out of respect to the Legislature (*b*), to be intended not to have a retrospective operation (*c*). Thus,

(*a*) 39 & 40 Vict. c. 61, s. 35; *Bath* v. *Berwick*, [1892] 1 Q. B. 731; and see also *Paddington Union* v. *Westminster Union*, [1915] 2 K. B. 644.

(*b*) *Per* Chancellor Kent, *Dash* v. *Van Kleek*, 7 Johnson, 502, etc.

(*c*) *Per* Story J., *Socy. for Propag. of Gospel* v. *Wheeler*, 2

the provision of the Statute of Frauds, that no action should be brought to charge any person on any agreement made in consideration of marriage, unless the agreement were in writing, was held not to apply to an agreement which had been made before the Act was passed (*a*). The Charitable Uses Act, 1735 (*b*), in the same way, was held not to apply to a devise made before it was enacted (*c*). And the Apportionment Act, 1870, which enacts that after the passing of the Act, rents are to be considered as accruing from day to day, like interest, and to be apportionable in respect of time accordingly, would seem not to apply to a Will made before the Act, though the testator died after it came into operation (*d*). The testator was presumed to have in view the state of the

Gallison, 139. See also *per* Chase C.J., *Calder* v. *Bull*, 3 Dallas, 390, cited by Willes J., *Phillips* v. *Eyre*, L. R. 6 Q. B. 1, where the distinction between retrospective and *ex post facto* legislation is indicated. See further, *per* Lopes L.J., *Re Pulborough School Board Election*, [1894] 1 Q. B. 737.

(*a*) *Gilmore* v. *Shuter*, 2 Lev. 227, 2 Mod. 310; *Ash* v. *Abdy*, 3 Swanst. 664. See also *Doe* v. *Page*, 13 L. J. Q. B. 153; *Doe* v. *Bold*, 11 Q. B. 127.

(*b*) 9 Geo. II. c. 36 (repealed save part of s. 5 by 51 & 52 Vict. c. 42, s. 13).

(*c*) *A.-G.* v. *Lloyd*, 3 Atk. 551; *Ashburnham* v. *Bradshaw*, 2 Atk. 36.

(*d*) *Jones* v. *Ogle*, L. R. 8 Ch. 192, but see *Capson* v. *Capson* (1874), 43 L. J. Ch. 677; *Brownrigg* v. *Pike* (1882), 51 L. J. P. 29; *Constable* v. *Constable* (1879), 48 L. J. Ch. 621.

law when he made his Will (*a*). The contrary presumption that the testator who left his Will unaltered after the Act was passed, intended that it should operate on the Will (*b*), would imply that he knew that the law had been changed. So, it was held that 8 & 9 Vict. c. 109, which made all wagers void, and enacted that no action should be brought or maintained for a wager, applied only to wagers made after the Act was passed (*c*); the Gaming Act, 1892, which prevents a betting agent from recovering from his employer sums paid for bets, was held not to prevent such recovery where the sums had been paid before the passing of the Act (*d*); and the Kidnapping Act of 1872, which made it unlawful for a vessel to carry native labourers of the Pacific Islands without a license, did not apply to a voyage begun before the Act was passed (*e*). Where one of the ingredients of an offence had been committed after the passing of the Act which created the offence, but before the Act came into operation,

(*a*) *Re March*, 27 Ch. D. 166; but see *Re Bridger*, [1894] 1 Ch. 297; and *Re Llanover*, [1903] 2 Ch. 330.

(*b*) *Per* Jessel M.R., *Hasluck* v. *Pedley* (1874), 19 Eq. 271.

(*c*) *Moon* v. *Durden*, 2 Ex. 22, on which see *per* Buckley L.J., *West* v. *Gwynne*, inf. p. 393; *Pettamberdass* v. *Thackoorseydass*, 7 Moo. P. C. 239. See *White, Exp.*, 33 L. J. Bank. 22.

(*d*) 55 & 56 Vict. c. 9; *Knight* v. *Lee*, [1893] 1 Q. B. 41.

(*e*) 35 & 36 Vict. c. 19; *Burns* v. *Nowell* (1880), 49 L. J. Q. B. 468.

the fact that the other ingredients were committed subsequently did not make the offence one within the Act (*a*). The Bills of Sale Act, 1882, which made void bills of sale not registered within seven days of their execution, was held not to apply to instruments executed before the Act came into operation. Compliance, it is evident, would have been impossible where the deed had been executed more than seven days before the Act passed (*b*). The 20 Vict. c. 19, which declared that extra-parochial places should, for poor-law and other purposes, be deemed parishes, was held not retrospective, so as to confer the status of irremovability on a pauper who had resided in such a place for five years before the Act (*c*).

The enactments of the Patents, Designs, and Trade Marks Acts, 1883, have been held not to affect any patent granted before the commencement of the Act (*d*); and it has been decided that the repealed International Copyright Act, 1886,

(*a*) 53 & 54 Vict. c. 71, s. 26 (repealed by 4 & 5 Geo. V. c. 59); *R.* v. *Griffiths*, [1891] 2 Q. B. 145. As to offences under the Bankruptcy Act, 1914, see Part VII. of the Act.

(*b*) *Hickson* v. *Darlow*, 23 Ch. D. 690.

(*c*) *R.* v. *St. Sepulchre*, 28 L. J. M. C. 187; See also *R.* v. *Ipswich Union*, 2 Q. B. D. 269; *Sunderland* v. *Sussex*, 8 Q. B. D. 99; *Barton Regis* v. *Liverpool*, 3 Q. B. D. 295; *Gardner* v. *Lucas*, 3 App. Cas. 582.

(*d*) 46 & 47 Vict. c. 57; *Brandon, Re* (1884), 9 App. Cas. 589. See also 7 Edw. VII. c. 29.

was not to be construed so as to revive or re-create a right which had expired before it was passed, or take away from the public the right which they had acquired under previous legislation (*a*). The Married Women's Property Act, 1882, did not entitle a plaintiff, who was suing a married woman upon a promissory note made by her before the passing of the Act, to have judgment against her in such terms as to be available against separate property to which she became entitled after the date of the note (*b*). Nor did it operate upon property falling into the possession of a married woman after the passing of the Act to which she had acquired a title before, so as to make it her separate estate (*c*). Even a statute which confers a benefit, such as abolishing a tax, would not be construed retrospectively, to relieve the persons already subject to the burden before it was abolished. An Act passed in August, providing that on all goods captured from the enemy, and made prize of war, a deduction of one-third of

(*a*) 49 & 50 Vict. c. 33, s. 6; *Lauri* v. *Renad*, [1892] 3 Ch. 402. The present law as to "existing" and "substituted" right is set out, s. 24, and Sched. I. of the Copyright Act, 1911.

(*b*) 45 & 46 Vict. c. 75, s. 1 (4); *Turnbull* v. *Forman*, 15 Q. B. D. 234. This sub-section is repealed by 56 & 57 Vict. c. 63, s. 4, which see as to cases of mere procedure under the Act. See inf. p. 402.

(*c*) *Reid* v. *Reid* (1886), 31 Ch. D. 402.

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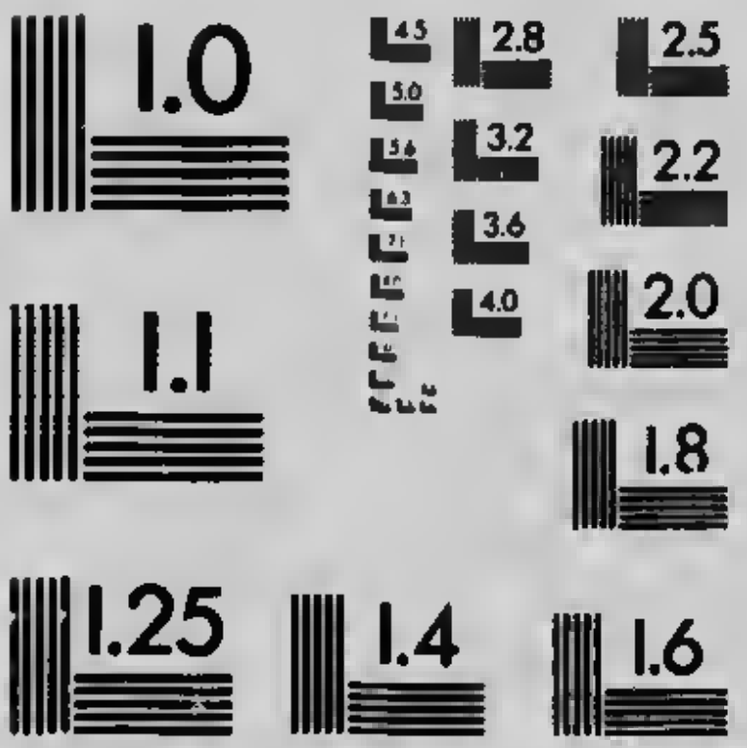

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the ordinary duties should be made, was held not to apply where the prize with her cargo, though condemned in September, had been brought into port on June, when certain duties accrued due (*a*).

The repealed Bankrupt Law Consolidation Act, 1849, which made a deed of arrangement (*b*) "now or hereafter" entered into by a trader with six-sevenths of his creditors binding on the non-executing creditors, at the expiration of three months after they "should have had" notice, was held to apply only to deeds executed after the passing of the Act (*c*). To apply such an enactment to past transactions, even though the property had been completely distributed among the creditors who had signed, would have been so unjust, that it was expedient to seek any means of getting rid of the apparent effect of the word "now," which was accordingly understood as restricted to arrangements not completed but yet binding in equity at the time when the Act was passed. So, a non-trader was held not liable to adjudication as

(*a*) *Prince* v. *U. S.*, 2 Gallison, 204.

(*b*) As to existing law, see Deeds of Arrangement Act, 1914 (4 & 5 Geo. V. c. 47); as to the general principles of which, see *Wilson, In re*, [1916] 1 K. B. 382.

(*c*) 12 & 13 Vict. c. 106; *Waugh* v. *Middleton*, 22 L. J. Ex. 111; *Marsh* v. *Higgins*, 19 L. J. C. P. 297; *Larpent* v. *Bibby*, 5 H. L. Cas. 481; *Noble* v. *Gadban*, 5 H. L. Cas. 504; *Re Phœnix Bessemer Co.*, 45 L. J. Ch. 11. See also *Reed* v. *Wiggins*, 32 L. J. C. P. 131.

a bankrupt in respect of a debt contracted before the enactment, which first made non-traders liable to the bankruptcy laws (*a*). The provisions of ss. 32 and 34, Bankruptcy Act, 1883, which are still in force, and which provide that "where a debtor is adjudged bankrupt" he shall be subject to certain disqualifications, were held to disqualify those persons only who were made bankrupt after the passing of the Act (*b*).

Sec. 1, 5 & 6 Will. IV. c. 83 (*c*), which empowered a patentee, with the leave of the Attorney-General, to enrol a disclaimer of any part of his invention (*d*), and declared that such disclaimer should be deemed and taken to be part of his patent and specification, was construed by the Court of Exchequer as enacting that the disclaimer should be so taken "from thenceforth"; the interpolation being deemed justifiable to avoid the apparent injustice of giving a retrospective effect to the disclaimer, and making a man a trespasser by relation (*e*). But this construction was rejected

(*a*) *Williams* v. *Harding*, L. R. 1 H. L. 9.

(*b*) 46 & 47 Vict. c. 52; *Pulborough School Board Election, Re*, [1894] 1 Q. B. 725; *Thompson, In re* (1919), 88 L. J. K. B. 646.

(*c*) For existing law, see 7 Edw. VII. c. 29 (The Patents and Designs Act, 1907).

(*d*) For meaning of word "disclaimer," see *Owen's Patent, In re* (1898), 79 L. T. 458.

(*e*) *Perry* v. *Skinner*, 6 L. J. Ex. 124; and *per* Cresswell J., *Stocker* v. *Warner*, 1 C. B. 167.

by the Common Pleas, on the ground that the enactment really worked no injustice in operating retrospectively (*a*).

Sec. 1, Mercantile Law Amendment Act, 1856 (repealed by s. 60, Sale of Goods Act, 1893), which provided that no *fi. fa.* should prejudice the title to goods of a *bonâ fide* purchaser for value, before actual seizure under the writ, was held not to apply where the writ had been delivered to the sheriff before the Act was passed. As the execution oreditor had the goods already bound by the delivery of the writ, the statute, if retrospective, would have divested him of a right which he had acquired (*b*); and for the like reasons, s. 146 of the (repealed) Bankruptcy Act, 1883, which enacted that "the sheriff shall not under a writ of *elegit* deliver the goods of a debtor, nor shall a writ of *elegit* extend to goods," was held not to apply to a case where the writ had been issued, and the sheriff had taken possession before the Act came into operation, although the issue and seizure were after the passing of the Act, and the delivery after it came into operation (*c*).

(*a*) *R.* v. *Mill*, 20 L. J. C. P. 16.

(*b*) *Williams* v. *Smith*, 28 L. J. Ex. 286.

(*c*) 46 & 47 Vict. c. 52, s. 146; *Hough* v. *Windus*, 53 L. J. Q. B. 165. As to duties of sheriff in regard to goods taken in execution under existing law, see Bankruptcy Act, 1914, s. 41. See also *Craig & Sons, In re*, [1916] 2 K. B. 497.

Sec. 14, Mercantile Law Amendment Act, 1856, which provides that a debtor shall not lose the benefit of certain Statutes of Limitation by his co-debtor's payment of interest, or part payment of the principal, was held not to effect the efficacy of such a payment made before the Act was passed (*a*). A different decision would have deprived the creditor of a right of action against one of his debtors. The provision in s. 10 of the Judicature Act, 1875, that in winding up companies whose assets are insufficient, the bankruptoy rules as to the rights of creditors and other matters shall apply, was held not to reach back to a company already in liquidation when the Act was passed (*b*).

And generally, "no rule of construction is more firmly established than this: that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only" (*c*).

(*a*) *Jackson* v. *Woolley*, 27 L. J. Q. B. 448.
(*b*) *Re Suche & Co.* (1875), 1 Ch. D. 48.
(*c*) *Athlumney, In re*, [1898] 2 Q. B.; Wright J., at pp. 551, 552.

Nor is a statute retrospective, in the sense under consideration, because a part of the requisites for its action is drawn from a time antecedent to its passing (*a*).

Sec. 5, Mercantile Law Amendment Act, 1856, which entitles a surety who pays the debt of his principal, to an assignment of the securities for it held by the creditor, would apply to the case of a surety who had entered into the suretyship before the Act, but had paid off the debt after it came into operation (*b*). Sec. 2, Infants' Relief Act, 1874, which enacts that no action shall be brought on a ratification, made after majority, of a contract made during infancy, was held to apply to ratifications of contracts made before the Act was passed (*c*). The Court of Chancery, which acquired jurisdiction, under the repealed s. 4 of 22 & 23 Vict. c. 35 (*d*), to relieve in respect of the forfeiture of a lease in consequence of a breach of a covenant to insure, exercised this new jurisdiction where the breach occurred after, but the lease had been made before the Act was passed (*e*).

(*a*) *Per* Lord Denman, *R.* v. *St. Mary, Whitechapel*, 12 Q. B. 127; *R.* v. *Christchurch*, Id. 149. See *R.* v. *Portsea*, 7 Q. B. D. 384; *Exp. Dawson*, L. R. 19 Eq. 433.

(*b*) *De Wolf* v. *Lindsell*, 37 L. J. Ch. 293.

(*c*) *Kibble, Exp.* (1875), 44 L. J. Bank. 63.

(*d*) Re-enacted by s. 14, Conveyancing Act, 1881 (44 & 45 Vict. c. 41).

(*e*) *Page* v. *Bennett* (1855), 29 L. J. Ch. 398.

And the provision of the Conveyancing Act of 1881, which relieved tenants against forfeiture for breach of covenant, was held to apply to a case where judgment had been already given before the Act was passed, and the landlord might have obtained possession, but for a stay of proceedings to give the tenant time to appeal (*a*). So, s. 3, Conveyancing and Law of Property Act, 1892, applies to "all leases," whether executed before or after the commencement of the Act; and, in the absence of express provision to the contrary, engrafts, upon every covenant against assignment or underletting without consent, a proviso that no fine, or sum of money in the nature of a fine, shall be payable in respect of such consent (*b*). So, s. 8, Metropolitan Water Board (Charges) Act, 1907 (7 Edw. VII. c. CLXXI.), is retrospective in removing from the Board the duty of providing, laying down, and maintaining the water communication pipe and imposing that duty on the owner or occupier of the premises supplied with water (*c*).

So, s. 6 of the Married Women's Property (Scotland) Act, 1881, applies to marriages entered

(*a*) 44 & 45 Vict. c. 41, s. 14; *Quilter* v. *Mapleson*, 9 Q. B. D. 672.

(*b*) *West* v. *Gwynne*, [1911] 2 Ch. 1; 80 L. J. Ch. 578.

(*c*) *Batt* v. *Metropolitan Water Board*, [1911] 2 K. B. 965; *Mist* v. *Metropolitan Water Board* (1915), 84 L. J. K. B. 2041.

into before the passing of that Act as well as to those contracted subsequently (*a*).

In general, when the law is altered pending an action, the rights of the parties are decided according to the law as it existed when the action was begun, unless the new statute shows a clear intention to vary such rights. Thus, s. 32 of the Medical Act, 21 & 22 Vict. c. 90, which, as amended by subsequent statutes, enacts that no person shall, after the 1st of January, 1859, recover any charge for medical treatment "unless he shall prove at the trial" that he was on the Medical Register, was held not to apply to an action for medical services, begun before that date, but tried after it (*b*). An administration bond given to the Ordinary not being assignable until the 21 & 22 Vict. c. 95, an action begun by the assignee before that Act was passed, was held not maintainable after it came into operation (*c*).

If a statute is in its nature a declaratory Act, the argument that it must not be construed so as to take away previous rights is not applicable. Thus, a statute passed in 1889 declaring that the provisions of a statute of 1881, with regard to the

(*a*) *Paterson* v. *Poe* (1883), 8 App. Cas. 678.

(*b*) *Thistleton* v. *Frewer*, 31 L. J. Ex. 230; *Wright* v. *Greenroyd*, 31 L. J. Q. B. 4. *Comp. Leman* v. *Houseley*, 44 L. J. Q. B. 22.

(*c*) *Young* v. *Hughes*, 4 H. & N. 76.

imposition of stamp duties upon personal property passing under "voluntary settlements," should be construed as if marriage settlements were included, though until then they had not been regarded as voluntary settlements, resulted in a decision that the provisions of the later Act were retrospective, and that the construction provided by it must be applied to the description of the property sought to be taxed, and this although the property passed to the beneficiaries, and proceedings to recover the duty were taken, before the second Act came into force (*a*).

It is hardly necessary to add, that whenever the intention is clear that the Act should have a retrospective operation, it must unquestionably be so construed (*b*), even though the consequences may appear unjust and hard (*c*). Thus, an Act (33 & 34 Vict. c. 29, s. 14) (*d*) which enacted that every person "convicted of felony" should for ever be disqualified from selling spirits by retail, and that if any such person should take out, or

(*a*) 44 & 45 Vict. c. 12, s. 38, 52 & 53 Vict. c. 7, s. 11; *A.-G.* v. *Theobald* (1890), 24 Q. B. D. 557; *Scott* v. *Craig's Representatives*, [1896] 24 Rettie 462. But see *Young* v. *Adams* (1898), 67 L. J. P. C. 75.

(*b*) See ex. gr. *Williams and Stepney, Re*, [1891] 2 Q. B. 257.

(*c*) See ex. gr. *Stead* v. *Carey*, 14 L. J. C. P. 177; *Bell* v. *Bilton*, 4 Bing. 615.

(*d*) Repealed by 10 Edw. VII. and 1 Geo. V. c. 24, s. 112, Sched. 7, and re-enacted by s. 35 of same Act.

have taken out, a license for that purpose, it should be void, was held to include a man who had been convicted of felony before, and had obtained a license after the Act was passed. Although the expression "convicted of felony" might have been limited to persons who should thereafter be convicted, yet, as the object of the Act was to protect the public from having beerhouses kept by men of bad character, the language was construed in the sense which best advanced the remedy and suppressed the mischief; though giving, perhaps, a retrospective operation to the enactment (*a*). The Summary Jurisdiction (Married Women) Act, 1895, s. 4, which enacts (*inter alia*) that "any married woman whose husband shall have been guilty of persistent cruelty to her, and by such cruelty have caused her to leave and live separately and apart from him, may apply to any Court of summary jurisdiction for an order under the Act," is retrospective in its operation, and applies to acts of cruelty committed before the Act came into

(*a*) *Hitchcock* v. *Way*, 45 R. R. 653; *R.* v. *Vine*, L. R. 10 Q. B. 195, diss. Lush J., considered in *Re Pulborough School Board*, [1894] 1 Q. B. 725; *Chappell* v. *Purday*, 13 L. J. Ex. 7. A bare verdict of guilty without penalty constitutes a conviction, *R.* v. *Blaby*, [1894] 2 Q. B. 170; 63 L. J. M. C. 133. As to the effect of pardon in removing the disqualification, see *Hay* v. *Tower Jus.*, [1898] 24 Q. B. D. 561.

operation (*a*). After the passing of the Statute of Frauds Amendment Act, 1828 (9 Geo. IV. c. 14), which enacted that in actions grounded upon simple contracts, no verbal promise should be "deemed sufficient evidence" of a new contract to bar the Statute of Limitation, it was held that such a promise given before the Act, and which was then sufficient to bar the statute, could not be received in evidence in an action begun before, but not tried till after the passing of the Act (*b*). This decision has been supported on the ground that the time for deciding what is or is not evidence, is when the trial takes place; and that when the Act told the judge what was and was not then to be evidence, he was bound to decide in obedience to it (*c*). But some stress is also to be laid on the circumstance that the Act did not come into operation until eight months after its passing; for the concession of this interval seemed to show that the hardship in question had been in the contemplation of the Legislature, and had been thus provided for (*d*). So, an Act which was

(*a*) 58 & 59 Vict. c. 39; *Lane* v. *Lane*, [1896] P. 155; 65 L. J. P. 63.

(*b*) *Hilliard* v. *Lenard*, Moo. & M. 297; *Towler* v. *Chatterton*, 31 R. R. 411.

(*c*) *Per* Cresswell J., *Marsh* v. *Higgins*, 9 C. B. 551. But *comp.* sup. p. 394.

(*d*) *Per* Park J., 6 Bing. 264.

passed in August, but was not to come into operation till October, making non-traders liable to bankruptcy. applied to a person who contracted a debt and committed an act of bankruptcy between those dates. It was considered that no injustice was done, since the Act had told him what would be the consequence of contracting the debt, before he contracted it (*a*). On this ground, also, it was held that s. 11, 11 & 12 Vict. c. 43 (*b*), which limits the time for taking summary proceedings before justices to six months from the time when the matter complained of arose, was held fatal to proceedings begun after the passing of the Act in respect of a matter which had arisen more than six months before it was passed (*c*); though the interval between the passing of the Act and its coming into operation was only six weeks. If the Act had come into immediate operation, it was observed, the hardship would have been so great, that the inference might have been against an intention to give it a retrospective operation; but

(*a*) *Rashleigh, Exp.* (1875), 2 Ch. D. 9; 45 L. J. Bk. 29, C. A. *Comp. Williams* v. *Harding*, (1866), L. R. 1 H. L. 9; 35 L. J. Bk. 25.

(*b*) Explained as to proceedings by Auditors, 12 & 13 Vict. c. 103, s. 9.

(*c*) *R.* v. *Leeds Ry. Co.*, 21 L. J. M. C. 193 (overruled on another point in *R.* v. *Edwards*, 53 L. J. M. C. 149). See *per* Bovill C.J., *Ings* v. *London & S. W. Ry. Co.*, L. R. 4 C. P. 19.

the provision suspending its operation, for however short a time, was to be taken as an intimation that the Legislature had provided it as the period within which proceedings respecting antecedent matters might be taken (*a*).

In the same way s. 10, Mercantile Law Amendment Act, 1856 (*b*), which enacted that no person should be entitled to commence an action after the time limited, by reason of his being abroad or in prison, was held to apply to causes of action which had accrued before the Act was passed. But some weight was due to the circumstance that another section of the same Act kept alive in express terms a cause of action already accrued, and thus afforded the inference that no such intention had been entertained, as none was expressed, as regards cases under s. 10 (*c*).

In both of the above cases, however, the construction, though fatal to the enforcement of a vested right, by shortening the time for enforcing it, did not in terms take away any such right; and in both it seems to fall within the general principle that the presumption against a retrospective construction has no application to enactments which affect only the procedure and practice of the

(*a*) *Per* Lord Campbell, *R.* v. *Leeds Ry. Co.*, 18 Q. B. 346.

(*b*) 19 & 20 Vict. c. 97.

(*c*) *Cornill* v. *Hudson* (1857), 27 L. J. Q. B. 8; *Pardo* v. *Bingham* (1869), 39 L. J. Ch. 170.

Courts (*a*), even where the alteration which the statute makes has been disadvantageous to one of the parties. Although to make a law for punishing that which, at the time when it was done, was not punishable, is contrary to sound principle; a law which merely alters the procedure may, with perfect propriety, be made applicable to past as well as future transactions (*b*); and no secondary meaning is to be sought for an enactment of such a kind. No person has a vested right in any course of procedure (*c*). He has only the right of prosecution or defence in the manner prescribed for the time being, by or for the Court in which he sues; and if an Act of Parliament alters that mode of procedure, he has no other right than to proceed according to the altered mode (*d*). The remedy does not alter the contract or the tort; it takes away no vested right, for the defaulter can have no vested right in a state of the law which left the injured party without, or with only a defective, remedy. If the time for pleading were shortened, or new powers of amending were given, it would

(*a*) *Wright* v. *Hale* (1860), 30 L. J. Ex. 40; *The Ydun*, [1899] P. 236; *A.-G.* v. *Theobald* (1890), 24 Q. B. D. 557, at p. 560.

(*b*) Macaulay's Hist. Eng., vol. iii. p. 715, and vol. v. p. 43.

(*c*) *Per* Mellish L.J., *Costa Rica* v. *Erlanger*, 3 Ch. D. 69. See ex. gr. *The Dumfries* and other cases, sup. pp. 277, 279.

(*d*) See judgments of Wilde B., *Wright* v. *Hale*, 30 L. J. Ex. 43, and of Lord Wensleydale, *A.-G.* v. *Sillem*, 10 H. L. Cas. 704, and *per* James L.J., *Warner* v. *Murdoch*, 4 Ch. D. 752.

not be open to the parties to gainsay suoh a change; the only right thus interfered with being that of delaying or defeating justioe; a right little worthy of respect (*a*).

The general prinoiple, indeed, seems to be that alterations in the procedure are always retrospeotive, unless there be some good reason against it (*b*). Where, for instance, the defendant pleaded to an action for a small sum, that the jurisdiction of the Court had been taken away by a Court of Requests Act, and that Act was repealed after the plea but before the trial; it was held that the plaintiff was entitled to judgment (*c*). When the Legislature gave a new remedy by the Admiralty Acts of 1840 and 1861 (*d*), for enforcing rights in the Admiralty, those Aots were held to extend to rights which had aoorued before the new remedy had been provided (*e*).

So, the provision of the repealed s. 128, Common Law Prooedure Act, 1852 (*f*), that the plaintiff

(*a*) See ex. gr. *Cornish* v. *Hocking*, 22 L. J. Q. B. 142; *Dash* v. *Van Kleek*, 7 Johns. 503; *The People* v. *Tibbetts*, 4 Cowen, 392.

(*b*) See *per* Lord Blackburn, *Gardner* v. *Lucas*, 3 App. Cas. 603, and *Kimbray* v. *Draper*, L. R. 3 Q. B. 160.

(*c*) *Warne* v. *Beresford*, 6 L. J. Ex. 192.

(*d*) 3 & 4 Vict. c. 65, s. 6, and 24 & 25 Vict. c. 10, ss. 6, 35.

(*e*) *The Alexander Larsen* (1841), 1 Rob. W. 288. See *The Ironsides*, 31 L. J. P. M. & A. 129.

(*f*) 15 & 16 Vict. c. 76 (s. 128 is repealed by 46 & 47 Vict. c. 49, s. 3).

might issue execution within six years from the recovery of a judgment, without revival of the judgment, was held to apply to a judgment which had been recovered more than a year and a day before the Act was passed, and which therefore could not have been put in force under the previous state of the law without revival (*a*); and the power given to a married woman by the Married Women's Property Act, 1882, of suing in all respects as if she were a *feme sole*, was held to enable her to so sue in respect of torts or breaches of contract committed before the passing of the Act (*b*). Sec. 37, Solicitors Act, 1843 (6 & 7 Vict. c. 73) (*c*), which made solicitors' bills taxable, for work done out of Court, and which also provided that, from the passing of the Act, no solicitor should bring an action for costs until a month after he had delivered his bill, was held to apply to costs incurred before the passing of the Act (*d*).

On this principle, it was held that s. 31, 3 & 4

(*a*) *Boodle* v. *Davis*, 22 L. J. Ex. 69.

(*b*) 45 & 46 Vict. c. 75, s. 1 (2); *Weldon* v. *Winslow*, 13 Q. B. D. 784. See also *Weldon* v. *De Bathe*, 14 Q. B. D. 339; *Lowe* v. *Fox*, 15 Q. B. D. 667. *Comp. Lumley, Re*, [1894] 3 Ch. 135.

(*c*) Last proviso of s. 37 is repealed by 38 & 39 Vict. c. 79, s. 2.

(*d*) *Binns* v. *Hey*, 13 L. J. Q. B. 28; *Brooks* v. *Bockett*, 9 Q. B. 847; *Scadding* v. *Eyles*, Id. 858.

Will. IV. c. 42 (*a*), which provides that in actions brought by executors, the plaintiff shall be liable for costs, was applicable to an action begun before the Act oame into operation (*b*); and though Littledale J. (*c*), and afterwards Parke B. (*d*), disapproved of the decision, it appears to have been generally conourred in by the Courts (*e*). So, the Common Law Procedure Act of 1860 (23 & 24 Vict. c. 126, s. 34) (*f*), whioh deprives a plaintiff, in an action for a wrong, of costs, if he recovers by verdict less than £5, unless the judge certifies in his favour, was held to apply to actions begun before the Act had come into operation, but tried after (*g*); and a similar effect was given to 30 & 31 Vict. c. 142, as regards giving security for costs in the County Courts (*h*). The provision which extended the time for making decrees *nisi* absolute from three

(*a*) Sec. 31, repealed by 42 & 43 Vict. c. 59, coupled with 46 & 47 Vict. c. 49, s. 4 (with saving for local or personal actions).

(*b*) *Freeman* v. *Moyes*, 1 A. & E. 338; *Pickup* v. *Wharton*, 2 C. & M. 405; *Grant* v. *Kemp*, Id. 636; *Exp. Dawson*, L. R. 19 Eq. 433.

(*c*) 1 A. & E. 341.

(*d*) In *Pinhorn* v. *Sonster*, 8 Ex. 138.

(*e*) *Per* Channell B., *Wright* v. *Hale*, 30 L. J. Ex. 43; *per* Wood V.-C., *Re Lord*, 1 K. & J. 90.

(*f*) Repealed by 30 & 31 Vict., Sched. (C).

(*g*) *Wright* v. *Hale* (1860), 30 L. J. Ex. 40.

(*h*) *Kimbray* v. *Draper* (1868), L. R. 3 Q. B. 160; 37 L. J. Q. B. 80.

to six months, applied to suits pending when the Act came into operation (*a*).

But a new procedure would be presumably inapplicable, where its application would prejudice rights established under the old (*b*); or would involve a breach of faith between the parties. For this reason, those provisions of the repealed s. 32, Common Law Procedure Act, 1854 (*c*), which permitted error to be brought on a judgment upon a special case, and gave an appeal upon a point reserved at the trial, were held not to apply where the special case was agreed to, and the point was reserved, before the Act came into operation (*d*).

Where a special demurrer stood for argument before the passing of the first Common Law Procedure Act, it was held that the judgment was not to be affected by that Act, which abolished special demurrers, but must be governed by the earlier law (*e*). The judgment was, in strictness, due before the Act, and the delay of the Court ought not to affect it.

In considering whether a statute was intended

(*a*) *Watton* v. *Watton*, 35 L. J. P. & M. 95.

(*b*) *Phœnix Bessemer Co., Exp.*, 45 L. J. Ch. 11.

(*c*) Repealed by 46 & 47 Vict. c. 49, s. 3.

(*d*) *Hughes* v. *Lumley*, 24 L. J. Q. B. 29; *Vansittart* v. *Taylor*, 4 E. & B. 910.

(*e*) *Pinhorn* v. *Souster*, 21 L. J. Ex. 336. See also *R.* v. *Crowan*, 19 L. J. M. C. 20; *Hobson* v. *Neale*, 22 L. J. Ex. 175.

to be retrospective in its operation, reference has been made to prescribed forms appended to rules made under the statute, and to the fact that their being headed "the day of , 189 ," indicated that they were not intended to apply to a period before 1890 (*a*).

(*a*) 53 & 54 Vict. c. 71, s. 25; section repealed by 4 & 5 Geo. V. c. 47, and replaced by s. 13 of that Act; *Norman, Re*, [1893] 2 Q. B. 369.

CHAPTER IX.

SECTION I.—MODIFICATION OF THE LANGUAGE TO MEET THE INTENTION.

WHERE the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence (*a*). This may be done by departing from the rules of grammar; by giving an unusual meaning to particular words; by altering their collocation; by rejecting them altogether, or by interpolating other words; under the influence, no doubt, of an irresistible conviction, that the Legislature could not possibly have intended

(*a*) See *per* Alderson B., *A.-G.* v. *Lockwood*, 9 M. & W. 398, and *Miller* v. *Salomons*, 7 Ex. 475; *per* Lord Denman, *Jubb* v. *Hull Dock Co.*, 9 Q. B. 443; *per* Lord Campbell, *Wigton* v. *Snaith*, 16 Q. B. 503; *per* Parke B., *Becke* v. *Smith*, 2 M. & W. 195, *Wright* v. *Williams*, 1 M. & W. 99, and *Hollingworth* v. *Palmer*, 18 L. J. Ex. 409, 414; *per* James L.J., *Rashleigh, Exp.*, 2 Ch. D. 13; Grot. de B. & P. b. 2, c. 16, s. 12 (4). See also *per* counsel, *Cory* v. *France* (1911), 80 L. J. K. B. 346.

what its words signify, and that the modifications thus made are mere corrections of careless language, and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used (*a*). The rules of grammar yield readily in such cases to those of common sense.

In a case already mentioned where a Colonial ordinance, passed to give effect to the treaty between this country and China, authorised the extradition to the Chinese Government of any of its subjects charged with having committed "any crime or offence against the laws of China," the Privy Council construed these words as limited to those crimes and offences which are punishable by the laws of all civilised nations; and as not including acts which, though against the laws of China, would be innocent in Europe (*b*). As the literal meaning of the words was wide enough to include political offences against the law of a foreign State, an English Court might feel bound to think it impossible that they could have been used in that sense. But it might be doubted whether the other

(*a*) *Salmon* v. *Duncombe* (1886), 11 App. Cas. 627; 55 L. J. P. C. 69; and see *Rose* v. *Rose*, [1897] 1 Ir. R. 9, at pp. 39–42.

(*b*) *A.-G.* v. *Kwok-a-Sing*, sup. p. 45.

party to the treaty understood our stipulation in the same narrow sense; or, indeed, whether it did not understand it as including, above all others, those crimes which all Governments are most desirous to punish, viz., those against themselves (*a*). Where the clearly expressed intention of a Colonial ordinance was to give to any subject of the Queen resident in the colony the power of disposing by Will according to English law of property both real and personal, which otherwise would devolve according to the law of the colony, and where a section of the ordinance was operative for that purpose, except that it concluded with the provision "as if such subject resided in England," the effect of which would be to leave both the *lex situs* and the *lex domicilii* in operation, thus reducing the section to a nullity, it was held that the concluding words ought not to be so construed as to destroy all that had gone before, and therefore should be treated as immaterial, the powers conferred not being affected by the question of residence in England (*b*). When it was settled that the Limitation Act, 1623 (21 Jac. I. c. 16), applied to India (*c*), it was necessary to construe, for that purpose, the expression "beyond the

(*a*) The same wide expressions are used in the 34 & 35 Vict. c. 8, and in the 37 & 38 Vict. c. 38.

(*b*) *Salmon* v. *Duncombe* (1886), 11 App. Cas. 627.

(*c*) *East India Co.* v. *Paul*, 7 Moo. P. C. 85.

seas," as meaning out of the territories (*a*). The same statute, which, after limiting the time for suing, gave a further period to persons abroad "after they returned," was construed as giving that extended time to the executor of a person who never returned, but died abroad (*b*). In the provision of s. 5, Arbitration Act, 1889, that where a submission provides that the reference shall be to a single arbitrator, and all parties do not concur in the appointment of an arbitrator, any party may serve the other parties with a written notice to "appoint" an arbitrator, "appoint" must be read as "concur in appointing," as it could not be supposed that the intention was that the party who would not concur in an appointment should have the appointment in his own hands (*c*).

An Act which made it penal "to be in possession of game after the last day" allowed for shooting, would, if construed literally, include cases where the possession had begun before the last day, and therefore lawfully; and to avoid this injustice, it was construed as applying only where the possession did not begin until after the close of the season; that is, the words "to begin" were interpolated

(*a*) *Ruckmabeye* v. *Lulloobhoy*, 8 Moo. P. C. 4.

(*b*) *Townsend* v. *Deacon*, 18 L. J. Ex. 298. See also *Forbes* v. *Smith*, 24 L. J. Ex. 299.

(*c*) 52 & 53 Vict. c. 49; *Eyre and Leicester Corp., Re*, [1892] 1 Q. B. 136, inf. p. 428.

before "to be in possession" (*a*). Under the Factory and Workshop Act, 1895, which prohibited the use of an underground bakehouse unless it was "so used at the commencement of the Act," it was held that an old-established bakehouse which was vacant at the commencement of the Act, but whose owner was seeking a tenant, was within the exemption (*b*). When one section enacted that if the plaintiff recovered a sum "not exceeding" £5 he should have no costs, and another, that if he recovered "less than" £5, and the judge certified, he should have his costs; the literal meaning of the last clause leaving it inoperative where the sum recovered was exactly £5, it was held, to avoid imputing so incongruous and improbable an intention to the Legislature, that the words "less than," should be read as equivalent to "not exceeding," the general principle being that "Acts of Parliament should be construed with a candid mind and with an intention to understand them" (*c*). Sec. 32, 7 Geo. IV. c. 57 (*d*),

(*a*) 2 Geo. III. c. 19, 39 Geo. III. c. 34; both Acts repealed as to England by 1 & 2 Will. IV. c. 32, s. 1; *Simpson* v. *Unwin*, 37 R. R. 359.

(*b*) 58 & 59 Vict. c. 37, s. 27 (3), repealed and replaced by s. 101 (1), Factory and Workshop Act, 1901; *Schwerzerhof* v. *Wilkins*, [1898] 1 Q. B. 640.

(*c*) *Garby* v. *Harris* (1852), 21 L. J. Ex. 160.

(*d*) Repealed S. L. R., 1873.

which invalidated voluntary conveyances made by insolvents "within three months before the commencement of the imprisonment," which, literally, would exclude the time of imprisonment, was construed as if the words had been "within a period commencing three months before the imprisonment." The literal construction, in leaving uninvalidated voluntary conveyances made after the imprisonment had begun, would have led to an incongruity which the Legislature could not be supposed to have intended (*a*). Sec. 65, County Courts Act, 1888, which provides that, where the claim in an action of contract does not exceed £100, a Judge of the High Court may order the action to be tried in any County Court "in which the action might have been commenced," was construed with the addition of the words "if it had been a County Court action," as otherwise the enactment would have been insensible and inoperative (*b*).

The Bankruptcy Act, 1869, providing that all the property acquired by the bankrupt "during the continuance" of the bankruptcy should be

(*a*) *Becke* v. *Smith*, 6 L. J. Ex. 54.

(*b*) 51 & 52 Vict. c. 43; *Curtis* v. *Stovin*, 22 Q. B. D. 513. See also *Burkill* v. *Thomas*, [1892] 1 Q. B. 312. By s. 3 of 3 Edw. VII. c. 42, the jurisdiction of a County Court is extended to claims not exceeding £100. Demands may not be divided for the purpose of bringing two or more actions. See s. 81, County Court Act, 1888.

divisible among his creditors, and providing also that he might obtain his discharge not only at the close, but during the continuance of his bankruptcy (*a*), it was held that the earlier passage must be read in substance as meaning that the future property which was to be divisible, was that acquired either during the continuance of the bankruptcy or the earlier discharge of the bankrupt (*b*). This construction was deemed necessary to avoid leaving the bankrupt incapable of acquiring property after he had given up everything to his creditors, simply because the property had not been realised, and consequently the bankruptcy not closed (*c*).

It is obvious that the provisions in numerous statutes which limit the time and regulate the procedure for legal proceedings for compensation for acts done in the execution of his office by a justice or other person, or "under" or "by virtue," or "in pursuance" of his authority, do not mean what the words, in their plain and unequivocal sense, convey; since an act done in

(*a*) As to what will disentitle a bankrupt to discharge, see *Smith, In re* (1919), L. J. K. B. 113.

(*b*) See as to this point, *Hill* v. *Settle*. [1917] 1 Ch. 319, C. A.

(*c*) 32 & 33 Vict. c. 71, ss. 15 and 48 repealed. As to similar provisions in existing Act, see ss. 26 and 38, Bankruptcy Act, 1914; *Ebbs* v. *Boulnois* (1875), L. R. 10 Ch. 479; and see *Cholmeley School* v. *Sewell* (1894), 63 L. J. Q. B. 820.

accordance with law is not actionable, and therefore needs no special statutory protection (*a*). Such provisions are obviously intended to protect, under certain circumstances, acts which are not legal or justifiable (*b*); and the meaning given to them by a great number of decisions seems, in the result, to be that they give protection in all cases where the defendant did, or neglected (*c*), what is complained of, under colour of the statute (*d*); that is, being within the general purview of it, and with the honest intention of acting as it authorised, though he might be ignorant of the existence of

(*a*) *Per* Cur., *Hughes* v. *Buckland* (1846), 15 L. J. Ex. 233. *Cf.* The Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), where the words are, "Where . . . any action . . . is commenced . . . against any person for any act done in pursuance or execution, or intended execution, of any Act of Parliament, or of any public duty or authority."

(*b*) See ex. gr. *Warne* v. *Varley*, 6 T. R. 443; *Lea* v. *Facey* (1887), 19 Q. B. D., Esher M.R., at p. 354.

(*c*) *Wilson v. Halifax* (1868), L. R. 3 Ex. 114; *Newton* v. *Ellis*, 24 L. J. Q. B. 337.

(*d*) Thus the Public Authorities Protection Act, 1893, has been held to extend its protection to municipal bodies in the execution of duties in connection with commercial enterprises undertaken under statutory authority; *The Ydun*, [1899] P. 236; *Parker* v. *London C. C.*, [1904] 2 K. B. 501. But see *Lyles* v. *Southend-on-Sea*, 74 L. J. K. B. 484; *per* Buckley J., *National Telephone Co.* v. *Kingston-upon-Hull*, 39 L. T. 291; *Sharpington* v. *Fulham* (1904), 73 L. J. Ch. 777; *Myers* v. *Bradford Corporation* (1915) L. J. K. B. 306.

the Act; and actually, whether reasonably or not, believing in the existence of such facts or state of things as would, if really existing, have justified his conduct (*a*). Thus, if an Act authorised the arrest of a person who entered the dwelling-house of another at night with intent to commit a felony (24 & 25 Vict. c. 96, s. 51), an arrest made in the honest and not unreasonable, but mistaken, belief that the person arrested had entered with that intent, would be protected. Apparently, however, there would be no protection if the arrest were made under a misconception, not of the facts, but of the law; as, for instance, if the person making the arrest believed that the prisoner had only

(*a*) See, among many other authorities, *Greenway* v. *Hurd*, 4 T. R. 553; *Roberts* v. *Orchard*, 33 L. J. Ex. 65; *Booth* v. *Clive*, 20 L. J. C. P. 151; *Carpue* v. *London & Brighton Ry. Co.*, 13 L. J. Q. B. 133; *Tarrant* v. *Baker*, 23 L. J. C. P. 21; *Burling* v. *Harley*, 27 L. J. Ex. 258; *Kine* v. *Evershed*, 16 L. J. Q. B. 271; *Hermann* v. *Seneschal*, 32 L. J. C. P. 43; *Downing* v. *Capel*, L. R. 2 C. P. 461; *Leete* v. *Hart*, L. R. 3 C. P. 322; *Chamberlain* v. *King*, L. R. 6 C. P. 474; *Selmes* v. *Judge*, L. R. 6 Q. B. 724; *Midland Ry.* v. *Withington Loc. Bd.*, 11 Q. B. D. 788; *Mason* v. *Aird*, 51 L. J. Q. B. 244; *Denny* v. *Thwaites*, 46 L. J. M. C. 141; *Cree* v. *St. Pancras Vestry*, [1899] 1 Q. B. 693; 68 L. J. Q. B. 389. In the following cases the Act has been held inapplicable: *Clerke* v. *St. Helen's Corp.*, 85 L. J. K. B. 17, C. A.; *Myers* v. *Bradford Corp.*, (1915) 84 L. J. K. B. 306; *Fry* v. *Cheltenham Corp.*, 81 L. J. K. B. 41; *Hart* v. *Marylebone Borough Council*, 76 J. P. 257; *A.-G.* v. *Lewes Corp.* (1911), 81 L. J. Ch. 40; *R.* v. *Hertford Union*, 111 L. T. 716.

attempted to enter; a different offence, for which the enactment in question does not authorise arrest; or if, where the law justified an immediate apprehension, an arrest was made which was not immediate (*a*). As a general proposition, however, unreasonableness of belief is immaterial, if the belief be honest; though it is an important element in determining the question of honesty (*b*).

A repealed Act (26 & 27 Vict. c. 29) (*c*), which enacted by s. 7 (*d*) that no witness before an election inquiry should be excused from answering self-criminating questions relating to corrupt practices at the election under inquiry, and entitled him, when he answered every question relating to those matters, to a certificate of indemnity declaring that he had answered all such criminating questions, was held to apply only where the witness answered "truly in the opinion of the commissioners"; for it was not to be supposed that any answer, however false or contemptuous, was equally intended (*e*). It is observable that this interpolation was made in the Act, notwithstanding that it repealed an earlier enactment which had

(*a*) *Griffith* v. *Taylor* (1876), 2 C. P. D. 194; *Morgan* v. *Palmer*, 2 L. J. (O. S.) K. B. 145.

(*b*) See *Clark* v. *Molyneux*, 3 Q. B. D. 237.

(*c*) Repealed by Corrupt and Illegal Practices Prevention Act, 1883.

(*d*) See s. 59 of 46 & 47 Vict. c. 51.

(*e*) *R.* v. *Hulme*, L. R. 5 Q. B. 377; *R.* v. *Holl*, 7 Q B. D. 575.

protected the witness only when he made "true" discovery.

Sec. 374, of the long since repealed Merchant Shipping Act, 1854, which enacted that no license granted by the Trinity House to pilots "shall continue in force beyond the 31st of January," after its date, but that "the same may be renewed on such 31st of January in every year, or any subsequent day," was construed as meaning, not that the renewed licenses must be issued on or after that day, but that they should take effect from the 31st of January. This departure from the strict letter was justified by the great inconvenience which would have resulted from a rigid adherence to it, since it would have left the whole district for a certain period, probably days, possibly weeks, without qualified pilots (*a*).

In s. 7, Railway and Canal Traffic Act, 1854, which enacts that railway and canal companies shall be liable for the loss or any injury done to "any horses, cattle, or other animals" (which would include a dog) intrusted to them for carriage, with the proviso that no greater damage

(*a*) *The Beta*, 3 Moo. P. C. N. S. 23. It is now provided by s. 599 (4) of the Merchant Shipping Act, 1894, that "A pilotage certificate . . . shall not be in force for more than the period of one year from its date, but may be renewed from year to year. . . ." As to the grant of pilotage certificates to masters and mates, see s. 23, Pilotage Act, 1913 (2 & 3 Geo. V. c. 31).

should be recovered for the loss of, or injury done to, "any of such animals" beyond the sums thereinafter mentioned—specifying certain sums for horses, neat cattle, sheep and pigs, but making no mention of dogs—the proviso was read, in order to reconcile it with the enacting part, as dealing only with "any *of the following* of such animals" (*a*). Where a railway company was made liable to make good the deficiency in the parochial rates arising from their having taken rateable property, "until its works were completed and liable to assessment," the House of Lords held that the intention was that the liability should cease as regards any one parish, as soon as that portion of the line which ran through it was completed; in other words, that the Act was to be read as fixing the liability when "its works *in the parish* were completed" (*b*).

A case in the Queen's Bench may be cited as furnishing a remarkable example of judicial modification for the purpose of supplying an apparent case of omission, and avoiding an injustice and absurdity, such as the Legislature was presumed

(*a*) *Harrison* v. *London and Brighton Ry. Co.*, 29 L. J. Q. B. 209; reversed on another point (1862), 31 L. J. Q. B. 113; *R.* v. *Strachan*, L. R. 7 Q. B. 463. See another instance of interpolation in *Perry* v. *Skinner*, sup. p. 389.

(*b*) *East London Ry. Co.* v. *Whitechurch* (1874), 43 L. J. M. C. 159, sup. p. 32.

not to have intended. Under 1 & 2 Vict. c. 110 (*a*), an insolvent prisoner for debt might be discharged from imprisonment, either upon his own petition, or upon the petition of any of his creditors. 10 & 11 Vict. c. 102 (*b*), in abolishing the circuits of the Insolvent Commissioners, and transferring their jurisdiction to the County Courts, provided that "if an insolvent petitions," the Insolvent Court should refer his petition to the Court of the district where he was imprisoned; but it omitted all mention of cases where the petitioner was a creditor. The Court, however, considered that an intention to include the latter sufficiently appeared. To confine the section to its literal meaning would have involved the unjust result that, though a vesting order might be made, and the debtor be deprived of his property, he would remain imprisoned. The words "if an insolvent petitions" were accordingly understood to have merely put that case as an example of the more general intention, viz., "if a petition be presented." For the purposes of the Legislature, it was immaterial whether the petition was the insolvent's or the creditor's (*c*).

Again, notwithstanding the general rule that full effect must be given to every word, yet if no

(*a*) Sec. 36. (*b*) Sec. 10.

(*c*) *R.* v. *Dowling* (1857), 8 E. & B. 605, nom. *Greenwood, Exp.*, 27 L. J. Q. B. 28.

sensible meaning can be given to a word or phrase, or if it would defeat the real object of the enactment, it may, or rather it should, be eliminated (*a*). The words of a statute must be construed so as to give a sensible meaning to them if possible. They ought to be construed *ut res magis valeat quam pereat* (*b*).

The Carriers Act, 1830 (1 Will. IV. c. 68), which enacts that a carrier shall not be responsible for the loss of certain articles delivered for carriage, unless the sender declares their value and nature, at the time of delivery, "at the office" of the carrier, was held to protect the carrier, where the parcel had been delivered to his servant elsewhere than at the office, and no declaration had been made either there or elsewhere; the fair meaning of the statute, and the paramount object of the Legislature being that the carrier should in every case be apprised of the nature and value of the article entrusted to him, whether it was delivered at the office or elsewhere (*c*).

(*a*) *Per* Lord Abinger, *Lyde* v. *Barnard*, 1 M. & W. 115; *per* Brett J., *Stone* v. *Yeovil*, 1 C. P. D. 701, though in that case the elimination was not necessary, 2 C. P. D. 99, and where elimination is unnecessary there is no power to delete. See also *Plant* v. *Potts*, [1891] 1 Q. B. 256, and *Hurcum* v. *Hilleary*, [1894] 1 Q. B. 579, C. A.

(*b*) *Per* Bowen L.J., *Curtis* v. *Stovin*, 22 Q. B. D. 513; and *per* Lindley L.J., *The Duke of Buccleuch*, 15 P. D. 86.

(*c*) *Boxendale* v. *Hart* (1852), 21 L. J. Ex. 123.

An Act (25 & 26 Vict. c. 114) which authorised constables to search any person whom they suspected of coming from any land in unlawful pursuit of game, and, if any game was found upon him, to detain and summon him, was held to authorise a constable to summon a man whom he saw on a footway, with a gun in his hand, picking up a rabbit thrown from an adjoining enclosure, just after the report of a gun, but whom he did not search. There was nothing in the general object of the Act to lead to the supposition that "the enormous absurdity" of requiring an actual bodily search under such circumstances was intended; and such a departure from the language of the Act was therefore considered as really meeting the true intention (*a*). The Extradition Act, 1870, which authorises the "apprehension" of a person on warrant, includes the detention of one already in custody, though arrested without a warrant (*b*). So, the 35 Geo. III. c. 101, s. 2, which empowered justices to suspend, in case of sickness, the order of removal of any pauper who should be "brought before them for the purpose of being removed,"

(*a*) *Hall* v. *Knox* (1863), 33 L. J. M. C. 1; *Lloyd* v. *Lloyd*, 14 Q. B. D. 725, which discusses *Clarke* v. *Crowder*, L. R. 4 C. P. 638, and *Turner* v. *Morgan*, L. R. 10 C. P. 587, where the statute was construed strictly. See also sup. p. 381. *Comp. Vinter* v. *Hind*, 10 Q. B. D. 63.

(*b*) 33 & 34 Vict. c. 52, s. 8; *R.* v. *Weil*, 53 L. J. M. C. 74.

was construed as authorising such suspension without the actual bringing up of the pauper before the justices; as the literal construction would have defeated the humane object of the enactment (*a*). And to prevent the enormous injustice which would result from a literal interpretation of the enactment that the Court of Bankruptcy should refuse a bankrupt his discharge in all cases where the debtor had committed an offence "under the Debtors Act, 1869," it was held that the words "connected with or arising out of the bankruptcy" must be added to qualify the general words (*b*). This interpretation, with amplifications, is incorporated in s. 26 (2), second paragraph, of the Bankruptcy Act, 1914.

To carry out the intention of the Legislature, it is occasionally found necessary to read the conjunctions "or" and "and" one for the other. The 43 Eliz. c. 3 (*c*), for instance, which speaks of property to be employed for the maintenance of "sick *and* maimed soldiers," referred to soldiers who were either the one "or" the other, and not only to those who were both (*d*).

(*a*) *R.* v. *Everdon*, 9 East, 101. Sec. 2 is repealed in part by S. L. R., 1871.

(*b*) 50 & 51 Vict. c. 66, s. 2; *Re Brockelbank*, sup. p. 358.

(*c*) Repealed by S. L. R., 1863.

(*d*) Duke, Charit. Uses, 127.

The 1 Jac. I. c. 15 (*a*), which made it an act of bankruptcy for a trader to leave his dwelling-house "to the intent, *or*, whereby his creditors might be defeated or delayed," if construed literally, would have exposed to bankruptcy every trader who left his home even for an hour, if a creditor called during his absence for payment. This absurd consequence was avoided, and the real intention of the Legislature beyond reasonable doubt effected, by reading "or" as "and"; so that an absence from home was an act of bankruptcy only when coupled with the design of delaying or defeating creditors (*b*).

The converse change was made in a Turnpike Act which imposed one toll on every carriage drawn by four horses, and another on every horse, laden or not laden, but not drawing; and provided that not more than one toll should be demanded for repassing on the same day "with the same horses *and* carriages." It was held that the real intention of the Legislature required that this "and" should be read as "or," and that a carriage repassing with different horses was not liable to a second toll. The toll was imposed on the carriage; and it was immaterial whether it was drawn by the same or different horses (*c*). In the provision of the Metropolis Management

(*a*) Repealed 6 Geo. IV. c. 16, s. 1.

(*b*) *Fowler* v. *Padget* (1798), 7 T. R. 509; 4 R. R. 511. See also *R.* v. *Mortlake*, 6 East, 397.

(*c*) *Waterhouse* v. *Keen* (1825), 40 R. R. 858, wrongly reported in the marginal note in 4 B. & C. 200.

Amendment Act, 1862, that no road shall be formed as a street for carriage traffic unless widened to 40 feet, *or* unless such street shall be open at both ends, the word "or" was read "nor," for the manifest intention was not that one of the two, but that both conditions should be complied with; that is, that the street should not only be 40 feet wide, but also be open at both ends (*a*).

This substitution of conjunctions, however, has been sometimes made without sufficient reason; and it has been doubted whether some of the cases of turning "or" into "and," and *vice versâ*, have not gone to the extreme limit of interpretation (*b*). It may be questioned, for instance, whether the judges who "were at the making" of the statute 2 Hen. V. c. 3, which required that jurors to try an action when the debt "or" damages amounted to forty marks, should have land worth forty shillings, were justified in construing it "by equity," and converting the disjunctive "or" into "and" (*c*).

(*a*) 25 & 26 Vict. c. 102, s. 98; section repealed s. 215, 4th Sched., London Building Act, 1894. *Metrop. Board* v. *Steed*, 8 Q. B. D. 445; *Daw* v. *London C. C.*, 59 L. J. M. C. 112. For existing provisions as to roads, see ss. 11 & 12 London Building Act, 1894 (57 & 58 Vict. c. ccxiii.).

(*b*) *Per* Lord Halsbury L.C., *Mersey Docks* v. *Henderson*, 13 App. Cas. 603. For a full collection of the cases hereon, see Stroud's Judicial Dictionary and Supp. tit., OR READ AS AND, AND VICE VERSA.

(*c*) Co. Litt. 272a.

The Court of Queen's Bench, on one occasion (now overruled) held that the power given to justices by the Highway Act, 1835 (5 & 6 Will. IV. c. 50 (*a*)), to order the diversion of a highway, when it appeared "nearer *or* more commodious to the public," was limited to cases where the new road was both nearer *and* more commodious (*b*); but the same Court more recently held that the power was exercisable when the new road was either the one *or* the other (*c*).

Statutes which authorise persons to do acts for the benefit of others, or, as it is sometimes said, for the public good or the advancement of justice, have often given rise to controversy when conferring the authority in terms simply enabling and not mandatory. In enacting that they "may," or "shall, if they think fit," or, "shall have power," or that "it shall be lawful" for them to do such acts, a statute appears to use the language of mere permission; but it has been so often decided as to have become an axiom that in such cases, such

(*a*) Secs. 85, 91.

(*b*) *R.* v. *Shiles* (1841), 1 Q. B. 919.

(*c*) *R.* v. *Phillips* (1866), 35 L. J. M. C. 217; *Wright* v. *Frant* 32 L. J. M. C. 204. See *Harrington* v. *Ramsay*, 22 L. J. Ex. 326; *Oldfield* v. *Dodd*, Id. 144. As to what constitutes "a good notice" of intention to apply for justices order, see *R.* v. *Derby JJ.*, [1917] 2 K. B. 802.

expressions may have—to say the least—a compulsory force (*a*), and so would seem to be modified by judicial exposition. On the other hand, in some cases, the authorised person is invested with a discretion, and then those expressions seem divested of that compulsory force, and, probably, that is the *primâ facie* meaning.

In an early case, where it was contended that 13 & 14 Car. II. c. 12, s. 18 (*b*), in enacting that the churchwardens and overseers "shall have power and authority" to make a rate to reimburse parish constables certain expenses, left it optional with them to make it or not, the Court held that it was obligatory on them to make it, whenever disbursements had been made and not been paid. "May be done," it was observed, is always understood, in such cases of public or private right, as "must be done" (*c*). So, where a statute directed that churchwardens should deliver their accounts to justices, and enacted that the latter "shall and they are hereby authorised and empowered, if they shall so think fit," to examine the accounts, aud disallow unfounded charges, it was held that the justices could not decline to enter upon the

(*a*) *Per* Cur., *R.* v. *Tithe Commrs.*, 80 R. R. 271.

(*b*) Repealed by 35 & 36 Vict. c. 92, s. 13, and replaced by s. 4 of that Act.

(*c*) *R.* v. *Barlow* (1693), Carth. 293 ; *R.* v. *Derby*, Skin. 370.

examination (*a*), or be at liberty to allow charges not sanctioned by law (*b*). Again the Weights and Measures Act, 1889, which provides that an inspector "may take in respect of the verification and stamping of weights, measures, and weighing instruments the fees specified," is obligatory and imposes on the inspector a duty to take the fees in all cases (*c*). Though s. 9, 11 & 12 Vict. c. 42, enacts that justices "may" issue a summons on an information laid before them, only, "if they shall think fit," it was held that they were not at liberty to refuse it on any extraneous considerations, such as that the prosecution was inexpedient, or that the law would operate unjustly in the particular case (*d*). A charter which granted to the steward and suitors of a manor "power and authority" to hold a Court to hear civil suits, was held to make it obligatory to hold it when

(*a*) *R.* v. *Cambridge*, 8 Dowl. 89; *per* Bramwell L.J., *R.* v. *Oxford* (*Bp.*), 4 Q. B. D., at p. 245. *Comp. R.* v. *Norfolk*, 4 B. & Ad. 238.

(*b*) *Barton* v. *Piggott*, 44 L. J. M. C. 5.

(*c*) 52 & 53 Vict. c. 21, s. 13. Section repealed by Sched. II. of 4 Edw. VII. c. 28, and re-enacted *cum var* by s. 9 of that Act. *R.* v. *Roberts*, [1901], 2 K. B. 177.

(*d*) *R.* v. *Adamson* (1875), 1 Q. B. D. 201; *R.* v. *Fawcett*, 11 Cox C. C. 305; *Exp. Lewis*, 21 Q. B. D. 191; *R.* v. *Byrde*, 60 L. J. M. C. 17; and see *R.* v. *Mead* (1916), 80 J. P. 332. A very instructive case on this point.

necessary (*a*). Again, s. 7, Tithe Act, 1842 (5 & 6 Vict. c. 54), which enacts that if any agreement for the commutation of tithes made before the Act, which was not of legal validity, should appear to the Tithe Commissioners to give a fair equivalent for the tithe, they "shall be empowered" to confirm it, or, if unfair, to confirm it nevertheless, and to award such a rent-charge as would make it a proper equivalent, and to extingnish the tithe; it was considered that the Commissioners were bound to make any such agreement between the parties the basis of their own settlement, and were not at liberty to throw it wholly aside in carrying out the general policy of the Act, viz., tithe extinction (*b*).

So, in *Backwell's Case*, Lord Keeper North held, and of the same opinion were all the judges, that the statnte which enacted that the Chancellor "should have full power" to issue a commission of bankruptcy against a bankrupt trader, on the petition of his creditors, imperatively reqnired its issue; declaring that "may" was in effect

(*a*) *R.* v. *Havering-atte-Bower*, 5 B. & Ald. 691; *R.* v. *Hastings*, Id. 692 n., both better reported in 2 D. & R. 176 n., and 1 D. & R. 148.

(*b*) *R.* v. *Tithe Commrs.*, 14 Q. B. 474. And see *Julius* v. *Oxford* (*Bp.*) (1880), 5 App. Cas. 214; 49 L. J. Q. B. 577; note especially *dicta* Cairns L.C., at p. 224, and Penzance Ld., p. 229, inf. pp. 432, 433.

"must" (*a*). Under s. 13, 13 & 14 Vict. c. 61 (*b*), which enacted that the Superior Court "may" give the plaintiff the costs of his action, if he lived more than 20 miles from the defendant, it was held that the Court was bound to give them in every case in which the plaintiff and defendant dwelt more than that distance apart (*c*). Under the provision of s. 5, Arbitration Act, 1889, that where a submission provides that the reference shall be to a single arbitrator, and all parties do not concur in appointing an arbitrator, any party may serve the other parties with a written notice to appoint, and if the appointment is not made in seven clear days the Court "may," on the application of the party who gave the notice, appoint an arbitrator, it is obligatory on the Court to make an appointment if applied to (*d*). An Act which made it "lawful" for a Court to stay proceedings in actions against companies under liquidation until proof of the plaintiff's debt (*e*);

(*a*) 13 Eliz. c. 7; 1 Jac. c. 15; *Backwell's Case*, 1 Vern. 152.

(*b*) Repealed by 51 & 52 Vict. c. 43, s. 188.

(*c*) *McDougall* v. *Paterson* (1851), 21 L. J. C. P. 27; acc. *Crake* v. *Powell*, 21 L. J. Q. B. 183, overruling *Jones* v. *Harrison* 20 L. J. Ex. 166.

(*d*) 52 & 53 Vict. c. 49, s. 5; *Eyre and Leicester Corp., Re*, [1892] 1 Q. B. 136.

(*e*) 11 & 12 Vict. c. 45, s. 73, now repealed. *Marson* v. *Lund* (1849), 13 Q. B. 664. For similar provisions in Companies (Consolidation) Act, 1908, see s. 140.

and a bankruptcy rule which provided that where the Court has given no directions as to the disallowance of the costs of improper or unnecessary proceedings, the taxing-master "may" look into the question, were held equally imperative (*a*). So, the provision of s. 56, Corrupt and Illegal Practices Prevention Act, 1883, that certain jurisdiction conferred by the Act "may" be exercised by one of the judges for the time being on the rota for the trial of election petitions, is to be read as equivalent to "must," and the jurisdiction cannot be exercised by any other judge (*b*). An Act which empowered a vestry to make a paving rate, and provided that when it appeared to the vestry that the rate was not incurred for the equal benefit of the whole parish, it "might" exempt the party not benefited, was held to impose a duty and not merely to confer a power on the vestry, to apportion the burden when the case arose (*c*).

On the other hand, where it was enacted that "it should be lawful" for the Superior Courts to issue commissions to examine witnesses abroad, it

(*a*) *Baines* v. *Wormsley* (1878), 47 L. J. Ch. 844.

(*b*) 46 & 47 Vict. c. 51; *Shaw* v. *Reckitt*, [1893] 1 Q. B. 779.

(*c*) *Howell* v. *London Dock Co.* (1858), 27 L. J. M. C. 177. For comments on this case, which was an anomalous one, see *R.* v. *G. W. Ry.* (1858), 28 L. J. M. C. 59. See also *Dormont* v. *Furness Ry. Co.*, 11 Q. B. D. 496.

was held that the Court was not bound to issue such a commission simply on proof that the persons whose evidence was required were abroad, but that it was in the discretion of the Court to determine upon the special circumstances of each case, whether it was advisable in the interests of justice to issue it or not (*a*). So, under a statute which enacted that where a county bridge is narrow, "it shall and may be lawful" for the Quarter Sessions to order it to be widened, it was held (having regard to the nature of the Court entrusted with the power, and to the subject matter which might involve other considerations besides the width of the bridge, such as the cost of the proposed work and its possible disproportion to any public benefit likely to be derived from it) that it was discretionary to make the order or not (*b*). But "may," where used in s. 9 of 38 & 39 Vict. c. 86, is imperative (*c*). Again, the enactment that if part of the consideration for an annuity were returned, or paid in goods, or retained on any

(*a*) 1 Will. IV. c. 22, s. 4; *Castelli* v. *Groom* (1852), 21 L. J. Q. B. 308. See *Armour* v. *Walker*, 25 Ch. D. 673; *Lawson* v. *Vacuum Brake Co.* (1884), 27 Ch. D. 137. This latter case explained in *Coch* v. *Allcock* (1888), 21 Q. B. D. 1; affirmed 57 L. J. Q. B. 489.

(*b*) 43 Geo. III. c. 59, s. 2; *Re Newport Bridge* (1859), 29 L. J. M. C. 52.

(*c*) *R.* v. *Mitchell, Livesey, Exp.* (1913), 77 J. P. 148; 82 L. J. K. B. 153.

pretence, "it should be lawful" for the Court to cancel the annuity deed, if it should appear that "any such practices," had been used; the Court considered that this last expression limited the enactment to cases where any of the forbidden acts had been done *malo animo*, and held that it was in their discretion to set the deed aside or not (*a*). The Church Discipline Act, 1840, which enacts that in every case of a clergyman charged with an ecclesiastical offence, or concerning whom a scandal may exist of having committed such an offence, "it shall be lawful" for the bishop, on the application of any person complaining of it, or if he thinks fit, on his own motion, to appoint a commission to examine witnesses, to ascertain if there be sufficient *primâ facie* ground for instituting further proceedings, was held to leave it discretionary with the bishop to appoint a commission on receiving such a complaint. Having regard to the pre-existing state of the law and the character of the bishop's office, it was considered that it was his duty, before issuing the commission, to determine on the expediency of instituting the prosecution, taking into his consideration the nature, credibility, or importance of the charge, and the status, solvency, and religious character of

(*a*) 53 Geo. III. c. 141, s. 6; repealed by 17 & 18 Vict. c. 90; *Barber* v. *Gamson* (1821), 4 B. & Ald. 281; *Girdlestone* v. *Allan*, 1 B. & C. 61.

the complainant, as well as the general interests of the Church (*a*).

This subject underwent much discussion in *R.* v. *Oxford* (*Bp.*), and elicited various views. The Queen's Bench held that it was imperative to issue the commission where a complaint had been made of an ecclesiastical offence (*b*), but the Court of Appeal reversed this decision (*c*), and this reversal was upheld on appeal to the House of Lords, who were practically unanimous in their view.

According to Lord Cairns, such words as "it shall be lawful" are always simply permissive (*d*) or enabling. They confer a power, and do not, of themselves, do more. But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power

(*a*) 3 & 4 Vict. c. 86, practically repealed by 55 & 56 Vict. c. 32 (Clergy Discipline Act, 1892); *R.* v. *Oxford* (*Bp.*), 4 Q. B. D. 525; *Julius* v. *Oxford* (*Bp.*), 5 App. Cas. 214; *Allcroft* v. *London* (*Bp.*), [1891] A. C. 666; *R.* v. *Chichester* (*Bp.*), 2 E. & E. 209.

(*b*) *R.* v. *Oxford* (*Bp.*), 4 Q. B. D. 245.

(*c*) 4 Q. B. D., p. 525.

(*d*) S. C., 5 App. Cas., p. 222.

is reposed to exercise it when called upon to do so; it lies on those who contend that an obligation exists to exercise the power, to show in the circumstances of the case something which, according to the above principles, created that obligation; and the cases decide only that where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to whom a definition is supplied by the Legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised, and the Court will require it to be exercised (*a*). Lord Penzance said that the words "it shall be lawful" are distinctly words of permission only, and the true question is, not whether they mean something different, but whether, having regard to all the circumstances—to the person enabled, to the general object of the statute, and to the persons for whose benefit the power may have been intended to be conferred—they do or do not create a duty in the person on whom it is conferred to exercise it. It is not enough that the thing empowered to be done should be for the public benefit in order to make it imperative to exercise that power on all occasions falling within the statute. It may be assumed that all powers conferred by statute on individuals in general

(*a*) 5 App. Cas., p. 225.

Public Acts are for the public benefit, or they would not have been conferred. He could find no specific authority for the proposition that in a certain class of statutes such words as "it shall be lawful" import *primâ facie*, not permission but obligation. The effect of the cases in which the exercise of the power conferred was held to be obligatory was that, though the statutes concerned had in terms only conferred a power, the circumstances were such as to create a duty, to show that the exercise of any discretion by the person empowered could not have been intended (*a*). Lord Selborne's view was that words such as "it shall be lawful" are not ambiguous and susceptible either of a discretionary or an obligatory sense, but their meaning is the same, whether there is or is not a duty or obligation to use the power which they confer. They are potential, and never (in themselves) significant of any obligation. The question whether a judge or public officer, to whom a power is given by such words, is bound to use it upon any particular occasion, or in any particular manner, must be solved *aliunde*, and in general it is to be solved from the context, from the particular provisions, or from the general scope and objects, of the enactment conferring the power (*b*). Lord Blackburn's opinion was that

(*a*) 5 App. Cas., p. 228.
(*b*) Id., p. 235.

the enabling words gave a power which *primâ facie* might be exercised or not; but if the object for which the power is conferred is for the purpose of enforcing a right, whether public or private, there may be a duty cast upon the donee of the power to exercise it for the benefit of those who have that right, when required on their behalf. Where there is such a duty, it is not inaccurate to say that the words conferring the power are equivalent to saying that the donee must exercise it (*a*). But he could not agree with the view that whenever the statute is for the public good, and of general interest and concern, powers conferred by enabling words are *primâ facie* to be considered powers which must be exercised (*b*).

More recently the Court of Appeal, in considering the provision of s. 125 (4), Bankruptcy Act, 1883 (repealed and replaced with certain alterations by s. 130, Bankruptcy Act, 1914), that any Court in which proceedings have been commenced for the administration of a deceased debtor's estate "may," on the application of any creditor, and on proof that the estate is insolvent, transfer the administration to the Court exercising jurisdiction in bankruptcy, decided that there was not enough in the statute to show that the power conferred must

(*a*) 5 App. Cas., p. 241, and see *R.* v. *Mitchell* (1913), 82 L. J. K.B. 153, at p. 157.

(*b*) 5 App. Cas., p. 245.

be exercised whenever the estate is shown to be insolvent, and it was consequently a discretionary power which the Court might refuse to use. Following the decision of the House of Lords in the preceding case it was said that from the nature of the English language the word "may" can never mean "must," that it is only potential, and when it is employed there is another question to be decided, viz., whether there is anything that makes it the duty of the person on whom the power is conferred to exercise that power. If not, the exercise is discretionary. But when the power is coupled with a duty of the person to whom it is given to exercise it, then it is imperative (*a*).

Accordingly, when a statute enacts that a candidate at an election "may" be present at the polling place, or that a clergyman accused of an ecclesiastical offence "may" attend the proceedings of the commission appointed to inquire into the accusation, or that a company "may" construct a railway (*b*), or that a plaintiff "may" sue in one action for injury done to his wife as well

(*a*) 46 & 47 Vict. c. 52; *Baker, Re*, 44 Ch. D. 262; *Johannisberg Co., Re*, [1892] 1 Ch. 583; and see *R.* v. *Mitchell* (1913), 82 L. J. K. B. 153.

(*b*) *York & N. Midland Ry. Co.* v. *R.*, 22 L. J. Q. B. 225; *R.* v. *G. W. Ry. Co.*, Id. 263; *Darlaston Loc. Bd.* v. *L. & N. W. Ry. Co.*, [1894] 2 Q. B. 694. See also *Nicholl* v. *Allen*, 31 L. J. Q. B. 283.

as himself(*a*), cases in which the donee of the power has only his own interests or convenience to consult, the word "may" is plainly permissive only, and a mere privilege or license is conferred which he may exercise or not at pleasure. But an enactment that churchwardens "may" make a rate for the reimbursement of constables, or the Chancellor "may" issue a commission in a case of bankruptcy, or one conferring power on the Courts to direct that a person entitled to costs should recover them, is no mere permission to do such acts, with a corresponding liberty to abstain from doing them. A duty is at the same time cast upon the persons empowered. For these are cases where a power is deposited with public officers, for the purpose of being used for the benefit of persons having rights in the matter. So, whenever a statute confers an authority to do a judicial act in a certain case, it is imperative on those so authorised to exercise the authority when the case arises, and its exercise is duly applied for by a party interested and having a right to make the application; and the exercise depends, not on the discretion of the Courts or judges, but upon proof of the particular case out of which the power arises (*b*). If a statute empowered justices to

(*a*) *Brockbank* v. *Whitehaven Ry. Co.*, 31 L. J. Ex. 349.

(*b*) *McDougal* v. *Paterson*, 11 C. B. 755. See also *Burton & Blinkhorn, Re*, [1903] 2 K. B. 300, where it was held that s. 32,

adjudicate in certain cases, that is, to impose a certain penalty on persons whom they should find guilty of a certain offence, it is incontestable that they would have no option to decline jurisdiction because the statute used only the word "may" instead of "shall" There would be here such a right in the public to make it the duty of the justices to exercise the power. Whether the language was facultative only or mandatory, it would be equally obligatory on them to hear and determine the complaint, to decide, one way or the other, whether the accused was guilty, and to impose the penalty if he was (*a*). The Supreme Court of the United States similarly laid it down that what public officers are empowered to do for a third person, the law requires shall be done whenever the public interest of individual rights

Solicitors Act, 1843 (6 & 7 Vict. c. 73), which enacts that a solicitor "shall and may be" struck off the rolls for certain offences, does not give the Court a discretion to impose any less punishment. (As to re-instatement, see 62 Vict. c. 4, s. 1). In some cases, this rule seems to have been overlooked, and the word "may" construed as simply permissive. See ex. gr. *R.* v. *Eye*, 4 B. & Ald. 271; *Jones* v. *Harrison*, 20 L. J. Ex. 166; *Bell* v. *Crane*, L. R. 8 Q. B. 481; *R.* v. *South Weald*, 33 L. J. M. C. 193; *De Beauvoir* v. *Welch*, 7 B. & C. 266. See, however, *R.* v. *Norfolk*, 4 B. & Ad. 238; *Kelly, Re*, 64 L. J. Q. B. 129, followed and qualified in *Newson, Re*, 53 Sol. J. 342.

(*a*) *Per* Lord Blackburn, *Julius* v. *Oxford* (*Bp.*), 5 App. Cas. 244; *R.* v. *Cumberland*, 4 A. & E. 695.

call for the exercise of the power; since the latter is given not for their benefit, but for his, and is placed with the depositary to meet the demands of right and prevent the failnre of justice. In all such cases, the Court observed, the intent of the Legislature, which is the test, is, not to grant a mere discretion, but to impose a positive and absolute duty (*a*).

Nor is the power made less imperative in any such cases by express references to the discretion of the authorised person. The duty of issuing a summons (*b*), or of examining the churchwarden's accounts (*c*), was as obligatory under the statute which empowered the justices to issue it or to examine them, "if they should so think fit," as it would have been if this expression had been omitted. Where the judgment creditor of a company "might" have execution against any individnal shareholder of it, if he failed after due diligence to obtain satisfaction of his debt from the company, it was held by the Common Pleas

(*a*) *Supervisors* v. *U. S.*, 4 Wallace, 446. See s. 32, Interpretation Act, 1889 (52 & 53 Vict. c. 63), which provides that, in future, when an Act confers a power or imposes a duty, the power may be exercised, and the duty shall bo performed from time to time as the occasion requires, and by the holder for the time being of the office on which the power is conferred or the duty imposed.

(*b*) *R.* v. *Adamson*, sup. p. 426. See also *R.* v. *Evans* (1890), 54 J. P. 471.

(*c*) *R.* v. *Cambridge*, sup. p. 426.

that there was no discretion to withhold this remedy from him in any case in which the Court was satisfied that the specific facts indicated by the statute existed—viz., that the debt was unpaid, that due endeavours had been made, and had failed, to put in force the execution against the company (*a*), and, it may be added, that the creditor had done nothing to disentitle him to execution against the shareholder (*b*); although the statute not only directed that the leave of the Court was to be asked for the execution, but provided that it "should be lawful" for the Court to grant or refuse the application for it, and "to make such order as it might see fit." Another familiar instance may be found in the case of a distress warrant to enforce a poor rate. It is well known that in every case where certain specific facts are proved, viz., that a rate, valid on its face, was made by a competent authority, that the rated land is in the district and in the occupation of the defaulter, and that the latter has been summoned and has not paid, the justices have no option to

(*a*) 7 & 8 Vict. c. 110 (repealed; for existing law, see 8 Edw. VII. c. 69); *Morisse* v. *Royal British Bank*, 26 L. J. C. P. 62; *Hill* v. *London & County Insur. Co.*, 26 L. J. Ex. 89. *Comp. Shrimpton* v. *Sidmouth &c. Ry. Co.*, L. R. 3 C. P. 80, decided on 8 & 9 Vict. c. 16; discussed, without approval, in *Lee* v. *Bude and Torrington Junction Ry. Co.* (1871), 6 L. R. C. P. 576, at p. 581.

(*b*) *Scott* v. *Uxbridge Ry. Co.*, L. R. 1 C. P. 596.

refuse the warrant, though the statute says only that they "may" issue it "if they think fit" (*a*). In all such cases they must exercise the power; they must "think fit" to do so whenever the occasion for it has arisen. In America, where it was enacted that city councils "might, if deemed advisable" (*b*), or even "might, if they believed that the public good and the best interests of the city required it" (*c*), levy a special tax to be expended in the liquidation of their debts, the Supreme Court issued a mandamus to levy the tax where it was proved that a debt existed, and that there were no other means in possession or prospect for their payment; holding that the discretion of the town councils was limited by their duty, and could not, consistently with the rules of law (*d*), "be resolved in the negative."

It is important here to notice the distinction between a discretion to exercise a power, and a discretion to determine only whether the occasion for it has arisen. This is illustrated by the construction of the enactment that justices may, if

(*a*) *R.* v. *Finnis*, 28 L. J. M. C. 201; *R.* v. *Boteler*, 33 L. J. M. C. 101. See also *R.* v. *Cambridge*, and *R.* v. *Adamson*, sup. p. 426.

(*b*) *Supervisors* v. *U. S.*, 4 Wallace, 446.

(*c*) *Galena* v. *Amy*, 5 Wallace, 705.

(*d*) Adverting to *R.* v. *Barlow*, sup. p. 425.

they think fit, issue a summons upon an information laid before them. Here the power is so far discretionary, that they may grant or refuse the summons according as they judge, in the honest exercise of their discretion (*a*), that a *primâ facie* credible case is shown for it; but its exercise is imperative, in the sense that they are bound to form an opinion, and if their opinion is that such a case is shown, it is not competent to them to refuse to exercise in on extraneous grounds, such as that the prosecution is unadvisable (*b*). An arbitrary or capricious exercise of a discretion would be no exercise at all (*c*). Again, as regards the power to order the examination of witnesses abroad (*d*), the power was discretionary, not because the language was merely enabling, but because the Legislature did not intend that the power should be exercised where injustice would result; and the decision of the Court that no such consequence was likely to ensue was a fact essential to make the exeroise of the power a duty. So, in the *Bishop of Oxford's Case*, though the power was widely discretionary as regards the question whether the occasion for its exeroise arose, the

(*a*) See sup. pp. 232–234.

(*b*) *R.* v. *Adamson*, and *R.* v. *Fawcett*, sup. p. 426.

(*c*) *Per* Lopes L.J., *R.* v. *London* (*Bp.*), 24 Q. B. D. 243; and *per* Lord Esher M.R., *R.* v. *St. Pancras*, 24 Q. B. D. 375.

(*d*) *Castelli* v. *Groom*, sup. p. 430.

Bishop could not have declined to hear the complaint (*a*); nor, if his own judicial discretion, uninfluenced by considerations foreign to his duty, had decided that the occasion for it had arisen, could he, consistently with the intention of the Legislature, have refused to issue the commission (*b*).

An omission which the context shows with reasonable certainty to have been unintended may be supplied, at least in enactments which are construed beneficially, as distinguished from strictly. Thus, when s. 33, Fines and Recoveries Act, 1833 (3 & 4 Will. IV. c. 74), in providing that if the protector of a settlement should be (1) a lunatic, or (2) convicted of felony, or (3) an infant, the Court of Chancery should be the protector in lieu of the lunatic or the infant, omitted the case of the convict of felony, it was held by Lord Lyndhurst that the omission might be supplied, in order to give effect to the manifest intention. Without it, the mention of the case of felony, in the first part of the sentence, was

(*a*) *Per* Lord Blackburn, 5 App. Cas. 241. See also *per* Lindley L.J., *R.* v. *London* (*Bp.*), 24 Q. B. D. 240.

(*b*) See the concluding remarks of Lord Justice Bramwell's judgment in 4 Q. B. D. 555.

Note:—For the cases on, "IT SHALL BE LAWFUL," "MAY," "MUST," "SHALL," "SHALL AND LAWFULLY MAY," see those titles in Stroud's Judicial Dictionary, and Supp.

insensible, and it necessarily implied the missing words (*a*). Although no original limit of time is specially mentioned in the Public Health Act, 1875, within which an umpire must make his award, yet inasmuch as there is an express provision that the time for making an award by an umpire under the Act shall not in any case be extended beyond two months from the reference to him,—a provision which implies the existence of an original limit,—it has been held that by analogy to the original limit fixed in the case of arbitrators, an original limit of 21 days from the date of the reference to him must be inferred to have been fixed in his case also (*b*). So, where a statute enacted that suits "against" an association should be brought in the district where it was established, without making any provision for suits "by" the association; but an earlier Act had in a similar clause provided for suits both by and against; the Supreme Court of the United States held that the omission was accidental, and

(*a*) *Re Wainewright*, 1 Phil. 258. See also in Deeds, *Dent* v. *Clayton*, 33 L. J. Ch. 503; *Wilson* v. *Wilson*, 5 H. L. Cas. 40; and in Wills, *Greenwood* v. *Greenwood*, 5 Ch. D. 954; *Re Redfern*, 6 Ch. D. 133.

(*b*) 38 & 39 Vict. c. 55, s. 180 (9); *Yeadon Loc. Bd.* v. *Yeadon Waterworks*, 41 Ch. D. 52. As for the time prescribed by the Act for the appointment of an arbitrator, see *Stoker* v. *Morpeth Corp.*, [1915] 2 K. B. 511.

might be supplied (*a*). Sec. 6, Statute of Frauds Amendment Act, 1828 (9 Geo. IV. c. 14), furnishes another example of clerical neglect which was treated in the same spirit. It enacts that no action shall be brought in respect of a representation made by one person concerning the conduct or credit of another, to the intent that the latter "may obtain credit, goods, or money *upon*," . . . unless the representation was in writing. The text is clearly imperfect. Lord Abinger, while deeming any conjectural transposition of the words inadmissible, held that the word "upon" must be rejected as nonsensical; but Baron Parke considered that the Court was at liberty either, by transposition, to read the passage "may obtain goods or money on credit," or to interpolate after "upon" the words "such representations" (*b*). By s. 58, London Building Act, 1894, a wall built as, or becoming, a party wall in any part, "shall be deemed a party wall for such part of its length as is so used"; that means (though not so expressed) height as well as length, so that only

(*a*) *Kennedy* v. *Gibson*, 8 Wallace, 498. *Comp. Hancocks* v. *Lablache*, 3 C. P. D. 197. This latter case, since the passing of the Married Women's Property Act, 1882, is no longer good law.

(*b*) *Lyde* v. *Barnard*, 1 M. & W. 101, 115. See also *United Alkali Co.* v. *Simpson*, *per* Lord Coleridge C.J., [1894] 2 Q. B. 121.

so much of the height as well as only so much of the length of wall which had been used as a party wall is to be deemed a party wall within the section (*a*).

The reference in s. 6, Intestates' Estates Act, 1890, to the "testamentary" expenses of an intestate, being obviously a slip in drafting, has been read as referring to the expenses of obtaining letters of administration and of administration generally (*b*).

In statutes governed by the principle of strict construction, such emendations have been refused (*c*).

Clerical errors may be read as amended; as where, for instance, an Act refers to another by title and date, and mistakes the latter (*d*).

It has been asserted that no modification of the language of a statute is ever allowable in construction except to avoid an absurdity which appears to be so, not to the mind of the expositor merely, but to that of the Legislature; that is, when it takes the form of a repugnancy (*e*). In this case, the

(*a*) *London &c. Dairy Co.* v. *Morley & Lanceley* (1911), 80 L. J. K. B. 908.

(*b*) 53 & 54 Vict. c. 29, s. 6; *Twigg's Estate, Re*, [1892] 1 Ch. 579.

(*c*) See *Underhill* v. *Longridge*, 29 L. J. M. C. 65, inf. p. 482.

(*d*) 2 Inst. 290; *Anon.*, Skinn. 110; *R.* v. *Wilcock*, 14 L. J. M. C. 104; *Boothroyd, Re*, 15 L. J. M. C. 57.

(*e*) *Per* Willes J., *Motteram* v. *E. C. R. Co.*, 7 C. B. N. S. 58; in *Bell Cox* v. *Hakes*, 15 App. Cas. 542, Lord Field, accepting

Legislature shows in one passage that it did not mean what its words signify in another; and a modification is therefore called for, and sanctioned beforehand, as it were, by the author. But the authorities do not appear to support this restricted view. They would seem rather to establish that the judicial interpreter may deal with careless and inaccurate words and phrases in the same spirit as a critic deals with an obscure or corrupt text, when satisfied, on solid grounds (*a*), from the context or history of the enactment, or from the injustice, inconvenience, or absurdity of the consequences to which it would lead, that the language thus treated does not really express the intention, and that his amendment probably does.

SECTION II.—EQUITABLE CONSTRUCTION.

The practice of modifying the language, and controlling the operation of enactments, however, was formerly carried to still greater lengths. It used to be laid down that a remedial statute should receive an equitable construction; so that cases out of its letter should, if within the general

Willes J.'s *dictum*, adds "absurdity"; *Abel* v. *Lee*, L. R. 6 C. P. 365; *Christopherson* v. *Lotinga*, 15 C. B. N. S. 809; *per* Brett J., *Boon* v. *Howard*, L. R. 9 C. P. 305.

(*a*) *Comp. Green* v. *Wood*, sup. p. 35, and cases cited pp. 29–31.

object or mischief of the Act, be brought within the remedy which it provided (*a*). The extremely wide construction given to the expression "charitable" use or trust in the 43 Eliz. c. 4 (*b*), is a remarkable example of this construction; the Court of Chancery including in that phrase a number of subjects which undoubtedly no one outside the Court of Chancery would have supposed to be comprehended within it (*c*).

It is to be observed, indeed, that the expression "equitable" is often used in the older authorities in diverse senses. Lord Mansfield said that equity was synonymous with the intention of the Legislature (*d*); and in this sense an equitable construction is free from objection. Thus the "equitable" construction, which included uses within the Statute De Donis, though that enactment spoke only of "lands and tenements," and may have originally contemplated only common law estates (*e*), and which applied 2 Hen. V. (stat. 2) (1414) (*f*) (requiring that a juror should

(*a*) Co. Litt. 24b; Bac. Ab. Statute (I.) 6; Com. Dig. Parliament, R. 13.

(*b*) Repealed by 51 & 52 Vict. c. 42, s. 13, which see.

(*c*) *Per* Lord Halsbury L.C., *Income Tax Commrs.* v. *Pemsel*, [1891] A. C. 542. See *Fouveaux, Re*, [1895] 2 Ch. 501.

(*d*) *R.* v. *Williams*, 1 W. Bl. 93.

(*e*) *Corbet's Case*, 1 Rep. 88.

(*f*) Repealed as to England by S. L. R., 1863.

have "lands" worth 40 shillings), to the *cestui que* use, and not to the feoffee, when the legal estate was in the latter (*a*), would seem to fall within the now recognised ordinary rules of construction. The 4 Edw. III. c. 7, which gave executors an action against trespassers for a wrong done to their testator, was said to have given them also an action on the case, by "the equity" of the statute (*b*); but the decision was strictly on the letter of the Act. It turned on the construction of the word "trespass," which was held to mean a wrong done generally, and of "trespassers," which was held to mean wrongdoers (*c*). The decision that the Statute of Gloucester, c. 5 (which gives the action of waste against lessees for life, or "for years," to recover the wasted place and treble damages), reached "by equity" a tenant for one year and even for half a year, was

(*a*) Co. Litt. 272b.

(*b*) *Russell* v. *Prat*, 1 Leon. 193; *Rutland* v. *Rutland*, Cro. Eliz., 377.

(*c*) *Per* Lord Ellenborough, *Wilson* v. *Knubley*, 7 East, 133. It was held to extend to all torts except those relating to the testator's freehold, or where the injury was of a purely personal nature. See *Williams* v. *Cary*, 4 Mod. 403; 12 Mod. 71; *Berwick* v. *Andrews*, 2 Lord Raym. 971; *Bradshaw* v. *Lanc. & York Ry. Co.*, L. R. 10 C. P. 189; *Leggott* v. *Gt. Northern Ry. Co.*, 1 Q. B. D. 599. See also *per* Bramwell L.J., *Twycross* v. *Grant*, 4 C. P. D. 40, and *Pulling* v. *Gt. Eastern Ry. Co.* (1882), 9 Q. B. D. 110, at p. 112.

apparently of a similar character (*a*). So, when it is said that it is on "the equity," or "equitable construction" of the statute 2 W. & M. c. 5 (which empowers a landlord to sell for the best price the goods which he has distrained for arrears of rent, if the tenant does not replevy in five days), that an action lies against the landlord who sells after impounding but before the expiration of five days (*b*), or after a tender of the rent and expenses within that time (*c*), or for less than the best price (*d*), it has been held, however, trover will not lie. No more apparently being meant than that a cause of action was given by implication (*e*) against a landlord who thus abused the power of sale thereby conferred on him.

Byles J., in his terse way, summed up the view he held by saying that "'within the Equity' means the same thing as 'within the mischief' of a statute" (*f*).

But the expression has been more generally used in other senses. In the construction of old

(*a*) Co. Litt. 53a; 2 Inst. 302.

(*b*) *Wallace* v. *King*, 1 H. Bl. 13. See also *Pitt* v. *Shew*, 4 B. & Ald. 208; *Harper* v. *Taswell*, 6 C. & P. 166.

(*c*) *Johnson* v. *Upham*, 28 L. J. Q. B. 252. See *R.* v. *Cox*, 2 Burr. 785; *R.* v. *Younger*, 5 T. R. 449.

(*d*) Com. Dig. Distress (D.), 8; Farwell on Powers, c. 17.

(*e*) See Chap. XII, Sec. II.

(*f*) *Shuttleworth* v. *Le Fleming*, 19 C. B. N. S. 703.

statutes, it has been understood as extending to general cases the application of an enactment which, literally, was limited to a special case. Thus, the Statute of Westminster 1 (3 Edw. I. c. 4), which enacted that a vessel should not be adjudged a wreck, if a man, a dog, or a cat escaped from it, was regarded as exempting a vessel from such adjudication, by an equitable construction, if any other animal escaped, those named being put only for example (*a*). The 46th chapter of the same statute, which directed the judges of the King's Bench to hear their causes in due order, was extended, on the same principle, to the judges of the other Courts (*b*); and the Statute of Westminster 2, c. 31, which gave the bill of exceptions to the ruling of the judges of the Common Pleas, was similarly held applicable, not only to the other judges of the Superior Courts, but to those of the County Courts, the Hundred, and the Courts Baron; their judges being still more likely to err (*c*). The 5 Hen. IV. c. 10, which forbade justices of the peace to commit to any other than the common jail, was held to be equally imperative on all other judicial functionaries (*d*). The Statute of 1 Rich. II. c. 12, which forbade the Warden of the Fleet to

(*a*) 2 Inst. 167; 5 Rep. 107.
(*b*) 2 Inst. 256.
(*c*) 2 Inst. 426; *Strother* v. *Hutchinson*, 4 Bing. N. C. 83.
(*d*) 2 Inst. 43.

suffer his prisoners for judgment debts to go at large, until they had satisfied their debts, was held to include all jailers (*a*). The Statute of Gloucester (6 Edw. I.), c. 11, in speaking of London, was considered as intending to include all cities and boroughs equally; the capital having been named alone for excellency (*b*). The statute, or writ *De Circumspecte Agatis* (13 Ed. I.), which directs the judges not to interfere with the Bishop of Norwich or his clergy in spiritual suits, was construed as protecting all other prelates and ecclesiastics, the Bishop of Norwich being put but for an example (*c*).

This kind of construction, which would not be tolerated now (*d*), was said to have been given to ancient statutes in consequence of the conciseness with which they were drawn (*e*); though the specific expressions used can hardly be considered more concise than the more abstract terms for which they were, possibly, substituted. It has been explained, also, on the ground that language was used with no great precision in early times and that Acts were framed in harmony with the

(*a*) *Platt* v. *Lock*, Plowd. 35.

(*b*) 2 Inst. 322.

(*c*) Id. 487.

(*d*) *Per* Pollock C.B., *Miller* v. *Salomons*, 21 L. J. Ex. 197.

(*e*) 2 Inst. 401; 10 Rep. 30b; *per* Lord Brougham, *Gwynne* v. *Burnell*, 6 Bing. N. C. 561.

lax method of interpretation contemporaneously prevalent (*a*). It has also been accounted for by the fact that in those times the dividing line between the legislative and judicial functions was feebly drawn, and the importance of the separation imperfectly understood (*b*). The ancient practice of having the statutes drawn by the judges from the petitions of the Commons and the answers of the King (*c*) may also account for the latitude of their interpretation. The judges would be disposed to construe the language with freedom, knowing, like Chief Justice Hengham and Lord Nottingham, what they meant when framing them (*d*).

But an equitable construction has been applied also to more modern statutes, and in a sense departing still more widely from the language. Thus, although s. 3, 21 Jac. c. 16, enacted that certain actions should be brought within six years after the cause of action accrued, "and not after," it was nevertheless held, notwithstanding these negative terms, that where an action was brought within six years, but abated by the death of either party, a reasonable time—that is, a year, computed, not from the death, but from the grant of

(*a*) *Per* Lord Ellenborough, *Wilson* v. *Knubley*, 7 East, 134.

(*b*) Sedg. Interp. Stat. 311. See *per* Lord Selborne, *Bradlaugh* v. *Clarke*, 8 App. Cas. 363.

(*c*) Co. Litt. 272a; sup. p. 73.

(*d*) Sup. p. 49.

administration—was to be allowed, by an equitable construction of the statute, beyond the period given, to bring a fresh action by or against the personal representatives of the deceased (*a*).

The provision of the Statute of Frauds, which prohibits the enforcement of agreements for the purchase of lands, unless they be in writing, was held not to prevent the Court of Chancery from decreeing the specific performance of such agreements, though not in writing, where they had been partly performed by the party seeking to enforce the contract. On all questions on that statute, it was said, the end and purport for which it was made—namely, to prevent frauds and perjuries—was to be considered; and any agreement in which there was no danger of either, was considered as out of the statute (*b*). The statute was not made to protect or be the means of fraud (*c*); and as it

(*a*) *Hodsden* v. *Harridge*, 2 Wms. Saund. 64a; *Curlewis* v. *Mornington*, 26 L. J. Q. B. 181; *Swindell* v. *Bulkeley*, 56 L. J. Q. B. 613. See also *Piggott* v. *Rush*, 4 A. & E. 912; *Atkinson* v. *Bradford Bldg. Soc.*, 25 Q. B. D. 377; *Tidd, Re*, [1893] 3 Ch. 154.

(*b*) *Per* Lord Hardwicke, *A.-G.* v. *Day*, 1 Ves. senr. 221.

(*c*) *Per* Lord Mansfield, *Carter* v. *Boehm*, 3 Burr. 1918; *per* Turner, L.J., *Lincoln* v. *Wright*, 4 De G. & J. 16; *Haigh* v. *Kaye*, L. R. 7 Ch. 469; *Williams* v. *Evans*, L. R. 19 Eq. 547; *Ungley* v. *Ungley*, 5 Ch. D. 887; *Re Duke of Marlborough*, [1894] 2 Ch. 133. *Sc.*, *per* Lord Selborne L.C., *Maddison* v. *Alderson*, 8 App Cas. 474

would be a fraud on one of the parties if a partly-performed contract were not completely performed, the Court of Chancery compelled its performance in contradiction to the positive enactment of the statute (*a*). And upon this principle an attorney's undertaking to pay his client's debt and costs has been enforced on motion of the Court of which he was an attorney, although void by the statute (*b*). The general doctrine cited above, however, was said by Eyre C.B., to raise the very mischief which the statute intended to prevent (*c*), and would probably have found no more favour at a later period in Equity (*d*), than it did in the Courts of Common Law where it was never recognised (*e*).

(*a*) *Per* Lord Redesdale, *Bond* v. *Hopkins*, 1 Sch. & Lef. 433. See also *A.-G.* v. *Day*, 1 Ves. senr. 221; *Lester* v. *Foxcroft*, Colles, 108, and 1 White & Tudor's Eq. Ca. 881, where the later authorities are collected; 2 Story Eq. Jur. s. 752 *et seq.*; *Webster* v. *Webster*, 27 L. J. Ch. 115; *Wilson* v. *West Hartlepool Co.*, 34 L. J. Ch. 241; *Nunn* v. *Fabian*, L. R. 1 Ch. 35. See *per* Grant M.R., *Frame* v. *Dawson*, 14 Ves. 387, applied in *Dickinson* v. *Barrow*, 73 L. J. Ch. 701, and in which latter case *Caton* v. *Caton*, 35 L. J. Ch. 292, and *McManus* v. *Cooke*, 56 L. J. Ch. 662, were commented on: *Maddison* v. *Alderson*, 8 App. Cas. 467; *Humphreys* v. *Green*, 10 Q. B. D. 148; *Britain* v. *Rossiter*, 11 Q. B. D. 123; *McManus* v. *Cooke*, sup.

(*b*) *Evans* v. *Duncan* (1831), 1 Tyrw. 283.

(*c*) *O'Reilly* v. *Thompson*, 2 Cox Eq. Ca. 273.

(*d*) See ex. gr. *Hughes* v. *Morris*, 21 L. J. Ch. 761.

(*e*) *Boydell* v. *Drummond*, 11 East, 142, 159; *Cocking* v. *Ward*, 15 L. J. C. P. 245.

Similar considerations affected the construction which was put upon the Middlesex Registry Act, 1708 (7 Anne, c. 20) (*a*), which, after reciting that frauds were committed by means of secret conveyances, enacted that deeds and wills affecting lands, either at law or in equity, should be adjudged fraudulent and void against subsequent purchasers, unless a memorial of them were registered. It was nevertheless held that such instruments, though unregistered, were valid against subsequent purchasers who had notice of them (*b*). It has been doubted whether the efficacy of the Act was not materially impaired by such a departure from its letter (*c*).

On similar grounds, it would seem, although the various Acts of Parliament which created stocks since the beginning of the reign of George I. provided that no method of assigning or transferring the stock, except that provided by the Act, should be valid or available in law, and directed that the owner of stock might devise it by will, attested by two witnesses, it was established by repeated decisions (before the Wills Act, 1837) that, notwithstanding such express terms, stock

(*a*) Sec. 18.

(*b*) *Le Neve* v. *Le Neve*, Amb. 436; *Davis* v. *Strathmore* (1809), 16 Ves. 419; *Willis* v. *Brown*, 10 Sim. 127.

(*c*) *Per* Sir W. Grant, *Wyatt* v. *Barwell*, 19 Ves. 439. See also *Doe* v. *Allsop*, 5 B. & Ald. 142.

might be disposed of by an unattested Will; it being held that, if not valid as a devise, the Will nevertheless bound the executor as a direction for the disposition of the stock (*a*).

This principle of Equitable Construction has, however, fallen into discredit, though sometimes sought to be revived under the new name of Legislation by Construction (*b*). It was condemned, indeed, by Lord Bacon, who delared that *non est interpretatio, sed divinatio, quæ recedit a literâ* (*c*); Lord Tenderden lamented it (*d*), and pronounced it dangerous (*e*); and it may now be considered as altogether discarded as regards the construction of most modern statutes (*f*). Statutes are now to be considered as framed with a view to equitable as well as legal doctrines (*g*). For instance, the fact that an execution creditor had notice, when his debt was contracted, that his

(*a*) *Ripley* v. *Waterworth*, 7 Ves. 440; *Franklin* v. *Bank of England*, 32 R. R. 611.

(*b*) *Per* Williams J., *Re English, Scottish & Australian Bank*, 62 L. J. Ch. 828.

(*c*) Adv. of Learning.

(*d*) *R.* v. *Turvey*, 2 B. & Ald. 520.

(*e*) *Brandling* v. *Barrington*, 6 B. & C. 475.

(*f*) See *per* Jessel M.R., *Walton, Exp.* (1881), 17 Ch. D. 750. See also *Hill* v. *West India Dock Co.* (1884), 9 A. C., Cairns Ld., at p. 456; and *Irish Land Commission* v. *Brown*, [1904] 2 Ir. R. 200, at p. 211.

(*g*) *Per* James L.J. and Mellish L.J., 2 Ch. D. 296, 297.

debtor had given a bill of sale to another person which was not registered, was held not to prevent the execution creditor from availing himself of the non-registration (*a*).

Where, indeed, a modern statute is strictly (*b*) *in pari materiâ* with one which has already received an equitable construction, that construction is extended to it on the general principle that they form together one body of law, and are to be construed together (*c*). Thus, s. 3, 3 & 4 Will. IV. c. 42, which limits the time for bringing actions on bonds and other specialties to 20 years (now 12 years) (*d*), in language identical with that used in s. 3, 21 Jac. c. 16, respecting simple contract debts, received the same equitable construction as had been given to the last-named Act; and the administrator of the obligor of a bond which had been put in suit in 1831, in which year the action abated by the death of the obligor, was held to be liable to be sued in 1858, within a year from the grant of letters of administration (*e*).

It may not be out of place to mention here that

(*a*) *Edwards* v. *Edwards*, 2 Ch. D. 291.

(*b*) *Comp. Adam* v. *Inhabitants of Bristol*, 2 A. & E. 389.

(*c*) Sup. p. 54 *et seq.*

(*d*) 37 & 38 Vict. c. 57, s. 1.

(*e*) *Sturgis* v. *Darell*, 29 L. J. Ex. 572; and see as to when time, under the statute, begins to run, *Wakefield &c. Bank* v. *Yates*, [1916] 1 Ch. 452.

the expression "the Equity of a Statute" is sometimes used as meaning the principle or ground of a rule adopted from analogy to a statute. For instance, 6 Rich. II. (*a*), which provided that a writ should abate, if the declaration showed that the contract sued upon was made in a different county from that mentioned in the writ, is said to have led (by the equity of that statute, or the analogy which it furnished) to the introduction by the judges, in the reign of James I., of the practice of changing the venue on motion, where there was no variance between the writ and declaration as to the place where the cause of action arose (*b*).

It was formerly asserted that a statute contrary to natural equity or reason (such as one which made a man a judge in his own case), or contrary to Magna Charta, was void; for, it was said, *jura naturæ sunt immutabilia*; they are *leges legum*; and an Act of Parliament can do no wrong (*c*). But such dicta cannot be supported. They stand as a

(*a*) Repealed 42 & 43 Vict. c. 59.

(*b*) *Knight* v. *Farnaby*, 2 Salk. 670; *Craft* v. *Boite*, 1 Saund. 247; Tidd. Pr. c. 24.

(*c*) *Bonham's Case*, 8 Rep. 118a; *City of London* v. *Wood*, 12 Mod. 687; *Day* v. *Savadge*, Hob. 87; *Mercer's Co.* v. *Bowker*, 1 Stra. 639; 3 Inst. 111. So enacted as to Magna Charta by 42 Edw. III. c. 1, Co. Litt. 81a. As to taking away the Royal power, see *per* Finch C.J., *R.* v. *Hampden* (Ship Money), 3 State Trials 1235.

beacon to be avoided, rather than as an authority to be followed (*a*).

The law on this subjeot oannot be better laid down than in the following words of a great Amerioan authority: "It is a prinoiple in the English law that an Aot of Parliament, delivered in clear and intelligible terms, oannot be questioned, or its authority controlled, in any court of justice. 'It is,' says Sir W. Blaokstone, 'the exeroise of the highest authority that the kingdom aoknowledges upon earth.' When it is said in the books that a statute oontrary to natural equity and reason, or repugnant, or impossible to be performed, is void, the oases are understood to mean that the Courts are to give the statute a reasonable construotion. They will not readily presume, out of respeot and duty to the lawgiver, that any very unjust or absurd oonsequenoe was within the contemplation of the law. But if it should happen to be too palpable in its direotion to admit of but one oonstruotion, there is no doubt, in the English law, as to the binding effioaoy of the statute. The will of the Legislature is the supreme law of the land, and demands perfeot obedienoe.

"But while we admit this conclusion of the English law, we cannot but admire the intrepidity and powerful sense of justice whioh led Lord Coke,

(*a*) See *per* Willes, J., *Lee* v. *Bude R. Co.* (1871), L. R. 6 C. P. 582.

when Chief Justice of the King's Benoh, to declare, as he did in *Doctor Bonham's Case*, that the Common Law doth control Aots of Parliament, and adjudges them void when against common right and reason. The same sense of justioe and freedom of opinion led Lord Chief Justioe Hobart, in *Day* v. *Savadge*, to insist that an Aot of Parliament made against natural equity, as to make a man judge in his own oase, was void; and induoed Lord Chief Justice Holt to say in the oase of the *City of London* v. *Wood*, that the observation of Lord Coke was not extravagant, but was a very reasonable and true saying. Perhaps what Lord Coke said in his reports on this point may have been one of the many things that King James alluded to, when he said that in Coke's reports there were many dangerous conoeits of his own uttered for law, to the prejudioe of the Crown, Parliament, and subjeots" (*a*).

(*a*) 1 Kent, Comm. 447.

CHAPTER X.

SECTION 1.—CONSTRUCTION OF PENAL LAWS.

THE rule which requires that penal and some other statutes shall be construed strictly was more rigorously applied in former times, when the number of capital offences was very large (*a*); when it was still punishable with death to cut down a cherry-tree in an orchard, or to be seen for a month in the company of gipsies (*b*), or for a soldier or sailor to beg and wander without a pass. Invoked in the majority of cases *in favorem vitæ*, it has lost much of its force and importance in recent times, and it is now recognised that the paramount duty of the judicial interpreter is to

(*a*) "Previous to the Revolution, the number on the Statute Book is said not to have exceeded 50. During the reign of George II., 63 new ones were added. In 1770 the number was estimated in Parliament at 154 (Cavendish Debates ii. 12), but by Blackstone (Comm. iv. 18) at 160; and Romilly, in a pamphlet which he wrote in 1786 (Observations on a late publication entitled 'Thoughts on Executive Government,' London), observed that in the sixteen years since the appearance of Blackstone's Commentaries it had considerably increased." Lecky, History of England, vi. 246.

(*b*) 4 Bl. Comm. 4.

put upon the language of the Legislature, honestly and faithfully, its plain and rational meaning, and to promote its object. "I oannot concur in the contention that beoause these Acts (against adulteration) impose penalties, therefore their construction should, necessarily, be strict. I think that neither greater nor less strictness should be applied to those than to other statutes" (*a*).

It was founded, however, on the tenderness of the law for the rights of individuals, and on the sound principle that it is for the Legislature, not the Court, to define a crime and ordain its punishment (*b*). It is unquestionably a reasonable expectation that, when the former intends the infliction of suffering, or an enoroachment on natural liberty or rights, or the grant of exoeptional exemptions, powers, and privileges, it will not leave its intention to be gathered by mere doubtful inference, or convey it in "cloudy and dark words" only (*c*), but will manifest it with reasonable clearness. The rule of strict construotion does not, indeed, require or sanotion that suspicious scrutiny of the words, or those hostile conclusions from their ambiguity or from what is left unexpressed, whioh charaoterise the judicial interpretation of affidavits in support of *ex parte*

(*a*) *Per* Day J., *Newby* v. *Sims* (1894), 63 L. J. M. C. 229.
(*b*) *U. S.* v. *Wiltberger*, 5 Wheat. 95.
(*c*) 4 Inst. 332.

applications (*a*), or of magistrates' convictions, where the ambiguity goes to the jurisdiction (*b*). Nor does it allow the imposition of a restricted meaning on the words, wherever any doubt can be suggested, for the purpose of withdrawing from the operation of the statute a case which falls both within its scope and the fair sense of its language. This would be to defeat, not to promote, the object of the Legislature (*c*); to misread the statute and misunderstand its purpose (*d*). A Court is not at liberty to put limitations on general words which are not called for by the sense, or the objects, or the mischiefs of the enactment (*e*); and no construction is admissible which would sanction a fraudulent evasion of an Act (*f*). But the rule of strict construction

(*a*) See ex gr. *Perks* v. *Severn*, 7 East, 194; *Fricke* v. *Poole*, 9 B. & C. 543.

(*b*) See *R.* v. *Davis*, 39 R. R. 563; *R.* v. *Jones*, 12 A. & E. 684; *per* Coleridge J., *R.* v. *Toke*, 8 A. & E. 227; *per* Cur., *Lindsay* v. *Leigh*, 17 L. J. M. C. 50; *R.* v. *Stainforth*, 17 L. J. M. C. 25; *Fletcher* v. *Calthrop* (1845), 14 L. J. M. C. 49. Note *R.* v. *Western* (1868), J. P. 390, as to extent of power of amendment in cases where the variance is not material.

(*c*) Bac. Ab. Stat. (I.) 9; *R.* v. *Hodnett*, 1 T. R. 101.

(*d*) *Per* Martin B., *Nicholson* v. *Fields*, 31 L. J. Ex. 236, and Bramwell B., *Foley* v. *Fletcher*, 3 H. & N. 781.

(*e*) *U. S.* v. *Coombs*, 12 Peters, 80.

(*f*) Com. Dig. Parl. (R.) 28; Bac. Ab. Stat. (I.) 9; *Britton* v. *Ward*, 2 Rol. 127. *Per* Cur., *U. S.* v. *Wiltberger*, 5 Wheat. 95; *U. S.* v. *Gooding*, 12 Wheat. 460; *American Fur Co.* v. *U. S.*, 2

requires that the language shall be so construed that no cases shall be held to fall within it which do not fall both within the reasonable meaning of its terms and within the spirit and scope of the enactment (*a*). Where an enactment may entail penal consequences, no violence must be done to its language in order to bring people within it, but rather care must be taken that no one is brought within it who is not within its express language (*b*). To determine that a case is within the intention of a statute, its language must authorise the Court to say so; but it is not admissible to carry the principle that a case which is within the mischief of a statute is within its provisions, so far as to punish a crime not specified in the statute, because it is of equal atrocity or of a kindred character with those which are enumerated (*c*). If the Legislature has not used words sufficiently comprehensive to include within its prohibition

Peters, 367; *U. S.* v. *Coombs*, 12 Peters, 80; *U. S.* v. *Hartwell*, 6 Wallace, 395. See sup. Chap. IV.

(*a*) *Per* Best C.J., *Fletcher* v. *Sondes*, 3 Bing. 580; *Bracy's Case*, 1 Salk. 348; *R.* v. *Harvey*, 1 Wils. 164; *Dawes* v. *Painter*, Freem. K. B. 175; *Scott* v. *Pacquet*, 36 L. J. P. C. 65; *Ellis* v. *M'Cormick*, L. R. 4 Q. B. 271; *The Gauntlet*, L. R. 4 P. C. 191, *per* James L.J.; *per* Lord Alverstone C.J., *R.* v. *South Shields Licensing Justices* (1911), 80 L. J. K. B. 810.

(*b*) *Per* Wright J., *London C. C.* v. *Aylesbury Co.*, [1898] 1 Q. B. 106.

(*c*) *U. S.* v. *Wiltberger*, 5 Wheat. 96.

all the cases which fall within the mischief intended to be prevented, it is not competent to a Court to extend them (*a*). It is immaterial, for this purpose, whether the proceeding prescribed for the enforcement of the penal law be criminal or civil (*b*).

The degree of strictness applied to the construction of a penal statute depended in great measure on the severity of the statute. When it merely imposed a pecuniary penalty, it was construed less strictly than where the rule was invoked *in favorem vitæ*. Formerly, an indictment for the capital felony of assaulting a person at a certain time and place, and feloniously cutting or feloniously robbing him, was fatally bad, because it did not allege that the cutting or the robbing was done "then and there"; while a similar omission in an indictment for the misdemeanour of a common assault was considered immaterial (*c*). Lord Hale mentions that a statute of Edward VI.,

(*a*) *Per* Lord Tenterden, *Proctor* v. *Manwaring* (1819), 3 B. & Ald. 145; and see *Robinson* v. *Emerson* (1866), 4 H. & C. 352, at p. 356.

(*b*) *Henderson* v. *Sherborne*, 2 M. & W. 236; *Nicholson* v. *Fields*, 31 L. J. Ex. 236; *Fletcher* v. *Hudson*, 7 Q. B. D. 611; *The Bolina*, 1 Gallison, 83, *per* Story J.

(*c*) 2 Hale, 178; *R.* v. *Baude*, Cro. Jac. 41; *R.* v. *Francis*, 2 Strn. 1015. See *R.* v. *Thomas* (1878), 44 L. J. M. C. 42, which shows that save by express statutory provision an indictment for felony will not support a conviction for misdemeanour.

which made the stealing of horses, in the plural, a capital offence, gave rise to a doubt, which it was thought necessary to remove by enactment in the following session of Parliament, whether it included the theft of one horse only; the doubt resting on the slender foundation that an earlier Act spoke of stealing "any horse," in the singular number (*a*). Perhaps the same spirit may be found in the more modern decisions, that a Court was not bound to know that a colt was a horse, in an Act against horse-stealing (*b*); or that a pig was a "hog" in an Act against hog-stealing (*c*); and that an onactment which made it a felony to "stab, cut, or wound," did not reach the case of biting off a nose or a finger, because the injury thus inflicted was not caused by an instrument (*d*); nor that of breaking a collar-bone, when the skin was not also broken (*e*).

A strict construction requires, at least, that no

(*a*) 2 Hale, 365, inf. pp. 570–571; 1 Edw. VI. c. 12. *Comp. R.* v. *Rowlands*, 8 Q. B. D. 530, as to defrauding "creditors" when one only is defrauded.

(*b*) *R.* v. *Beaney*, Russ. & Ry. 416. *Comp. R.* v. *Welland*, Russ. & Ry. 494.

(*c*) *U. S.* v. *McLain*, 2 Brev. 443 (Tennessee).

(*d*) *R.* v. *Stevens*, 1 Moo. C. C. 409; *R.* v. *Harris*, 7 C. & P. 446; *R.* v. *Jeans*, 1 C. & K. 539. *Comp. R.* v. *Shadbolt*, 5 C. & P. 504; *R.* v. *Elmsly*, 2 Lew. 126; *R.* v. *Waltham*, 3 Cox C. C. 442; *R.* v. *Owens*, 1 Moo. C. C. 205.

(*e*) *R.* v. *Wood*, 4 C. & P. 381.

case shall fall within a penal statute which does not comprise all the elements which, whether morally material or not, are in fact made to constitute the offence as defined by the statute. Thus, the Coventry Act, 22 & 23 Car. II. (repealed 9 Geo. IV. c. 31), which made capital the infliction, with malice aforethought "and by lying in wait," of a variety of disfiguring or disabling bodily injuries, was held not to include any such outrage, however malicious and deliberate, when not preceded by a lying-in-wait with the intent of committing it (*a*). And it was much doubted whether a person who inflicted such injuries with intent to murder, and not merely to maim and disfigure, fell within the Act (*b*). If a pirate attacks a vessel, but, instead of taking her, extorts from her master a promise to pay a sum for her redemption, no piracy would be committed, for there was no taking (*c*). The Riot Act, 1 Geo. I. Stat. 2, c. 5, s. 1, which makes it felony for rioters to remain assembled for more than an hour after the proclamation set forth in the Act has been

(*a*) 1 East, P. C. 398; *R.* v. *Child*, 4 C. & P. 442. *Comp.* sup. p. 364.

(*b*) So held *per* Lord King and Yates J. in *R.* v. *Coke*, 1 East, P. C. 400; *dubit.* Willes J. and Eyre B. See also *R.* v. *Williams*, Id. 424.

(*c*) Molloy, 64, s. 18. For a definition of this offence, see *A.-G.* (*Hong Kong*) v. *Kwok-a-Sing*, 42 L. J. P. C. 64.

made, failed of effect if the proclamation was not made fully and accurately; as if, for example, the final words, "God save the King," were omitted (*a*). A person cannot be convicted of perjury if the oath was administered by one who had not legal authority to administer it, as in the case of an affidavit in the Admiralty sworn before a Master in Chancery, though the Admiralty was in the habit of admitting affidavits so sworn (*b*). The statute which imposes a penalty where sack of coal upon being weighed shall be found deficient in weight of coal, and prescribes that, in the weighing, the sacks are to be weighed both with and without the coals therein, is not complied with by putting the full sacks successively into one scale, and an empty sack with the weights which the coal in each should weigh in the other, and consequently the penalty has been held not recoverable by the buyer in such a case (*c*); the precise procedure indicated by the statute not having been followed.

An enactment which made it a misdemeanour on the part of a bankrupt to commit certain acts within four months next before "the presentation

(*a*) *R.* v. *Child* (1830), 4 C. & P. 442. See *R.* v. *Woolcock*, 5 C. & P. 516.

(*b*) *R.* v. *Stone*, 23 L. J. M. C. 14.

(*c*) 1 & 2 Will. IV. c. lxxvi. s. 57; *Meredith* v. *Holman* (1847), 16 L. J. Ex. 126; *Smith* v. *Wood* (1889), 59 L. J. Q. B. 5.

of a bankruptcy petition *against* him," did not have that effect where the petition was presented by the bankrupt himself (*a*). An Act which made it penal to personate "any person entitled to vote" would not be violated by personating a dead voter (*b*). A penalty imposed on a man who ran away, leaving his wife and children chargeable, or whereby they became chargeable, would not be incurred by his simple desertion, without the intent that his family should become chargeable to the parish (*c*). Nor was at one time a husband liable to conviction for refusing to maintain his wife, when she refused to live with him, though her refusal was owing to his ill-treatment (*d*). A gamekeeper who kills wild rabbits in his master's woods which it was his duty to protect, and takes them away at once and sells them, is not guilty of

(*a*) 32 & 33 Vict. c. 62, s. 11; *Re Burden*, 21 Q. B. D. 24. But see now 4 & 5 Geo. V. c. 59, s. 154, which increases the period to six months.

(*b*) *Whiteley* v. *Chappell*, 38 L. J. M. C. 51. See also *R.* v. *Brown*, 2 East, P. C. 1007. As to existing law, see Corrupt Practices Act, 1883, s. 3, and Ballot Act, 1872, s. 24, which avoids this anomaly.

(*c*) *Reeve* v. *Yeates* (1862), 31 L. J. M. C. 241; *Sweeney* v. *Spooner* (1863), 32 L. J. M. C. 82. See also *Heath* v. *Heape*, 26 L. J. M. C. 49.

(*d*) *Flannigan* v. *Bishopwearmouth*, 27 L. J. M. C. 46. See *Pape* v. *Pape*, 20 Q. B. D. 76. But see Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39).

embezzling the rabbits, for he did not get possession of them "for or on account of" his master (*a*). A statute which imposed a penalty on an unqualified person who, either in his own or another's name, did any act appertaining to the office of proctor for fee or reward, would not apply to mere agents, or to acts which, though usually performed by proctors, were not of strict right incident to their office; such as preparing the documents necessary for obtaining letters of administration, where there was no contest (*b*). An Act which punishes the obtaining, with intent to defraud, any "chattel, money, or valuable security" by a false pretence is not violated by obtaining "credit on account," by a false pretence (*c*); nor by obtaining a dog by a false pretence, for a dog is not a chattel which is the subject of larceny at common law (*d*).

(*a*) *R.* v. *Read* (1878), 3 Q. B. D. 131; 47 L. J. M. C. 50.

(*b*) 23 & 24 Vict. c. 127, s. 26 (1); *Stephenson* v. *Higginson* (1851), 3 H. L. Cas. 638; *Law Socy.* v. *Shaw* (1882), 9 Q. B. D. 1.

(*c*) 24 & 25 Vict. c. 96, s. 88; *R.* v. *Wavell*, 1 Moo. C. C. 224. Probably, however, the offender would come within the mischief of s. 13 of 32 & 33 Vict. c. 62. See *Reg.* v. *Jones* (1897), 67 L. J. Q. B. 41.

(*d*) *R.* v. *Robinson*, 28 L. J. M. C. 58. But "chattels" includes choses in action, such as shares in a joint-stock company, *Robinson* v. *Jenkins*, 24 Q. B. D. 275; and a dog may be "goods," *R.* v. *Slade*, 21 Q. B. D. 433. By 24 & 25 Vict. c. 96, s. 18, dog stealing is made a criminal offence. See "CHATTELS," and "GOODS AND CHATTELS," Stroud's Judicial Dictionary and Supp.

An agent entrusted with money to invest on mortgage is not liable to conviction for embezzling it, as entrusted to him "for safe custody" (*a*). The forging of an indorsement on a document in the form of a bill of exchange, but having no drawer's name thereon, would not be a forging of an indorsement on a bill of exchange (*b*).

Obtaining from the corrospondent of a banker a sum of money on a cheque drawn in favour of the correspondent on the banker, on whom the drawer falsely pretended he had authority to draw, would not be an attempt to obtain money from the banker by false pretences. If the correspondent were to obtain the money from the banker, it would not be obtained by the authority of the drawer of the cheque; nor, presumably, by his wish, for he would gain nothing by it (*c*). It might, however, constitute a misdemeanour within the meaning of 32 & 33 Vict. c. 62, s. 13 (1) (*d*). See also Larceny Act, 1916. The provision of the Sheriff's Act, 1887, which imposes a penalty on any sheriff's officer who "takes or demands any money or reward under any pretext whatever," other than the fees or sums allowed by that or any

(*a*) 24 & 25 Vict. c. 96, s. 76; *R.* v. *Newman*, 8 Q. B. D. 706.

(*b*) *R.* v. *Harper*, 7 Q. B. D. 78. *Comp. R.* v. *Bowerman*, [1891] 1 Q. B. 112.

(*c*) *R.* v. *Garrett*, 23 L. J. M. C. 20.

(*d*) And see s. 32 of the Larceny Act, 1916.

other Act, would not apply to a claim for charges disallowed on taxation; as the claim must be taken to have been a demand for such items of the charges as should be allowed on taxation (*a*). Moreover, the penalty is inflicted for the doing of an act in the nature of a criminal offence, and to constitute such an offence there should be *mens rea*, and consequently, he is not liable to a penalty for a mere mistake (*b*).

The Act which punishes the administration of a noxious drug would not include a substance which is not in itself poisonous but noxious only when given in excess, as cantharides (*c*). A provision which prohibits unloading coal across a footway does not apply to coke (*d*).

It was held that the Act which imposes a penalty for "baiting" animals did not apply to setting dogs in pursuit of rabbits in a small enclosed space of 3 or 4 acres, from which the rabbits could not escape; the word "baiting" being, if not etymologically at least popularly, confined to

(*a*) 50 & 51 Vict. c. 55, s. 23 (2 *b*); *Woolford's Trustee* v. *Levy*, [1892] 1 Q. B. 772.

(*b*) *Lee* v. *Dangar*, [1892] 2 Q. B. 337. As to *mens rea*, see sup. p. 177 *et seq.*

(*c*) *R.* v. *Hennah* (1877), 13 Cox C. C. 547. *Comp. R.* v. *Wilson*, inf. p. 490.

(*d*) 30 & 31 Vict. c. 134, s. 5; *Fletcher* v. *Fields*, [1891] 1 Q.B. 790.

attacks on animals tied to a stake (*a*). Probably, however, it might come within the mischief contemplated by 1 & 2 Geo. V. c. 27. Again, it has been held that a person is not guilty of "frequenting" a street with intent to commit a felony, in the absence of evidence that he had been there more than once (*b*). Also it has been decided that a person charged under 55 Geo. III. c. 194, s. 20, with acting and practising as an apothecary is not amenable to more than one penalty although it was proved he had supplied medicine to several persons on the same day (*c*). An article kept ready for use in a back room or cellar is not "exposed for sale" within s. 6, Margarine Act, 1887 (*d*). A

(*a*) *Pitts* v. *Millar*, L. R. 9 Q. B. 380. As to "domestic animal" under the Cruelty to Animals Acts, 1849 and 1854 (12 & 13 Vict. c. 92 and 17 & 18 Vict. c. 60), see *Yates* v. *Higgins*, 65 L. J. M. C. 31, and cases therein cited. See further, *Bridge* v. *Parsons*, 32 L. J. M. C. 95; *Allen* v. *Small*, [1904] 2 I. R. 705; but see *Johnstone* v. *Abercrombie*, 30 Sc. L. R. 260. See also *Swan* v. *Sanders*, 50 L. J. M. C. 67; *Filburn* v. *People's Palace Co.*, 59 L. J. Q. B. 471.

(*b*) 5 Geo. IV. c. 83, s. 4 (amended by 34 & 35 Vict. c. 112, s. 15); *Clark* v. *R.*, 14 Q. B. D. 92; but see *Lang* v. *Walker*, 40 Sc. L. R. 284; *Davis* v. *Jeans*, 41 Sc. L. R. 426; and see *Pointon* v. *Hill*, 12 Q. B. D. 306, as to "wandering abroad to beg and gather alms" within s. 3 of same Act.

(*c*) *Apothecaries Co.* v. *Jones*, [1893] 1 Q. B. 89. See also *Greig* v. *Bendeno*, sup. p. 81.

(*d*) 50 & 51 Vict. c. 29, modified by 62 & 63 Vict. s. 27, and Schedule, and see 7 Edw. VII. c. 21; *Crane* v. *Lawrence* (1890),

person found on premises for an immoral purpose involving no breach of the criminal law, does not fall under the penalty imposed for being found on premises "for an unlawful purpose" (*a*). Nor would a man who obtained a license to retail beer, by means of a certificate that he was "a person of good character," be liable to conviction for using a certificate which he knew to be false, merely because he cohabited with a woman without being married to her (*b*).

The Metropolis Management Amendment Act, 1862, in incorporating the powers for the "suppression" of nuisances, conferred by an earlier local Act, which contained, besides several provisions for getting rid of existing nuisances, a prohibition against keeping pigs, was held not to have comprised this last provision, as the effect of it was, not to "suppress," but to prevent the creation of nuisanoes (*c*). Where a local Act, after

59 L. J. M. C. 110. *Comp. Wheat* v. *Brown* (1892), 61 L. J. M. C. 94. See also *Barlow* v. *Terrett*, 60 L. J. M. C. 104, followed in *Firth* v. *McPhail*, 74 L. J. K. B. 458. See further, *Hobbs* v. *Winchester*, 79 L. J. K. B. 1123. Apparently selling margarine spread on bread in an eating house is not "exposing for sale" within the meaning of the Act, *Moore* v. *Pearce's Dining &c. Rooms* (1895), 65 L. J. M. C. 7.

(*a*) 5 Geo. IV. c. 83; *Hayes* v. *Stevenson*, 3 L. T. N. S. 296.

(*b*) *Leader* v. *Yell*, 33 L. J. M. C. 231.

(*c*) *Chelsea Vestry* v. *King*, 34 L. J. M. C. 9. See *G. W. Ry. Co.* v. *Bishop* (1872), L. R. 7 Q. B. 550; 41 L. J. M. C. 120.

providing, by one section, that any structure, built or rebuilt, except on the site of a former dwelling, should not be "used" as a dwelling, unless there was an open space of 20 feet in front of it, without the previous consent of the local board, imposed, by another, a penalty if any building or work were "made or suffered to continue" contrary to the provisions of the Act; the Court refused to construe the latter section as including the offences prohibited in the former, though the effect of the decision was to leave them without specific provision for their punishment (*a*).

On the ground that an enactment giving a power of committal for non-payment of a debt is a highly penal one, it was held that s. 5 (2), Debtors Act, 1869, which gives such a power in the case of default made by any person in payment of any "debt due from him" in pursuance of a judgment, did not apply to the case of a judgment debt with execution limited to the separate property of a married woman, which could not properly be described as a "debt due from her," upon the strict construction which such a section required (*b*). And it has been held

(*a*) *Pearson* v. *Hull* (1865), 35 L. J. M. C. 36, diss. Martin B. See another example in *Elliott* v. *Majendie* (1872), L. R. 7 Q. B. 429.

(*b*) 32 & 33 Vict. c. 62; *Scott* v. *Morley*, 20 Q. B. D. 120. See also *Gardiner*, *Re*, 20 Q. B. D. 249. But see as to who is

that a garnishee order absolute is not a "final judgment" against the garnishee within s. 4 (1 *g*), Bankruptcy Act, 1883 (repealed and re-enacted by s. 1 (*g*), 4 & 5 Geo. V. c. 59); for the words "final judgment" have a proper professional meaning, and when found in a section of an Act which is defining acts of bankruptcy should be construed as strictly as if they occurred in a section defining a misdemeanour, because the commission of an act of bankruptcy entails disabilities on the person who commits it (*a*).

Again, as illustrative of the rule of strict construction, it has been said that while remedial laws may extend to new things not *in esse* at the time of making the statute (*b*), penal laws may not. Thus, the 31 Eliz. c. 12 (repealed by 7 & 8 Geo. IV. c. 27, s. 1), which took away the benefit of clergy from accessories after, as well as before, the fact was held not to extend to accessories made by subsequent enactment. The receiver, therefore, of a stolen horse, who was made an

"a debtor" within the meaning of the Bankruptcy Act, 1914, s. 1 (2) of that statute.

(*a*) *Chinery, Exp.*, 12 Q. B. D. 342. See also *Schmitz, Exp.*, 12 Q. B. D. 511; *Whinney, Exp.*, 13 Q. B. D. 476; *Henderson, Re*, 57 L. J. Q. B. 258; *Lester, Exp.*, 62 L. J. Q. B. 372.

(*b*) 2 Inst. 35; *per* Cur., *Dawes* v. *Painter*, Freeman K. B. 175. Sup. pp. 464, 465.

accessory by a later statute, was held not ousted (*a*). Where one Act (24 & 25 Vict. c. 96, s. 91) (*b*), made it felony to receive, with guilty knowledge, a chattel, the stealing of which was felony either at common law or under that Act; and a subsequent one made a partner who stole partnership property liable to conviction for the stealing, as though he had not been a partner; it was held that to receive such stolen property was not an offence under the earlier Act (*c*).

The Act to prevent Stock Jobbing, which, after referring, in the preamble, to the great inconveniences which had arisen, and daily arose, by the wicked practice of stock jobbing—diverting men from their ordinary pursuits, ruining families, discouraging industry, and injuring commerce—declared void all such contracts "in any public or joint stock, or other public securities whatsoever," was held, notwithstanding the mischief in view, and the wide terms used, not to apply to transactions in foreign funds (*d*) or in railway

(*a*) Fost. Cr. L. 372.

(*b*) Sec. 91 repealed by 6 & 7 Geo. V. c. 50, s. 48 and Sched.

(*c*) 31 & 32 Vict. c. 116, s. 1 (repealed by s. 48 and Sched., 6 & 7 Geo. V. 50, which see); *R.* v. *Smith*, 39 L. J. M. C. 112; *R.* v. *Streeter*, [1900] 2 Q. B. 601.

(*d*) 7 Geo. II. c. 8, repealed by 23 & 24 Vict. c. 28; *Henderson* v. *Bise*, 3 Stark. 158; *Wells* v. *Porter*, 2 Bing. N. C. 722. *Comp. Smith* v. *Lindo*, 27 L. J. C. P. 196, 335.

shares (*a*), on the ground that the former were not dealt in, and the latter were not known, in England, when the Act was passed.

But this degree of strictness may be regarded as extreme. It could hardly be contended that printing a treasonable pamphlet was not an offence against the statute of Edw. III., because printing was not invented until a century after it was passed; or that it would not be treason to shoot the King with a pistol, or poison him with an American drug (*b*). Sec. 2, 56 Geo. III. c. 58 (*c*), which enacted that no brewer or dealer in beer shall have, or put into beer, any liquor for darkening its colour, or use molasses or any preparation in lieu of malt and hops, under a penalty of £200, was held not to be confined to such dealers as were known at the time when the Act was passed, viz., licensed victuallers, licensed by a magistrate under the Act of 5 & 6 Edw. VI. c. 25; but to include the retailer of beer furnished with an excise license, who first came into legal existence under the 1 Will. IV. c. 64 (*d*). So s. 18, Game Act, 1831 (1 & 2 Will. IV. c. 32), authorising justices to license any householder to sell game, who is

(*a*) *Hewitt* v. *Price* 11 L. J. C. P. 292. *Comp. Copeland, Exp.*, inf. p. 494.

(*b*) Hallam, Const. Hist. c. 15.

(*c*) Repealed 48 & 49 Vict. c. 51, s. 10.

(*d*) *A.-G.* v. *Lockwood*, 9 M. & W. 378.

not licensed to sell beer by retail, includes not only householders licensed under 1 Will. IV. c. 64, but also those who hold an "additional" license under s. 1, Revenue Act, 1863 (26 & 27 Vict. c. 33) (*a*). The 8 Anne, c. 7, which enacted that if any sort of prohibited goods should be landed without payment of duty, the offender should forfeit treble value, was held to extend to gloves, which were not prohibited until the 6 Geo. III. (*b*). A market Act which prohibited the sale of provisions in any part of the town but the market-place, would extend to parts of the town built after the Act was passed on what were then fields (*c*), and this rule applies in cases where the old market provides insufficient accommodation (*d*).

It was held that the repealed (*e*) Engraving Copyright Act, 1734 (8 Geo. II. c. 13), which imposed a penalty for piratically engraving, etching,

(*a*) *Shoolbred* v. *St. Pancras Jus.* (1890), 24 Q. B. D. 346; 59 L. J. M. C. 33. With regard to the disputed point as to whether or not a person owning several shops and selling beer in one of them could hold a license to sell game, see *R.* v. *Bird and Others* (1898), 42 Sol. J. 397.

(*b*) *A.-G.* v. *Saggers*, 1 Price, 182.

(*c*) *Collier* v. *Worth*, 1 Ex. D. 464. See *R.* v. *Cottle*, 20 L. J. M. C. 162, and *Milton* v. *Faversham*, 10 B. & S. 548 n.

(*d*) *Gt. Eastern Ry. Co.* v. *Goldsmid* (1884), 9 App. Cas. 927.

(*e*) For existing law of Copyright, see 1 & 2 Geo. V. c. 46, and for a disquisition thereon, Clerk and Lindsell on Torts, Chap. XXI.

or otherwise, or "in any other manner," copying prints and engravings, applied to copying by photography, though that process was not invented till more than a century after the Act was passed (*a*). Bicycles were held to be "carriages" within the provision of the Highway Act, 1835, against furious driving, though not so held for taxing purposes (*b*), and tricyles propelled by steam to be "locomotives" within the Locomotives Act, 1865, though not invented when those Acts were passed (*c*). Under an Act which imposed a penalty for selling bread otherwise than by weight, except bread "usually sold" under the denomination of fancy bread, it was held penal to sell bread which would have fallen within the exception at the time when the Act was passed, but which has since ceased to be sold under the denomination of fancy bread (*d*).

(*a*) *Gambart* v. *Ball*, 14 C. B. N. S. 306, sup. p. 146 n., *Graves* v. *Ashford*, L. R. 2 C. P. 410. Catalogues and lists of articles for sale are books or "literary works," *Collis* v. *Cater* (1898), 78 L. T. 613; Aliter a copy made by a pattern for woolwork, *Dicks* v. *Brooks*, 49 L. J. Ch. 812. *Comp. Beal*, *Exp.*, inf. p. 491.

(*b*) *Williams* v. *Ellis* (1880), 49 L. J. M. C. 47.

(*c*) *Taylor* v. *Goodwin* (1879), 4 Q. B. D. 228; 48 L. J. M. C. 104; see an interesting disquisition on this case in *Simpson* v. *Teignmouth, &c., Bridge Co.* (1903), 72 L. J. K. B. 204; *Parkyns* v. *Preist* (1881), 7 Q. B. D. 313; 50 L. J. Q. B. 648.

(*d*) *R.* v. *Wood*, L. R. 4. Q. B. 559. *Comp. Aërated Bread*

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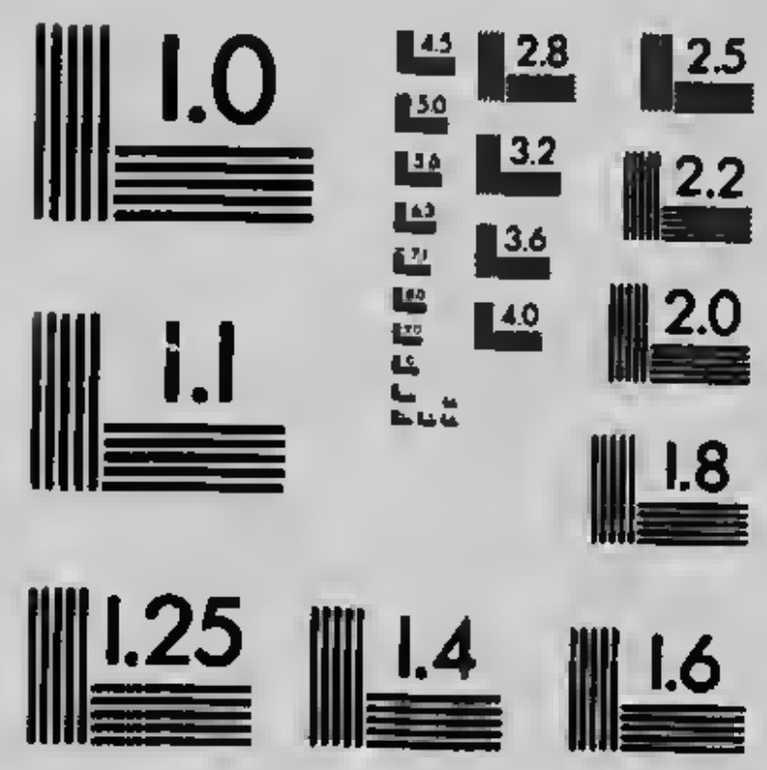

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The general principle now under consideration is well exemplified by comparing the manner in which an omission which, it was inferable from the text, was the result of acoident, has been generally dealt with in penal and in remedial Acts. Thus, where the owner of mines was required, under a penalty, in case (1) of loss of life in the mine by accident, or (2) of personal injury arising from explosion, to send notioe of such accident to an inspector within 24 hours "from the loss of life" (omitting the case of personal injury), the Court refused to supply, in order to make the defendant liable to a oonviction, the obvious omission in the latter branch of the sentence, and held that notice was not necessary when personal injury from explosion, short of loss of life, had occurred; although the mention of such injury in the earlier part of the sentence was idle and insensible without such an interpolation (*a*). Seo. 28, 5 & 6 Will. IV. c. 63, whioh empowered inspectors to examine "weights, measures, and soales," in shops, and if upon examination it appeared that "the said weights or measures" (omitting soales) were

Co. v. *Gregg* (1873), L. R. 8 Q. B. 355, in which a conviction by justices was upheld, and see also *V. V. Bread Co.* v. *Stubbs* (1896), 74 L. T. 704.

(*a*) *Underhill* v. *Longridge*, 29 L. J. M. C. 65. *Comp. Williams* v. *Evans*, inf. p. 497.

light or unjust, to seize them, was held not to authorise a seizure of scales (*a*) (but this decision is no longer good law (*b*)). The repealed Act of William IV. relating to Municipal Corporations, after empowering the borough justices to appoint a clerk to the justices, provided that it should not be lawful to appoint to that office any alderman or councillor, and provided that the clerk should not prosecute any offender committed for trial, enacted that any person "being an alderman or councillor" who should act as clerk to the justices, or "shall otherwise offend in the premises," should forfeit £100, recoverable by action. This clearly did not reach a clerk who prosecuted offenders committed by the justices, if he were not an alderman or councillor; and yet the manifest intention seemed to be that he should be subject to the penalty for either or both offences, of acting if disqualified, and of prosecuting. But to effectuate this intention, it would have been necessary to interpolate the words "any person who" before "shall otherwise offend"; and this the Court refused to do for the purpose of bringing a person within the penal enactment (*c*); though also relieving him

(*a*) *Thomas* v. *Stephenson*, 22 L. J. Q. B. 258.

(*b*) See 41 & 42 Vict. c. 49, s. 48.

(*c*) *Coe* v. *Lawrance* (1853), 22 L. J. Q. B. 140. As to existing law, see 45 & 46 Vict. c. 50, s. 159.

from indictment (*a*). So, the Court refused to supply a *casus omissus* under the Vaccination Act, 1871, as it was an enactment creating an offence (*b*). If the statutes, in these cases, had been remedial, the omission would probably have been supplied (*c*).

The rule of strict construction, however, whenever invoked, comes attended with qualifications and other rules no less important; and it is by the light which each contributes that the meaning must be determined (*d*). Among them is the rule that that sense of the words is to be adopted which best harmonises with the context, and promotes in the fullest manner the policy and object of the Legislature. The paramount object, in construing penal as well as other statutes, is to ascertain the legislative intent; and the rule of strict construction is not violated by permitting the words to have their full meaning, or the more extensive of two meanings, when best effectuating the intention (*e*). They are, indeed, frequently

(*a*) *Per* Coleridge J. See also *R.* v. *Davis*, L. R. 1 C. C. R. 272. See *National Merc. Bank, Exp.*, 15 Ch. D. 42, sup. p. 31.

(*b*) *Broadhead* v *Holdsworth*, 2 Ex. D. 321.

(*c*) *Re Wainewright*, 1 Phil. 258, sup. p. 444.

(*d*) *Per* Cur., *U. S.* v. *Hartwell*, 6 Wallace, 395.

(*e*) Id. 396.

taken in the widest sense, sometimes even in a sense more wide than etymologically belongs or is popularly attached to them, in order to carry out effectually the legislative intent, or, to use Lord Coke's words, to suppress the mischief and advance the remedy (*a*).

Thus, the Act which makes it felony to set fire to or damage a ship or vessel (*b*) has been construed as including an open boat of 18 feet in length (*c*). Under the statute which makes it a misdemeanour knowingly to utter counterfeit coin is included a genuine coin from which the milling has been filed and replaced by another (*d*), but, on the other hand, where there was no evidence of intention to utter a counterfeit coin made up of two genuine coins split and soldered together so as to constitute a double headed piece, the statute was held inapplicable (*e*). The possession of a die for making a false stamp, known to be such by its possessor, is, however innocent his intention, a possession "without lawful excuse" within the Post Office

(*a*) *Heydon's Case*, sup. p. 123.

(*b*) The term "vessel" includes any ship or boat, or any other description of vessel used in navigation: 57 & 58 Vict. c. 60, s. 742.

(*c*) *Semble per* Patteson J., *R.* v. *Bowyer*, 4 C. & P. 559. *Comp. Ferguson and Hutchinson, Exp.*, 40 L. J. Q. B. 105; sup. p. 131.

(*d*) *R.* v. *Hermann* (1879), 4 Q. B. D. 284.

(*e*) *R.* v. *McMahon* (1894), 15 N. S. W. (Law Reports), 131.

(Protection) Act, 1884 (*a*). Although the Act which punishes a man for running away from his wife and "children," thereby leaving them chargeable to the parish, applies only to the desertion of legitimate children, this rests, not on any indisposition to depart from the strict and narrow meaning of the word, but on the ground that the object of the Legislature was limited to the enforcement of the man's legal obligation, which did not extend to the support of his illegitimate children (*b*). But the statute which made it a criminal offence to take an unmarried girl from the possession and against the will of her father or mother, was held to apply to the case of a natural daughter taken from her putative father (*c*); for the wider construction obviously carried out more fully the aim and policy of the enactment. The "taking from the possession" again, in the

(*a*) 47 & 48 Vict. c. 76, s. 7 (*c*), repealed by 8 Edw. VII. c. 48, and re-enacted by s. 65 (*c*) of that Act. As to the law relating to the possession of certain specified forged dies and seals, see 3 & 4 Geo. V. c. 27: *Dickens* v. *Gill*, [1896] 2 Q. B. 310.

(*b*) *R.* v. *Maude* (1842), 11 L. J. M. C. 120, on which see *per* Williams L.J., *Woolwich* v. *Fulham*, 75 L. J. K. B. 680, 681; *Westminster* v. *Gerard*, 2 Bulst. 346. As to whether or not a man who runs away from his wife and children, one or more of whom is illegitimate, is not guilty of an offence under 5 Geo. IV. c. 83, s. 3, see 20 J. P., p. 364.

(*c*) 24 & 25 Vict. c. 100, s. 55; *R.* v. *Cornforth*, 2 Stra. 1132. See also *R.* v. *Hodnett*, 1 T. R. 96.

same enactment, is construed in the widest sense, implying neither actual nor constructive force, and extending to voluntary and temporary elopements made with the active concurrence of the girl (*a*).

Lord Coke thought that burglary might be committed in a church, because a church is the mansion of God; but Lord Hale thought this opinion only a quaint turn without any argument (*b*). It is now, however, provided by s. 27 of the Larceny Act, 1916 (6 & 7 Geo. V. c. 50), that to break and enter a place of divine worship is a felony exactly analogous in character to the breaking and entering of a dwelling-house. The "breaking" required to constitute burglary includes acts which would not be so designed in popular language; such as lifting the flap of a cellar (*c*), or pulling down the sash of a window (*d*), or raising a latch (*e*), or even descending a chimney, for that is as much closed as the nature of things permits (*f*). Lord Hale, who doubted whether the

(*a*) *R.* v. *Robins*, 1 C. & K. 456; *R.* v. *Kipps*, 4 Cox C. C. 167; *R.* v. *Biswell*, 2 Cox C. C. 279; *R.* v. *Manktelow*, 22 L. J. M. C. 115; *R.* v. *Timmins* (1860), 30 L. J. M. C. 45.

(*b*) 1 Hale, 556. See *Folkestone Corp.* v. *Woodward* (1872), L. R. 15 Eq. 159; *Wright* v. *Ingle*, 16 Q. B. D. 379.

(*c*) *Brown's Case*, 2 East, P. C. 487; *R.* v. *Russell*, 1 Moo. C. C. 377. *Comp. R.* v. *Lawrence*, 4 C. & P. 231.

(*d*) *R.* v. *Haines*, Russ. & Ry. 451.

(*e*) *R.* v. *Jordan*, 7 C. & P. 432.

(*f*) 1 Hawk. c. 38, s. 4; *R.* v. *Brice*, Russ. & Ry. 450.

latter act was a breaking, was relieved from deciding the point in the case before him, as it was elicited that some bricks had been loosened in the thief's descent, which sufficed to constitute a breaking (*a*). Indeed, the burglar "breaks" into a house if he gets admittance by inducing the inmate to open the door by a trick, as by a pretence of business, or by raising an alarm of fire (*b*).

A threatening letter is "sent" when it is dropped in the way of the person for whom it is destined, so that he may pick it up (*c*); or is sent by A. that he may deliver it to B. (*d*); or is affixed in some place where he would be likely to see it (*e*); or is placed on a public road near his house, so that it may, however indirectly, reach him, which it eventually does after passing through several hands (*f*); or perhaps even if it does not reach the person addressed (*g*); although in none of these cases would the paper be popularly said to have been "sent." A person who writes

(*a*) 1 Hale, 552.

(*b*) 2 East, P. C. 485.

(*c*) *R.* v. *Jepson*, and *R.* v. *Lloyd* (1767), 2 East, P. C. 1115, 1122; *R.* v. *Wagstaff*, Russ. & Ry. 398.

(*d*) *R.* v. *Paddle* (1822), R. & R. 484.

(*e*) *R.* v. *Williams*, 1 Cox C. C. 16.

(*f*) *R.* v. *Grimwade*, 1 Den. 30. See also *R.* v. *Jones*, 5 Cox C. C. 226.

(*g*) *R.* v. *Adams*, 22 Q. B. D. 66.

and publishes an article in a newspaper, intending to encourage the murder of another person anywhere, is guilty of encouraging a person to murder, though the article is not addressed to any particular person (*a*).

To make false signals, and thereby to bring a train to a stand on a railway, was held to be within the enactment which made it an offence to "obstruct" a railway (*b*); and an enactment which makes it a misdemeanour to do anything to obstruct an engine or carriage using a railway, was held to include railways not yet open to public traffic, and to apply though no engine or carriage was obstructed (*c*).

The collection of alms on false and fraudulent pretences is an "immoral act" within the meaning of the Clergy Discipline Act, 1892 (*d*), as is also habitual swearing and ribaldry (*e*).

A person "suffers" gaming to go on in his house who purposely abstains from ascertaining,

(*a*) 24 & 25 Vict. c. 100, s. 4; *R.* v. *Most* (1881), 7 Q. B. D. 244; 50 L. J. M. C. 113; *R.* v. *Antonelli* (1906), 70 J. P. 4.

(*b*) *R.* v. *Hadfield*, L. R. 1 C. C. R. 253; *R.* v. *Hardy*, Id. 278. *Comp. Walker* v. *Horner*, 1 Q. B. D. 4; *Bastable* v. *Little*, 76 L. J. K. B. 77, with *Betts* v. *Stevens*, 79 L. J. K. B. 17. See *Gully* v. *Smith*, 12 Q. B. D. 121.

(*c*) *R.* v. *Bradford*, 29 L. J. M. C. 171.

(*d*) 55 & 56 Vict. c. 32, s. 2; *Fitzmaurice* v. *Hesketh*, [1904] A. C. 266. See also *Beneficed Clerk* v. *Lee*, [1897] A. C. 226.

(*e*) *Moore* v. *Oxford* (*Bp.*), [1904] A. C. 283.

or purposely goes out of reach of seeing or hearing it (*a*); and he uses an instrument for the destruction of game on a Sunday, who sets a snare on Saturday, and leaves it till Monday (*b*).

An Act which makes it penal to "administer," or "to cause to be taken," a noxious drug to procure abortion, would be violated by one who supplied such a drug to a woman, and explained to her how it was to be taken, and she afterwards took it accordingly, in his absence (*c*). And a man supplies such a drug, "knowing it to be intended" to procure abortion, if he so intended it, though the woman did not (*d*). To supply beer at a public-house to a drunken man would be to "sell" the liquor to him, although it was ordered and paid for by a sober companion (*e*).

(*a*) 35 & 36 Vict. c. 94, s. 17, repealed by s. 79, Licensing (Consolidation) Act, 1910; *Redgate* v. *Haynes*, 1 Q. B. D. 89. See *Bond* v. *Evans*, 21 Q. B. D. 249; and *comp. Somerset* v. *Hart*, 12 Q. B. D. 360, and *Somerset* v. *Wade*, [1894] 1 Q. B. 574; *Massey* v. *Morriss*, [1894] 2 Q. B. 412.

(*b*) *Allen* v. *Thompson*, L. R. 5 Q. B. 336. See also *Ruther* v. *Harris*, 1 Ex. D. 97.

(*c*) *R.* v. *Wilson*, 26 L. J. M. C. 18; *R.* v. *Farrow*, D. & B. 164. *Comp. R.* v. *Hennah*, sup. p. 473.

(*d*) *R.* v. *Hillman*, 33 L. J. M. C. 60. *Comp. R.* v. *Fretwell*, 31 L. J. M. C. 145.

(*e*) 35 & 36 Vict. c. 94, s. 13, repealed s. 75, Licensing (Consolidation) Act, 1910; *Scatchard* v. *Johnson*, sup. p. 125. See *Pletts* v. *Campbell*, [1895] 2 Q. B. 229, and *Radford* v. *Williams* (1914), 78 J. P. 90.

A ropealed Act (*a*) which prohibited under a penalty "the copying of a painting" without the owner's leave was held to reach a photograph of an engraving which the proprietor of the painting had made from it (*b*).

A servant receives money "for or in the name or on account of his master" within the Act against embezzlement, who, having a cheque given to him in his own name for his master, gets it cashed by a person ignorant of the circumstances; for though that person did not pay the money on account of the master, it was enough that it was received on his account (*c*). The Sale of Food and Drugs Act, 1875, which makes it penal to sell an adulterated article "to the prejudice of the purchaser," would include a sale to an officer who makes the purchase, not with his own money or for his own use, but with the public money and for the purpose of analysis (*d*).

A man who fires from a highway at game, has

(*a*) For existing law, see Copyright Act, 1911, and for a disquisition thereon, Clerk and Lindsell on Torts, Chap. XXI.

(*b*) *Beal, Exp.*, L. R. 3 Q. B 387. *Comp. Gambart* v. *Ball*, sup. p. 481.

(*c*) *R.* v. *Gale* (1876), 2 Q. B. D. 141. *Comp. R.* v. *Read*, sup. p. 471; and see for definition of Larceny, 6 & 7 Geo. V. c. 50.

(*d*) *Hoyle* v. *Hitchman*, 4 Q. B. D. 233. See the numerous cases on this phrase, suh "PREJUDICE OF PURCHASER," in Stroud's Judicial Dictionary and Supp.

trespassed on the land of the owner of the soil on which the highway runs; for the right of way over the road is only an easement, and if a man uses it for an unlawful purpose, he becomes a trespasser (*a*). If he walks with a gun with intent to kill game, he "uses" the gun for that purpose without firing, within the statute which makes using a gun with that intent penal (*b*); and the offence of "taking" game is complete when the game is snared, though neither killed nor removed (*c*). A "public place," too, has received a very wide meaning in cases of nuisance (*d*), and a workhouse has been held to be a "public building" within the Factory and Workshop Act, 1891 (*e*).

A person who pays for goods by a cheque on a bank where he has no assets is guilty of "obtaining goods by false pretences"; for in

(*a*) *Mayhew* v. *Wardley*, 14 C. B. N. S. 550; *R.* v. *Pratt*, 4 E. & B. 860; *Harrison* v. *Rutland* (*Duke*), [1893] 1 Q. B. 142; inf. pp. 546, 547.

(*b*) 6 Anne c. 14, s. 4, repealed by 1 & 2 Will. IV. c. 32, s. 1, and see s. 23 of this latter Act; *R.* v. *King*, 1 Sess. Ca. 88. See also *U. S.* v. *Morris*, 14 Peters, 464.

(*c*) 5 Geo. III. c. 14, repealed by 7 & 8 Geo. IV. c. 27; *R.* v. *Glover*, Russ. & Ry. 269.

(*d*) See *R.* v. *Thallman*, 33 L. J. M. C. 58. See *Golding* v. *Stocking*, L. R. 4 Q. B. 516; *Langrish* v. *Archer*, 10 Q. B. D. 44.

(*e*) 1 Edw. VII. c. 22, s. 149 (1), Sched. VI., Part 1, clause 20; *Mile End Guardians* v. *Hoare*, [1903] 2 K. B. 483.

giving the cheque he impliedly represents that he has authority from the bank to draw it, and that it is a good and valid order for payment of the amount (*a*). If, however, a person at the time he gives the cheque believes that it will be paid on presentation he cannot be convicted of a false pretence (*b*). But, on the other hand, if a person promise to give (say) £100 on the signature of a note, there is a representation of an existing fact, viz., that the money was ready on the delivery of the note (*c*).

A repealed Act (*d*) which imposed a penalty on corn-dealers for omitting to make a return of every parcel of corn bought from them would be broken, though the unreturned sales were not evidenced in writing as required by the Statute of Frauds, and therefore were not enforceable in a Court of Justice (*e*).

The enactment which punished with transportation for life every person, whether employed by the Postmaster-General, or by "any person under him, or on behalf of the post-office," who stole

(*a*) *R.* v. *Hazelton*, 44 L. J. M. C. 11; *R.* v. *Parker*, 7 C. & P. 829. *Comp. R.* v. *Benson*, 77 L. J. K. B. 644.

(*b*) *R.* v. *Walne* (1879), 11 Cox 647, C. C. R.

(*c*) 24 & 25 Vict. c. 96, s. 90; s. 90 repealed by 6 & 7 Geo. V. c. 50, s. 48 and Sched.; *R.* v. *Gordon*, 23 Q. B. D. 354.

(*d*) 9 Geo. IV. c. 60, repealed by 5 & 6 Vict. c. 14, s. 1.

(*e*) *R.* v. *Townrow*, 1 B. & Ad. 465.

a letter with money in it, was held to include a person who gratuitously assisted a postmaster, at his request, in sorting the letters (*a*). The Bankrupt Law Consolidation Act, 1849, which disentitled a bankrupt to his certificate, if he had, within a year of his bankruptcy, lost £200 by "any contract" for the purchase or sale of Government or other "stock," was held to apply to one who had lost that amount in the purchase of railway "shares," and by several contracts (*b*). The employment of an English steam tug in towing a prize to the captor's waters is a breach of the provision of the Foreign Enlistment Act, 1870, against "dispatching a ship to be employed in the military or naval service of a foreign state" (*c*). Where an Act (7 & 8 Vict. c. 15) (*d*) provided that if any accident occurred in a factory, causing an injury to any person employed there, of such a nature as to prevent his return to work at a.m. on the next day, it must, under a penalty, be reported by the occupier of the factory to the

(*a*) *R.* v. *Reason*, 23 L. J. M. C. 11; *R.* v. *Foulkes*, 44 L. J. M. C. 65. *Comp. Martin* v. *Ford*, 5 T. R. 101, and *Bennett* v. *Edwards*, 6th point, 7 B. & C. 586. Transportation is abolished, see sup. p. 262.

(*b*) *Copeland, Exp.*, 22 L. J. Bank. 17, sup. p. 479. *Comp. Hewitt* v. *Price*, sup. p. 479.

(*c*) *Dyke* v. *Elliott* (1872), L. R. 4 P. C. 184; 41 L. J. Adm. 65.

(*d*) Repealed 41 & 42 Vict. c. 16, s. 107.

district surgeon and the sub-inspector; it was held that the Act applied to all accidents, whether caused by the machinery of the factory or otherwise; and that the sufferer was prevented from "returning to his work" next day, within the meaning of the Act, although he did return for that purpose, but was unable to work (*a*).

Certain repealed sections of the Corrupt Practices Prevention Act, 1854, which declared that whoever, "directly or indirectly," makes a gift to a person to induce him to "endeavour to procure the return" of any person to Parliament shall be deemed guilty of bribery, were held to extend to a gift made to induce its recipient to vote for the giver at a preliminary test ballot, held for the purpose of selecting one of three candidates to be proposed when the election came. In voting for the giver at the test ballot, the voter indirectly "endeavoured to procure" his return at the election (*b*).

An enactment which prohibited any officer concerned in the administration of the poor laws from "supplying for his own profit" any goods "ordered" to be "given" in parochial relief to any person, was held to reach a guardian whose partner had, with knowledge of the facts, sold a

(*a*) *Lakeman* v. *Stephenson*, L. R. 3 Q. B. 192.

(*b*) *Britt* v. *Robinson* (1870), L. R. 5 C. P. 503. Certain sections repealed by 46 & 47 Vict. c. 56; note ss. 1, 2 and 3 of this Act.

bedstead to the relieving officer on behalf of the parish for delivery to a pauper; although the guardian was ignorant of the transaction, the bedstead had not been "ordered" by the guardians (*a*), and it was only lent, not "given" in parochial relief (*b*). An officer of a local board, who was a shareholder in a company having a contract with the board, was held to be "interested in a bargain or contract" with the board, within the meaning of the Public Health Act, 1875, and liable to the penalty imposed by that statute (*c*).

Sec. 78, Highway Act, 1835, which enacted that if any person (1) riding a horse, or (2) driving a carriage, rode or drove furiously, "every person so offending" should be liable on conviction before a magistrate to forfeit £5, if "the driver" was not the owner of the carriage, and £10 if "the driver" was the owner (not mentioning the rider), was construed as making the rider, who was not the owner of the horse, as well as the driver, liable;

(*a*) *Greenhow* v. *Parker*, 31 L.J. Ex. 4. See *Woolley* v. *Kay*, 25 L. J. Ex. 351.

(*b*) *Davies* v. *Harvey*, sup. p. 337; *Stanley* v. *Dodd*, 1 D. & R. 397. *Comp. Proctor* v. *Manwaring*, sup. p. 299.

(*c*) 38 & 39 Vict. c. 55, s. 193; *Todd* v. *Robinson*, 14 Q. B. D. 739; *Nutton* v. *Wilson*, 22 Q. B. D. 744; *Barnacle* v. *Clark*, [1900] 1 Q. B. 279. See further, *Burgess* v. *Clark*, 14 Q. B. D. 735; *Whiteley* v. *Barley*, 57 L. J. Q. B. 643; *R.* v. *Whiteley*, 58 L. J. M. C. 164; *Cox* v. *Ambrose*, 60 L. J. Q. B. 114. *Comp. Morris*, App., *Howden*, Resp., [1897] 1 Q. B. 378.

as providing, in other words, that while the owner of a carriage was liable to a penalty of £10, the offender in all the other cases mentioned was liable to £5 (*a*).

An Act (*b*) which made it felony riotously to demolish, pull down, or destroy, or begin to demolish, pull down, or destroy, a church or dwelling, would not reach a case where the demolition had not gone beyond movable shutters not attached to the freehold; for whatever might have been the intent of the rioters, this was not a beginning of the demolition of the house to which the shutters belonged (*c*); nor would a partial demolition of the building be a "beginning to demolish" within the Act, if not done with the intention of completing it (*d*). But if the structure were in all substantial respects destroyed, the offence would be included in the Act, although some portion, as, for instance, a chimney, had been suffered to remain uninjured (*e*). Nor would it be considered as beyond the operation

(*a*) *Williams* v. *Evans* (1876), 1 Ex. D. 277, overruling *R.* v. *Bacon*, 11 Cox C. C. 540; *Chatterton* v. *Parker* (1914), 78 J. P. 339. *Comp. Underhill* v. *Longridge*, sup. p. 482.

(*b*) 7 & 8 Geo. IV. c. 30 (repealed by 24 & 25 Vict. c. 95). As to existing law, see 24 & 25 Vict. c. 97, s 11.

(*c*) *R.* v. *Howell* (1839), 9 C. & P. 437; *Pilcher* v. *Stafford*, 33 L. J. M. C. 113; *Edleston* v. *Barnes*, 45 L. J. M. C. 73.

(*d*) *R.* v. *Thomas*, 4 C. & P. 237, *per* Littledale J.; *R.* v. *Price*, 5 C. & P. 510, *per* Tindal C.J.; *Drake* v. *Footitt*, 7 Q. B. D. 201.

(*e*) *R.* v. *Langford*, Car. & M. 602.

of the Act, if the demolition had been effected by fire; although arson is a distinct felony provided for by a different enactment (*a*).

Some of the decisions relative to the theft of writings seem to convey a fair impression of the spirit in which criminal statutes have been construed. As neither land nor mere rights were capable of being stolen, it was early established that title deeds relating to lands, and written contracts, which were mere rights or the evidences of rights, were not the subjects of larceny. To steal a skin worth a shilling was felony; but when it had £10,000 added to its value by what was written on it, it was no offence at common law to take it away; and a person who broke into a house at night with the intention of stealing a mortgage deed would not have been guilty of felony, for the theft was not a felony, but a misdemeanour only (*b*). Most of these anomalies have, however, been removed by the Larceny Act, 1916. But even before the passing of this Act a paper like a pawnbroker's ticket, indicating not a mere right of action, but a right to a specific personal chattel of which the holder of the ticket may be regarded as in possession (for the possession of the

(*a*) *R.* v. *Harris*, and *R.* v. *Simpson*, C. & M. 661, 669.

(*b*) Arg. in *R.* v. *Westbeer*, 2 Stra. 1133; *R.* v. *Pooley*, Russ. & Ry. 12; *R.* v. *Powell*, 21 L. J. M. C. 78. See 6 & 7 Geo. V. c. 50, s. 7.

pawnor is his possession for the purpose of an indictment), would be the subject of larceny (*a*). And a like rule obtained in the case of a railway ticket, obtained by false pretenoes. The ticket being evidenoe of a right to be carried on the railway (*b*). But an Act which punished an agent who, in violation of good faith, and contrary to the purpose of his trust, sold, negotiated, transferred, pledged, or in any manner converted to his own use "any ohattel or valuable seourity" with whioh he was entrusted, would not include a polioy of insurance entrusted to him for collection; for it is neither a ohattel oapable of sale or barter, nor yet a valuable security, for this implies that money is payable irrespectively of any contingenoy; and it is not oapable of being sold, negotiated, transferred, or pledged (*c*).

The tendenoy of modern decisions, upon the whole, is to narrow materially the difference between what is oalled a strict and a beneficial construotion. All statutes are now construed

(*a*) *R.* v. *Morrison*, 28 L. J. M. C. 210. See *R.* v. *Fitchie*, 26 L. J. M. C. 90.

(*b*) *R.* v. *Boulton*, 19 L. J. M. C. 67; *R.* v. *Beecham*, 5 Cox C. C. 181. See *Marks* v. *Benjamin*, 9 L. J. M. C. 20.

(*c*) 24 & 25 Vict. c. 96, s. 75, repealed by 1 Edw. VII. c. 10, which is now repealed by 6 & 7 Geo. V. c. 50, which see. *R.* v. *Tatlock*, 2 Q. B. D. 157; but in this case there was a remarkable division of opinion of the judges.

with a more attentive regard to the language, and criminal statutes with a more rational regard to the aim and intention of the Legislature, than formerly. It is unquestionably right that the distinction should not be altogether erased from the judicial mind (*a*); for it is required by the spirit of our free institutions that the interpretation of all statutes should be favourable to personal liberty (*b*); and this tendency is still evinced in a certain reluctance to supply the defects of language, or to eke out the meaning of an obscure passage by strained or doubtful inferences (*c*). The effect of the rule of strict construction might almost be summed up in the remark, that where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of interpretation fail to solve, the benefit of the doubt should be given to the subject, and against the Legislature which has failed to explain itself (*d*). But it yields to the paramount rule that every statute

(*a*) *Per* Pollock C.B., *Nicholson* v. *Fields*, 31 L. J. Ex. 233.

(*b*) *Per* Lord Abinger, *Henderson* v. *Sherborne*, 2 M. & W. 239.

(*c*) *Per* Story J., *The Industry*, 1 Gall. 117.

(*d*) See *Hull Dock Co.* v. *Browne*, 36 R. R. 459; *per* Pollock C. B., *Nicholson* v. *Fields*, sup.; and *per* Bramwell B., *Foley* v. *Fletcher*, 28 L. J. Ex. 106; Puff L. N. b. 5, c. 12, s. 5, Barb. n. 4; *Lewis* v. *Carr*, 1 Ex. D. 484; *Secretary of State for India* v. *Scoble*, [1903] A. C. 299; *East Indian Ry. Co.* v. *Secretary of State for India*, [1905] 2 K. B. 413, C. A. *Comp. Chadwick* v. *Pearl Life Insurance Co.*, [1905] 2 K. B. 507.

is to be expounded according to its expressed or manifest intention (*a*); and that all oases within the misohiefs aimed at are, if the language permits, to be held to fall within its remedial influence (*b*).

SECTION II.—STATUTES ENCROACHING ON RIGHTS, OR IMPOSING BURDENS.

Statutes which encroach on the rights of the subject, whether as regards person or property, are similarly subject to a strict oonstruction in the sense before explained. It is a recognised rule that they should be interpreted, if possible, so as to respeot such rights (*c*). It is presumed, where the objects of the Aot do not obviously imply such an intention, that the Legislature does not desire to oonfiscate the property, or to encroach upon the right of persons; and it is therefore expected that if such be its intention, it will manifest it plainly, if not in express words, at least by clear implication, and beyond reasonable doubt (*d*). It

(*a*) 4 Inst. 330; *The Sussex Peerage*, 11 Cl. & F. 143.

(*b*) *Fennell* v. *Riddler*, 4 L. J. (O. S.) K. B. 207; *The Industry*, sup. p. 500. See ex. gr. *R.* v. *Charretie*, 13 Q. B. 447; *Wynne* v. *Middleton*, 1 Wils. 126; *Archer* v. *James*, 2 B. & S. 61; *Smith* v. *Walton*, 3 C. P. D. 109; *May* v. *G. W. Ry. Co.*, L. R. 7 Q. B. 384, *per* Cockburn C.J.; *R.* v. *Adams*, 22 Q. B. D. 66.

(*c*) *Per* Bowen L.J., *Hough* v. *Windus*, 12 Q. B. D. 224.

(*d*) *Western Counties Ry. Co.* v. *Windsor and Annapolis Ry. Co.*, 7 App. Cas., at p. 188; *Commissioners of Public Works* v. *Logan*,

is a proper rule of construction not to construe an Act of Parliament as interfering with or injuring persons' rights, without compensation, unless one is obliged so to construe it (*a*).

A local Harbour Act, which imposed a penalty on "any person" who placed articles "on any quay, wharf, or landing place, within 10 feet of the quay head, or on any space of ground immediately adjoining the said haven, within 10 feet from high-water mark," so as to obstruct the free passage over it, was held to apply only to ground over which there was already a public right of way, but not to private property not subject to any such right, and in the occupation of the person who placed the obstruction on it (*b*). Notwithstanding the comprehensive nature of the general terms used, it was not to be inferred that the Legislature contemplated such an interference with the rights

[1903] A. C. 355. See also *per* Bramwell L.J., *Wells* v. *London & Tilbury Ry. Co.*, 5 Ch. D. 130; *per* Mellish L.J., *Lundy Co., Re*, L. R. 6 Ch. 467; *per* James L.J., *Jones, Exp.*, L. R. 10 Ch. 663; *per* Cur., *Randolph* v. *Milman*, L. R. 4 C. P. 113; *Green* v. *R.*, 1 App. Cas. 513; *Sheil, Exp.*, 4 Ch. D. 789; *per* Bowen L.J., *Rendall* v. *Blair*, 45 Ch. D. 153; *per* Lord Esher M.R., *Duke of Devonshire* v. *O'Connor*, 24 Q. B. D. 473, referring to the judgment of Cockburn C.J., *Sowerby* v. *Smith*, L. R. 9 C. P. 524.

(*a*) *Per* Brett M.R., *A.-G.* v. *Horner*, 14 Q. B. D. 257.

(*b*) *Harrod* v. *Worship*, 30 L. J. M. C. 165, diss. Wightman J. See also *Wells* v. *London & Tilbury Ry. Co.*, sup. *Yarmouth* v. *Simmons*, 10 Ch. D. 518.

of property as would have resulted from construing the words as creating a right of way. The Partnership Act of 1865 (*a*), which provided that when a loan to a trader bore interest varying with the profits of the trade, the leader should not, if the trader became bankrupt, "recover" until the claims of the other creditors were satisfied, did not deprive the creditor of any rights acquired by mortgage. Though he could not recover, he was entitled to retain (*b*).

On this ground, it would seem, Statutes of Limitation are to be construed strictly. The defence of lapse of time against a just demand is not to be extended to cases which are not clearly within the enactment; while provisions which give exceptions to the operation of such enactments are to be construed liberally (*c*).

Statutes which impose pecuniary burdens, also, are subject to the same rule of strict construction. It is a well-settled rule of law that all charges upon the subject must be imposed by clear and

(*a*) 28 & 29 Vict. c. 88, ss. 1, 5. Re-enacted by ss. 2 (*d*), 3, Partnership Act, 1890, 53 & 54 Vict. c. 39, s. 3. Applied to limited partnerships by 7 Edw. VII. c. 24, s. 7.

(*b*) *Sheil, Exp.*, 46 L. J. Bank. 62.

(*c*) See the judgment of Lord Cranworth in *Roddam* v. *Morley*, 1 De G. & J. 1.

unambiguous language, because in some degree they operate as penalties (*a*). The subject is not to be taxed unless the language of the statute clearly imposes the obligation (*b*). A construction, for example, which would have the effect of making a person liable to pay the same tax twice in respect of the same subject matter would not be adopted unless the words were very clear and precise to that effect (*c*). In a case of reasonable doubt the construction most beneficial to the subject is to be adopted (*d*). Thus, in estimating a bank manager's "total income from all sources," for the purpose of ascertaining whether he is entitled to partial relief from income tax, the

(*a*) *Per* Bayley J., *Denn* v. *Diamond*, 4 B. & C. 243; *per* Park J., *Doe* v. *Snaith*, 8 Bing. 152; *per* Parke B., *Harris* v. *Birch*, 9 M. & W. 594; *Sneesum* v. *Marshall*, 7 M. & W. 419; *per* Field J., *R.* v. *Barclay*, 8 Q. B. D. 306; *Partington* v. *A.-G.*, L. R. 4 H. L. 100, applied by Hamilton J. in *Northumberland* (*Duke*) v. *Inl. Rev.*, 80 L. J. K. B. 875, reversed on appeal (1911), 81 L. J. K. B. 240, C. A.; *Oriental Bank* v. *Wright*, 5 App. Cas. 842; *Inl. Rev.* v. *Angus*, 23 Q. B. D. 579; *per* Hamilton J., *Lanston Monotype Corp.* v. *Anderson*, 80 L. J. K. B. 951.

(*b*) *Per* Cur., *Hull Dock Co.* v. *Browne*, sup. p. 500; *per* Pollock C.B., *Nicholson* v. *Fields*, sup. p. 500; *Parry* v. *Croydon Gas Co.*, 11 C. B. N. S. 579; 15 Id. 568.

(*c*) *Carr* v. *Fowle*, [1893] 1 Q. B. 251.

(*d*) *Per* Lord Lyndhurst, *Stockton Ry. Co.* v. *Barrett*, 11 Cl. & F. 602; *per* Parke B., *Micklethwait, Re*, 11 Ex. 456; *per* Lindley L.J., *Thorley, Re*, [1891] 2 Ch. 613; *Pryce* v. *Monmouthshire Canal Co.*, 4 App. Cas. 197.

yearly value of his free residence in the bank premises, where he is bound to reside, is not to be taken into account as "income" (*a*). The provision of s. 32, Customs and Inland Revenue Act, 1881, that if it shall be discovered that the personal estate of a deceased person was undervalued at the time of probate, "the person acting in the administration of the estate shall deliver a further affidavit with an account duly stamped, with the amount of excess duty which ought to have been paid in the first instance," does not apply to persons who have completed the duties of administration (*b*). Where land employed as the site of an almshouse was, on that account, declared by two successive statutes to be exempt from land tax, the fact that other land had since been applied to the same charitable purpose, and the original land had been, by order of the Court of Chancery, directed to be held by the trustees of the charity to their own use, free from its charitable trusts, did not render it liable, even in the hands of a tenant, to the taxation from which it had been previously

(*a*) *Tennant* v. *Smith*, [1892] A. C. 150. See also *Secretary of State for India* v. *Scoble*, [1903] A. C. 299, on which see *East India Ry.* v. *Secretary for India*, 74 L. J. K. B. 779, and *Chadwick* v. *Pearl Life Assurance*, 74 L. J. K. B. 671; *A.-G. of British Columbia* v. *Ostrum*, [1904] A. C. 144.

(*b*) 44 & 45 Vict. c. 12, s. 32; *A.-G.* v. *Smith* (1892), 62 L. J. Q. B. 288; *Nunn's Estate, In re*, [1894] 1 Ir. R. 252.

exempt (*a*). So, an Act which imposed a stamp on every writing given on the payment of money, "whereby any sum, debt, or demand" was "acknowledged to have been paid, settled, balanced, or otherwise discharged" was held not to extend to a receipt given on the occasion of a sum being deposited (*b*). If one instrument be incorporated, by reference, in another, its words would not be counted as part of the incorporating deed for the purpose of stamp duty, under an Act imposing a duty according to its length on the instrument, "together with every schedule, receipt, or other matter put or endorsed thereon, or annexed thereto" (*c*). Where an Act (*d*) imposed a stamp duty on newspapers, and defined a newspaper as comprising "any paper containing public news, intelligence, or occurrences . . . to be dispersed and made public," and also "any paper containing any public news, intelligence, or occurrences, or any

(*a*) *Cox* v. *Rabbits*, 3 App. Cas. 473; *St. Thomas's Hospital* v. *Hudgell* (1900), 70 L. J. K. B. 115.

(*b*) *Tomkins* v. *Ashby* (1827), 6 B. & C. 541. See also *Wroughton* v. *Turtle*, 13 L. J. Ex. 57; *Mullett* v. *Huchison* or *Hutchinson* (1828), 7 B. & C. 639.

(*c*) *Fishmongers' Co.* v. *Dimsdale*, 12 C. B. 557. The stamp duty for length (in addition to *ad. val.* duty, and called "progressive duty") was imposed by 55 Geo. III. c. 184, and was continued by the subsequent Stamp Acts until the Stamp Act, 1870.

(*d*) 6 & 7 Will. IV. c. 76, repealed by 33 & 34 Vict. c 99.

remarks or observations thereon . . . published periodically or in parts or numbers, at intervals not exceeding 26 days," and not exceeding a certain size; it was held that a publication, the main object of which was to give news, but was published at intervals of more than 26 days, was not liable to the stamp duty as a newspaper (*a*). An Act which imposes a stamp duty on "every charter-party, or memorandum, or other writing between the captain or owner of a vessel and any other person relating to the freight or conveyance of goods on board," does not extend to a guarantee for the due performance of a charter-party (*b*). And yet, where an Act, (*c*) after imposing a stamp on contracts, exempted those which were made relative to the sale of goods, a guarantee for the payment of the price on such a sale was held included in the exemption (*d*); the same words being susceptible of meaning different things when used to impose a tax, or to exonerate from it (*e*). The Act, 6 & 7 Vict. c. 36 (*f*), which exempts from

(*a*) *A.-G.* v. *Bradbury* (1851), 21 L. J. Ex. 12.

(*b*) 5 & 6 Vict. c. 79, s. 2 and Sched.; *Rein* v. *Lane* (1867), L. R. 2 Q. B. 144.

(*c*) 23 Geo. III. c. 58, s. 4, repealed S. L. R., 1861.

(*d*) *Warrington* v. *Furbor* (1807), 8 East, 242.

(*e*) *Per* Blackburn J., L. R. 2 Q. B. 147, citing *Curry* v. *Edensor*, 3 T. R. 527, and *Warrington* v. *Furbor*, sup. See also *Armytage* v. *Wilkinson*, 3 App. Cas. 355.

(*f*) Amended by 59 & 60 Vict. c. 25, ss. 2–4.

rating the buildings of certain societies, provided they are supported wholly or in part by "voluntary contributions," applies only where the payments are a gratuitous offering for the benefit of others, and are not the price of an advantage purchased by the contributor (*a*); the payments must be "a gift made from disinterested motives for the benefit of others" (*b*). Lord Ellenborough remarked that the cases to which a duty attached ought to be fairly marked out, and that a liberal construction ought to be given to words of exception confining the operation of the duty (*c*). It is to be observed, however, that all exemptions from taxation increase the burden on other members of the community, and should therefore be deprecated (*d*).

At the same time, such Acts, like penal Acts, are not to be so construed as to furnish a chance of escape and a means of evasion (*e*). The Stamp Act, 1870, which imposed (s. 3 and Schedule) an *ad valorem* duty on Settlements by which "any

(*a*) *Per* Lord Herschell, *Savoy (Overseers)* v. *Art Union of London*, [1896] A. C. 296. See also *A.-G.* v. *Ellis* (1895), 64 L. J. Q. B. 813.

(*b*) *Per* Lord Campbell C.J., *Russell Institution* v. *St. Giles and St. George, Bloomsbury*, 23 L. J. M. C. 65.

(*c*) *Warrington* v. *Furbor*, sup. p. 507.

(*d*) *Per* Lord Halsbury L.C., *Inl. Rev.* v. *Forrest*, 15 App. Cas. 334.

(*e*) *U. S.* v. *Thirty-six Barrels of Wine*, 7 Blatchf. 459. *A.-G.* v. *Furness Ry. Co.*, [1899] 2 Q. B. 267.

definite and certain amount of stock is settled," obviously applied although the interests in the stock were contingent and defeasible, where the amount of the stock was definite and certain (*a*). Indeed, as in criminal statutes, the widest meaning is given to the language when needful to effectuate the intention of the Legislature. For instance, in one of the Church Building Acts, which enacted that the "repairs" of district churches might be provided for by a rate on the district, the word "repairs" was construed as comprising not only reparation of the structure, but all incidental matters necessary for the due performance of service, such as lighting, cleaning, stationery, and organist's salary (*b*). In America, revenue laws are not regarded as penal laws in the sense that requires them to be construed with strictness in favour of the defendant. They are regarded rather in their remedial character; as intended to prevent fraud, suppress public wrong, and promote the public good; and are so construed as to most effectually accomplish those objects (*c*).

(*a*) 33 & 34 Vict. c. 97; repealed 54 & 55 Vict. c. 39, s. 123; *Onslow* v. *Inl. Rev.*, [1891] 1 Q. B. 239; *Inl. Rev.* v. *Oliver* (1909), 78 L. J. P. C. 146; *Massereene* (*Viscount*) v. *Inl. Rev.*, [1900] 2 Ir. R. 138.

(*b*) *R.* v. *Consistory Court*, 31 L. J. Q. B. 106. See *R.* v. *Warwick*, 15 L. J. Q. B. 306, sup. p. 127; *A.-G.* v. *L. & N. W. Ry.*, 6 Q. B. D. 216; *Thorley, Re*, [1891] 2 Ch. 613.

(*c*) *Cliquot's Champagne*, 3 Wallace, 145.

It has been said that all statutes which inflict costs are to be construed strictly, on the ground that such costs are a kind of penalty (*a*). There is little authority in support of the proposition. On the other hand, the power of ordering the payment of costs had been sometimes construed on the prinoiple of beneficial and liberal construction; as where, for instance, they have been imposed on persons who were strangers to an action of ejectment, but at whose instance it was brought or defended (*b*).

Enactments, also, which impose forms and solemnities on contracts on pain of invalidity, are construed so as to be as little restrictive as possible of the natural liberty of contracting. It

(*a*) *Cone* v. *Bowles*, 1 Salk. 205. See *per* Mellor J., *Cobb* v. *Mid-Wales Ry. Co.*, L. R. 1 Q. B. 351. There has been no strictness in the interpretation of s. 1 (*b*), Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), which gives costs, as between solicitor and client, to a successful defendant in an action for an act done in pursuance of a statutory or other public duty or authority. See *Fielden* v. *Morley*, 69 L. J. Ch. 314; *Harrop* v. *Ossett*, 67 L. J. Ch. 347; *Toms* v. *Clacton*, 78 L. T. 712: *North Metrop. Tramways Co.* v. *London Co. Co.*, 67 L. J. Ch. 449; *Chamberlain* v. *Bradford*, 83 L. T. 518; *Lyles* v. *Southend-on-Sea*, 74 L. J. K. B. 484; *Gilbert* v. *Gosport and Alverstoke U. D. C.*, [1916] 2 Ch. 587.

(*b*) *Hutchinson* v. *Greenwood*, 24 L. J. Q. B. 2; *Mobbs* v. *Vandenbrande*, 33 L. J. Q. B. 177. *Comp. Evans* v. *Rees*, 9 C. B N. S. 391; *Anstey* v. *Edwards*, 16 C. B. 212; *Hayward* v. *Gifford*, 7 L. J. Ex. 256. See also *R.* v. *Pembridge*, sup. p. 45.

was in allusion to the Statute of Frauds that Lord Nottingham said that all Acts which restrain the common law, that is, apparently, which impose restrictions unknown to the common law, ought themselves to be restrained in exposition (*a*). The Statute of Frauds, which enacts that no action shall be brought on contracts (s. 4), or that the contracts shall not be good (s. 17) (*b*), unless "the agreement or some note or memorandum thereof shall be in writing and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised," has given rise to many decisions, apparently in this spirit. Thus, although it is unquestionably necessary that all the essential elements of the contract shall appear in writing, such as the subject matter (*c*), the consideration (*d*), and the parties (*e*), it has been held that it is not

(*a*) *Ash* v. *Abdy*, 3 Swanst. 664.

(*b*) Now, the Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 4, where the words are, "shall not be enforceable by action."

(*c*) *Shardlow* v. *Cotterell* (1881), 20 Ch. D. 90; *Vale of Neath Colliery* v. *Furness*, 45 L. J. Ch. 276; *Marshall* v. *Berridge*, 19 Ch. D. 233.

(*d*) *Wain* v. *Warlters* (1864), 7 R. R. 645; *Frost, In re* (1898), 67 L. J. Ch. 691.

(*e*) *Williams* v. *Lake*, 29 L. J. Q. B. 1; *Williams* v. *Byrnes*, 1 Moo. P. C. N. S. 154; *Williams* v. *Jordan*, 6 Ch. D. 517; *Beer* v. *London and Paris Hotel Co.*, L. R. 20 Eq. 412. See under s. 7, 30 Vict. c. 23 (repealed 54 & 55 Vict. c. 39, and practically

necessary that they should be contained in any formal document (*a*). A note or letter, by the party to be charged, stating the material particulars, verbally accepted, suffices (*b*). The statute is satisfied, also, by a number of letters or other documents connected either physically, by being fastened together (*c*), or by their own internal evidence, if all the elements of the contract may be collected from the whole correspondence (*d*). An envelope shown by evidence to have enclosed a letter relating to the contract, can supply

re-enacted by s. 93 of this Act); *Arthur Average Assoc., Re*, L. R. 10 Ch. 542. *Comp. Edwards* v. *Aberayron Socy.*, 1 Q. B. D. 563.

(*a*) *Gray* v. *Smith*, 43 Ch. D. 208; *Barkworth* v. *Young*, 26 L. J. Ch. 153, on which see *per* Jessel M.R., *Trowell* v. *Shenton*, 8 Ch. D. 324; *Hoyle, Re*, 62 L. J. Ch. 182; *Jones* v. *Victoria Dock Co.*, inf. p. 515.

(*b*) *Coleman* v. *Upcot*, 5 Vin. Ab. 527, pl. 17; *Welford* v. *Beazely*, 3 Atk. 503; *Bill* v. *Bament*, 11 L. J. Ex. 81; *Rishton* v. *Whatmore*, 8 Ch. D. 467; *Munday* v. *Asprey*, 13 Ch. D. 855; *Cave* v. *Hastings*, 7 Q. B. D. 125.

(*c*) *Kenworthy* v. *Schofield*, 26 R. R. 600.

(*d*) *Shortrede* v. *Cheek*, 40 R. R. 258; *Boydell* v. *Drummond*, 10 R. R. 450; *Dobell* v. *Hutchinson*, 42 R. R. 408; *Watts* v. *Ainsworth*, 31 L. J. Ex. 448; *Morris* v. *Wilson*, 5 Jur. N. S. 168; *Crane* v. *Powell*, L. R. 4 C. P 123; *Bonnewell* v. *Jenkins*, 8 Ch. D. 70; *Commins* v. *Scott*, L. R. 20 Eq. 11; *Kronheim* v. *Johnson*, 7 Ch. D. 60; *Beckwith* v. *Talbot*, 5 Otto, 289 (U. S.). See *Ridgway* v. *Wharton*, 6 H. L. Cas. 238, cited in *Jones* v. *Victoria Dock Co.*, sup.; *Studds* v. *Watson*, 28 Ch. D. 305; *Hussey* v. *Horne-Payne*, 4 App. Cas. 311; *Bristol Aërated Bread Co.* v. *Maggs*, 44 Ch. D. 616; *Bellamy* v. *Debenham*, 45 Ch. D. 481.

the name of a party to the memorandum in writing (*a*). A letter from the purchaser addressed to a third person, stating the terms of the contract (*b*), and one from the purchaser to the seller, which after setting forth its terms repudiated the contract, have been held sufficient notes or memoranda of the bargain to satisfy the statute (*c*). It has been said that the cases have gone very far in putting the correspondence of parties together, to constitute a memorandum to satisfy the statute (*d*). Indeed, as it becomes necessary, in such a case, to inquire what the contract really was, in order to determine whether the informal papers constitute a written note of it, it may be said that the very evil is let in against which the statute aimed (*e*).

So although it is necessary that the parties to the contract should be sufficiently described to admit of their identification (*f*), it is not

(*a*) *Pearce* v. *Gardner*, [1897] 1 Q. B. 688.

(*b*) *Gibson* v. *Holland*, L. R. 1 C. P. 1. Sugd. V. & P. 139, 14th ed. See also *Hoyle, Re*, [1893] 1 Ch. 84; *Holland, In re* (1902), 71 L. J. Ch. 518.

(*c*) *Bailey* v. *Sweeting*, 30 L. J. C. P. 150; *Wilkinson* v. *Evans*, 35 L. J. C. P. 224; *Buxton* v. *Rust*, 41 L. J. Ex. 1, 173.

(*d*) *Per* Pollock C.B., *McLean* v. *Nicoll*, 7 Jur. N. S. 999.

(*e*) *Per* Channell B., Id. See ex. gr. *Rishton* v. *Whatmore*, 8 Ch. D. 467.

(*f*) *Charlewood* v. *Bedford*, 1 Atk. 497; *Champion* v. *Plummer* (1805), 8 R. R. 795; *Jones Bros.* v. *Joyner* (1909), 82 L. T. 768: *Williams* v. *Lake*, sup. p. 511.

necessary that they should be described by name. It has been held, for instance, that a contract of sale signed by the auctioneer, as "the agent of the proprietor," or of "the trustee for the sale" of the property sold, sufficiently described the seller (*a*); though a contract similarly "signed by the agent of the vendor" has been held not to suffice (*b*); for a mere assertion that the person who sells is the seller, is obviously not a description of the seller, nor tends to his identification. But in view of more recent decisions this proposition is somewhat open to question (*c*).

Again, as regards the signing or subscribing an instrument as party or witness, the enactments which require these formalities have been construed with similar indulgence. The testator who wrote his will with his own hand, and began by declaring that it was his will, setting forth his name, was deemed to have thereby sufficiently "signed" his Will (*d*); and an attesting witness who wrote his name on the Will, elsewhere than

(*a*) *Sale* v. *Lambert* (1874), 43 L. J. Ch. 470; *Catling* v. *King*, 5 Ch. D. 660; *Rossiter* v. *Miller* (1877), 3 App. Cas. 1124. See also *Hood* v. *Barrington*, L. R. 6 Eq. 218.

(*b*) *Potter* v. *Duffield*, L. R. 18 Eq. 4; *per* Kay J., *Jarrett* v. *Hunter*, 56 L. J. Ch. 141.

(*c*) *Commins* v. *Scott* (1875), 44 L. J. Ch. 563; *Filby* v. *Hounsell*, [1896], 2 Ch. 737.

(*d*) 29 Car. II. c. 3, s. 5, repealed, 7 Will IV. and 1 Vict. c. 26; *Lemayne* v. *Stanley*, 3 Lev. 1.

at the end of it, was deemed to have sufficiently "subscribed" it, within the Statute of Frauds (*a*). A letter, beginning "Messrs. H. & Co., Gentlemen," drawn up by their clerk by their authority, and presented by him to E. for signature, has been held to be sufficiently signed by a person authorised by H. & Co., so as to entitle E., who had signed it, to sue them for breach of the contract contained in the letter (*b*). An agreement, too, has been held to be sufficiently signed by a corporate body, within the meaning of the Statute of Frauds, where a resolution ordering its engrossment and execution was passed by the body and signed by the chairman (*c*).

Acts which establish monopolies (*d*), or confer exceptional exemptions and privileges, correlatively trenching on general rights, are subject to the same principle of strict construction (*e*). The Act 21 Edw. I., *De Malefactoribus in Parcis* (*f*), which

(*a*) *Roberts* v. *Phillips*, 24 L. J. Q. B. 171; *Streatley, in the goods of*, [1891] P. 172; 60 L. J. P. 56.

(*b*) *Evans* v. *Hoare*, [1892] 1 Q. B. 593.

(*c*) *Jones* v. *Victoria Dock Co.*, 46 L. J. Q. B. 219; *Daniels* v. *Trefusis*, [1914] 1 Ch. 788.

(*d*) *Per* Lord Campbell, *Reed* v. *Ingham*, 3 E. & B. 899; *Direct U. S. Cable Co.* v. *Anglo-American Co.*, 2 App. Cas. 394.

(*e*) See ex. gr. *R.* v. *Hull Dock Co.*, 3 B. & C. 516; *Brunskill* v. *Watson*, L. R. 3 Q. B. 418.

(*f*) Repealed 7 & 8 Geo. IV. c. 27, s. 1.

authorised a parker to kill trespassers whom he found in his park, and who refused to yield to him, was construed as strictly limited to a legal park (*a*)—that is, one established by prescription or Royal Charter, and not merely one by reputation (*b*). The enactment (*c*) that shipowners should not be liable for damage done by their ships without their default, beyond "the value of the ship" and its "freight," was held to include, in this value, everything belonging to her owners that was on board for the performance of her adventure, such as the fishing stores of a vessel employed in the Greenland fishery; although they would not have been covered by a policy on "the ship and freight," and the phrase, "the value of the ship and her appurtenances" had been used ten times in other parts of the Act (*d*). This decision rested on the ground that the enactment abridged the common law right of the injured person; and that the shipowner was not entitled to more than the meaning of the words strictly imported (*e*). So, the enactments (*f*) which exonerate a shipowner

(*a*) 1 Hale, 491; 3 Dyer, 326b; Com. Dig. Parl. (R.) 20.

(*b*) Co. Litt. 233a; 2 Blackstone's Com. 38, 416.

(*c*) 53 Geo. III. c. 159, s. 1 (repealed 17 & 18 Vict. c. 120, s. 4).

(*d*) *Gale* v. *Laurie* (1826), 29 R. R. 199; and see *Smith* v. *Kiroy* (1875), 1 Q. B. D. 131.

(*e*) As to existing limitations of liability, see ss. 502–505, Merchant Shipping Act, 1894.

(*f*) For existing limitations of liability, see s. 633, Merchant

from liability for damage caused by his ship through the default of a compulsorily employed pilot, are restricted to cases where the pilot was the sole cause of the damage, without any default on the part of the master or crew (*a*).

The same principle of construction is applied to enactments which create new jurisdictions, or delegate subordinate legislative or other powers (*b*). As the Government of India is precluded from legislating directly as to the sovereignty or dominion of the Crown over any part of its territories in India, an enactment by the Indian Legislative Council making a notification in the Gazette conclusive evidence of a cession of territory, was held inoperative to prevent a Court in India from inquiring into the nature and lawfulness of the cession (*c*). A general Order made by the judges of the Court of Chancery, under Parliamentary

Shipping Act, 1894; and see also Pilotage Act, 1913 (2 & 3 Geo. V. c. 31).

(*a*) *The Protector*, 1 Rob. W. 45; *The Diana*, 4 Moo. P. C. 11; *The Iona*, L. R. 1 P. C. 426, discussed by Lord Chelmsford in *Clyde Navigation Co.* v. *Barclay* (1877), 1 App. Cas. 790. *Comp.* *The Warkworth* (1889), 9 P. D. 145, and see *Cia Shipping Co.* v. *British Shipowners' Association* (1889), 58 L. J. Q. B. 462.

(*b*) See ex. gr. *per* James L.J., *Flower* v. *Lloyd*, 6 Ch. D. 301; *Diss* v. *Aldrich*, 2 Q. B. D. 179.

(*c*) *Damodhar* v. *Deoram*, 1 App. Cas. 332.

authority to regulate the procedure of that Court, and which directed how a defendant "in any suit" might be served with process abroad (*a*) was held by Lord Westbury (*b*) limited to those suits in which service abroad had been provided for by law, viz., suits relating to land and public stock by the 2 Will. IV. c. 33 (*c*) and 4 & 5 Will. IV. c. 82 (*c*). If the Order had been construed literally as applicable to all suits, it would, while professedly only regulating the procedure, have, in effect, extended the jurisdiction of the Court; an object foreign to the Act which conferred the power of regulation. This decision, indeed, was afterwards overruled; but it was on the ground that the jurisdiction of the Court had always existed, though there was no power of enforcing it; and that the Order, therefore, did not extend the jurisdiction (*d*).

The power given to a County Court judge "in every case, if he shall think just, to order a new trial," is exercisable only where such reasons exist as would lead the Supreme Court to grant a new

(*a*) See R. S. C., Order XI., for Rules as to service out of the jurisdiction.

(*b*) *Cookney* v. *Anderson*, 1 De G. J. & Sm. 365. See also *Lanman* v. *Audley*, 6 L. J. Ex. 136; *Great Australian Co.* v. *Martin*, 5 Ch. D. 1; *Fowler* v. *Barstow*, 20 Ch. D. 240.

(*c*) Repealed S. L. R., 1890.

(*d*) *Drummond* v. *Drummond*, L. R. 2 Ch. 32; *Hope* v. *Hope*, 23 L. J. Ch. 682. See also *Re Busfield*, 32 Ch. D. 123.

trial (*a*). And under a power to regulate the practice of their Courts, it is more than doubtful whether the County Court judges have authority to make a rule empowering a judge to appoint a deputy registrar, if the registrar is absent at the sitting of the Court (*b*). 22 & 23 Vict. c. 21, s. 26 (*c*), which empowered the Barons of the Exchequer to make rules as to the process, practice, and pleading, of their Court in revenue cases, was held not to authorise them to make rules granting an appeal to the Exchequer Chamber and House of Lords (*d*). A different construction would, in effect, have given the Barons authority to confer jurisdiction on two Superior Courts, and to impose on them the duty of hearing an appeal against its decisions (*e*). A power given to the Court, subject to the restrictions of the Act, to authorise the grant of leases, followed by a proviso that any person entitled to the possession of settled estates

(*a*) 51 & 52 Vict. c. 43, s. 93; *Murtagh* v. *Barry*, 24 Q. B. D. 632; *How* v. *L. & N. W. Ry. Co.* (1892), 61 L. J. Q. B. 368, and a like rule applies in case of refusal to order new trial; *Pole* v. *Bright* (1892), 61 L. J. Q. B. 139. *Comp. Johnson* v. *Johnson*, sup. p. 152.

(*b*) *Wetherfield* v. *Nelson* (1869), 38 L. J. C. P. 220. As to references to the official referee, *Longman* v. *East*, 3 C. P. D. 142.

(*c*) Repealed 44 & 45 Vict. c. 59, s. 3, and Sched.

(*d*) *A.-G.* v. *Sillem* (1864), 10 H. L. Cas. 704. *Comp. Hann, Re*, 18 Q. B. D. 393.

(*e*) *Per* Lord Kingsdown, 10 H. L. Cas. 775.

might apply to the Court for the exercise of the power, was held not exercisable except on the application of such a person (*a*). When commissioners were authorised, at the same time that they awarded compensation, to apportion the payment among those benefited, an apportionment made at a subsequent time was held invalid (*b*).

The Licensing Act, 1872, enacting that where justices have ordered a distress in default of payment of a penalty, they may order, in default of its payment, imprisonment for six months, was held not to authorise imprisonment where (in consequence of the defendant admitting his inability to pay the fine) no order of distress had been made. It would, indeed, have been idle to issue a distress; but the words were express and positive (*c*). So, where an Act gives an appeal to the next Quarter Sessions, that Court cannot, under a general power to regulate its procedure,

(*a*) *Taylor* v. *Taylor*, 1 Ch. D. 426; 3 Ir. 145.

(*b*) *Mayor of Montreal* v. *Stevens*, 3 App. Cas. 605.

(*c*) 35 & 36 Vict. c. 94, s. 51, repealed s. 99, Licensing (Consolidation) Act, 1910; *Brown, Re*, 3 Q. B. D. 545; *per* Cockburn C.J., duhit. Mellor J. See other illustrations, in the construction of the powers given to the railway commissioners, *G. W. Ry. Co.* v. *Ry. Commrs.*, 50 L. J. Q. B. 483; *Toomer* v. *London, Ch. & D. Ry. Co.* (1877), 2 Ex. D. 450, discussed in *Warwick Canal Co.* v. *Birmingham Canal Co.* (1879), 48 L. J. Ex. 550; *S. E. Ry. Co.* v. *Ry. Commrs.* (1881), 50 L. J. Q. B. 201; *West Ham Corp.* v. *G. E. Ry. Co.* (1895), 64 L. J. Q. B. 340.

reject it on the ground of non-compliance with certain regulations not prescribed by the Act such as failure to file appeal (*a*), failure to give notices not required by the statute (*b*), or failure to lodge the appeal a specified number of days before the Sessions (*c*). It might perhaps, unless the statute required that the appeal should be decided at the same Sessions (*d*), lawfully postpone the hearing of an appeal not complying with those conditions within such time; but to reject it altogether would be to refuse the appellant the privilege given by the Act, by imposing conditions which the Legislature had not imposed. Where the judge of the Court of Arches was required, under the Public Worship Regulation Act, 1874 (*e*), to hear a cause in London or Westminster, it was held that he had no power to hear it elsewhere in the province of Canterbury, and that all his proceedings there were void (*f*).

The power given by 43 Eliz. c. 2, to justices to appoint "four, three, or two substantial householders," as parish overseers, is not well executed

(*a*) *R.* v. *West Riding* (1842), 2 Q. B. 705.

(*b*) *R.* v. *West Riding*, 5 B. & Ad. 667; *R.* v. *Norfolk*, 39 R. R. 713; *R.* v. *Surrey*, 6 D. & L. 735; *R.* v. *Blues*, 5 E. & B. 291.

(*c*) *R.* v. *Pawlett*, L. R. 8 Q. B. 491; *R.* v. *Staffordshire*, 4 A. & E. 842.

(*d*) *R.* v. *Belto*[illegible] 17 L. J. M. C. 70.

(*e*) 37 & 38 Vict. c. 85, amended 38 & 39 Vict. c. 76.

(*f*) *Hudson* v. *Tooth* (1877), 3 Q. B. D. 46.

by appointing more than four (*a*); or by appointing a single one, even when he is the only householder in the parish (*b*). Sec. 355 of the repealed Merchant Shipping Act, 1854 (*c*), which empowered the Board of Trade to give the master of a ship a certificate to pilot "any ships belonging to the same owner," was construed as requiring that the name of the owner should be mentioned in the certificate; and a certificate representing another person as the owner was held not granted in compliance with the statute (*d*).

Where trustees, who were authorised to borrow £30,000 for building a chapel, and to levy the amount, with interest, by a rate, borrowed £32,000, and made a rate to pay the interest on the whole of that sum, it was held, not only that they had exceeded their power, but that the rate was bad *in toto*, and a distress to recover it unwarranted (*e*).

(*a*) *R.* v. *Loxdale*, 1 Burr. 445. See *R.* v. *All Saints, Derby*, 13 East, 143.

(*b*) *R.* v. *Cousins*, 33 L. J. M. C. 87; *R.* v. *Clifton*, 2 East, 168. *Comp. Preece* v. *Pulley*, 49 L. J. C. P. 686, and *comp.* under s. 32, Trustee Act, 1850, *Shipperdson's Trusts*, 49 L. J. Ch. 619; *Stokes' Trusts*, L. R. 13 Eq. 333; *Harford's Trusts*, 13 Ch. D. 135; but see *Colyer, Re*, 50 L. J. Ch. 79.

(*c*) See s. 23 of Pilotage Act, 1913 (2 & 3 Geo. 5), for grant of pilotage certificates to masters and mates.

(*d*) *The Earl of Auckland* (1861), 30 L. J. P. M. & A. 121, 127. See also *The Bristol City* (1901), 71 L. J. P. 5.

(*e*) *Ritcher* v. *Hughes* (1824), 26 R. R. 424; 2 L. J. K. B. 61.

A corporate body, constituted by statute for certain purposes, is regarded as so entirely the creature of the statute, that acts done by it without the prescribed formalities, or for objects foreign to those for which it was formed, would be, in general, null and void (*a*).

Rules and by-laws made under statutory powers enforceable by penalties are construed like other provisions encroaching on the ordinary rights of persons. They must, on pain of invalidity, be not unreasonable, nor in excess of the statutory power authorising them, nor repugnant to that statute or to the general principles of law (*b*).

A municipal power of regulation or of making by-laws for good government, without express

(*a*) *Chambers* v. *Manchester &c. Ry. Co.*, 33 L. J. Q. B. 268; *Payne* v. *Cork Co., Ltd.*, [1900] 1 Ch. 308; 69 L. J. Ch.

(*b*) See *Hacking* v. *Lee*, 29 L. J. Q. B. 204; *Davis, Exp.*, L. R. 7 Ch. 526; *Bentham* v *Hoyle*, 3 Q. B. D. 289; *Johnson* v. *Croydon*, 16 Q. B. D. 708; *Dick* v. *Badart*, 10 Q. B. D. 387; *Strickland* v. *Hayes*, [1896] 1 Q. B. 290; *Burnett* v. *Berry*, [1896] 1 Q. B. 641; *Mantle* v. *Jordan*, [1897] 1 Q. B. 248; *Kruse* v. *Johnson* (a leading case), [1898] 2 Q. B. 91; *Kitson* v. *Ashe*, [1899] 1 Q. B. 425; *White* v. *Morley*, [1899] 2 Q. B. 34; *Gentel* v. *Rappe*, [1902] 1 K. B. 160; *Thomas* v. *Sutters*, [1900] 1 Ch. 10; *Walker* v. *Stretton*, 44 W. R. 525; *Simmons* v. *Malling*, 66 L. J. Q. B. 585; *Gray* v. *Sylvester*, 61 J. P. 807; *Godwin* v. *Walker*, 12 Times Rep. 367; *Brownscombe* v. *Johnson*, 78 L. T. 265; *Scott* v. *Glasgow*, 68 L. J. P. C. 98; *London & S. W. Ry.* v. *Hills*, 75 L. J. K. B. 340; *Slowey* v. *Threshie*, 38 Sc. L. R. 799; *Nash* v. *Finlay* (1902) 85 L. T. 682.

words of prohibition, does not authorise the making it unlawful to carry on a lawful trade in a lawful manner. Moreover a power to regulate and govern seems to imply the continued existence of that which is to be regulated and governed (*a*). But there is a "well-recognised principle that where there is a competent Authority to which an Act of Parliament entrusts the power of making regulations, it is for that Authority to decide what regulations are necessary; and any regulations which they may decide to make should be supported, unless they are manifestly unreasonable or unfair" (*b*).

A by-law can be divided, if on part being omitted, the rest of the by-law reads grammatically, and when it can thus be divided, one part may be rejected as bad, while the rest may be held good (*c*).

In determining the validity of by-laws made by public representative bodies under statutory powers, their consideration is approached from a different standpoint from by-laws of railway or other like companies, which carry on business for their own profit, although incidentally for the advantage of the public. Courts of justice are

(*a*) *Per* Lord Davey, *Toronto* v. *Virgo*, [1896] A. C. 88; *A.-G. (Ontario)* v. *A.-G. Dominion of Canada* (1896), 65 L. J. P. C. 26.

(*b*) *Per* Lord Alverstone C.J., *London County Council* v. *Bermondsey Bioscope Co.*, 80 L. J. K. B. 144.

(*c*) *Per* Lindley L. J., *Strickland* v. *Hayes*, sup. p. 523.

slow to condemn municipal by-laws as invalid, on the supposed ground of unreasonableness, and support them if possible by a "benevolent" interpretation, and credit those who have to administer them with an intention to do so in a reasonable manner (*a*). But, on the other hand, if a by-law necessarily involves that which is unreasonable, it is the duty of the Court to declare it to be invalid (*b*).

A local Act which authorised a navigation company to make by-laws for the orderly using of the navigation, and for the governing of the boatmen carrying merchandise on it, was held not to authorise a by-law which closed the navigation on Sundays, and prohibited the use of any boat on it, except for going to church (*c*). Where a charter,

(*a*) *Kruse* v. *Johnson*, sup. p. 523. See also *per* Channell J., *Salt* v. *Scott-Hall*, [1903] 2 K. B. 245; 72 L. J. K. B. 627, who points out that where proceedings are taken under the Summary Jurisdiction Acts, the justices can treat exceptional cases under s. 16 of the Summary Jurisdiction Act, 1879 (now repealed and replaced by s. 1 (1), Probation of Offenders Act, 1907), by dismissing the information or imposing a nominal penalty, notwithstanding that a breach of a by-law has in fact been committed. See further, inf. pp. 529, 530, and cases in note to p. 530.

(*b*) *Per* Lord Alverstone C.J., *Stiles* v. *Galinski*, [1904] 1 K. B. 621.

(*c*) *Calder and Hebble Nav. Co.* v. *Pilling* (1845), 14 L. J. Ex. 223, distinguished in *Thomas* v. *Sutters* (1900), 1 Ch. 10.

which founded a school, empowered the governors to remove the master at their discretion, and also authorised them to make by-laws; it was held that a by-law ordaining that the master should not be removed unless sufficient cause was exhibited in writing against him, signed by the governors, and declared by them to be sufficient, was void; for the power to make by-laws did not authorise the making of one which restrained and limited the powers originally given to the governors by the founder. This was in effect to alter the constitution of the school (*a*).

Where, however, the statute conferring the power to make by-laws enacts that any such laws consistent with the provisions of the statute, and not repugnant to any other law in force, shall have the force of law when confirmed by the Executive, it is doubtful whether a Court would not be precluded from questioning the reasonableness of such by-laws or whether they are

(*a*) *R.* v. *Darlington School*, 14 L. J. Q. B. 67, questioned by Lord Hatherley in *Dean* v. *Bennett*, 40 L. J. Ch. 452. See also *R.* v. *Cutbush*, 4 Burr. 2204; *Chilton* v. *London & Croydon Ry. Co.*, 16 L. J. Ex. 89; *Williams* v. *G. W. Ry. Co.*, 10 Ex. 16; *R.* v. *Rose*, 24 L. J. M. C. 130; *Bostock* v. *Staffordshire Ry. Co.*, 25 L. J. Ch. 325; *Foster* v. *L. C. & D. Ry.*, [1895] 1 Q. B. 711; 64 L. J. Q. B. 65; *United Land Co.* v. *G. E. Ry. Co.*, L. R. 10 Ch. 586; *Norton* v. *London & N. W. Ry. Co.*, 9 Ch. D. 623; 13 Id. 268; *Shillito* v. *Thompson*, 1 Q. B. D. 12. *Comp. Bonner* v. *G. W. Ry.*, 24 Ch. D. 1.

ultra vires, unless it be in some very extreme case (*a*).

As regards enactments of a local or personal character, which confer any exceptional exemption from a common burden (*b*), or invest private persons or bodies, for their own benefit and profit, with privileges and powers interfering with the property or rights of others, they are construed against those persons or bodies more strictly, perhaps, than any other kind of enactment. Any person whose property is interfered with has a right to require that those who interfere shall comply with the letter of the enactment so far as it makes provision on his behalf (*c*). The Courts take notice that they are obtained on the petitions framed by their promoters; and in construing them, regard them, as they are

(*a*) *Slattery* v. *Naylor*, 13 App. Cas. 446. See *Institute of Patent Agents* v. *Lockwood*, [1894] A. C. 347; *Devonport Corp.* v. *Tozor* (1902), 71 L. J. Ch. 754. See also *A.-G.* v. *Dorin* (1912), 81 L. J. Ch. 225.

(*b*) Ex. gr. Acts which exempt lands from "all taxes and assessments whatsoever" are construed as applying only to then existing taxes and assessments; *Williams* v. *Pritchard* (1790), 2 R. R. 4 Term Repts. 310; *Perchard* v. *Heywood* (1800), 53 R. R. 128; 8 Term Repts. 468; *Sion College* v. *London (Mayor)*, [1901] 1 K. B. 617; 70 L. J. K. B. 369, distinguished in *Netherlande Steamboat Co.* v. *London Corp.* (1904), 68 J. P. 377, C. A.

(*c*) *Per* Lord Macnaghten, *Herron* v. *Rathmines Improvement Commissioners*, [1892] A. C. 523.

in effect, contracts (*a*) between those persons, or those whom they represent, and the Legislature on behalf of the public and for the public good (*b*). Their language is therefore treated as the language of their promoters, who asked the Legislature for them; and when doubt arises as to the construction of that language, the maxim (ordinarily inapplicable to the interpretation of statutes) that *verba cartarum fortius accipiuntur contra proferentem*, or that words are to be understood most strongly against him who uses them, is justly applied. The benefit of the doubt is to be given to those who might be prejudiced by the exercise of the powers which the enactment grants, and against those who claim to exercise them (*c*). Indeed, if words in a local or personal

(*a*) See observations of Lord Selborne, *Milnes* v. *Mayor of Huddersfield*, 11 App. Cas. 523. See, however, sup. p. 53.

(*b*) On this ground a contract by such a body never to use a power given by Parliament was held void; *Ayr Harbour* v. *Oswald*, 8 App. Cas. 623.

(*c*) See among many authorities, *R.* v. *Croke*, 1 Cowp. 26; *Gildart* v. *Gladstone*, 11 East, 685; *Hull Dock Co.* v. *Browne*, 2 B. & Ad. 58; *per* Patteson J., *R.* v. *Cumberworth*, 4 A. & E. 741; *Blakemore* v. *Glamorganshire Canal Co.*, 36 R. R. 289; *Webb* v. *Manchester Ry. Co.*, 48 R. R. 28; *Stockton & Darlington Ry. Co.* v. *Barrett*, 11 Cl. & F. 590; *Scales* v. *Pickering*, 4 Bing. 448; *Parker* v. *G. W. Ry. Co.*, 13 L. J. C. P. 105; *Eversfield* v. *Mid-Sussex Ry. Co.*, 3 De G. & J. 286; *Simpson* v. *S. Staffordshire Waterworks*, 34 L. J. Ch. 380; *R.* v. *Wycombe*, L. R. 2 Q. B. 310; *Morgan* v. *Metropolitan Ry. Co.*, L. R. 4 C. P. 97; *Fenwick*

Act seemed to express an intention to enaot something unconneoted with the purpose of the promoters, and which the committee, if they had done their duty, would not have allowed to be introduoed, almost any oonstruction, it has been said, would seem justifiable to prevent them from having that effeot (*a*).

Even if such statutes were not regarded in the light of contracts (*b*), they would seem to be subject to striot construotion on the same ground as grants from the Crown, to whioh they are analogous, are subject to it. As the latter are construed strictly against the grantee, on the ground that prerogatives, rights, and emoluments are conferred on the Crown for great purposes and for the publio use, and are therefore not to be understood as diminished by any grant beyond what it takes away by necessary and unavoidable construction (*c*); so the Legislature, in granting

v. *East London Ry. Co.*, L. R. 20 Eq. 544; *per* Cockburn C.J., *Hipkins* v. *Birmingham Gas Co.*, 6 H. & N. 250; *A.-G.* v. *Furness Ry. Co.*, 47 L. J. Ch. 776; *Lamb* v. *N. London Ry. Co.*, L. R. 4 Ch. 522; *Clowes* v. *Staffordshire Potteries*, L. R. 8 Ch. 125; *Altrincham* v. *Cheshire Lines Committee* (1885), 15 Q. B. D. 597; and see *Dewsbury Waterworks Board* v. *Penistone Union* (1885), 16 Q. B. D. 585.

(*a*) *Per* Lord Blackburn, *River Wear Commrs.* v. *Adamson*, 2 App. Cas. 743.

(*b*) See *R.* v. *York & N. Midland Ry. Co.*, 22 L. J. Q. B. 41.

(*c*) *Per* Lord Stowell, *The Rebeckah*, 1 Rob. C. 230.

away, in effect, the ordinary rights of the subject, should be understood as granting no more than actually passes by necessary and unavoidable construction.

The principle of strict construction is less applicable where the powers are conferred on public representative bodies for essentially public purposes (*a*).

(*a*) *Per* Wood V.-C., *N. London Ry. Co.* v. *Metrop. Bd. of Works* (1859), Johns. 405. See *Lewis* v. *Weston-super-Mare Local Board* (1888), 58 L. J. Ch. 39. See also *Pallister* v. *Gravesend*, 9 C. B. 774; *Galloway* v. *London (Mayor)*, L. R. 1 H. L. 34; *Quinton* v. *Bristol (Mayor)*, L. R. 17 Eq. 524; *A.-G.* v. *Cambridge*, L. R. 6 H. L. 303; *Richmond* v. *N. London Ry. Co.*, L. R. 3 Ch. 679; *Lyon* v. *Fishmongers' Co.*, 1 App. Cas. 662; *Venour's Case*, 2 Ch. D. 522. See pp. 523–526, sup.

CHAPTER XI.

SECTION I.—SOME SUBORDINATE PRINCIPLES—EFFECT OF USAGE.

It is said that the best exposition of a statute or any other document is that which it has received from contemporary authority. *Optima est legum interpres consuetudo* (*a*). *Contemporanea expositio est optima et fortissima in lege* (*b*). Where this has been given by enactment or judicial decision, it is of course to be accepted as conclusive (*c*). But, further, the meaning publicly given by contemporary, or long professional, usage, is presumed to be the true one, even when the language has etymologically or popularly a different meaning. It is obvious that the language of a statute must be understood in the sense in which it was understood when it was passed (*d*); and those who lived at or near the time when it was passed, may reasonably be supposed to be better acquainted

(*a*) Dig. i. 3, 37.

(*b*) 2 Inst. 11.

(*c*) See ex. gr. *per* Hullock B., *Booth* v. *Ibbotson*, 1 Yo. & J. 360; *per* Tindal C.J., *Bank of England* v. *Anderson*, 3 Bing. N. C. 666; *per* Parke B., *Doe* v. *Owens*, 10 M. & W. 521; *Curlewis* v. *Mornington*, 26 L. J. Q. B. 181.

(*d*) Sup. p. 108.

than their descendants with the circumstances to which it had relation, as well as with the sense then attached to legislative expressions (*a*); moreover, the long acquiescence of the Legislature in the interpretation put upon its enactment by notorious practice, may, perhaps, be regarded as some sanction and approval of it (*b*). It often becomes, therefore, material to inquire what has been done under an Act; this being of more or less cogency, according to circumstances, for determining the meaning given by contemporaneous exposition (*c*).

It has been sometimes said, indeed, that usage is only the interpreter of an obscure law, but cannot control the language of a plain one: and that if it has put a wrong meaning on unambiguous

(*a*) Co. Litt. 8b; 2 Inst. 18, 282; Bac. Ab. Stat. (I.) 5; 2 Hawk. c. 9, s. 3; *per* Lord Mansfield, *R.* v. *Varlo*, 1 Cowp. 250; *per* Lord Kenyon, *Leigh* v. *Kent*, 3 T. R. 364, *Blankley* v. *Winstanley*, Id. 286, and *R.* v. *Scot*, Id. 604; *per* Buller J., *R.* v. *Wallis*, 5 T. R. 380; *per* Lord Ellenborough, *Kitchen* v. *Bartsch*, 7 East, 53; *per* Best, C.J., *Stewart* v. *Lawton*, 1 Bing. 377; *per* Lord Hardwicke, *A.-G.* v. *Parker*, 3 Atk. 576; *per* Lord Eldon, *A.-G.* v. *Forster*, 10 Ves. 338; *R.* v. *Mashiter*, 6 A. & E. 153; *R.* v. *Davis*, Id. 374; *Newcastle* v. *A.-G.*, 12 Cl. & F. 402; *Smith* v. *Lindo*, 27 L. J. C. P. 196, 335; *R.* v. *Herford*, 29 L. J. Q. B. 249; *A.-G.* v. *Jones*, 33 L. J. Ex. 249; *Marshall* v. *Exeter* (*Bp.*), 31 L. J. C. P. 262; *Montrose Peerage*, 1 Macq. H. L. 401.

(*b*) See *per* James L.J., *The Anna* (1876), 1 P. D. 253.

(*c*) *R.* v. *Canterbury* (*Archbp.*), 11 Q. B. 581, *per* Coleridge J.

language, it is rather an oppression of those concerned than an exposition of the Act, and must be corrected (*a*). It may, indeed, well be the rule, as Lord Eldon laid it down in a case of a breach of trust of charity property, that if the enjoyment of property had been clearly a continued breach for even two centuries, of a trust created by a deed or will, it would be just and right to disturb it (*b*). But it seems different where the Legislature has stood by and sanctioned by its non-interposition the construction put upon its own language by long and notorious usage; and the proposition above stated certainly falls short of the full effect which has been often given to usage. Authorities are not wanting to show that where the usage has been of an authoritative and public character, its interpretation has materially modified the meaning of apparently unequivocal language.

Thus, the statute 1 Westm. c. 10, for instance, which enacts that coroners shall be chosen of the most legal and wise knights, has been understood to admit of the election of coroners who are not

(*a*) *Sheppard* v. *Gosnold*, Vaugh. 170; *per* Lord Brougham, *Dunbar* v. *Roxburghe*, 3 Cl. & F. 354; *per* Grose J., *R.* v. *Hogg*, 1 R. R. 375; *per* Pollock, C.B., *Gwyn* v. *Hardwicke* (1856), 1 H. & N. 53; and see *Esher Urban Council* v. *Marks* (1902), 71 L. J. K. B. 309.

(*b*) *Per* Lord Eldon, *A.-G.* v. *Bristol*, 2 Jac. & W. 321.

knights, if they possessed land enough to qualify them for knighthood (*a*); though in one case a merchant appears to have been removed from a coronership for that he was *communis mercator* (*b*). So, a power given by 6 Hen. VIII. c. 6, to the judges of the Queen's Bench, to issue a writ of *Procedendo*, was held, from the course of practice, to be exercisable by a single judge at chambers (*c*). Although the 31 Eliz. c. 5 (*d*)—which limited the time for bringing actions on penal statutes to two years, when the action was brought for the Queen, and to one year, when brought as well for the Queen as for the informer—was silent as to actions brought for the informer alone; it was held, partly on the ground of long professional understanding, that the last-mentioned actions were limited to one year (*e*). Though 15 Rich. II. enacted that the Admiralty should have no jurisdiction over contracts made in the bodies of counties, nevertheless seamen engaging in England have always been admitted to sue for wages in that Court (*f*),

(*a*) F. N. B. 164.

(*b*) 2 Inst. 32.

(*c*) *R.* v. *Scaife*, 20 L. J. M. C. 229. See *Leigh* v. *Kent*, 3 T. R. 362.

(*d*) Repealed in part by 11 & 12 Vict. c. 43, s. 36.

(*e*) *Dyer* v. *Best* (1866), L. R. 1 Ex. 152.

(*f*) *Smith* v. *Tilly*, 1 Keb. 712. As to relief and repatriation of distressed seamen and seamen left abroad, see 6 Edw. VII. c. 48, Merchant Shipping Act, 1906.

where the remedy is easier and better than in the Common Law Courts; on the ground, it has been said (*a*), that *communis error facit jus*; or rather, as was observed by Lord Kenyon (*b*), not *communis error*, but uniform and unbroken usage, *facit jus*. "Were the language obscure," said Lord Campbell in a celebrated case, "instead of being clear, we should not be justified in differing from the construction put upon it by contemporaneous and long-continued usage. There would be no safety for property or liberty if it could be successfully contended that all lawyers and statesmen have been mistaken as to the true meaning of an old Act of Parliament" (*c*). If we find a uniform interpretation of a statute materially affecting property and perpetually recurring, and which has been adhered to without interruption, it would be impossible to introduce the precedent of disregarding that interpretation (*d*).

The principle of construction would seem to be applicable to an ecclesiastical case of much celebrity. The rubric of the first Prayer Book of Edward VI. (1549) ordered that clergymen

(*a*) *Per* Lord Holt, *Clay* v. *Sudgrave*, 1 Salk. 33.

(*b*) In *R.* v. *Essex*, 4 T. R. 594.

(*c*) *Gorham* v. *Exeter* (*Bp.*), 15 Q. B. 73. See also *per* Cur., *Hebbert* v. *Purchas*, L. R. 3 P. C. 650.

(*d*) *Per* Lord Westbury, *Morgan* v. *Crawshay*, L. R. 5 H. L. 304, 320.

should wear albs and copes while administering the Communion. The second Prayer Book, with 5 & 6 Edw. VI. c. 1, prohibited those vestments and substituted surplices. These last dresses were again ordered, by the conjoined effect of 1 Eliz. c. 2, and the Advertisements or Orders issued in pursuance of it; and the former soon disappeared, the surplice becoming the sole officiating vestment until the Restoration. The rubric of the Prayer Book of 1662, however, with 13 & 14 Car. II. c. 4 (which confirmed 1 Eliz. c. 2), directed that the vestments used under the book of 1549 "should be retained and be in use" (*a*); but the surplice alone continued to be worn for nearly two centuries. When the right or duty of wearing the old vestments was asserted, the Privy Council held that the last rubric (which has the force of a statute) did not repeal the Act and Advertisements of Elizabeth, and must be read as if both were inserted in it (*b*). This construction, which was not reconcilable with the meaning of the

(*a*) Whether through disingenuousness or negligence? *Per* Dean Stanley in his Christian Institutions, p. 167. *Semble*, it was done advisedly; for the attention of the bishops had been called to the possibility of a return to vestments as the result of the wording; *Hebbert* v. *Purchas* (1871), L. R. 3 P. C. 605, at p. 643; See sup. p. 50.

(*b*) *Ridsdale* v. *Clifton*, 2 P. D. 276; Kelly C.B. and two other members of the Council dissenting. See letter to Lord Chancellor Cairns by Chief Baron Kelly, 1878, p. 14.

words of the rubric, nor, perhaps, in harmony with the ordinary prinoiples of interpretation, was, however, the construction whioh had been put upon it by long and general usage. Any other, indeed, it was remarked, would have been oppressive and unjust, by subjeoting every olergyman who had failed to use the garments of the first book, to heavy penalties (*a*).

The Court of Queen's Bench was influenced in its oonstruction of a statute of Anne (*b*) by the faot that it was that which had been generally considered the true one for one hundred and sixty years (*c*). Even a modern Act has received an interpretation from authoritative usage whioh oould hardly have been otherwise given to it. The Central Criminal Court Act, 1834 (4 & 5 Will. IV. o. 36), which empowers the judges of that Court, or any "two or more" of them, to try all offenoes whioh might be tried under a commission of Oyer and Terminer for London or Middlesex, was construed to authorise a single judge to try; suoh having been the universal practice of other superior courts of criminal judioature held under commissions of Oyer and

(*a*) *Ridsdale* v. *Clifton*, 2 P. D. 308, and *Hebbert* v. *Purchas* (1871), L. R. 3 P. C. 605, at p. 647.

(*b*) 8 Anne, c. 14, s. 1, restricted by 51 & 52 Vict. c. 43, s. 60, and 3 & 4 Geo. V. c. 37, s. 18 (2).

(*c*) *Cox* v. *Leigh* (1874), L. R. 9 Q. B. 333.

Terminer, as well as the established practice of the Central Criminal Court for the thirty-six years since the passing of the Act (*a*).

When the question arose whether a person convicted at one time of several offences could be considered, at the time of the adjudication, as "in prison undergoing imprisonment," within s. 25, 11 & 12 Vict. c. 43 (which authorises the convicting justice, in that case, to make the period of imprisonment for the second offence begin from the expiration of that of the first), it was decided in the affirmative, partly, indeed, in conformity with the construction put on the analogous enactment in 7 & 8 Geo. IV. c. 28, but partly also in consequence of the practice of the judges for forty years (*b*).

In all these cases, a contrary resolution would, to use the words of Parker C.J. (*c*), have been an overturning of the justice of the nation for years past. The understanding which is accepted as authoritative on such questions, however, is not that which has been speculative merely, or

(*a*) *Leverson* v. *R.*, L. R. 4 Q. B. 394. *Comp.*, however, *Clow* v. *Harper*, 3 Ex. D. 198. See also *per* Lords Blackburn and Watson, *Clyde Navigation* v. *Laird*, 8 App. Cas. 658.

(*b*) *R.* v. *Cutbush*, L. R. 2 Q. B. 379. See also *Buccleuch (Duke)* v. *Metrop. Bd. of Works*, L. R. 5 Ex. 251; considered and distinguished in *Recker* v. *N. British & Mercantile Insurance Co.* (1915), 84 L. J. K. B. 1813.

(*c*) In *R.* v. *Bewdley*, 1 P. Wms. 223.

floating in the minds of professional men; it must have been long acted on in general practice (*a*), and publicly. A mere general practice, for instance, which had grown up in a long series of years, on the part of the officers of the Crown, of not using patented inventions without remuneration to the patentee, under the impression that the Crown was precluded from using them without his license, was held ineffectual to control the true construction or true state of the law; which was that the Crown was not excluded from their use (*b*). It is, however, settled law that a petition of right will lie for damages resulting from a breach of contract by the Crown (*c*).

Some, however, of the cases cited—*e.g. R.* v. *Leverson*, sup. p. 538—may well be doubted, for "*Contemporanea Expositio* has no application to a modern Act, and I adopt Lord Watson's statement in *Clyde Navigation* v. *Laird* (*d*), as the Court of Appeal did in *Goldsmiths Co.* v. *Wyatt* (*e*). What Lord Watson said was this,—'When there

(*a*) *Per* Lord Ellenborough, *Isherwood* v. *Oldknow*, 3 M. & S. 396; *per* Lord Cottenham, *Waterford Peerage*, 6 Cl. & F. 173; *per* James L.J., *Ford and Hill, Re* (1879), 10 Ch. D. 370; 48 L. J. Ch. 327.

(*b*) *Feather* v. *R.*, 35 L. J. Q. B. 200.

(*c*) *Windsor & Annapolis Ry.* v. *R.* (1886), 11 A. C. 607, P. C.; 55 L. J. P. C. 41.

(*d*) 8 App. Cas. 673.

(*e*) 76 L. J. K. B. 166.

are ambiguous expressions in an Act *passed one or two centuries ago*, it may be legitimate to refer to the construction put upon these expressions throughout a long course of years by the unanimous consent of all parties interested, as evidencing what must presumably have been the intention of the Legislature at that remote period. But I feel bound to construe a recent statute according to its own terms, when these are brought into controversy, and not according to the views which interested parties may have hitherto taken' " (*a*).

A universal law cannot receive different interpretations in different towns (*b*). A mere local usage cannot be invoked to construe a general enactment, even for the locality (*c*). *A fortiori* is this the case, when the local custom is manifestly at variance with the object of the Act; as, for instance, a custom for departing from the standard of weights and measures, which the Legislature plainly desires to make obligatory on all and everywhere (*d*).

(*a*) *Per* Farwell L.J., *Sadler* v. *Whiteman* (1910), 79 L. J. K. B. 786, at p. 800. See, however, *per* Lord Blackburn, *Clyde Navigation* v. *Laird*, 8 App. Cas. 670.

(*b*) *Per* Grose J., *R.* v. *Hogg*, 1 T. R. 728; approved in *Income Tax Commissioners* v. *Pemsel*, [1891] A. C. 531, at p. 548; 61 L. J. Q. B. 265.

(*c*) *R.* v. *Saltren*, Cald. 444.

(*d*) *Noble* v. *Durell*, 3 T. R. 271.

Usage, ancient and modern, if certain, invariable, and not unreasonable, has often been admitted to throw light on the construction of old deeds, charters, and other documents (*a*).

SECTION II.—CONSTRUCTION IMPOSED BY STATUTES.

When the Legislature puts a construction on an Act, a subsequent cognate enactment in the same terms would, *primâ facie*, be understood in the same sense. Thus, as s. 125, 6 Geo. IV. c. 16, which made void securities given by a bankrupt to creditors, as a consideration for signing the bankrupt's certificate, was stated in the preamble of 5 & 6 Will. IV. c. 41, to have had the effect of making such securities void even in the hands of innocent holders for value, and was by the latter Act modified so as to make them valid in such hands; it was considered, when the Act of Geo. IV. was repealed, and its 125th section was re-enacted in its original terms in the Bankrupt Law Consolidation Act, 1849, that the renewed enactment ought to receive the construction which the preamble of 5 & 6 Will. IV.

(*a*) See ex. gr. *Withnell* v. *Gartham*, 6 T. R. 388; *Doe* v. *Ries*, 8 Bing. 181, *per* Tindal C.J.; *Wadley* v. *Bayliss*, 15 R. R. 645; *Beaufort* v. *Swansea*, 3 Ex. 413; *Bradley* v. *Newcastle*, 23 L. J. Q. B. 35.

c. 41, had put on the earlier one (*a*). The expression "taxed cart," in a local Act, was held to mean a vehicle which had been defined as a taxed cart by 43 Geo. III. c. 161 (*b*).

Where it is gathered, from a later Act, that the Legislature attached a particular meaning to certain words in an earlier cognate one, this would be taken as a legislative declaration of its meaning there (*c*).

It may be taken for granted that the Legislature is acquainted with the actual state of the law (*d*). Therefore, when the words of an old statute are either incorporated in, or by reference made part of, a new statute, this is understood to be done with the object of adopting any legal interpretation which has been put on them by the Courts (*e*). So, the same words appearing in

(*a*) *Goldsmid* v. *Hampton* (1858), 27 L. J. C. P. 286. For "undue preference" in bankruptcy under existing law, see 4 & 5 Geo. V. c. 59, s. 26 (3) (*i*).

(*b*) *Williams* v. *Lear*, L. R. 7 Q. B. 285, overruling *Purdy* v. *Smith*, 28 L. J. M. C. 150. See also *Ward* v. *Beck*, 32 L. J. C. P. 113.

(*c*) *R.* v. *Smith*, 4 T. R. 419; *Morris* v. *Mellin*, 6 B. & C. 454, sup. p. 378.

(*d*) *Per* Lord Blackburn, *Young* v. *Leamington* (*Mayor*), 8 App. Cas. 526; *Kent C. C., Exp.*, [1891] 1 Q. B. 725.

(*e*) *Per* James L.J., *Dale's Case*, 6 Q. B. D. 453, and in *Greaves* v. *Tofield*, 14 Ch. D. 571; *per* Mathew J., *Clark* v. *Wallond*, 52 L. J. Q. B. 322; *Jay* v. *Johnstone*, [1893] 1 Q. B. 25 189. As to Consolidation Acts, see sup. p. 109.

a subsequent Act *in pari materiâ*, the presumption arises that they are used in the meaning which had been judicially put on them; and unless there be something to rebut that presumption, the new statute is to be construed as the old one was (*a*). One reason, for instance, for holding that s. 504, Merchant Shipping Act, 1854 (which limited the liability of shipowners, and is replaced by s. 503, Merchant Shipping Act, 1894), did not extend to foreign ships, was that the enactment was taken from 53 Geo. III. c. 149, which had received that construction judicially (*b*). On similar grounds, Order XXXI. of the Judicature Act, 1875, r. 11 (*c*), received the same construction as had been given to the earlier enactment from which it was copied (*d*).

And it has also been held that the limitation of liability afforded by s. 503 to a private shipowner

(*a*) *Mansell* v. *R.*, 27 L. J. M. C. 4; *per* Blackburn J., *Jones* v. *Mersey Docks Co.*, 11 H. L. Cas. 480; *Exp. Thorne*, 3 Ch. D. 457; *Attwater, Exp.*, 5 Ch. D. 27; *per* James L.J., *Exp. Campbell*, L. R. 5 Ch. 706; *per* Lord Coleridge C.J., *Barlow* v. *Teal*, 15 Q. B. D. 405; *per* Fry L.J., *Avery* v. *Wood*, [1891] 3 Ch. 118; and *per* Lindley L.J., *Colonial Bank* v. *Whinney*, 30 Ch. D. 285. *Comp.* the remarks of Byles J., *St. Losky* v. *Green*, 9 C. B. N. S. 370. See also ex. gr. *Sturgis* v. *Darell*, sup. p. 458.

(*b*) *Per* Turner L.J., *Cope* v. *Doherty*, 27 L. J. Ch. 610.

(*c*) Now R. S. C., Ord. XXXI. r. 14, which see.

(*d*) *Bustros* v. *White* (1876), 45 L. J. Q. B. 642. See also *Anderson* v. *Bank of Columbia* (1876), 2 Ch. D., pp. 654, 656.

does not extend to the Procurator-General who under Prize Court Rules, 1914, is substituted for the actual captor of a ship alleged to contain contraband of war (*a*).

Even where the Acts are not *in pari materiâ*, the meaning notoriously given to expressions in the earlier, may be taken to be that in which they are used in the later, Act. Thus the Income Tax Act, 1842, which exempts from charge property applicable to "charitable purposes," was held to use this expression in the wide sense of what is a Charity within 43 Eliz. c. 4 (*b*).

But an Act of Parliament does not alter the law by merely betraying an erroneous opinion of it (*c*). For instance, 7 Jac. I. c. 12, which enacted that shop books should not be evidence above a year before action, did not make them evidence within the year; though the enactment was obviously passed under the impression, not improbably confirmed by the practice of the Courts in those days, that they were admissible in evidence (*d*). So, an Act of Edw. VI., continuing till the end of the then next session an Act of

(*a*) *The Oscar II.* (1919), P. 171.

(*b*) 5 & 6 Vict. c. 35, s. 61; *Income Tax Commissioners* v. *Pemsel*, 61 L. J. Q. B. 265; *Inl. Rev.* v. *Scott*, 68 L. J. Q. B. 432.

(*c*) See ex. gr. *per* Ashurst J., *Dore* v. *Gray*, 1 R. R. 494; *Lloyd, Exp.*, 1 Sim. N. S. 248, *per* Shadwell V.-C.

(*d*) *Pitman* v. *Maddox*, 2 Salk. 690. See also *Dore* v. *Gray*, sup.

Hen. VIII. (*a*), which was not limited in duration, was considered to be idle in that respect, and not to abrogate it (*b*). An Act which provided that no more than 6*d*. in the £ should be paid for appraisement, in cases of distress for rent, "whether by one broker or more," did not alter the earlier law, which required that goods distrained for rent should be appraised by two brokers (*c*).

A passage in an Act which showed that the Legislature assumed that a certain kind of beer might be lawfully sold without a license, could not be treated as an enactment that such beer might be so sold, when the law imposed a penalty on every unlicensed person who sold any beer (*d*). Sec. 27, 41 & 42 Vict. c. 77, which provided that s. 149, Public Health Act, 1875, which vests the "streets" of a town in its local authority, should not be construed to pass minerals to the local authority, was considered not to afford the inference that the soil and freehold of the streets vested in all other respects (*e*). Earlier bankrupt

(*a*) 28 Hen. VIII. c. 14, repealed S. L. R., 1863.

(*b*) *The Prices of Wine*, Hob. 215.

(*c*) *Allen* v. *Flicker*, 10 A. & E. 640.

(*d*) *Read* v. *Storey*, 30 L. J. M. C. 110. See 24 & 25 Vict. c. 21, s. 3, repealed 10 Edw. VII. c. 8, Sched. 6.

(*e*) *Coverdale* v. *Charlton*, 4 Q. B. D. 116; *Wandsworth Bd. of Works* v. *United Telephone Co.*, 13 Q. B. D. 904; *Rolls* v. *St. George Southwark*, 14 Ch. D. 785; *Tunbridge Wells* v. *Baird*,

Acts, in making traders having the privilege of Parliament liable to be made bankrupts, had expressly provided that they should be exempted from arrest; but when the Bankruptcy Act, 1861, enacted that all debtors should be liable to bankruptcy, without making any similar provision on behalf of peers and members of Parliament, it was held that they were nevertheless protected by the privilege (*a*).

It is now, however, provided by s. 128 of the Bankruptcy Act, 1914, that "if a person having privilege of Parliament commit an act of bankruptcy he may be dealt with under this Act in like manner as if he had not such privilege."

Many enclosure Acts were passed under the once prevalent opinion that the lord of a manor had a seignorial right of sporting over every part of the manor; whereas he had only a right of sporting over the waste, as incident to the ownership of the land (*b*). When those Acts divested the freehold out of him, and vested it in the tenants, among whom they allotted it, but reserved to the lord all the rights of sporting which had been enjoyed by himself and his predecessors, a conflict of opinion

[1896] A. C. 434; *Finchley Electric Light Co.* v. *Finchley Urban District Council*, [1903] 1 Ch. 437, C. A.

(*a*) *Newcastle* v. *Morris*. L. R. 4 H. L. 661.

(*b*) *Pickering* v. *Noyes* (1825), 28 R. R. 430; *Sowerby* v. *Smith* (1874), 43 L. J. C. P. 290.

arose as to whether this reservation entitled the lord to the right of shooting over the enclosures (*a*).

The 7 & 8 Vict. c. 29, in reciting that the 9 Geo. IV. c. 69, which punishes night poaching on "land, whether open or enclosed," had been evaded by the destruction of game, not on open and enclosed lands as described in that Act, but upon public roads and paths, and in making provision to meet the evasion, proceeded on an erroneous view of the law; for public roads and paths are "lands" within the meaning of the earlier Act; and the person who kills game while standing on them is a trespasser, not being there in the exercise of the right of way which alone justified his presence, but for the purpose of unlawfully seeking game (*b*).

Provisions sometimes found in statutes enacting imperfectly or for particular cases only that which was already and more widely the law, have occasionally furnished ground for the contention that an intention to alter the general law was to be inferred from the partial or limited enactment;

(*a*) See *Greathead* v. *Morley*, 10 L. J. C. P. 246; *Ewart* v. *Graham*, 7 H. L. Cas. 331; *Sowerby* v. *Smith*, L. R. 9 C. P. 524; *Devonshire* (*Duke*) v. *O'Connor*, 24 Q. B. D. 468; *Ecroyd* v. *Coulthard* (1898), 67 L. J. Ch. 458.

(*b*) *R.* v. *Pratt* (1855), 24 L. J. M. C. 113; *Harrison* v. *Rutland* (*Duke*) (1892), 62 L. J. Q. B. 117; *Mayhew* v. *Wardley*, 14 C. B. N. S. 550; sup. p. 492.

resting on the maxim, *expressio unius est exclusio alterius*. But that maxim is inapplicable in such cases. The only inference which a Court can draw from such superfluous provisions (which generally find a place in Acts to meet unfounded objections and idle doubts), is that the Legislature was either ignorant or unmindful of the real state of the law, or that it acted under the influence of excessive caution; and if the law be different from what the Legislature supposed it to be, the implication arising from the statute, it has been said, cannot operate as a negation of its existence (*a*); and any legislation founded on such a mistake has not the effect of making that law which the Legislature erroneously assumed to be so. Thus, when in contending that debts due by corporate bodies were subject to foreign attachment in the Mayor's Court, the express statutory exemptions of the East India Company and of the Bank of England were cited as supplying the inference that corporate bodies were deemed by the Legislature to be subject to that process, the judicial answer was that it was more reasonable to hold that the two great corporations prevailed on Parliament to prevent all questions as to themselves by direct enactment, than to hold that Parliament by such special enactment meant

(*a*) *Per* Cur., *Mollwo* v. *Court of Wards*, L. R. 4 P. C. 419, 437. See also *per* Cockburn C.J., *Shrewsbury* v. *Scott*, 6. C. B. N. S. 1.

to determine the question in all other cases adversely to corporations (*a*). A local Act which, in imposing wharfage dues for the maintenance of a harbour on certain articles, expressly exempted the Crown from liability in respect of coals imported for the use of royal packets, and the provisions in turnpike Acts (*b*), which exempted from toll carriages and horses attending the Queen, or going or returning from such attendance; were not suffered to affect the more extensive exemptions which the Crown enjoys by virtue of its prerogative (*c*).

On the other hand it has been laid down that where a statute confers powers upon a company, which the company as owner of property could have exercised without statutory power, the powers expressly given must be treated either as superfluous, or as purposely inserted in order to define, that is limit, the right conferred, and as implying a prohibition of the exercise of the more extensive rights which the company might have by virtue of its ownership of property, and that it cannot

(*a*) *London Joint Stock Bank* v. *London (Mayor)*, 1 C. P. D. 17; affirmed *sub nom. London Corp.* v. *London Joint Stock Bank* (1881), 50 L. J. Q. B. 594, H. L.

(*b*) 3 Geo. IV. c. 126, s. 32, and 4 Geo. IV. c. 95, s. 24.

(*c*) *Weymouth* v. *Nugent* (1865), 34 L. J. M. C. 81. See *Hornsey Urban District Council* v. *Hennell*, [1902] 2 K. B. 73; *Westover* v. *Perkins*, 28 L. J. M. C. 227; *Smithett* v. *Blythe*, 35 R. R. 358. See p. 285 sup.

be doubted that the latter, *i.e.* the restrictive interpretation, is the true mode of regarding statutory powers conferred on bodies created for public purposes, and authorised to acquire land for such purposes (*a*).

A mere recital in an Act, whether of fact or of law, is not conclusive, but Courts are at liberty to consider the fact or the law to be different from the statement in the recital; unless, indeed, it be clear that the Legislature intended that the law should be, or the fact should be regarded to be (*b*), as recited. If, for instance, a road was stated in an Act to be in a certain township, or a town to be a corporate borough, the statement, though some evidence of the fact alleged, would be open to contradiction (*c*). Sec. 3, 36 & 37 Vict. c. 60 (*d*), would hardly, by merely reciting that "an accessory after the fact" is "by English

(*a*) *London Assoc. of Shipowners* v. *London & India Docks*, [1892] 2 Ch. 242; and see *Barraclough* v. *Brown*, [1897] A. C. 615; 66 L. J. Q. B. 672.

(*b*) The 34 Geo. III. c. 54 (repealed S. L. R., 1871), reciting that a conspiracy had been formed for subverting the laws and constitution, and for introducing the anarchy prevalent in France; this recital was relied on as proof of the conspiracy in the treason trials of 1794, *per* Eyre C.J. in addressing the Grand Jury in *Hardy's Case*, 24 State Trials, 200.

(*c*) *R.* v. *Haughton*, 22 L. J. M. C. 89; *R.* v. *Greene*. 6 A. & E. 548.

(*d*) Amended 58 & 59 Vict. c. 33.

law liable to be punished as if he were the principal offender," be understood as making so important a change of the law.

In all these cases, no inference necessarily arose that the Legislature intended to alter the law, and to make it as it was alleged to be. A different effect, however, would be given to an Act which showed, whether by recital or enactment, that it intended to effect a change. If the mistake is manifested in words competent to make the law in future, there is no principle which can deny them this effect (*a*). Such was the effect of 4 & 5 Viot. c. 48 (*b*), which enacted that municipal corporations should be rateable in respect of their property, as though it were not corporate property; but that such property, when lying wholly within a borough the poor of which were relieved by one entire poor rate, should continue exempt from rateability "as if the Act had not passed." When the Act was passed, the general opinion was that such property was exempt; but later decisions settled that it was not. It was held that the above enactment exempted them, notwithstanding the final words, which were considered as not conveying a different intention (*c*).

(*a*) *Per* Cur., *Postmaster-General* v. *Early*, 12 Wheat. 148.
(*b*) Repealed 45 & 46 Vict. c. 50, s. 5.
(*c*) *R.* v. *Oldham Corp.*, L. R. 3 Q. B. 474.

One ground on which the Exchequer Chamber held that the attesting words, "on the true faith of a Christian," of the abjuration oath were essential parts of the oath, was that Parliament had put that construction on them, when allowing the Jews, a few years after enacting the oath, to omit those words when the oath was tendered to them *ex officio* (*a*).

A statute of the United States enacted that the district court should, in certain cases, have concurrent jurisdiction with the state and circuit courts, as if (contrary to the fact) the district court had not already, and the circuit court had, jurisdiction. But though the language plainly indicated only the opinion that the jurisdiction existed in the circuit court, and not an intention to confer it, this effect was nevertheless given to the Act, to prevent its being inoperative, and to carry out what was the obvious object of the Act (*b*). The district court could not have had concurrent jurisdiction with the circuit court, unless the latter could take cognisance of the same suits.

(*a*) 1 Geo. I. st. 2, c. 13 (repealed by 34 & 35 Vict. c. 48), 10 Geo. I. c. 4 (repealed, S. L. R., 1867); *Salomons* v. *Miller*, 8 Ex. 778; *Miller* v. *Salomons*, sup. p. 20.

(*b*) *Postmaster-General* v. *Early*, sup. p. 551.

SECTION III.—CONSTRUCTION OF WORDS IN BONAM PARTEM—EFFECT OF MULTIPLICITY OF WORDS—OF VARIATION OF LANGUAGE.

It is said, and in a certain and limited sense truly, that words must be taken in a lawful and rightful sense (*a*). When an Act, for instance, gave a certain efficacy to a fine levied of land, it meant only a fine lawfully levied (*b*). The provision that a judgment in the Lord Mayor's Court, when removed to the Superior Court, shall have the same effect as a judgment of the latter, would not apply to a judgment which the inferior tribunal had no jurisdiction to pronounce (*c*). The landlord's claim to recover arrears of rent out of goods seized in execution by the bailiff of a County Court, under the County Courts Act, 1888, depends upon whether the seizure was lawful. If the goods did not belong to the debtor, and the seizure was consequently unlawful, the claim under the section could not arise (*d*). A rule of a building society

(*a*) See, *e.g.* *R.* v. *Hulme* (1870), L. R. 5 Q. B. 377.

(*b*) Co. Litt. 381b; 2 Inst. 590.

(*c*) *Bridge* v. *Branch*, 1 C. P. D. 633.

(*d*) 51 & 52 Vict. c. 43, s. 160 (amended by 3 & 4 Geo. V. c. 34, s. 18 (2), which, in case of bankruptcy, limits the right of the landlord to six months' rent); *Hughes* v. *Smallwood*, 25 Q. B. D. 306. *Comp.* *Beard* v. *Knight*, 27 L. J. Q. B. 359; *Foulgar* v. *Taylor*, 29 L. J. Ex. 154.

authorising a director to reimburse himself for any loss incurred in executing the powers given him by the rules, does not apply to acts *ultra vires* and beyond the powers the society could confer (*a*). So, an Act which requires the payment of rates as a condition precedent to the exercise of the franchise would not be construed as excluding from it a person who refused to pay a rate which was illegal, though so far valid that it had not been quashed or appealed against (*b*), and this requirement is now apparently entirely dispensed with under the provisions of the Representation of the People Act, 1918. A covenant by a tenant to pay all parliamentary taxes is construed to include only such as he may lawfully pay, but not the landlord's property tax, which it would be illegal for him to engage to pay (*c*). A statutory authority to abate nuisances would not justify an order to abate one when it could not be obeyed without committing a trespass (*d*).

(*a*) *Cullerne* v. *London Bldg. Socy.* (1890), 59 L. J. Q. B. 525.

(*b*) *R.* v. *Windsor* (*Mayor*), 13 L. J. Q. B. 337. See also *Bruyeres* v. *Halcomb*, 3 A. & E. 381.

(*c*) *Gaskell* v. *King*, 11 East, 165. See *Edgeware Highway Board* v. *Harrow Gas Co.*, L. R. 10 Q. B. 92; *Owen* v. *Body*, 5 A. & E. 28.

(*d*) Public Health Act, 1875 (38 & 39 Vict. c. 55); *Scarborough* (*Mayor*) v. *Rural Authority of Scarborough*, 1 Ex. D. 344; but see

A highway surveyor, who is required by the Highway Act, 1862, to "conform in all respects to the orders of the board in the execution of his duties," is, like the olergyman who had sworn canonioal obedience to his bishop (*a*), bound to obey only lawful orders, whioh his superior has authority to give; so that he is personally liable for his aot, if the board had no jurisdiction to make the order under which he did it (*b*). Seo. 199, Companies Act, 1862 (repealed, ss. 267, 268, Companies (Consolidation) Aot, 1908), providing for the winding-up of oompanies of more than seven members not registered under the Act, applies only to companies which may be lawfully formed without registration, but not to those which are prohibited unless registered (*c*). But money earned in an unlawful "vocation" is properly assessed to the income tax (*d*).

Where analogous words are used, each may be presumed to be susoeptible of a separate and distinct meaning; for the Legislature is not

Parker v. *Inge*, 17 Q. B. D. 584; and *Broadbent* v. *Shepherd*, [1901] 2 K. B. 274.

(*a*) *Long* v. *Gray*, 1 Moo. P. C. N. S. 411.

(*b*) *Mill* v. *Hawker*, L. R. 10 Ex. 92; *comp. Dews* v. *Riley*, 11 C. B. 434.

(*c*) *Padstow &c. Assoc., Re*, 20 Ch. D. 137; *Shaw* v. *Benson*, 11 Q. B. D. 563.

(*d*) 5 & 6 Vict. c. 35, Sched. D; *per* Denman J., *Partridge* v. *Mallandaine* (1880), 56 L. J. Q. B. 251.

supposed to use words without a meaning (*a*). But the use of tantologous expressions is not uncommon in statutes, and there is no snoh presnmption against fulness, or even superfluity of expression, in statutes, or other written instrnments, as amounts to a rule of interpretation, controlling what might otherwise be their proper oonstruotion (*b*).

It has been justly remarked that, when precision is required, no safer rule can be followed than always to oall the same thing by the same name (*c*). It is, at all events, reasonable to presnme that the same meaning is implied by the use of the same expression in every part of an Act (*d*). Acoordingly, in ascertaining the meaning to be attaohed to a particnlar word in a section of an Aot, though the

(*a*) See ex. gr. the distinotion between "rights" and "interests" in the International Copyright Act, 1886 (49 & 50 Viot. o. 33), s. 6 (repealed and replaced by Part II., Copyright Act, 1911); *Moul* v. *Groenings*, [1891] 2 Q. B. 443: between moneys paid "under" and "in respect of" a gaming contract, *Tatham* v. *Reeve*, 62 L. J. Q. B. 30, approved in *Saffery* v. *Mayer*, 70 L. J. K. B. 145. See also another example in *Brighton Guardians* v. *Strand Guardians*, [1891] 2 Q. B. 156.

(*b*) *Per* Lord Selbonrne L.C., *Hough* v. *Windus*, 12 Q. B. D. 229.

(*c*) Sir G. C. Lewis, Ohs. and Reas. in Polit., vol. i. p. 91.

(*d*) *Courtauld* v. *Legh*, L. R. 4 Ex. 130, *per* Cleashy B.; *R.* v. *Poor Law Commrs.*, 6 A. & E. 68, *per* Lord Denman; *Re Kirkstall Brewery*, 5 Ch. D. 535. *Comp.* the judgments of Cockburn C.J. in *Smith* v. *Brown*, L. R. 6 Q. B. 731, and of Baggallay L.J. in *The Franconia*, 2 P. D. 174.

proper course would seem to be to ascertain that meaning if possible from a consideration of the section itself; yet, if the meaning cannot be so ascertained, then, on the principle that, as a general rule, a word is to be considered as used throughout an Act in the same sense, other sections may be looked at to fix the sense in which the word is there used (*a*).

But the presumption is not of much weight. In 12 & 13 Vict. c. 96, for instance, which makes any "person" in a British possession charged with any crime at sea liable to be tried in the colony, and provides that where the offence is murder or manslanghter of any "person" who dies in the colony of an injury feloniously inflicted at sea, the offence shall be considered as having been committed wholly at sea; the word "person" would include any human being, when relating to the sufferer, but would, as regards the offender, include only those persons who, on general principles of law, are subject to the jurisdiction of our Legislature, and responsible for their acts (*b*). In the enactment which makes it felony for any one, "being married," to "marry" again while the former marriage is in force, the same word

(*a*) *Per* Jessel M.R., *Spencer* v. *Metrop. Bd. of Works*, 22 Ch. D. 142.

(*b*) See *U. S.* v. *Palmer*, 3 Wheat. 631; See also *R.* v. *Lewis* (1857), Dears & B. 182, and other cases cited, sup. p. 262 *et seq.*

has obviously two different meanings, necessarily implying the validity of the marriage in the one case, and as necessarily excluding it in the other (*a*). And though by s. 27 (2), Metropolitan Building Act, 1855, separate sets of chambers in large buildings are to be deemed to be "separate buildings," and to be separated by proper party-walls, etc., accordingly, yet it has been held that they are not "separate buildings" within the meaning of Schedule II. Part I. of the same Act, under which the district surveyor is entitled to charge a fee in respect of "every" new "building" surveyed by him (*b*). So, the word "made" is used in different senses in the London Government Act, 1899 (*c*).

The case of *Forth* v. *Chapman* (*d*) furnishes a

(*a*) 24 & 25 Vict. c. 100, s. 57; *R.* v. *Allen* (1872), 41 L. J. M. C., at p. 98. For another illustration, see *Pharmaceutical Socy.* v. *Piper*, [1893], 1 Q. B. 686 (approved in *Pharmaceutical Socy.* v. *Armson*, [1894] 2 Q. B. 720), where the word "article" is said to have different meanings in different parts of s. 17 (31 & 32 Vict. c. 121). So "otherwise" is used in differing senses in the Married Women's Property Act, 1882; *Tidswell, Re*, 56 L. J. Q. B. 548.

(*b*) 18 & 19 Vict. c. 122 (repealed, 57 & 58 Vict. c. ccxiii., s. 215, and Sched. 4; note s. 74 of this Act); *Moir* v. *Williams*, [1892] 1 Q. B. 264.

(*c*) *Per* Warrington J., *Parrish* v. *Hackney Corp.*, 55 S. J. 670.

(*d*) 1 P. Wms. 663; *Crooke* v. *De Vandes*, 9 Ves. 203, *per* Lord Eldon.

well-known instance of a single passage in a Will receiving two different interpretations, according to the nature of the property to which it was applied; a devise of freehold and leasehold property to a person, with remainder over if he died "without issue," being construed to mean, as regarded the freehold, failure of issue at any future time, but as regarded the leasehold, a failure of issue at the death of the devisee. But this construction, which Lord Kenyon (*a*) considered hardly illustrative of the saying that *lex plus laudatur quando ratione probatur*, and which has since been partially set aside by the Wills Act, 1837 (*b*), was attributable to the different principles of interpretation adopted by the Common Law and Ecclesiastical Courts, under whose cognisance Wills of the two kinds of property respectively and exclusively fell (*c*).

So, it seems to have been once thought that in s. 2, 9 Anne, c. 14 (*d*), which gave the loser at play a right to recover by action his losses above £10, when lost at a single sitting, and gave an informer the right to recover them, and treble value besides, if the loser did not take proceedings

(*a*) *Porter* v. *Bradley*, 1 R. R. 675.

(*b*) 7 Will. IV. and 1 Vict. c. 26, s. 29; *Bence, Re*, [1891] 3 Ch. 242.

(*c*) Fearne, Cont. Rem. 476. See *Wingfield* v. *Wingfield*, 9 Ch. D. 658, and the cases there cited.

(*d*) Repealed by 8 & 9 Vict. c. 109, s. 15.

in time, the expression "a single sitting" might receive two different meanings, according as the plaintiff was the loser, or an informer: that is, that a sitting suspended for dinner should be held single and continuous when the loser sued, but be broken into two sittings when the action was brought by the informer; on the ground that in the one case the Act was remedial, and therefore entitled to a beneficial construction, while in the latter it was penal, and therefore was to be construed strictly (*a*). But unquestionably the interpreter is bound, in general, to disclaim the right to assign different meanings to the same words on the ground of a supposed general intention of the Legislature (*b*).

As the same expression is as a general rule to be presumed to be used in the same sense throughout an Act, or a series of cognate Acts, a change of language, probably, suggests the presumption of change of intention (*c*); and as has been seen, the change of language in the later of two statutes on the same subject has often the effect of repealing the earlier provision by implication (*d*). Where a limited interpretation

(*a*) *Bones* v. *Booth*, 2 W. Bl. 1226.

(*b*) *Per* Lord Denman, *R.* v. *Poor Law Commrs.* (1838), 6 A. & E. 56, at p. 68.

(*c*) *Per* Lord Tenterden, *R.* v. *Great Bolton*, 8 B. & C. 74; *Ricket* v. *Met. Ry. Co.*, L. R. 2 H. L. 207.

(*d*) See cases cited sup. pp. 285–295.

has been placed upon prior Acts of Parliament, and the words of an amending Act have been enlarged, the inference is that the enlargement must have been intentional on the part of the Legislature (*a*). So where by earlier enactments, penalties on members of Parliament for sitting and voting before being sworn were expressly recoverable by common informers, and by a repealing Act the penalties were made recoverable by action, without saying by whom, it was held that the common informer could not sue, but only the Crown (*b*). And it has been held that where section after section of an Act relating to the winding up of companies is limited to winding up by the Court, the absence of any such limitation in another section which contains provisions as to procedure "if the winding up of a company is not concluded within a year after its commencement," indicates an intention on the part of the Legislature that the latter section shall also apply to cases of voluntary winding up (*c*).

Where one section of 35 & 36 Vict. c. 74 (*d*),

(*a*) *Hurlbatt* v. *Barnett*, [1893] 1 Q. B. 77

(*b*) 29 & 30 Vict. c. 19, s. 5; *Bradlaugh* v. *Clarke*, 8 App. Cas. 354.

(*c*) 53 & 54 Vict. c. 63, s. 15; repealed 8 Edw. VII. c. 59, s. 286, Sched. 6, pt. I. As to existing law relating to winding up of Companies, see ss. 182 *et seq.*, 8 Edw. VII. c. 59; *Stock & Share Auction & Banking Co., Re*, [1894] 1 Ch. 736.

(*d*) Repealed, 38 & 39 Vict. c. 63, s. 1, which see.

imposed a penalty for selling, as unadulterated, articles of food which were adulterated; and another provided that the seller of an article of food, who, knowing that it was mixed with a foreign substance to increase its bulk or weight, did not declare the admixture to the purchaser, should be deemed to have sold an adulterated article; the former section would reach a seller who was ignorant of the adulteration; since, where knowledge was intended to be an element in an offence under the Act, the Legislature had conveyed its intention in express terms (*a*).

Where an Act recited and repealed an earlier one, which had authorised two justices, "whereof one to be of the quorum," to remove any person "likely to be" chargeable to the parish, and enacted that no person should be removed until "actually" chargeable, when "two justices" (omitting all mention of either being of the quorum) might remove him; it was held that this qualification was not necessary under the later Act (*b*).

A man who sends his servants or his dogs on the land of another, would be, in law, as much a trespasser as if he had entered on the land in

(*a*) *Fitzpatrick* v. *Kelly*, 42 L. J. M. C. 132, sup. p. 58. See *Pope* v. *Tearle* (1874), 43 L. J. M. C 129; *Roberts* v. *Egerton*, 43 L. J. M. C. 135. See further, sup. p. 186.

(*b*) *R.* v. *Llangian*, diss. Cockburn C.J., sup. p. 287.

person (*a*); but an Act which imposed a penalty for committing a trespass "by entering or being" upon land, would be construed as limiting, by these superadded words, the trespass to a personal entrance (*b*).

Sec. 59, 6 Geo. IV. c. 125, which exempted from compulsory pilotage any ship whatever which "is" within the limits of the port to which she belongs, was construed as exempting from compulsory pilotage a London vessel while within the port of London, though on a voyage from Bordeaux; but she would not have been exempted under s. 379, Merchant Shipping Act, 1854 (repealed, s. 625, Merchant Shipping Act, 1894), which exempted ships "navigating" within the limits of the port to which they belong (*c*). In an Act (59 Geo. III. c. 50) (*d*), which provided that no person should acquire a settlement in a parish by a 40 days' residence in a tenement rented by him, unless, if a house, it was "held," and if land, it was "occupied" by him for a year,

(*a*) *Baker* v. *Berkeley*, 3 C. & P. 32; *Dimmock* v. *Allenby*, cited 2 Marsh. 582. See further, sup. p. 492.

(*b*) *R.* v. *Pratt* (1855), 24 L. J. M. C. 113, sup. p. 547. But see *Read* v. *Edwards*, 34 L. J. C. P. 31.

(*c*) *The Stettin*, Br. & Lush. 199. See also *Hickman* v. *Maisey*, [1900] 1 Q. B. 752, and *Genl. Steam Nav. Co.* v. *Brit. Colon. Steam Nav. Co.*, 38 L. J. Ex. 97.

(*d*) Repealed 6 Geo. IV. c. 57, s. 1, which section is itself repealed by S. L. R., 1873.

effect was given to the two different words as expressing different ideas, by holding that a house need not be "occupied" for the purpose of acquiring a settlement (*a*); though, it was observed, this was probably not really intended by the Legislature (*b*).

But just as the presumption that the same meaning is intended for the same expression in every part of an Act is, as we have seen, not of much weight, so the presumption of a change of intention from a change of language (of no great weight in the construction of any documents) seems entitled to less weight in the construction of a statute than in any other case; for the variation is sometimes to be accounted for by a mere desire to avoid the repeated use of the same words (*c*), and often from the circumstance that the Act has been compiled from different sources; and further,

(*a*) *R.* v. *North Collingham*, 1 B. & C. 578; *R.* v. *Great Bolton*, 8 B. & C. 71.

(*b*) *Per* Best J., *R.* v. *North Collingham*, sup. See other illustrations in *Lawrence* v. *King*, 37 L. J. M. C. 78; *Gorely, Exp.*, 34 L. J. Bank. 1; *Gale* v. *Laurie*, 23 R. R. 199; *Cornill* v. *Hudson*, 27 L. J. Q. B. 8; *Wiley* v. *Crawford*, 30 L. J. Q. B. 319.

(*c*) *Per* Blackburn J., *Hadley* v. *Perks*, L. R. 1 Q. B. 444; *per* Lord Abinger, *R.* v. *Frost*, 9 C. & P. 129; *per* Lindley L.J., *Brace* v. *Abercarn Colliery Co.*, [1891] 2 Q. B. 705. As to accidental omissions, see sup. pp. 443–445.

from the alterations and additions from various hands which Acts undergo in their progress through Parliament. Though the statute is the language of the three estates of the realm, it seems legitimate, in construing it, to take into consideration that it may have been the production of many minds; and that this may better account for the variety of style and phraseology which is found, than a desire to convey a different intention. Even where the variation occurs in different statutes, the change is often not indicative of a change of intention. Thus there is no difference between a "stream" and a "river" in ss. 27, 28, 24 & 25 Vict. c. 109 (*a*); and "ordinary luggage" in an Act, and "personal luggage" in a by-law made under it, have been construed as meaning the same thing (*b*). So, there can be no material difference between "suffering" and "knowingly suffering" persons to gamble in a public-house (*c*). To "turn cattle loose" on a public thoroughfare, which is subject to a penalty by s. 54, Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), is substantially identical

(*a*) *Rolle* v. *Whyte*, 37 L. J. Q. B. 118.

(*b*) *Hudston* v. *Midland Ry. Co.* (1869), 38 L. J. Q. B. 213; discussed in *Macrow* v. *G. W. Ry.* (1871), 40 L. J. Q. B. 300.

(*c*) 9 Geo. IV. c. 61; 35 & 36 Vict. c. 94, repealed s. 79, Licensing (Consolidation) Act, 1910; *Bosley* v. *Davies*, 1 Q. B. D. 84.

with "leaving cattle" there "without a keeper," contrary to s. 74, Highway Act, 1835 (*a*); and the definition in 6 & 7 Vict. c. 86, s. 2, of a hackney carriage, as a carriage plying for hire in "any public place," is identical in meaning with the earlier Act, 1 & 2 Will. IV. c. 22, which defined it as plying for hire in any "street or road" (*b*). It may be questioned whether too much importance has not sometimes been attached to a variation of language (*c*).

An Act which enacted that "it shall and may be lawful" for a justice to hear a certain class of cases under £50, and that penalties above that sum "shall" (*d*) be sued for in the Superior Courts, was held equally imperative in both cases, even though the effect was to oust the jurisdiction of the Superior Courts in the former (*e*). So, though one section of 3 Geo. IV. c. 39, made a

(*a*) 5 & 6 Will. IV. c. 50 (s. 74 of which is repealed and re-enacted with variations by 27 & 28 Vict. c. 101, s. 25). See *Sherborn* v. *Wells*, 32 L. J. M. C. 179.

(*b*) *Skinner* v. *Usher*, L. R. 7 Q. B. 423. See also *Curtis* v. *Embery*, L. R. 7 Ex. 369.

(*c*) See ex. gr. *R.* v. *South Weald*, 33 L. J. M. C. 192; *Jarman*, *Exp.*, 4 Ch. D. 835.

(*d*) 25 Geo. III. c. 51 (repealed 2 & 3 Will. IV. c. 120, s. 1, which Act is repealed by S. L. R., 1874). See ex. gr. *Haldane* v. *Beauclerk*, 18 L. J. Ex. 227; *Montague* v. *Smith*, 21 L. J. Q. B. 73. See also sup. pp. 424–429.

(*e*) *Cates* v. *Knight*, sup. pp. 238–240.

warrant of attorney to confess judgment, if not filed within 21 days, "fraudulent and void against the assignees" in bankruptcy of the debtor, and another made it "void to all intents and purposes," if the defeasance was not written on the same paper as the warrant, it was held, notwithstanding the dissimilarity of the language, that the latter section was not more extensive than the former, but made the warrant of attorney void only as against the assignees (*a*). Sec. 137, Bankrupt Law Consolidation Act, 1849 (*b*), which made judges' orders, given by consent by a "trader," null and void to "all intents and purposes," unless filed, was held to have no more extensive meaning than the provision just cited of the 3 Geo. IV. c. 39, and was therefore valid against a solvent trader. The word "trader" which is used in the same and the preceding sections, was held to be confined to traders who afterwards became bankrupt; though the word "bankrupt" was used in all the other sections relating to the subject. All of them, however, were prefaced by the preamble that they related to "transactions with the bankrupt" (*c*).

(*a*) *Morris* v. *Mellin*, 6 B. & C. 446; *Bennett* v. *Daniel*, 10 B. & C. 500, diss. Parke J.; and Rolfe B., *Bryan* v. *Child*, 1 L. M. & P. 437. See also *Myers* v. *Veitch*, L. R. 4 Q. B. 649; *R.* v. *Tone*, 1 B. & Ad. 561.

(*b*) Repealed 32 & 33 Vict. c. 83, s. 20.

(*c*) *Bryan* v. *Child* (1850), 1 L. M. & P. 429; discussed in *Gowan* v. *Wright* (1886), 56 L. J. Q. B. 131.

Where under earlier bankruptcy statutes certain voluntary settlements could be avoided by an order for sale by a trustee in bankruptcy, and were thus voidable only, the enactment in s. 47, Bankruptcy Act, 1883, that such settlements should be "void" as against the trustee was construed as also merely rendering them voidable; the object of the Legislature being conceived to be unchanged, and the purpose of the alteration to be merely convenience in drafting (*a*).

A change of language effected by the omission in a later statute of words which occurred in an earlier one would make no difference in the sense, when the omitted words of the earlier enactment were unnecessary. Thus, where the first Act, after enacting that in an "indiotment" for murder the manner or means of death need not be stated, superfluously provided that the term "indictment" should include "inquisition" (which it did *ex vi termini*, without any such provision (*b*)), and a subsequent consolidation Act repealed and re-enacted the same enactment, omitting the unnecessary interpretation clause; it was held that the word

(*a*) 46 & 47 Vict. c. 52 (repealed, 4 & 5 Geo. V. c. 59, s. 168, and Sched. 6, which see); *Re Brall*, [1893] 2 Q. B. 381; approved by Ct. of Ap., *Re Carter and Kenderdine*, 66 L. J. Ch. 408.

(*b*) 2 Hale, 155*; *Withipole's Case*, Cro. Car. 134. Aliter, "information," *R.* v. *Slator*, 8 Q. B. D. 267. See also *Yates* v. *R.*, 14 Q. B. D. 648; *A.-G.* v. *Bradlaugh*, 14 Q. B. D. 667.

"indictment" was to be read in its full and established meaning, and not in the restricted sense in which the Legislature apparently understood it in the earlier statnte (*a*). So, the Merchant Shipping Act of 1854, which required (following an earlier Act) that the transfer of ships shonld be registered, but omitted the proviso of the earlier, which declared that a transfer not registered should not be valid for any purpose whatever, was construed as making such a transfer void, notwithstanding the omission of the proviso (*b*). The 8 & 9 Vict. c. 106, which, after repealing a similar enactment of the preceding session, made certain leases void when not made by deed, was constrned as leaving the nnsealed document valid as an agreement; althongh the repealed Act had an express provision to that effect, which the repealing one omitted (*c*).

Even where the omitted words were material to the sense, but might be implied, the omission would not, in itself, be considered material, if leading to consequences not likely to be intended.

(*a*) *R.* v. *Ingham*, 33 L. J. Q. B. 183.

(*b*) *Liverpool Borough Bank* v. *Turner*, 30 L. J. Ch. 379. See also *Ballhyany* v. *Bouch* (1881), 50 L. J. Q. B. 421, and ss. 24–26, Merchant Shipping Act, 1894.

(*c*) *Bond* v. *Rosling* (1860), 30 L. J. Q. B. 227; *Parker* v. *Taswell*, 27 L. J. Ch. 812; *per* Byles J., *Tidey* v. *Mollett*, 16 C. B. N. S. 298. See, however, *Walsh* v. *Lonsdale*, 52 L. J. Ch. 2, on which see *Coatsworth* v. *Johnson*, 55 L. J. Q. B. 220.

Thns, althongh the Bankruptoy Act, 1869, in making an assignment by a debtor of all his property an act of bankruptoy, omitted the words "with intent to defeat or delay his creditors" whioh had been in former Aots, it was held that no alteration had been made in the law; for those words had been really snperfluous and misleading (*a*). A statute which required witnesses before an election commission to answer self-oriminating questions, and indemnified them against proseoution for the offenoes confessed, if the commissioners certified that they had answered the qnestions, was held not to differ substantially from an earlier one, which gave the indomnity only when it was certified that the answers were true. The Court shrank from inferring, from the mere dissimilarity of the terms of the two Acts, though the omitted words were material, the improbable intention, in the later one, to protect a witness who had answered, indeed, in point of fact, but had answered falsely or contemptuonsly (*b*).

It has, indeed, been said that, generally, statutes

(*a*) *Wood, Re*, L. R. 7 Ch. 302. See *Horn* v. *Ion*, 4 B. & Ad. 78. See also *Copeland, Exp.*, 22 L. J. Bank. 17; and note a similar omission in s. 1 of Bankruptcy Act, 1914.

(*b*) *R.* v. *Hulme*, sup. p. 415. See *Duncan* v. *Tindal*, 22 L. J. C. P. 137; *Hughes* v. *Morris*, 2 De G. M. & G. 349; *McCalmont* v. *Rankin*, Id. 403; *Kennedy* v. *Gibson*, 8 Wallace, 498. See sup. p. 445.

in pari materiâ ought to receive a uniform construction, notwithstanding any slight variations of phrase; the object and intention being the same (*a*). And it has been frequently laid down in America, that the mere change of phraseology is not to be deemed to alter the law (*b*). It would be difficult, at the present time, to give countenance to the doubt whether an Act which made it felony to steal "horses," in the plural, applied to the stealing of one horse, in consequence of an earlier Act having made it felony to steal "any horse" in the singular (*c*). The general language of a statute which repealed one of limited operation, and re-enacted its provisions in an amended form, would be construed as equally limited in operation, unless an intention to extend it clearly appeared (*d*).

SECTION IV.—ASSOCIATED WORDS UNDERSTOOD IN A COMMON SENSE.

When two words or expressions are coupled together, one of which generally includes the other, it is obvious that the more general term is used in a meaning excluding the specific one.

(*a*) *Per* Cur., *Murray* v. *E. I. Co.*, 24 R. R. 325, referring to the Statutes of Limitation.

(*b*) Sedg. Interp. Stat. 234, 428.

(*c*) 2 Hale, 365; sup. p. 467.

(*d*) *Per* Cur., *Brown* v. *McLachlan*, L. R. 4 P. C. 543.

Though the words "cows," "sheep," and "horses," for example, standing alone, comprehend heifers, lambs, and ponies respectively, they would be understood as excluding them if the latter words were coupled with them (*a*). The word "land," which in its ordinary legal acceptation includes buildings standing upon it, is evidently used as exoluding them, when it is coupled with the word "buildings" (*b*). If after imposing a rate on houses, buildings, works, tenements, and hereditaments, an Aot exempted "land," this word would be restricted to land unburthened with houses, buildings, or works; which would otherwise have been unnecessarily enumerated (*c*). In 43 Eliz. c. 2, s. 1, which imposed a poor rate on the occupiers of "lands," houses, tithes, and "coal-mines," the same word was similarly limited in meaning as not including mines other than coal-mines (*d*). The

(*a*) *R.* v. *Cook*, 2 East, P. C. 616; *R.* v. *Loom*, 1 Moo. C. C. 160.

(*b*) See ex. gr. *Dewhurst* v. *Feilden*, 66 R. R. 696; *Peto* v. *West Ham*, 28 L. J. M. C. 240; discussed and questioned by Blackburn J. in *R.* v. *Midland Ry.* (1875), 44 L. J. M. C. 137.

(*c*) *R.* v. *Midland Ry. Co.*, 4 E. & B. 958; *Crayford* v. *Rutter*, [1897] 1 Q. B. 650.

(*d*) *Lead Smelting Co.* v. *Richardson* (1762), 3 Burr. 1341; *R.* v. *Sedgley*, 2 B. & Ad. 65; *R.* v. *Cunningham*, 5 East, 478; *Morgan* v. *Crawshay* (1871), L. R. 5 H. L. 304; *Thursby* v. *Briercliffe*, [1894] 2 Q. B. 11, [1895] A. C. 32. *Comp. Southwark &c. Water Co.* v. *Hampton Urban Council* (1898), 68 L. J. Q. B. 207.

mention of one kind of mine shows that the Legislature understood the word "land," which in law comprehends all mines, as not including any.

In the same way, although the word "person," in the abstract, includes artificial persons, that is, corporations (*a*), the Statute of Uses (27 Hen. VIII. c. 10), which enacts that when a "person" stands seised of tenements to the use of another "person or body corporate," the latter "person or body" shall be deemed to be seised of them, is understood as using the word "person" in the former part of the sentence as not including a body corporate. Consequently, the statute does not apply where the legal seisin is in a corporation (*b*). The same construction was given, for the same reason, to the same word in the Charitable Uses Act, 1735, 9 Geo. II. c. 36 (*c*).

It is in this sense that the maxim, occasionally misapplied in argument (*d*), *expressio unius est exclusio alterius*, finds its true application.

(*a*) 2 Inst. 722. See, however, *Weavers Co.* v. *Forrest*, 1 Stra. 1241; *Harrison's Case*, 1 Leach, 180; *St. Leonards* v. *Franklin*, 3 C. P. D. 377; *Pharmaceutical Society* v. *London & Provincial Supply Assoc.*, 49 L. J. Q. B. 736. As to foreign corporations, *Ingate* v. *Austrian Lloyd's*, 27 L. J. C. P. 323; *Scott* v. *Royal Wax Co.*, 1 Q. B. D. 404; *Royal Mail Co.* v. *Braham*, 2 App. Cas. 381.

(*b*) Bac. Reading Stat. Uses, 43, 57.

(*c*) Repealed except s. 5 (in part) 51 & 52 Vict. c. 42, s. 13; *Walker* v. *Richardson*, 6 L. J. Ex. 229.

(*d*) Sup. p. 548. See *Feather* v. *R.*, 6 B. & S. 257; *Eastern*

When two or more words, susceptible of analogous meaning, are coupled together, *noscuntur a sociis*; they are understood to be used in their cognate sense. They take, as it were, their colour from each other; that is, the more general is restricted to a sense analogous to the less general. The expression, for instance, of "places of public resort," assumes a very different meaning when coupled with "roads and streets," from that which it would have if the accompanying expression was "houses" (*a*). In an enactment (s. 6, 23 & 24 Vict. c. 27 (*b*)) respecting houses "for public refreshment, resort and entertainment," the last word was understood, not as a theatrical or musical or other similar performance, but as something contributing to bodily, not mental, gratification (*c*). An

Archipelago Co. v. *R.*, 1 E. & B. 310, *per* Cresswell J.; *London Joint Stock Bank* v. *London (Mayor)*, 1 C. P. D. 117.

(*a*) See ex. gr. *Jones, Re*, 21 L. J. M. C. 116; *R.* v. *Brown*, 21 L. J. M. C. 113; *Freestone, Exp.*, 25 L. J. M. C. 121; *Davys* v. *Douglas*, 28 L. J. M. C. 193; *Sewell* v. *Taylor*, 29 L. J. M. C. 50; *Case* v. *Storey*, 38 L. J. M. C. 113; *Skinner* v. *Usher*, 41 L. J. M. C. 158. See also *R.* v. *Charlesworth*, 2 L. M. & P. 117; *Wilson* v. *Halifax*, 37 L. J. Ex. 44; *Kippins, Exp.*, 66 L. J. Q. B. 95.

(*b*) Sec. 6 amended 24 & 25 Vict. c. 91, ss. 8, 10.

(*c*) *Muir* v. *Keay*, 44 L. J. M. C. 143. See *Taylor* v. *Oram*, 31 L. J. M. C. 252; *Howes* v. *Inl. Rev.*, 45 L. J. M. C. 86; 46 Id. 15; but with another context "entertainment" may easily have another connotation, ex. gr. See *R.* v. *Tucker*, 46 L. J. M. C. 197; *Terry* v. *Brighton Aquarium Co.*, 44 L. J. M. C. 173; *Reid*

Act (*a*) which exempted "magnates and noblemen" from tithes, was held, on this ground, not to extend to an ecclesiastical magnate, such as a dean, but to apply only to magnates of a "noble" kind (*b*).

In the same way, s. 17, Statute of Frauds, which required that contracts for the sale of "goods, wares, and merchandise" for £10 or upwards, should be in writing, and the Factors Act, 5 & 6 Vict. c. 39 (*c*), which protected certain dealings of agents entrusted with the documents of title of "goods and merchandise," did not extend to shares or stock in companies (*d*), or to the certificates of them (*e*). In each of these cases, the meaning of the more general word is in

v. *Wilson*, 64 L. J. M. C. 60; *Baxter* v. *Langley*, 38 L. J. M. C. 1; *Lee* v. *Simpson*, 16 L. J. C. P. 105; *Lamb* v. *Stott*, 36 Sc. L. R. 913.

(*a*) 37 Hen. VIII. c. 12.

(*b*) *Warden* v. *Dean of St. Paul's* (1817), 4 Price, 65.

(*c*) Now the Sale of Goods Act, 1893, 56 & 57 Vict. c. 71, s. 4, sup. p. 511, and the Factors Act, 1889, 52 & 53 Vict. c. 45.

(*d*) *Tempest* v. *Kilner*, 3 C. B. 249; *Bowlby* v. *Bell*, 16 L. J. C. P. 18; *Humble* v. *Mitchell*, 9 L. J. Q. B. 29; *Heseltine* v. *Siggers*, 18 L. J. Ex. 166.

(*e*) *Freeman* v. *Appleyard*, 32 L. J. Ex. 175 See, however, *Evans* v. *Davies*, [1893] 2 Ch. 216, where shares were held to be within the words "goods, wares, or merchandise" of R. S. C., 1883, Ord. 50, r. 2. No reference appears, however, to have been made to the principle under consideration, or to the foregoing authorities.

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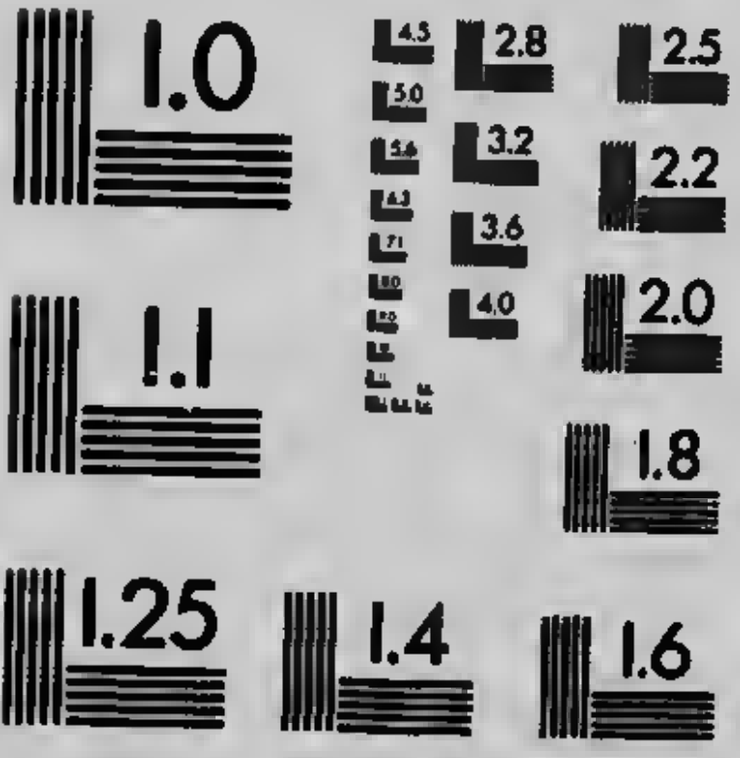

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a measure derived from, or at least limited by, the more specific one with which it is associated. The Bankrupt Law Consolidation Act, 1849 (*a*), which made a fraudulent "gift, delivery, or transfer" of property an act of bankruptcy (*b*) included only such deliveries or transfers as were of the nature of a gift; that is, such only as alter the ownership of the property; but it did not include a delivery to a bailee for safe custody (*c*).

In the provision of the repealed Bankruptcy Act, 1869, which authorised the Court to order a bankrupt to set aside a sum out of his "salary or income" towards payment of his debts, the latter word was held to mean income of the nature of salary, such as periodical payments under a contract for a theatrical engagement (*d*), or the earnings of a commercial traveller employed at so much a year, terminable at a week's notice (*e*); but would not apply to wages (*f*); or earnings of a

(*a*) Repealed 32 & 33 Vict. c. 83, s. 20.

(*b*) *Comp.* 4 & 5 Geo. V. c. 59, s. 1 (*b*).

(*c*) *Cotton* v. *James* (1830), 35 R. R. 244; 8 L. J. K. B. 345; *Isitt* v. *Beeston* (1869), 38 L. J. Ex. 89.

(*d*) 32 & 33 Vict. c. 71, s. 90 (as to existing Law, see Bankruptcy Act, 1914, s. 51 (2)); *Shine, Exp.*, 61 L. J. Q. B. 253; *Re Graydon*, [1896] 1 Q. B. 417.

(*e*) *Brindle, Exp.*, 56 L. T. 498.

(*f*) *Lloyd, Exp.*, [1891] 2 Q. B. 231. See further, *Re Jones* inf. p. 579.

professional man (*a*). These latter statements are, however, much qualified by the decision of the Court of Appeal in *Roberts, In re* (*b*).

The receipt of "parochial relief or other alms," which disqualifies for the municipal franchise (5 & 6 Will. IV. c. 76, s. 9), is confined to other parochial alms, and does not include alms received from a charitable institution (*c*). And it is now provided by 7 & 8 Geo. V. c. 64, s. 9 (1), that "A person shall not be disqualified from being registered or from voting as a parliamentary or local government elector by reason that he or some person for whose maintenance he is responsible has received poor relief or other alms." The ordinary marine policy which ensures against arrest of "kings, princes, and people," refers, under the last word, not to any collection of persons, but to the governing power of a country not included in the other terms with which it is associated (*d*).

(*a*) *Benwell, Exp.*, 54 L. J. Q. B. 59. See *Rogers, Re*, [1894] 1 Q. B. 425.

(*b*) *Roberts, In re*, [1900] 1 Q. B., Lindley M.R., at p. 129; (1899), 69 L. J. Q. B. 19.

(*c*) *R.* v. *Lichfield*, 2 Q. B. 693. See *Harrison* v. *Carter*, 2 C. P. D. 26, and *Cowen* v. *Kingston-upon-Hull*, [1897] 1 Q. B. 273, and the cases collected therein.

(*d*) *Nesbitt* v. *Lushington*, 4 T. R. 783. See *Johnson* v. *Hogg*, 10 Q. B. D. 432. See also *Davidson* v. *Burnand*, L. R. 4 C. P. 117; *Ashbury Carriage Co.* v. *Riche*, L. R. 7 H. L. 673; *Chartered*

In the Thames Conservancy Act, 1857, which, after empowering the conservators to license the construction of jetties in the river, provided that this should not take away any "right," claim, privilege, franchise, or immunity to which the occupiers of land on the banks were entitled, the word "right" was limited by the associated words to vested rights of property, and did not include the right of navigation which the occupiers enjoyed not otherwise than the public generally (*a*). In s. 1, Prescription Act, 1832, the expression "any right of common" is similarly restricted by the succeeding words, "or other profit or benefit to be taken and enjoyed from or upon any land," so as not to include rights in gross, but only those usual rights of common and *profit à prendre* which are in some way appurtenant to the land, and limited to the wants of a dominant tenement (*b*). And in s. 2 of the same Act, relating to claims by custom, prescription or grant, "to any way or other easement," the only easements included are those analogous to a right of way, that is, rights of utility and benefit, and not merely of

Merc. Bank v. *Wilson*, 3 Ex. D. 198; *Woodward* v. *London & N. W. Ry. Co.*, Id. 121; *Williams* v. *Ellis*, 5 Q. B. D. 175.

(*a*) 20 & 21 Vict. c. cxlvii. s. 53; *Kearns* v. *Cordwainers Co.*, (1859), 28 L. J. C. P. 285; discussed in *Lyon* v. *Fishmongers Co.* (1876), 46 L. J. Ch. 68, at p. 75.

(*b*) 2 & 3 Will. IV. c. 71 (extended to Ireland, 21 & 22 Vict. c. 42); *Shuttleworth* v. *Le Fleming*, 34 L. J. C. P. 309.

recreation and amusement (*a*). An Act (*b*) which made it felony to break and enter into a "dwelling, shop, warehouse, or counting-house," would not include a workshop, but only that kind of shop which had some analogy with a warehouse; that is, one for the sale of goods (*c*). And a statutory prohibition for the conveyance of gunpowder into a mine except in a "case or canister" would prevent the use of a case, such as a linen bag, which is not of the same solid and substantial description as a canister (*d*). Debentures of a company are not "stock or shares" within s. 14, Judgments Act (*e*), 1838 (*f*), and the wages of a collier are not within the meaning of the words "salary or income" of s. 53 of the Bankruptcy Act, 1883 (*g*), as they are not "income" *ejusdem generis* with "salary" (*h*).

(*a*) *Mounsey* v. *Ismay*, 34 L. J. Ex. 52. See *Webb* v. *Bird*, 10 C. B. N. S. 268; 13 Id. 841.

(*b*) 7 & 8 Geo. IV. c. 29 (repealed 24 & 25 Vict. c. 95, which see).

(*c*) *R.* v. *Sanders* (1839), 9 C. & P. 79.

(*d*) 35 & 36 Vict. c. 77, s. 23 (2); *Foster* v. *Diphwys Casson Slate Co.*, 56 L. J. M. C. 21.

(*e*) 1 & 2 Vict. c. 110 (as to s. 14, see 57 & 58 Vict. c. 16, s. 5, and Sched.).

(*f*) *Sellar* v. *Bright & Co.* (1904), 73 L. J. K. B. 643.

(*g*) Repealed by Bankruptcy Act, 1914, as to appropriation of portion of pay or salary to creditors under this latter Act, see s. 51 (2).

(*h*) *Re Jones*, [1891] 2 Q. B. 231. See further, *Exp. Lloyd*, sup. p. 576.

The County Courts Act (see now s. 74, County Courts Act, 1888), in making a person subject to the jurisdiction of the Court of the district within which he "dwells or carries on his business," included under the latter expression not only a personal carrying on of business, but cases where it was carried on altogether by an agent (*a*). Sec. 6, 24 & 25 Viot. c. 10, which gave the Admiralty jurisdiotion, when the shipowner is not domioiled in England, over any olaim of the owner of goods carried into any English port, for damage done to them by the negligence or misconduct of, or for "any breaoh of duty or of contraot" by the shipowner, master, or orew, seems confined to breaches of duty or contraot having some analogy to what is provided in the earlier part of the seotion; and was therefore held not to apply to the wrongful refusal of a master to take a oargo to a port abroad (*b*).

On the same prinoiple, an Aot whioh prohibits the "taking or destroying" the spawn of fish would not inolude a "taking" of spawn for the purpose of removing it to another bed; for the word "destroying," with which "taking" is associated, indicates that the taking which is

(*a*) *Minor* v. *London & N. W. Ry. Co.*, 26 L. J. C. P. 39; *Shields* v. *Rait*, 18 L. J. C. P. 120. *Comp. Re Norris*, 5 M. B. R. 111.

(*b*) *The Dannebrog* (1874), L. R. 4 A. & E. 386.

prohibited is dishonest or mischievous (*a*). And in an Act which made it penal to "take or kill" fish without the leave of the owners of the fishery, the same kind of "taking" was similarly held to have been intended (*b*). An Act which prohibits the "having or keeping" gunpowder, does not apply to a person who "has" gunpowder for a merely temporary purpose, as a carrier, the kind of "having" intended by the Act being explained by the word "keeping" with which it is associated (*c*). So, where an Act punishes the "having in his possession or conveying" anything suspected of being stolen and not satisfactorily accounted for, the former expression is limited by the latter, and does not, therefore, apply to possession in a house (*d*). An Act which made it felony to "cast away or destroy" a ship was held not to apply to a case where a ship was run aground or stranded upon a rock, but was afterwards got off in a

(*a*) 3 Jac. I. c. 12 (repealed 24 & 25 Vict. c. 109, s. 39); *Bridger* v. *Richardson*, 15 R. R. 355.

(*b*) 22 & 23 Car. II. c. 25 (repealed 1 & 2 Will. IV. c. 32, s. 1); *R.* v. *Mallinson*, 2 Burr. 679.

(*c*) 12 Geo. III. c. 61 (repealed 23 & 24 Vict. c. 139, s. 1); *Biggs* v. *Mitchell*, 31 L. J. M. C. 163. See *R.* v. *Strugnell* (1865), 35 L. J. M. C. 78. But see *Shelley* v. *Bethell* (1883), 12 Q. B. D. 11; 53 L. J. M. C. 16.

(*d*) 2 & 3 Vict. c. 71, s. 24; this section is supplemental only to 2 & 3 Vict. c. 47, s. 66, and is qualified thereby; *Hadley* v. *Perks* (1866), L. R. 1 Q. B. 444.

condition capable of being refitted (*a*). This rule was applied to the construction of the repealed Act, 1 Vict. c. 85, which made it felony "to shoot, cut, stab, or wound"; for the latter term was held to be restricted, by the verbs which preceded it, to injuries inflicted by an instrument; and consequently to bite off a finger or a nose, or to burn the face with vitriol, was not to wound within the meaning of the Act (*b*).

One phrase or clause, in the same way, sometimes materially limits the effect of another with which it is similarly associated. Thus, an Act which disgavelled lands "to all intents and purposes," and then went on to make them "descendible as lands at common law," was held to disgavel them only for the purposes of descent (*c*). The section of 17 Geo. III. c. 26 (*d*), which excepted from the general provisions of the enactment any "voluntary annuity granted without regard to pecuniary consideration," was construed as using the word "voluntary," not in its usual legal sense, as without consideration, but as without pecuniary consideration (*e*).

(*a*) *De Londo's Case* (1765), 2 East, P. C. 1098.

(*b*) *R.* v. *Harris*, 7 C. & P. 446; *R.* v. *Stevens*, 1 Moo. C. C. 409; *R.* v. *Murrow*, Id. 456; *R.* v. *Jenning's Case*, 2 Lewin C. C. 130. See *R.* v. *Waudby* (1895), 64 L. J. M. C. 251.

(*c*) *Wiseman* v. *Cotton*, 1 Lev. 79.

(*d*) Repealed by S. L. R., 1861.

(*e*) *Crespigny* v. *Wittenoom*, 4 T. R. 790. See *Blake* v. *Attersoll*, 2 B. & C. 875; *Evatt* v. *Hunt*, 22 L. J. Q. B. 348.

SECTION V.—GENERIC WORDS FOLLOWING MORE SPECIFIC.

It is, however, the use of a general word following (*a*) one or more less general terms *ejusdem generis*, which affords the most frequent illustration of the rule under consideration. *Generi per speciem derogatur*. In the abstract, general words, like all others, receive their full and natural meaning though they should not be extended so as to confine matters to which they are obviously not germane. Thus, as an example of the above general proposition, s. 3, 3 & 4 Will. IV. c. 42, which limits the time for suing "upon any bond or other specialty," comprehends under the last expression every kind of specialty, including a statute (*b*). In such and cognate cases, the general principle applies, that the terms are to receive their plain and ordinary meaning; and Courts are not at liberty to impose on them limitations not called for by the sense, or the objects or mischief of the enactment (*c*).

But the general word which follows particular and specific words of the same nature as itself

(*a*) Not preceding. See ex. gr. *King* v. *George*, 5 Ch. D. 627.

(*b*) *Cork & Bandon Ry. Co.* v. *Goode*, 22 L. J. C. P. 198; discussed and distinguished in *Thomson* v. *Clanmorris* (*Lord*) (1900), 69 L. J. Ch. 337.

(*c*) *Per* Cur., *U. S.* v. *Coombs*, 12 Peters, 80.

takes its meaning from them, and is presumed to be restricted to the same genus as those words (*a*): or, in other words, as comprehending only things of the same kind as those designated by them; unless, of course, there be something to show that a wider sense was intended.

Thus s. 43 of the Customs Laws Consolidation Act, 1876, which provides that "the importation of arms, ammunition, gunpowder or any other goods may be prohibited by proclamation in Order in Council," obviously relates only to goods of a like character or description to those specifically mentioned—and not to other things of an entirely different description.

The Sunday Observance Act, 1677 (29 Car. II. c. 7), which enacts that "no tradesman, artificer, workman, labourer, or other person whatsoever, shall do or exercise any labour, business, or work of their ordinary callings upon the Lord's Day," has been held not to include a coach proprietor (*b*), a farmer (*c*), a barber (*d*), and possibly a solicitor (*e*); the word "person" being confined to followers of callings like those specified by

(*a*) See *per* Willes J., *Fenwick* v. *Schmalz*, L. R. 3 C. P. 313.

(*b*) *Sandiman* v. *Breach*, 31 R. R. 169.

(*c*) *R.* v. *Cleworth*, 4 B. & S. 927, nom. *R.* v. *Silvester*, 33 L. J. M. C. 79.

(*d*) *Palmer* v. *Snow*, [1900] 1 Q. B. 725.

(*e*) *Peate* v. *Dickin*, 4 L. J. Ex. 28.

the preceding words. For a similar reason, the 20 Geo. II. c. 19 (*a*), which empowered justices to determine differences between masters and "servants in husbandry, artificers, handicraftsmen," and persons in some other specific employments, and "all other labourers," did not include a domestic servant (*b*), or a man employed to take care of goods seized under a writ (*c*); for though in the abstract they may be "labourers" their employments have no analogy with those specified. It would include, however, a man who contracted to work by the piece, not by the day, provided the relation of master and servant existed (*d*).

The Metropolitan Building Act, 1855 (*e*), which entitled a district surveyor "or other person," to a month's notice of action for anything done under the Act, was held, on this principle, not to give that privilege to every person sued, but to give

(*a*) Repealed, 38 & 39 Vict. c. 86, s. 17.

(*b*) *Kitchen* v. *Shaw*, 6 A. & E. 729. *Comp. Exp. Hughes*, 23 L. J. M. C. 138; *Davies* v. *Berwick*, 50 L. J. M. C. 81; *Morgan*, v. *London Gen. Omnibus Co.*, 13 Q. B. D. 842. See, however, the concluding observations of Fry L.J. in *Bound* v. *Lawrence*, [1892] 1 Q. B. 226. See also *Cook* v. *North Metrop. Tramways Co.*, 18 Q. B. D. 683.

(*c*) *Branwell* v. *Penneck*, 7 B. & C. 536.

(*d*) *Lowther* v. *Radnor*, 8 East, 113; *comp. Lancaster* v. *Greaves*, 9 B. & C. 628; *Exp. Johnson*, 7 Dowl. 702; *R.* v. *Heywood*, 1 M. & S. 624. See also *Gordon* v. *Jennings*, 9 Q. B. D. 45.

(*e*) Repealed, 57 & 58 Vict. c. cxiii., s. 215, Sched. 4.

it only to persons *ejusdem generis* with a district surveyor; that is, having an official duty (*a*). An Act which empowers Quarter Sessions to order the treasurer of "the county, riding, division, or place" to pay costs, only applies to a "place" *ejusdem generis* with "county, riding, division," that is a place having a separate Court of Quarter Sessions (*b*). And s. 75, Larceny Act, 1861 (now ss. 19–22, Larceny Act, 1916), which made it a misdemeanour for any "banker, merchant, broker, attorney, or other agent" to convert to his own use any valuable security entrusted to him for any special purpose, was held not under the words "or other agent" to include any ordinary agent who may from time to time be entrusted with valuable securities, but only persons whose occupation is similar to those specifically enumerated (*c*).

(*a*) *Williams* v. *Golding*, L. R. 1 C. P. 69. *Comp. Newton* v. *Ellis*, 24 L. J. Q. B. 337. See contra *Driffield Co.* v. *Waterloo Co.*, 31 Ch. D. 638. As to the existing law relating "to notice," see Public Authorities Protection Act, 1893, and see s. 216 of 57 & 58 Vict. c. cxiii. as to continuance of provisions in preceding London Buildings Acts until specifically revoked.

(*b*) Vagrancy Act, 1824, 5 Geo. IV. c. 83, s. 9. So much of this section as relates to costs is repealed by 8 Edw. VII. c. 15, s. 10, and Sched. As to existing law, see s. 3, Costs in Criminal Cases Act, 1908; *R.* v. *West Riding JJ.*, [1900] 1 Q. B. 291.

(*c*) 24 & 25 Vict. c. 96, s. 75 of the Larceny Act, 1861, is repealed and re-enacted in an amplified form by 1 Edw. VII. c. 10; *R.* v. *Portugal*, 16 Q. B. D. 487; *R.* v. *Prince*, 2 C. & P. 517; *R.* v. *Kane*, 70 L. J. K. B. 143.

In an Act imposing a penalty on unqualified persons navigating "any wherry, lighter, or other craft," the last word would include only vessels of the same kind as wherries and lighters, not steam tugs which carried neither passengers nor goods (*a*). But the same word would be more comprehensive if it had followed "boats and vessels" (*b*). A prohibition against deducting from an artificer's wages any part of them "for frame rent and standing, or other charges," would not include, under the last word, a fine incurred for breach of agreement (*c*).

The Distress for Rent Act, 1737 (11 Geo. II. c. 19), which by s. 8 authorises the distress for rent of "corn, grass, or other product" growing on the demised lands, includes only products similar to grass and corn; but not young trees, which, though unquestionably products of the land, are of a different character from the products specified by the earlier terms (*d*). For the same reason, young trees are not included in the Act which punishes

(*a*) 7 & 8 Geo. IV. c. lxxv., s. 37; *Reed* v. *Ingham* (1854), 23 L. J. M. C. 156. The words "any Cathedral, Collegiate, Chapter, or other Schools" in the proviso at the end of s. 62 of the Charitable Trusts Act, 1853, 16 & 17 Vict. c. 137 (partly repealed by S. L. R., 1875), were similarly construed in *Stockport Schools, Re* (1898), 68 L. J. Ch. 41.

(*b*) *Tisdell* v. *Combe*, 7 A. & E. 788.

(*c*) *Willis* v. *Thorp*, 44 L. J. Q. B. 137.

(*d*) *Clark* v. *Gaskarth* (1818), 8 Taunt. 431.

the stealing of "any plant, root, fruit, or vegetable production growing in a garden, orchard, nursery-ground, hothouse or conservatory" (*a*).

An Act which prohibited playing or betting in the streets "at or with any table or instrument of gaming," would not include, under the last general words, half-pence used for tossing for money (*b*). A by-law which imposed a penalty for causing an obstruction in the street in various specified ways, all of a temporary character, or otherwise causing or committing "any other obstruction, nuisance, or annoyance" in any of the streets, was held not to include, under the latter words, any obstruction which was not of a temporary character (*c*).

The enactment which prohibited the establishment, without license, of "the business of a blood boiler, bone boiler, fellmonger, slaughterer of cattle, horses, or animals of any description, soap boiler, tallow melter, tripe boiler, or other noxious or offensive business, trade, or manufacture," was held not to include under the final general terms any employments not connected, as all the specified

(*a*) *R.* v. *Hodges*, 1 Moo. & M. 341. See *Radnorshire Bd.* v. *Evans*, 32 L. J. M. C. 100; *Smith* v. *Barnham*, 1 Ex. D. 419.

(*b*) *Watson* v. *Martin*, 34 L. J. M. C. 50, rectified by 36 & 37 Vict. c. 38, s. 3; *Hirst* v. *Molesbury*, L. R. 6 Q. B. 130. *Comp.* *R.* v. *O'Connor*, 15 Cox C. C. 3. See further, *Tollet* v. *Thomas*, 24 L. T. 508.

(*c*) *R.* v. *Dickenson*, 26 L. J. M. C. 204.

trades were, with animal matter; and so did not reach brick-making (*a*), nor a small-pox hospital (*b*).

A fishing net with an illegally small mesh is not an "instrument" within the Salmon Fishery Acts, which prohibit the use of "any otter lath, or jack, wire or snare, spear, gaff, strokehall, snatch, or other like instrument for the purpose of catching salmon" (*c*).

A bill of sale, by the yearly tenant of a dwelling-house, of all the household goods, furniture, and other household effects in and about the dwelling-house, "and all other the personal estate whatsoever," of the assignor, was held not to pass his term or interest in the house (*d*). So, a Will, which, after enumerating in a bequest furniture, plate, linen, china, and pictures, added "all other goods, chattels, and effects which shall be in the house" at the time of the testator's death, did not include a sum of money then in the house (*e*).

(*a*) 11 & 12 Vict. c. 63, s. 64, repealed by 38 & 39 Vict. c. 55, s. 343, Sched. V., pt. III.; *Wanstead Board* v. *Hill* (1863), 32 L. J. M. C. 135.

(*b*) 38 & 39 Vict. c. 55, s. 112; *Withington L. Bd.* v. *Manchester Corp.* (1893), 62 L. J. Ch. 393. *Comp. Metropolitan Asylums District* v. *Hill*, 50 L. J. Q. B. 353; *Passey* v. *Oxford*, 43 J. P. 622.

(*c*) 24 & 25 Vict. c. 109, s. 8; amended by 36 & 37 Vict. c. 71, s. 18; *Jones* v. *Davies*, 67 L. J. Q. B. 294.

(*d*) *Harrison* v. *Blackburn*, 34 L. J. C. P. 109. *Comp. Ringer* v. *Cann*, 7 L. J. Ex. 108.

(*e*) *Gibbs* v. *Lawrence* (1860), 30 L. J. Ch. 170. Discussed in

And the rules of an industrial society, established to carry on the business of general dealers, farmers, and manufacturers, which provided that the profits of the business should be applied either to increase the capital, reserve fund, or business of the society, "or to any lawful purpose," and that the remainder, less any grant that might be made for educational purposes, should be divided among the members, have been held not to authorise a subscription to a strike fund, that not being a lawful purpose *ejusdem generis* with increasing the capital, reserve fund, or business of the society (*a*).

An Act (*b*) which gives a vote to the occupier of a "house, warehouse, counting-house, shop, or other building," includes, in the latter term, only buildings which, like those specifically mentioned, are of some permanence and utility, and contribute to the beneficial occupation of the land, increasing thereby its value (*c*). The words

MacPhail v. *Phillips*, [1904] 1 Ir. R., at p. 159; *Bridgeman* v. *Fitzgerald*, 50 L. J. Ch. 9. See also *Manton* v. *Tabois*, 54 L. J. Ch. 1008. See, however, *Anderson* v. *Anderson*, 64 L. J. Q. B. 457.

(*a*) *Warburton* v. *Huddersfield Industrial Socy.*, [1892] 1 Q. B. 817. As to obligatory Rules and Amendments, see 56 & 57 Vict. c. 39, s. 10, and Sched. II.

(*b*) 2 & 3 Will. IV. c. 45, s. 27, repealed by 7 & 8 Geo. V. c. 64, s. 47, and Sched. VIII., which Act see.

(*c*) *Powell* v. *Boraston* (1864), 34 L. J. C. P. 73. See also *Morish* v. *Harris*, L. R. 1 C. P. 155. *Comp. Hodgson* v. *Jex*, 2 Ch. D. 122; *Chapman* v. *Chapman*, 4 Id. 800.

"tenements and hereditaments," which, in their technical sense, embrace not only every species of right connected with land, such as rents, tithe, rights of common, seignorial rights, but also offices, have been confined to habitable structures, when coupled with and following such words as "houses, warehouses, and shops" (*a*). Where an Act (*b*) authorised the police to enter any house or room used for stage plays, and imposed a penalty for keeping any house or other "tenement" as an unlicensed theatre; it was held that the word "tenement" was confined in meaning to something of the same character as "house" or "room," and so did not include a portable booth, consisting of two waggons joined together, and used as a theatre by strolling players (*c*).

Sec. 33, 3 & 4 Will. IV. c. 90, which enacted that the owners of "houses, buildings, and property other than land," rateable to the poor, should be rated at thrice the rate imposed on the owners of land, was held confined to that kind of "property other than land," which was *ejusdem generis* with "houses and buildings," and that a railway, a

(*a*) *R.* v. *Manchester Waterworks Co.*, 1 B. & C. 630; *R.* v. *East London Waterworks Co.*, 21 L. J. M. C. 49. See also *Chelsea Waterworks* v. *Bowley*, 20 L. J. Q. B. 520; *Metrop. Ry.* v. *Fowler*, [1893] A. C. 416; *R.* v. *Neville*, 15 L. J. M. C. 33.

(*b*) 2 & 3 Vict. c. 47, s. 46.

(*c*) *Fredericks* v. *Howie* (1862), 31 L. J. M. C. 249; *Day* v. *Simpson* (1865), 34 L. J. M. C. 149, sup. p. 211.

canal, with its towing-paths, and a dry dock lined with masonry, which were its accessories, were not comprised in the expression, but were rateable as land (*a*). On the same prinoiple, s. 79, Companies Act 1862 (repealed by s. 129, Companies (Consolidation) Act, 1908), whioh provides that a company may be wound up by the Court of Chancery when the company passes a resolution in favour of that course, or does not begin business within a year, or its members are reduced to less than seven, or when the Court thinks a winding-up "just and equitable," empowers the Court by these last general words to wind up only when it is just and equitable on grounds analogous to those precedingly stated (*b*).

Of course, the restricted meaning, which primarily attaches to the general word in suoh ciroumstances, is rejected when there are adequate grounds to

(*a*) *R.* v. *Neath* (1871), L. R. 6 Q. B. 707; *R.* v. *Midland Ry. Co.* (1875), 44 L. J. M. C. 137. *Comp. R.* v. *Midland Ry. Co.* (1855), 4 E. & B. 958.

(*b*) *Spackman's Case* (1849), 1 McN. & G. 170; *Anglo-Greek Steam Co., Re* (1866), L. R. 2 Eq. 1; *Langham Rink Co., Re*, 46 L. J. Ch. 345. See, however, inter alia, *Suburban Hotel Co., Re* (1867), 36 L. J. Ch. 710; *German Date Coffee Co., Re*, 51 L. J. Ch. 564; *Chic Lim, Re*, 74 L. J. Ch. 597; *Melson, Re*, 75 L. J. Ch. 509; *Crigglestone Co., Re*, 75 L. J. Ch. 662; *Stephens* v. *Mysore Reefs Mining Co.* (1902), 71 L. J. Ch. 295; *Symington, Re*, 43 Sc. L. R. 157. See under the Apportionment Act, 1870, 33 & 34 Vict. c. 35, *Cox's Trusts, Re*, 47 L. J. Ch. 735.

show that it was not used in the limited order of ideas to which its predecessors belong. If it can be seen from a wider inspection of the scope of the legislation that the general words, notwithstanding that they follow partioular words, are nevertheless to be construed generally, effect must be given to the intention of the Legislature as gathered from the larger survey. Upon this principle it has been held that, having regard to the object of s. 32, Patents, Designs, and Trade Marks Act, 1883 (repealed, s. 36, Patents and Designs Aot, 1907, 7 Edw. VII. c. 29), as seen on a consideration of the whole section, and the law existing at the time of its enactment, in construing the reference to threats of legal proceedings "by oirculars, advertisements, or otherwise," which it contains, the words "or otherwise" are not to be restricted to threats by measures *ejusdem generis* with circulars or advertisements, but are to be regarded as extending the previous words, so as absolutely to prohibit any threats whatever of legal proceedings by a patentee for the infringement of his patent, unless they are followed up speedily by an action (*a*). And where an inspector

(*a*) *Skinner & Co.* v. *Shew & Co.* (1892), 62 L. J. Ch. 196, distinguished in *Beven* v. *Welsbach Incandescent Gas Light Co.*, [1902] 20 R. P. C. 69, p. 73. As to what constitutes a threat of proceedings, see *Diamond Coal Cutter Co.* v. *Mining Appliances Co.*, [1915] W. N. 340.

of nuisances was authorised to inspect articles of food deposited in "any place" for sale, and a penalty was imposed on persons who prevented him from entering any "slaughter-house, shop, building, market, or other place," where any carcase was deposited for sale; it was held that the latter word was not confined to places *ejusdem generis* with those which preceded it. The earlier passage, giving authority to enter "any place," obviously required that the same word should receive an equally extensive meaning in the subsequent passage (*a*). Sec. 53, Public Health Act, 1848 (*b*), which imposed a penalty for making any "sewer, drain, privy, cesspool, ashpit, building, or other work, contrary to the provisions of the Act," included, under the word "building," not only constructions of a character similar to those previously mentioned, but also dwelling-houses (*c*). And where a special Act passed in 1767 authorised the owner of a bridge to take a toll on "every coach, chariot, berlin, hearse, chaise, chair, cabash, wagon, wain, dray, cart, car, or other carriage whatsoever," the *ejusdem generis* principle was not applied, and, on the ground

(*a*) *Young* v. *Grattridge*, L. R. 4 Q. B. 166. See also *Harris* v. *Jenns*, 30 L. J. M. C. 183.

(*b*) Repealed by 38 & 39 Vict. c. 55, s. 343, Sched. V., pt. 3.

(*c*) *Pearson* v. *Kingston* (1865), 35 L. J. M. C. 36. See *Morish* v. *Harris*, 35 L. J. C. P. 101.

that the Legislature intended every vehicle passing over the bridge to pay toll, a bicycle was held to be a "carriage" within the Act (*a*).

When justices, empowered to prepare a standard for an equal county rate, were authorised for this purpose to direct overseers, assessors of rates, and other persons having the r[illegible]agement of the rates or valuations, to make returns of the annual value of the property in the parish, and to require "the said overseers, assessors, collectors, and any other persons whomsoever," to produce parochial and other rates and valuations, "and other documents in their custody or power," the context showed that the final generic expression was not confined to official, but extended to private, persons (*b*). So, where an Act imposed a rate on a variety of tenements and buildings which were enumerated, and on "other buildings and hereditaments, meadow and pasture excepted," the exception appended to the concluding general words showed that the latter were used in their widest sense, and were not limited in meaning by the particular terms which preceded them (*c*).

(*a*) *Cannan* v. *Abingdon* (1900), 69 L. J. Q. B. 517. *Comp. Plymouth Tramway Co.* v. *General Tolls Co.*, 75 L. T. 467. But see *Simpson* v. *Teignmouth Bridge Co.*, 72 L. J. K. B. 204; *Smith* v. *Kynnersley*, 72 L. J. K. B. 357.

(*b*) *R.* v. *Doubleday*, 3 E. & E. 501.

(*c*) *R.* v. *Shrewsbury Gas Co.*, 1 L. J. M. C. 18.

Further, the general principle in question applies only where the specific words are all of the same nature. Where they are of different genera, the meaning of the general word remains unaffected by its connection with them. Thus, where an Act made it penal to convey to a prisoner, in order to facilitate his escape, "any mask, dress, or disguise, or any letter, or any other article or thing," it was held that the last general terms were to be understood in their primary and wide meaning, and as including any article or thing whatsoever which could in any manner facilitate the escape of a prisoner, such as a crowbar (*a*). Here, the several particular words "disguise" and "letter," exhausted the whole genera; and the last general words must be understood, therefore, as referring to other genera.

The general object of the Act, also, sometimes requires that the final generic word shall not be restricted in meaning by its predecessors. Thus, 17 Geo. III. c. 56, s. 10, which, after reciting that stolen materials used in certain manufactures were often concealed in the possession of persons who had received them with guilty knowledge, and that the discovery and conviction of the offenders was in consequence difficult, proceeded to authorise justices to issue search warrants for

(*a*) *R.* v. *Payne*, 35 L. J. M. C. 170. See also *Shillito* v. *Thompson*, 1 Q. B. D. 12.

purloined materials suspected to be concealed "in any dwelling-house, outhouse, yard, garden, or other place," was held to include, under the last word, a warehouse which was a mile and a half from the dwelling-house (*a*). Though such a warehouse would probably not be usually considered as *ejusdem generis* with a "dwelling-house," coupled with its enumerated dependencies, it was reasonable, having regard to the preamble and the general object of the statute, to think that the warehouse was within the contemplation of the Legislature, as it was a very likely place for the concealment against which the enactment was directed; and a narrower construction would have restricted the effect, instead of promoting the object of the Act. The requirement of s. 32, 5 & 6 Will. IV. c. 76 (*b*), that municipal voting papers should be signed by the voter, and state the name of the "street, lane, or place," in which the property was situated in respect of which he claimed to vote, was considered satisfied by a statement of the parish where the property lay; the object of the provision being, apparently, the identification of the voter (*c*).

Several decisions on a recent enactment are

(*a*) *R.* v. *Edmundson* (1859), 28 L. J. M. C. 213.

(*b*) Repealed by 45 & 46 Vict. c. 50, s. 5.

(*c*) *Per* Lord Campbell and Crompton J., *R.* v. *Spratley*, 6 E. & B. 363. See *Lowther* v. *Bentinck*, L. R. 19 Eq. 166.

instructive examples of the application of the above-mentioned rules, as to the effect of words of analogous meaning on each other, and of specific words on the more general one, which closes the enumeration of them; as well as of their subordination to the more general principle of gathering the intention from a review of the whole enactment, and giving effect to its paramount object. The 16 & 17 Vict. c. 119, s. 5, after reciting that a kind of gaming had lately sprung up, to the demoralisation of improvident persons, by opening places called betting-houses or offices, enacts, for the better snppression of them, that any person who, being "the owner or occupier of any house, office, room, or place," should "open, keep, or nse," or "knowingly permit" it to be used for the purposes of betting, should be liable to a penalty of £50, and to an action for the recovery of any deposit made with him in respect of the bet. The Exchequer Chamber held that a man who habitually resorted to a certain spot nnder a tree in Hyde Park, and there made bets, was not the "occupier" of the place within the meaning of the Act, as that expression derived a meaning from the one with which it was coupled, which implied some legal and exclusive title to the place (*a*). Again, where the owners of a racecourse knowingly permitted the

(*a*) *Doggett* v. *Catterns* (1865), 34 L. J. C. P. 159. See also *Thwaites* v. *Coulthwaite* (1896), 65 L. J. Ch. 238.

public, on the payment of an entrance fee, to enter an uncovered enclosure adjacent to a racecourse where race meetings were held, most of whom went for the purpose of backing horses with bookmakers, who were admitted on the same terms as the public, and had no special rights in the enclosure, the House of Lords held that the enclosure so used was not "a place opened, kept or used for betting with persons resorting thereto" within the Act (*a*). But a temporary wooden structure, erected on a piece of ground rented by the person who used it for betting purposes, though unroofed and not fixed to the soil, was held to be a "place" within the Act (*b*); and in another case, a man who carried on the same business, standing on a stool sheltered under a large umbrella on which was printed an indication of the business, was held to be the "occupier of a place" within the Act; as he had in fact appropriated it for his proceedings, though he paid no rent and had no greater right to stand on the spot than any others of the public who were admitted (*c*). In order that a case may come

(*a*) *Powell* v. *Kempton Racecourse Co.* (1899), 68 L. J. Q. B. 392.

(*b*) *Shaw* v. *Morley*, 37 L. J. M. C. 105.

(*c*) *Bows* v. *Fenwick* (1874), 43 L. J. M. C. 107, approved in *Powell* v. *Kempton Racecourse Co.*, sup.; and applied in *Thwaites* v. *Coulthwaite* (1896), 65 L. J. Ch. 238. See similar

within s. 1 of this Act, it is not necessary that the receipt of the money should take place at the house, or office, or even within the United Kingdom (*a*).

Analogous to the rules above considered is another, that when words descriptive of the rank of persons or things are used in a descending order according to rank, the general words superadded to them do not include (though standing alone they would do so) persons or things of a higher rank or importance than the highest named, if there be any lower species to which they can apply. In such a case, the general word is taken not as generic, but as including only what is lower in the genus than the lowest specified. Thus, s. 3, 13 Eliz. c. 10, which avoided conveyances by masters and fellows of colleges, deans and chapters

cases *Galloway* v. *Maries*, 51 L. J. M. C. 53, criticised in *Powell* v. *Kempton Racecourse Co.*, sup. p. 599; *Liddell* v. *Lofthouse*, 65 L. J. M. C. 64; *M'Inany* v. *Hildreth*, 66 L. J. Q. B. 376; *R.* v. *Humphreys*, 67 L. J. Q. B. 534; *Brown* v. *Patch*, [1899] 1 Q. B. 892; *Belton* v. *Busby*, 68 L. J. Q. B. 859; *Tromans* v. *Hodkinson*, 72 L. J. K. B. 21; *R.* v. *Deaville*, Id. 272. See also, in connection with similar enactments, *Langrish* v. *Archer*, 52 L. J. M. C. 47; *Taylor* v. *Smetten*, 52 L. J. M. C. 101.

(*a*) *Lennox* v. *Stoddart* (1902), 71 L. J. K. B. 747. It should be noted that s. 5 of the Betting Act, 1853, is *not* impliedly repealed by s. 1 of the Gaming Act, 1892. See *Lennox* v. *Stoddart*.

of cathedrals, parsons, vicars, and "others having any spiritual or ecclesiastical living," does not include bishops (*a*).

Chap. 28, Statutes of Marlbridge, 52 Hen. III., which gave a right of action in certain cases to "abbots, priors, and other prelates of the Church," did not, according to Lord Coke, include bishops; because, among other reasons, the bishop is of a higher degree than an abbot (*b*). It may be presumed that there were prelates of a lower degree than abbots and priors, otherwise the generic expression so construed would have been without effect. To avoid this the rule in question would be rejected, and the general term would receive its full and natural meaning, and include the higher denominations (*c*). Duties imposed, under the general head of "metals" upon "copper, brass, pewter, and tin, and on all other metals not enumerated," would not include the higher metals of gold or silver, which are commonly known as precious metals (*d*).

The 22 & 23 Car. II. c. 25 (*e*), which empowered the lords of "manors and other royalties" to

(*a*) *Archbp. of Canterbury's Case*, 2 Rep. 46b; *Copland* v. *Powell*, 1 Bing. 373; *Cope* v. *Barber*, L. R. 7 C. P. 393.

(*b*) 2 Inst. 151, 457, 478; 2 Rep. 46b.

(*c*) 2 Inst. 137.

(*d*) *Cashe* v. *Holmes* (1831), 2 B. & Ad. 592, *per* Parke J.

(*e*) Repealed by 1 & 2 Will. IV. c. 32, s. 1.

grant a deputation to a gamekeeper, was limited to the lords of such royalties as are inferior to manors; for if a royalty of a higher nature had been meant, it would have preceded the term "manor" (*a*).

2 Westm. c. 47, which prohibited salmon-fishing from Lady-day to St. Martin's, in "the waters of the Humber, Owse, Trent, Done, Arre, Derewent, Wherfe, Nid, Yore, Swale, Tese, Tine, Eden, and all other waters wherein salmons be taken," was considered as including, in the final general expression, only rivers inferior to those enumerated, and therefore as not comprising *nobile illud flumen*, the Thames (*b*). It does not appear whether the rivers specified were named in order of descending importance. An Act (since repealed) which punished cruelty to any "horse, mare, gelding, mule, ass, ox, cow, heifer, sheep, or other cattle," was held not to include a bull (*c*).

It was, indeed, once thought that in 14 Geo. II. c. 6 (*d*), which made it a capital felony to steal sheep or "other cattle," this last expression was "much too loose" to include any other cattle than those already specified, viz., sheep, but this

(*a*) *Ailesbury* v. *Pattison*, 1 Doug. 28. See also *Evans* v. *Stevens* (1791), 4. T. R. 224, 459.

(*b*) 2 Inst. 478.

(*c*) 3 Geo. IV. c. 71; *Hill, Exp.* (1827), 33 R. R. 664; 3 Car. & P. 225.

(*d*) Repealed 7 & 8 Geo. IV. c. 27, s. 1.

extreme strictness of construction may be, perhaps, best attributed to the excessive severity of the law in question (*a*).

A statute which spoke of indictments before justices of the peace and "others having power to take indictments," was understood, on the general ground under consideration, as not applying to the Superior Courts (*b*). But 11 & 12 Vict. c. 42 (*c*), which authorises justices of the peace to inquire into indictable offences committed on the high seas or abroad, and to bind the witnesses to appear at the next "court of Oyer and Terminer, or jail delivery, or superior court of a County Palatine, or the Quarter Sessions," would authorise a justice to hold an inquiry into an offence committed by a Colonial Governor in his colony, which is triable by the Queen's Bench. That court was included in the words, "court of Oyer and Terminer" (*d*).

SECTION VI.—MEANING OF SOME PARTICULAR EXPRESSIONS.

It may be convenient to mention, in conclusion, the meaning in which a few words and expressions

(*a*) 1 Bl. Comm. 88. *Comp. Child* v. *Hearn*, L. R. 9 Ex. 176; *Fletcher* v. *Sondes*, 30 R. R. 32; *R.* v. *Paty*, 2 W. Bl. 721; *Wright* v. *Pearson*, L. R. 4 Q. B. 582.

(*b*) 2 Rep. 46b. (*c*) Secs. 1 (1) and 2.

(*d*) *R.* v. *Eyre* (1868), L. R. 3 Q. B. 487.

in frequent use in statutes are, in general, understood.

Unless the contrary intention appears, in statutes passed after 1850, words importing the masculine gender include females, the singular includes the plural, and the plural the singular; the expression "person" a "body corporate" (*a*); the word "county" means also county of a town or of a city; the word "land" includes messuages, tenements, and hereditaments, houses, and buildings of any tenure; the words "oath," "swear," and "affidavit," include affirmation, declaration, affirming and declaring, in the case of persons by law allowed to declare or affirm, instead of swearing; and the word "month" means calendar month (*b*). But "six months" may sometimes mean the period between two feast days, as between Michaelmas and Lady-day (*c*). Half a year consists of 182, and a quarter of a year of 91, days (*d*).

Expressions of time in an Act of Parliament mean (unless it is otherwise specifically stated)

(*a*) *Mousell* v. *L. & N. W. Ry. Co.*, [1917] 2 K. B., at p. 842.

(*b*) Interpretation Act, 1889, 52 & 53 Vict. c. 63, ss. 1, 3, 4.

(*c*) See *Morgan* v. *Davies*, 3 C. P. D. 260. See, however, generally, *Walker* v. *Constable*, 3 Wils. 25; *Rogers* v. *Hull Dock Co.*, 34 L. J. Ch. 165; *Wilkinson* v. *Calvert*, 47 L. J. C. P. 679; *Barlow* v. *Teal*, 54 L. J. Q. B. 400.

(*d*) Co. Litt. 135b; 6 Rep. 61b; Cro. Jac. 167.

in Great Britain, Greenwich mean time, and in Ireland, Dublin mean time (*a*). But "statutory time" in summer is one hour in advance of Greenwich mean time (*b*). In the computation of time, distinctions have been made by the Courts which were founded chiefly on considerations of convenience and justice. The general rule, anciently, seems to have been that both terms or endings of the period given for doing or suffering something were included; but when a penalty or forfeiture was involved in non-compliance with a condition within the given time, the time was reckoned by including one and excluding the other of the terminal days (*c*). A distinction was afterwards made, depending on whether the point from which the computation was to be made was an act to which the person against whom the time ran, was privy or not. Thus, if the time ran "from" when he was arrested, or received a notice of action, it might justly be computed as including the day of that event; but not so, if it ran from the death of another person (*d*); a fact

(*a*) 43 & 44 Vict. c. 9.

(*b*) 6 & 7 Geo. V. c. 14; 6 & 7 Geo. V. c. 45. These provisions as to time have been extended by Order in Council to the Isle of Man.

(*c*) De Morgan, Comp. Alm. cited in Sir G. C. Lewis' Obs. and Reas. in Politics, vol. I. 387 n.

(*d*) *Per* Sir W. Grant, *Lester* v. *Garland*, 15 Ves. 253; *per* Parke B., *Young* v. *Higgon*, 6 M. & W. 53; *Newman* v. *Hardwicke*,

of which he would not, as in the previous cases, necessarily be cognisant, or, in other words, in such and cognate cases the exact meaning is signified by the phrase "from and after" (*a*). But it has also been laid down that when a period of time allowed to a person is included between the dates of two acts to be done by another person, as where it is enacted that no action shall be brought against a justice until notice of the intention to bring it has been given to him a month before the writ is issued, both the terminal days are to be excluded (*b*). The notice having been given on the 28th of April, the action, it was held, was rightly brought on the 29th of May; what was requisite was that two days of the same number should not be comprised in the computation (*c*). An Act which received

3 Nev. & P. 368. Insurance against accidents for twelve months "from" Nov. 24th, 1887, covers an accident occurring on Nov. 24th, 1888; *South Staffordshire Tramways Co.* v. *The Sickness & Accident Assurance Association* (1890), 60 L. J. Q. B. 47, to the contrary *Glassington* v. *Rawlins* (1800), 3 East, 407; applied *Migotti* v. *Colvill* (1878), 48 L. J. M. C. 48.

(*a*) *Sheffield Corp.* v. *Sheffield Electric Light Co.*, [1898] 1 Ch., at p. 209.

(*b*) 24 Geo. II. c. 44, s. 1. *Per* Alderson B., *Young* v. *Higgon* (1840), 6 M. & W. 54. See *Pellew* v. *Wonford*, 9 B. & C. 134; *Blunt* v. *Heslop*, 47 R. R. 664; *R.* v. *West Riding*, 23 R. R .421; *Weeks* v. *Wray*, L. R. 3 Q. B. 212.

(*c*) *Freeman* v. *Read*, 30 L. J. M. C. 123 See also *Webb* v. *Fairmaner*, 7 L. J. Ex. 140; *R.* v. *Price*, 8 Moo. P. C. 203; *Migotti* v. *Colvill*, 4 C. P. D. 233; *Southam, Re*, 51 L. J. Ch. 207.

the Royal assent on August 9, 1899, gave a company power to take lands, which was to cease after three years from the passing of the Act. The company served a notice to treat for the purchase of lands on August 9, 1902; it was held that the notice was served in time, it being now a well-established rule that where a particular time is given, from a certain date, within which an act is to be done, the day of the date is to be exoluded (*a*).

Again, when so many "clear days" (*b*), or so many days "at least" (*c*) are given to do an act, or "not less than" so many days are to intervene, both the terminal days are excluded from the computation (*d*). In other cases, it would seem, the rule is to exclude the first and include the last day (*e*). In order to satisfy the provision of s. 1,

(*a*) *Goldsmiths Co.* v. *West Metrop. Ry.*, 72 L. J. K. B. 931.

(*b*) *R.* v. *Herefordshire Jus.*, 3 B. & Ald. 581; *Liffin* v. *Pitcher*, 6 Jur. 537. See *Walker* v. *Crystal Palace Gas Co.*, 60 L. J. Q. B. 781. Dissented from in *The Courier* (1891), 61 L. J. P. 11; *O'Hara* v. *Elliott* (1893), 62 L. J. Q. B. 317.

(*c*) *Zouch* v. *Empsey*, 4 B. & Ald. 522; *R.* v. *Salop*, 8 A. & E. 173.

(*d*) *Railway Sleepers Co., Re*, 29 Ch. D. 204; *Robinson* v. *Waddington*, 18 L. J. Q. B. 250; *McQueen* v. *Jackson*, 72 L. J. K. B. 606; *Emmerson* v. *Oliver*, 43 Sc. L. R. 291.

(*e*) See Archb. Pr. p. 66, 25th ed.; *Radcliffe* v. *Bartholomew*, [1892] 1 Q. B. 161; 61 L. J. M. C. 63; *Williams* v. *Burgess*, 12 A. & E. 635. Sundays have been held included in computation

Bankruptcy Act, 1890 (now s. 1, Bankruptcy Act, 1914), which enacts that a debtor commits an act of bankruptcy if execution has been levied by seizure of his goods and the sheriff has held them for 21 days—it is necessary that the sheriff should hold the goods for 21 whole days, excluding the day of seizure (*a*).

When a statute requires that something shall be done "forthwith," or "immediately," or even "instantly," it would, probably, be understood as allowing a reasonable time for doing it (*b*). An application to deprive a plaintiff of costs, which must be made "at the trial," was deemed made in time, when made an hour after the trial was over, and the judge was trying another cause (*c*).

unless expressly excepted, *R.* v. *Middlesex JJ.* (1843), 2 Dowl. (N. S.), at p. 724. But see R. S. C., Ord. LXIV. r. 2; and *Milch* v. *Frankau*, [1909] 2 K. B. 100.

(*a*) *Re North*, [1895] 2 Q. B. 264.

(*b*) See *Toms* v. *Wilson*, 32 L. J. Q. B. 382; *Brighty* v. *Norton*, Id. 38; *Forsdike* v. *Stone*, L. R. 3 C. P. 607; *per* Cockburn C.J., *Griffith* v. *Taylor*, 2 C. P. D. 202; *Massey* v. *Sladen*, L. R. 4 Ex. 13; *R.* v. *Aston*, 19 L. J. M. C. 236; *Hancock* v. *Somes*, 28 L. J. M. C. 196; *Costar* v. *Hetherington*, Id. 198; *per* Rolfe B., *Thompson* v. *Gibson*, 10 L. J. Ex. 243; *per* Cockburn C.J., *R.* v. *Berkshire Jus.*, 48 L. J. M. C. 137. *Comp. Exp. Sillence*, 47 L. J. Bank. 87; *Gibbs* v. *Stead*, 8 B. & C. 533; *Tennant* v. *Bell*, 16 L. J. M. C. 31; *Lowe* v. *Fox*, 15 Q. B. D. 667. See further, Stroud's Judicial Dictionary, tit. "FORTHWITH" and "IMMEDIATELY."

(*c*) Order LXV. R. S. C.; *Kynaston* v. *Mackinder*, 47 L. J. Q. B.

If the statute require some act to be done periodioally and reourrently once in a certain spaoe of time, as, for instance, the inspection of the boilers of steamers once in six months, it would probably be understood to mean that not more than six months should elapse hetween tho two acts. It would not be satisfied hy dividing the year into two equal periods, and doing the aot once in the beginning of the first, and once at the end of the second period (*a*). A repealed Act whioh imposed a penalty for absence for more than a certain time in any one year, means not a calendar year computed from the 1st of January, hut a year computed back from the day when the action for the penalty was hrought (*b*).

It used to be laid down as a general rule that Courts refused to take notice of the fraction of a day, for the uncertainty, which is always the mother of confusion and contention (*c*): and in civil cases, a judicial act, suoh as a judgment, is taken conclusively to have heen done at the first

76. See also *Page* v. *Pearce*, 10 L. J. Ex. 434. *Comp. R.* v. *Berks*, 4 Q. B. D. 469.

(*a*) *Virginia & Maryland St. Nav. Co.* v. *U. S.*, Taney & Campbell's Maryland Rep. 418.

(*b*) 43 Geo. III. c. 84, repealed and re-enacted with restrictions as to non-residence by 1 & 2 Vict. c. 106, s. 32; *Cathcart* v. *Hardy* (1814), 2 M. & S. 534.

(*c*) *Clayton's Case*, 5 Rep. 1b.

moment of the day (*a*). But as regards the acts of parties, including in this expression acts which, though in form judicial, are in reality the acts of parties, the Courts do notice such fractions, whenever it is necessary to decide which of two events first happened (*b*). Thus, they will notice the hour when a party issued a writ of summons, or filed a bill, or delivered a declaration, or the sheriff seized goods (*c*). A person who was keeping a dog at noon without a license would not escape from conviction by procuring a license at one p.m. (*d*). Where the title of the Crown and of the subject accrue on the same day, the title of the Crown is preferred (*e*).

Sundays are included in computations of time, except when the time limited is less than six days,

(*a*) *Shelley's Case*, 1 Rep. 93b; *Wright* v. *Mills*, 28 L. J. Ex. 223. See also *Re North*, [1895] 2 Q B. 264.

(*b*) *Per* Grove J., *Campbell* v. *Strangeways*, 3 C. P. D. 107; *per* Lord Mansfield, *Combe* v. *Pitt*, 3 Burr. 1434; *per* Patteson J., *Chick* v. *Smith*, 8 Dowl. 340; *per* Cur., *R.* v. *Edwards* (1853), 23 L. J. Ex. 42; *Marshall* v. *James* (1874), 43 L. J. C. P. 281; *Migotti* v. *Colville* (1878), 48 L. J. M. C. 48; *Tomlinson* v. *Bullock*, 4 Q. B. D. 230; *Clarke* v. *Bradlaugh*, 8 Q. B. D. 63. See further, p. 739, inf.

(*c*) 2 Lev. 141, 176; and *per* Cur., *R.* v. *Edwards*, sup.

(*d*) *Campbell* v. *Strangeways*, 3 C. P. D. 107.

(*e*) *A.-G.* v. *Capell*, 2 Show. 636; *R.* v. *Giles*, 8 Price, 293; *Giles* v. *Grover*, 36 R. R. 27; *R.* v. *Edwards* (1853), 23 L. J. Ex. 42.

in which case the Sunday is excluded (*a*). It has been held, however, that where an Act making no mention of Sunday required that a recognisance should be entered into in two days after notice of appeal, and the notice was given on a Friday, recognisances on the following Monday were too late; though Sunday was the last day, and they could not be entered into then (*b*). "Daily" includes Sundays (*c*). Of course, when an Act expressly excludes Sunday, the days given for doing an act are working days only (*d*).

A continuing act, such as trespass or imprisonment, dates, in the computation of the time allowed for bringing an action in respect of it, from the day of its termination (*e*). So, a

(*a*) R. S. C., Ord. LXIV., r. 2.

(*b*) *Simpkin, Exp.* (1859), 29 L. J. M. C. 23; *Peacock* v. *R.*, 27 L. J. C. P. 224.

(*c*) *London C. C.* v. *S. Metropolitan Gas Co.*, 73 L. J. Ch. 136.

(*d*) *Pease* v. *Norwood*, L. R. 4 C. P. 235; *Hicks, Exp.*, L. R. 20 Eq. 143.

(*e*) *Massey* v. *Johnson*, 12 East, 67; *Hardy* v. *Ryle*, 9 B. & C. 603; *Collins* v. *Rose*, 8 L. J. Ex. 273; *Pease* v. *Chaytor*, 32 L. J. M. C. 121; *Whitehouse* v. *Fellowes*, 30 L. J. C. P. 305. As to Subsidence, see *Darley Main Colliery Co.* v. *Mitchell*, 11 App. Cas. 127; *Crumbie* v. *Wallsend Loc. Bd.*, [1891] 1 Q. B. 503. See, however, *Wallace* v. *Blackwell*, 25 L. J. Ch. 644; *Eggington* v. *Lichfield*, 24 L. J. Q. B. 360. As to Continuing Nuisance, see cases in *Bathishill* v. *Reed*, 25 L. J. C. P. 290, and *Whitehouse* v. *Fellowes*, sup. As to Encroachment, *Coggins* v.

bankrupt remaining abroad with intent to defeat his creditors commits a fresh act of bankruptoy every day (*a*).

Distances were formerly measured by the nearest and most usnal road or way (*b*); and this is nndouhtedly the popular manner of measuring them (*c*). But if the nearest practicable mode of acoess were adopted, should it he a carriage-way, or a bridle-path, or a footpath? If the way were by a tidal river, the distanoe might vary every hour of the day (*d*). Unless a contrary intention appears, distanoes will, "for the purposes of any Act passed after" 1st January, 1890, he measured in a straight line on a horizontal plane (*e*); indeed, without enactment, that would seem a nniversal rule for all Acts, without distinction (*f*).

In the Interpretation Act, 1889, and every suh-

Bennett, 2 C. P. D. 568; *Rumball* v. *Schmidt*, 8 Q. B. D. 603; *Welsh* v. *West Ham* (*Mayor*), [1900] 1 Q. B. 324.

(*a*) *Bunny, Exp.*, 26 L. J. Bank. 83.

(*b*) 1 Hawk. 54. *Comp.* 23 L. J. C. P. 144 n.

(*c*) *Per* Coleridge J., *Lake* v. *Butler*, 5 E. & B. 97.

(*d*) *Per* Lord Campbell, *Lake* v. *Butler*, sup. See *Stokes* v. *Grissell*, 14 C. B. 678; *Jewell* v. *Stead*, 25 L. J. Q. B. 294; *R.* v. *Saffron Walden*, 15 L. J. M. C. 115; *Duignan* v. *Walker*, 28 L. J. Ch. 867; *Mouflet* v. *Cole*, L. R. 8 Ex. 32; *Coulbert* v. *Troke*, 1 Q. B. D. 1.

(*e*) 52 & 53Vict. c. 63, s. 34.

(*f*) *Lake* v. *Butler*, 5 E. & B. 97; *Jewell* v. *Stead*, 25 L. J. Q. B. 294. As to the general measurement of distance, see *Mouflet* v. *Cole*, 42 L. J. Ex. 8.

sequent Act, the expression "person," unless the contrary intention appears, includes any body of persons corporate or unincorporate (*a*), and the same expression includes any body corporate in the construction of any previous enactment relating to an offence punishable on indictment or summary conviction (*b*).

In every Act expressions referring to writing, unless the contrary intention appears, are to be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form (*c*).

In every Act subsequent to 1866, unless the contrary intention appears, the word "parish" means, as regards England and Wales, a place for which a separate poor rate is or can be made, or a separate overseer appointed (*d*).

An offence made punishable, in the language of our old statutes, by "judgment of life or member," is thereby made a felony (*e*); but when the judgment is "forfeiture of body and goods," or to be

(*a*) 52 & 53 Vict. c. 63, s. 19. And see *Mousell Bros.* v. *L. & N. W. Ry.* (1918), 87 L. J. K. B. 82.

(*b*) 52 & 53 Vict. c. 63, s. 2 (1).

(*c*) Id. s. 20.

(*d*) Id. s. 5.

(*e*) 1 Hawk. 305.

at the King's will for body, lands, and goods, the offence is a misdemeanour only (*a*). When a "second offence" is the subject of distinct punishment, it is an offence committed after conviction of a first (*b*). When a case is made triable, or a penalty recoverable in "a Court of Record," the Supreme Court of Judicature alone, but not the Quarter Sessions, is intended (*c*). The punishment of "fine and ransom" is a single pecuniary penalty (*d*), and when to be imposed "at the King's pleasure," this is to be done in his Courts and by his justices (*e*). When imprisonment is provided, immediate imprisonment is generally understood (*f*), and "forfeiture" means forfeiture to the Crown, except when it is imposed for wrongful detention or dispossession; in which cases the forfeiture goes to the benefit of the party wronged (*g*).

(*a*) Co. Litt. 391; 3 Inst. 145.

(*b*) 2 Inst. 468, which was relied on and applied in *R.* v. *South Shields Licensing Jus.* (1911), 80 L. J. K. B. 809.

(*c*) 6 Rep. 19b, 2 Hale, 29; Jenk. Cent. 228.

(*d*) 1 Inst. 127a.

(*e*) 1 Hale, 375.

(*f*) 8 Rep. 119b; *comp.* 11 & 12 Vict. c. 43, s. 25.

(*g*) 1 Inst. 159a, 11 Rep. 60b.

CHAPTER XII.

SECTION 1.—IMPLIED ENACTMENTS—NECESSARY INCIDENTS AND CONSEQUENCES.

Passing from the interpretation of the language of statutes, it remains to consider what intentions are to be attributed to the Legislature, where it has expressed none, on questions necessarily arising out of its enactments.

Although, as already stated (p. 148), the Legislature is presumed to intend no alteration in the law beyond the immediate and specific purposes of the Act, these are considered as including all the incidents or consequences strictly resulting from the enactment. Thus, when the Legislature imposes upon the promoters of a railway or other undertaking an obligation to construct and maintain works, it necessarily follows that they must bear the cost of construction and maintenance, unless there be an express or plainly implied provision to the contrary (*a*). An Act (*b*) which

(*a*) *West India Improvement Co.* v. *A. G. of Jamaica*, [1894] A. C. 243.

(*b*) 9 Geo. I. c. 22 (The Black Act), repealed by 7 & 8 Geo. IV. c. 27, s. 1.

declared an offence felony would impliedly give it all the incidents of felony; and it would make it an offence to be an accessory before or after it (*a*). Where an Act directs that a new offence which it creates shall be tried by an inferior Court according to the course of the common law, the inferior Court tries it as a Common Law Court, subject to all the incidents of common law proceedings, and subject therefore to removal by writs of error, habeas corpus, and certiorari (*b*). Where the widow of a copyholder became entitled to dower by custom, it was held that she became entitled to all the incidents of dower, such as, among others, to damages, under the Statute of Merton, when deforced of her dower (*c*), and to the same right of thirds in her husband's copyholds as, at common law, she had in his freeholds, so that her thirds in his copyholds would be unaffected by any alienation by him (*d*). Where trustees were appointed by statute to perform duties which would, of necessity, continue without limit of time, it was held that from the nature

(*a*) 1 Hale, 632, 704; *Coalheavers' Case* (1768), 1 Leach, 66. See also *R.* v. *Reyce* (1767), 4 Burr., at p. 2075.

(*b*) *Per* Lord Mansfield, *Hartley* v. *Hooker* (1777), 2 Cowp. 524.

(*c*) 20 Hen. III.; *Shaw* v. *Thompson*, 4 Rep. 30b.

(*d*) *Doe d. Riddell* v. *Gwinnell*, 10 L. J. Q. B. 212; *Powdr[illegible]* v. *Jones*, 24 L. J. Ch. 123.

of the powers given to them, they were impliedly made a corporation (*a*). When a local authority had statutory powers to "recover" expenses, it was thereby also impliedly empowered not only to sue for them, but to sue in its collective designation, although not incorporated (*b*). The right of shareholders to "inspect" and "peruse" a register of debenture stock, impliedly carries with it the right to take copies. The enactment might otherwise confer a mere illusory right (*c*). The Bankruptcy Acts, in requiring a bankrupt to answer self-criminating questions relative to his trade and affairs, made his answers subject to the general rules of the law of evidence, and conse-

(*a*) *Newport Trustees, Exp.*, 16 Sim. 346; *Comp. Williams* v. *Lords of Admiralty*, 11 C. B. 420; *Rivers* v. *Adams*, 3 Ex. D. 361. See also *Tone Conservators* v. *Ash*, 10 B. & C. 349, and *Jeffreys* v. *Gurr*, 36 R. R. 769, where incorporation was implied from the circumstance that there would otherwise be no means of enforcing the rights given by the statute. *Comp. Salford (Mayor)* v. *Lancashire C. C.* (1890), 25 Q. B. D. 384; 59 L. J. Q. B. 576.

(*b*) *Mills* v. *Scott*, L. R. 8 Q. B. 496.

(*c*) 26 & 27 Vict. c. 118, s. 28; *Mutter* v. *Eastern & Midlands Ry.*, 57 L. J. Ch. 615; *Nelson* v. *Anglo-American Land Co.*, 66 L. J. Ch. 112; *Perkins* v. *London & N. W. Ry.*, 1 Ry. & Can. Traffic Cas. 327; *Ormerod* v. *St. George's Iron Works*, [1908] 1 Ch. 505, C. A.; but this implied right to take copies is negatived by an express provision as to mode of obtaining copies, *Balaghât Gold Co., Re*, 70 L. J. K. B. 866. See also R. 27 (18) Ord. LXV., R. S. C., 1883.

quently admissible in evidence against him, even in criminal proceedings. To hold otherwise would have been, in effect, to suppose that the Legislature, in expressly changing the law which had hitherto protected him from answering, intended also to make the further change, by mere implication, of suspending, *pro tanto*, the ordinary rule as regards the admissibility of self-prejudicing statements (*a*).

The Judgments Extension Act, 1868 (31 & 32 Vict. c. 45), which provided for the execution, in Scotland and Ireland, of judgments recovered in England, was considered as having impliedly abolished the rule of procedure which required that a plaintiff residing out of the jurisdiction should give security for costs; the logical reason for the rule (which was, that if the verdict were against the plaintiff, he would not be within the reach of the process of the Court for costs) having been swept away by the enactment (*b*).

So, the owner or master of a ship is tacitly relieved from liability for the injuries done by the ship through the acts or neglect of a pilot, where

(*a*) *R.* v. *Scott* (1856), 25 L. J. M. C. 128; *R.* v. *Widdop* (1872), 42 L. J. M. C. 9; *R.* v. *Erdheim* (1896), 65 L. J. M. C. 176; *Sankey, Re*, 59 L. J. K. B. 238.

(*b*) *Raeburn* v. *Andrew* (1874), 43 L. J. Q. B. 73. Principle not applied *Howe Machine Co., In re* (1889), 41 Ch. D. 118 (but order subsequently discharged).

the employment of the latter is compulsory by law; the pilot performing a duty imposed by statute, and being neither appointed by nor under the control of the owner or master (*a*).

An Act which simply creates a corporation, impliedly gives it the general legal attributes of one, among which is an ordinary power to mako contraots (*b*); but, speaking generally, its powers are only those which are expressly conferred, or which, by necessary implication, are included in the express powers; whilst under the Companies Acts, 1862 and 1867, replaced by Companies (Consolidation) Aot, 1908, the powers of a Company are further restricted by its Memorandum of Association (*c*). A contract entered into by a Company beyond its competency could not be ratified even by the unanimous assent of the shareholders,

(*a*) *Carruthers* v. *Sydebotham*, 16 R. R. 392; *The Maria*, 1 Rob. W. 95; *The Agricola*, 2 Rob. W. 10; *Lucey* v. *Ingram*, 9 L. J. Ex. 196; *The Clan Gordon*, 7 P. D. 190; *Comp. The China*, 7 Wallace, 67. As to General Law of Pilotage, see 2 & 3 Geo. V. c. 31.

(*b*) See *Ashbury &c. Co.* v. *Riché*, 44 L. J. Ex. 185; *Broughton* v. *Manchester Waterworks*, 22 R. R. 278; *Shears* v. *Jacob*, L. R. 1 C. P. 513, and the cases collected in *S. of Ireland Colliery* v. *Waddle*, L. R. 3 C. P. 463; 4 Id. 617.

(*c*) Id. See also *London C. C.* v. *A.-G.* (1902), 71 L. J. Ch. 268; *East Anglian Ry. Co.* v. *Eastern Counties Ry. Co.*, 21 L. J. C. P. 23; *South Yorkshire Ry. Co.* v. *Great N. Ry. Co.*, 22 L. J. Ex. 305; *A.-G.* v. *G. E. Ry.*, 48 L. J. Ch. 428; *A.-G.* v. *Mersey Ry.*, 76 L. J. Ch. 568.

for this would be an attempt to do what the Act of Parliament prohibits (*a*).

"The difference between a Statutory Corporation and a Corporation incorporated by Royal Charter is well settled. The former can do such acts *only* as are authorised, directly or indirectly, by the statute creating it; the latter, speaking generally, can do everything that an ordinary individual can do. If, however, the Corporation by Charter be a Municipal Corporation, then they are subject to the restrictions imposed by the Municipal Corporations Act, 1882, and will be restrained from applying their borough fund to purposes not authorised by that Act (*b*).

Where an Act provided that the costs and expenses incidental to passing it, should be paid by the Metropolitan Board, but did not state to whom they should be paid, it was held that they were payable to the promoters only, and

(*a*) *Per* Lord Cairns, *Ashbury &c. Co.* v. *Riché*, L. R. 7 H. L. 672; 44 L. J. Ex. 197.

(*b*) *A.-G.* v. *Newcastle-upon-Tyne and N. E. Ry.*, 58 L. J. Q. B. 558, 560; 23 Q. B. D. 492, 497; *A.-G.* v. *Tynemouth Corp.* (1898), 67 L. J. Q. B. 489; *A.-G.* v. *L. C. C.* (1901), 70 L. J. Ch. 367, C. A. *Per* Farwell J., *A.-G.* v. *Manchester*, 75 L. J. Ch. 334; see also *per* Swinfen Eady J., *British S. Africa Co.* v. *De Beers Mines*, 79 L. J. Ch. 345, affirmed 80 L. J. Ch. 65; reversed in H. L. (without affecting the above dictum), W. N. (1911), 245.

not to agents and other persons employed by them (*a*).

A private Act which, after annexing a rectory to the deanery of Windsor, recited that the dean's residence at the latter place would oblige his frequent absence from the rectory, and required him to appoint a curate to reside there, was deemed to give him, by implication, an exemption from residence (*b*).

But this extention of an enactment is confined to its strictly necessary incidents or logical consequences. When, for instance, a statute requires the performance of a service, it implies no provision that the person performing it shall be remunerated (*c*). An Act which empowered justices to discharge an apprentice from his apprenticeship, if ill-treated by his master, would not inferentially empower them to order a return of the premium; for however just it might be that such a return should be made, and convenient that it should be ordered by the tribunal which cancelled the indenture, such a power was not the logical or necessary

(*a*) *Wyatt* v. *Metrop. Bd. of Works* (1862), 31 L. J. C. P. 217. Distinguished in Haddon's (Ld.) Estate Act, W. N. (1889), 96, C. A.

(*b*) *Wright* v. *Legge*, 6 Taunt. 48.

(*c*) *Per* Lord Abinger, *Jones* v. *Carmarthen* (1841), 8 M. & W. 605; *R.* v. *Hull*, 22 L. J. Q. B. 324; *R.* v. *Allday*, 26 L. J. Q. B. 292. See also *Alresford* v. *Scott*, 7 Q. B. D. 210.

incident or result of that which was expressly conferred (*a*). Money received by the treasurer of a trading club on account of the club is none the less the property of the members as beneficial owners, because the club was formed in contravention of s. 4, Companies Act, 1862, and has consequently no legal existence as a company, association, or co-partnership (*b*). Where a gas company is required by statute to supply gas to the public lamps in a town from sunset to sunrise at a fixed annual sum per lamp, the burners to consume not less than a certain amount of gas per hour, there is no implied provision that on failure of the supply on certain days it is only to be entitled to a smaller sum (*c*). The Tithe Act, 1836, which authorised a tenant who paid the tithe rent-charge to deduct the amount from the rent next due, gave a tenant no implied right to sue the landlord for the payment, the landlord not being liable to pay the tithe (*d*). And s. 13, Stannaries Act, 1869 (*e*), which gives power to a cost-book

(*a*) *R.* v. *Vandeleer*, 1 Stra. 69; *East* v. *Pell*, 8 L. J. M. C. 33.

(*b*) 25 & 26 Vict. c. 89, repealed s. 1, Companies (Consolidation) Act, 1908; *R.* v. *Tankard*, [1894] 1 Q. B. 548.

(*c*) *Richmond Gas Co.* v. *Richmond Corp.*, [1893] 1 Q. B. 56.

(*d*) 6 & 7 Will. IV. c. 71, s. 80; *Dawes* v. *Thomas*, [1892] 1 Q. B. 414. As to land tax, see *Andrew* v. *Handcock* (1819), 21 R. R. 569; 1 Brod. & Bing. 37. As to when payable by tenant, *Parish* v. *Sleeman* (1860), 29 L. J. Ch. 96; *Manning* v. *Lunn* (1846), 2 Car. & K. 13.

(*e*) 32 & 33 Vict. c. 19.

mining company to bring an action against a shareholder for unpaid calls, in the name of their purser, does not consequently authorise the purser to present a bankruptcy petition in his own name on behalf of the company against a shareholder in respect of a judgment recovered by him in such action (*a*). A County Council incorporated under the Local Government Act, 1888, is a purely statutory body, and has not the powers of a municipal or common law corporation, and therefore the possession of statutory powers to purchase and work tramways does not empower it to work omnibuses in connection with the tramways (*b*).

Where a statute requires a thing to be done, but does not impose a specific fine for not doing it, it is not for the Court inferentially to draw the conclusion that a penalty is incurred (*c*).

SECTION II.—IMPLIED POWERS AND OBLIGATIONS.

Where an Act confers a jurisdiction, it impliedly grants, also, the power of doing all such acts, or employing such means, as are essentially necessary to its execution. *Cui jurisdictio data est, ea*

(*a*) *Nance, Re*, [1893] 1 Q. B. 590. See *Guthrie* v. *Fisk*, 3 B. & C. 178; *Sunderland Bd.* v. *Frankland*, L. R. 8 Q. B. 18.

(*b*) 51 & 52 Vict. c. 41; *London C. C.* v. *A.-G.* (1902), 71 L. J. Ch. 268.

(*c*) *Hammond* v. *Pulsford*, [1895] 1 Q. B. 223.

quoque concessa esse videntur, sine quibus jurisdictio explicari non potuit (*a*). Thus, an Act which empowers justices to require persons to take an oath as special constables, or give them jurisdiction to inquire into an offence, impliedly empowers them to apprehend the persons who unlawfully fail to attend before them for those purposes; otherwise the jurisdiction could not be effectually exercised (*b*). So, where an inferior Court is empowered to grant an injunction, the power of punishing disobedience to it by commitment is impliedly conveyed by the enactment; for the power would be useless if it could not be enforced (*c*). And it is laid down that where a statute empowers a justice to bind a person over, or to cause him to do something, and the person, in his presence, refuses, the justice has impliedly authority to commit him to jail till he complies (*d*). An Act which authorises the making of by-laws, impliedly authorises the annexation of a reasonable

(*a*) Dig. 2, 1, 2.

(*b*) *Oath before Justices*, 12 Rep. 131; 2 Hawk. c. 13, s. 15; *Bane* v. *Methuen*, 27 R. R. 546. *Comp. R.* v. *Twyford*, 5 A. & E. 430. See also *Hawe* v. *Planner*, 1 Saund. 10; *Burton* v. *Henson*, 11 L. J. Ex. 348. See also Statutes relating to Special Constables, 1 & 2 Will. IV. c. 41; 45 & 46 Vict. c. 50; 4 & 5 Geo. V. c. 61; and see *Commissioner of Metrop. Police* v. *Hancock*, [1916] 1 K. B. 190.

(*c*) *Mortin, Exp.* (1879), 4 Q. B. D. 212, 491.

(*d*) 2 Hawk. c. 16, s. 2.

pecuniary penalty for their infringement, recoverable (in the absence of other provision) by action or distress (*a*).

The enactment that at the election of poor law guardians the votes should be taken and returned as the Commissioners should direct, impliedly authorised the appointment of a returning officer (*b*). An Act which, after empowering the parishioners to elect an assistant overseer, provided that this power should cease where an assistant overseer had been appointed by the Poor Law Commissioners (who had previously no power to make such an appointment), and while their order of appointment remained in force, would seem to have given the Commissioners that power by implication (*c*). Where a judgment was recovered in a County Court against its bailiff, a power to appoint a special bailiff to levy execution in that case was held to be necessarily incident to the Court (*d*).

So it was held that when a duty was imposed

(*a*) 5 Rep. 63a; 2 Kyd. Corp. 156; *Hall* v. *Nixon*, L. R. 10 Q. B. 152; *R.* v. *Sankey*, 3 Q. B. D. 379. See 52 & 53 Vict. c. 63, s. 32.

(*b*) 4 & 5 Will. IV. c. 76, s. 40 (repealed in part; see 7 & 8 Vict. c. 101); *R.* v. *Oldham*, 16 L. J. M. C. 110.

(*c*) *R.* v. *Greene*, 21 L. J. M. C. 137. See *Cullen* v. *Trimble*, sup. p. 242.

(*d*) *Bellamy* v. *Hoyle* (1875), L. R. 10 Ex. 220.

on a county, and costs necessarily arose in ques tioning the propriety of an act done to enforc that duty—as, for instance, in disputing th liability of a fine imposed on the county fo neglect to repair the county jail—the justices who had the superintendence of the county purse had impliedly a right to defray such costs ou of it (*a*).

In the same way, when powers, privileges, o property are granted by statute, everything indis pensable to their exercise or enjoyment is im pliedly granted also, as it would be in a gran between private persons. Thus, as by a privat grant or reservation of trees, the power of ente ing on the land where they stand, and of cuttin them down and carrying them away, is impliedl given or reserved; and by the grant of mines, th power to dig them (*b*); so, under a Parliamentary authority to build a bridge on a stranger's land the grantee tacitly acquires the right of erecting

(*a*) *R.* v. *Essex*, 4 T. R. 591, *per* Lord Kenyon; *R.* v. *Whit* 14 Q. B. D. 358. See *A.-G.* v. *Brecon*, 10 Ch. D. 204; *Leit Council* v. *Leith Harbour Commissioners*, [1899] A. C. 508; *Brook Jenkins & Co.* v. *Torquay Corp.*, [1902] 1 K. B. 601; (1901), 7 L. J. K. B. 109. See also as to the implied right of a tradin company to borrow, *General Auction Co.* v. *Smith*, 60 L. J. Ch 723; *per* Buckley J., *Mansel* v. *Cobham*, 74 L. J. Ch. 327 *Hinds* v. *Buenos Ayres Tramways Co.*, 76 L. J. Ch. 17.

(*b*) Shep. Touchst. 89; Roll. Ab. Incidents, A.

on the land, the temporary scaffolding which is essential to the execution of the work (*a*). Where an express statutory right is given to make and maintain something requiring support, the statute, in the absence of a controlling context, must be taken to mean that the right of support shall accompany the right to make and maintain. If the Act does not provide any means of obtaining compensation for the loss occasioned to the landowner by his having to leave support, this is an argument against the Legislature having intended to give such right; but if it contains provisions under which compensation can be obtained, it needs a strong context to show that the right of support is not given (*b*).

So, if the Legislature authorises the construction

(*a*) *Clarence Ry. Co.* v. *G. N. of England Ry. Co.*, 12 L. J. Q. B. 145.

(*b*) *L. & N. W. Ry. Co.* v. *Evans*, 62 L. J. Ch. 1, approved in *Clippens Oil Co.* v. *Edinburgh Water Trustees*, 73 L. J. P. C. 32. *Comp. Ruabon Co.* v. *G. W. Ry.*, [1893] 1 Ch. 427; *Bell* v. *Earl of Dudley*, 64 L. J. Ch. 291. As to the construction of Acts, ex. gr. Inclosure Acts, involving, or relating to, a severance of the Surface from the Subjacent Minerals, see *per* Lord Blackburn, *Davis* v. *Treharne*, 50 L. J. Q. B. 667, cited by Lord Selborne L.C., *Love* v. *Bell*, 53 L. J. Q. B. 258; *Dixon* v. *White*, 8 App. Cas. 833; *Bank of Scotland* v. *Stewart*, 28 Sc. L. R. 735; *New Sharlston Collieries* v. *Westmorland*, 73 L. J. Ch. 341 n.; *Butterknowle Colliery Co.* v. *Bishop Auckland Co-operative Soc.*, 75 L. J. Ch. 541.

of a work or the use of a particular thing for a particular purpose, the permission carries with it impliedly an exemption from responsibility for any damage arising from the use, without negligence (*i.e.*, the neglect of some care which one is bound by law to exercise towards somebody (*a*)); as, for instance, when haystacks are fired by locomotive engines running on railways (*b*). But to the general rule, that statutory authority absolves from responsibility where no negligence is shown, see the Railway Fires Act, 1905 (5 Edw. VII. c 11). Where, however, trustees and official persons are authorised to execute a work, such to raise a road, to lower a hill, or to make a drain, they are impliedly authorised, if necessary for the due execution of their task, to

(*a*) *Per* Bowen L.J., *Thomas* v. *Quartermaine* (1887), 18 Q. B. D., at p. 694. This case considered and explained in *Amos* v. *Duffy* (1890), 6 T. L. R. 339, C. A.

(*b*) *R.* v. *Pease*, 38 R. R. 207; *Vaughan* v. *Taff Vale Ry. Co.*, 29 L. J. Ex. 247 (questioned by Bramwell L.J. in *Powell* v. *Fall*, 5 Q. B. D. 601); *Freemantle* v. *London & N. W. Ry. Co.*, 31 L. J. C. P. 12; *Blyth* v. *Birmingham Waterworks Co.*, 25 L. J. Ex. 212; *Dunn* v. *Birmingham Canal Co.*, L. R. 8 Q. B. 42; *Hammersmith Ry. Co.* v. *Brand*, L. R. 4 H. L. 171; *A.-G.* v. *Metrop. Ry. Co.*, [1894] 1 Q. B. 384; *Cracknell* v. *Thetford*, L. R. 4 C. P. 629; *Geddis* v. *Bann Co.*, 3 App. Cas. 454, *per* Lord Blackburn; *National Telephone Co.* v. *Baker*, [1893] 2 Ch. 186; *Stretton's Derby Brewery Co.* v. *Derby* (*Mayor*), [1894] 1 Ch. 431; *Canadian Pac. Ry. Co.* v. *Roy*, [1902] A. C. 220.

prejudice the rights, or injure the property of third persons without liability for action provided they do no more than the statute under which they are acting authorises and requires them to do (*a*). But in like circumstances a private individual or corporation would be liable whether he were guilty of negligence or not (*b*). Where Commissioners have to construct works, and may levy rates to pay for their construction, there is an implication, unless it be clearly negatived by something in the Act to the contrary, that it is within their power to levy a rate to provide for a liability incurred through the work being done negligently by their servants (*c*). And a statute which authorises a Local Authority to employ a proper number of persons to act as firemen, impliedly authorises such firemen to preserve order during a fire, and to exclude such persons from the burning premises as it may be necessary to exclude, so as to prevent the inconvenience which would arise

(*a*) *Per* Williams J., *Whitehouse* v. *Fellowes* (1861), 10 C. B. N. S., at p. 780; 30 L. J. C. P. 305.

(*b*) *Taff Vale Ry.* v. *Amalgamated Society of Railway Servants*, [1901] A. C. 426; Farwell J., at p. 432.

(*c*) *Gallsworthy* v. *Selby Commissioners*, [1892] 1 Q. B. 348; *Mersey Docks* v. *Gibbs* (1866), L. R. 1 H. L. 93; *Southampton Bridge Co.* v. *Southampton Local Board*, 28 L. J. Q. B. 41; *R.* v. *Williams* (1884), 9 App. Cas. 418; 53 L. J. P. C. 64; *R.* v. *Selby Dam Drainage Commissioners* (1892), 61 L. J. Q. B. 372.

from overcrowding or interference with thei work (*a*).

But when an Act confers such powers, it also impliedly requires that they shall be exercised only for the purposes for which they were given, and subject to the conditions which it prescribes, and also with due skill and diligence, and in a way to prevent a needless mischief or injury (*b*). A power, for instance, to establish asylums for the sick would not authorise the establishment of a small-pox hospital in such a place or circumstances as to be a common nuisance (*c*).

Again, a grant of fish in a pond does not carry with it an authority to dig a trench to let the

(*a*) *Carter* v. *Thomas*, [1893] 1 Q. B. 673.

(*b*) *Jones* v. *Bird*, 24 R. R. 579; *Grocers' Co.* v. *Donne*, 43 R. R. 591; *Clothier* v. *Webster*, 31 L. J. C. P. 316; *Trower* v. *Chadwick*, 43 R. R. 659; *Lawrence* v. *G. N. Ry. Co.*, 20 L. J. Q. B. 293; *Collins* v. *Middle Level Commrs.*, L. R. 4 C. P. 279; *Geddis* v. *Bann Co.* (1878), 3 App. Cas. 430; *Canadian Pac. Ry. Co.* v. *Roy* (1901), 71 L. J. P. C. 51. But see *Southwark Water Co.* v. *Wandsworth Board*, [1898] 2 Ch. 603; and *East Fremantle Corp.* v. *Annois* (1901), 71 L. J. P. C. 39.

(*c*) 30 Vict. c. 6, s. 5 (extended 39 & 40 Vict. c. 61, ss. 40, 41); *Metrop. Asylums District* v. *Hill* (1881), 50 L. J. Q. B. 353; *Canadian Pac. Ry. Co.* v. *Parke*, 68 L. J. P. C. 89, which last two cases were cited and applied by Joyce J. in *Metrop. Water Board* v. *Solomon*, 77 L. J. Ch. 520. See also *Rapier* v. *London Tramways Co.*, [1893] 2 Ch. 588; *Vernon* v. *St. James's Vestry*, 16 Ch. D. 449. *Comp. L. B. & S. C. Ry.* v. *Truman*, 11 App. Cas. 45 and *Jordeson* v. *Sutton &c. Gas Co.*, [1899] 2 Ch. 217.

water out to take the fish, since they can be taken by nets or other devices, without doing such damage (*a*); and, in like manner, a statute does not give by implication any powers not absolutely essential to the privilege or property granted. An authority to construct a sewer on the land of another, for instance, would not carry with it the right to lateral support from the land, if it was possible to construct an adequate sewer independent of such support (*b*). An Act of Parliament does not, by authorising persons to repair and cleanse a navigable river, impliedly authorise them to dig, in the bed of the river (the soil of which is vested in the owner of a several fishery) a canal or passage to a new wharf, for the convenience of their barges, to the prejudice of the fishery (*c*). Authority given to make a railway for the passage of waggons, engines and other carriages, does not impliedly give power to use locomotives on it; as other means of traction may be employed. Therefore, if injury arises from the use of a locomotive, under such circumstances, the general rule of law implies, that a person who uses a dangerous thing is liable to an action for any injury which he does

(*a*) Finch's Disc. on Law, 63; *Gearns* v. *Baker*, L. R. 10 Ch. 355.

(*b*) *Metrop. Board* v. *Metrop. Ry. Co.*, 38 L. J. C. P. 172; *Roderick* v. *Aston Local Board*, 5 Ch. D. 328.

(*c*) *Partheriche* v. *Mason*, 2 Chit. 658.

by it (*a*). Ordinary railway, gas, and mining companies, on this principle, have no implied power to draw, accept, or indorse bills or notes; for this is not essential to their business (*b*). So, it has been held that a Colonial legislative body has, impliedly granted to it by the Act or charter which constitutes it, the power of removing and keeping excluded from the chamber where it carries on its deliberations, all persons who interrupt its proceedings; for such a power is absolutely indispensable for the proper exercise of its functions. But a power of punishing such offenders for their contempt of its authority is not necessary for this purpose, and so is not granted by implication (*c*).

If land is vested by Act of Parliament in persons for public purposes, a power of conveying away any part of it would not be impliedly granted (*d*):

(*a*) *Jones* v. *Festiniog Ry. Co.* (1868), L. R. 3 Q. B. 733; *Guardians Armagh Union* v. *Bell*, [1900] 2 Ir. R. 371 (affirmed on appeal); *R.* v. *Bradford Navigation*, 34 L. J. Q. B. 191; *Powell* v. *Fall*, 5 Q. B. D. 597; *Gas Light & Coke Co.* v. *St. Mary Abbott's*, 15 Q. B. D. 1. See *Rylands* v. *Fletcher*, L. R. 3 H. L. 330.

(*b*) *Bateman* v. *Mid-Wales Ry. Co.*, L. R. 1 C. P. 499, and the cases collected there.

(*c*) *Keilley* v. *Carson*, 4 Moo. P. C. 63; *Fenton* v. *Hampton*, 11 Id. 347; *Brown, Re*, 33 L. J. Q. B. 193; *Doyle* v. *Falconer*, L. R. 1 P. C. 328; *Barton* v *Taylor* (1886) 55 L. J. P. C. 1; 11 App. Cas., at p. 203. See *Spilsbury* v. *Micklethwaite*, 9 R. R. 717; and *comp. Fielding* v. *Thomas* (1896), 65 L. J. P. C. 103.

(*d*) *Wadmore* v. *Dear* (1871), L. R. 7 C. P. 212; *Tepper* v.

"a parliamentary franchise of this kind is not a bit of property which the owner can dispose of just as he might a stick or a table or an acre of land; it is nothing of the kind" (*a*). So, where a statute prohibited bathing on the shore except from bathing machines, which the local authorities were empowered to license, that power did not entitle a licensed person to place a bathing machine on the shore without the consent of the owner of the shore (*b*).

The concession of privileges or powers often carries with it implied obligations. For instance, an Act which gives a power to dig up the soil of streets for a particular purpose, such as making a drain, impliedly casts on those thus empowered the duty of filling up the ground again, and of restoring the street to its original condition (*c*).

Nichols (1864), 34 L. J. C. P. 61; *Mulliner* v. *Midland Ry. Co.* (1879), 11 Ch. D. 611; *Ayr Harbour Trustees* v. *Oswald* (1883), 8 App. Cas. 623; *G. W. Ry.* v. *Solihull Rural Council* (1902), 86 L. J. 852, C. A.; *Stretford Union Council* v. *Manchester &c. Ry.* (1903), 1 L. G. R. 683.

(*a*) *Per* Cozens-Hardy M.R., *Eccles Corp.* v. *South Lancashire Tramways Co.*, 79 L. J. Ch. 765, in support of which dictum the learned judge cites from the judgment of Lord Herschell L.C. in *Edinburgh Street Tramways Co.* v. *Edinburgh*, 63 L. J. Q. B. 771.

(*b*) *Mace* v. *Philcox*, 33 L. J. C. P. 124.

(*c*) *Gray* v. *Pullen* (1864), 34 L. J. Q. B. 265; *Bower* v. *Peate* (1876), 45 L. J. Q. B. 446; *Groves* v. *Wimborne* (*Ld.*) (1898), 67 L. J. Q. B. 862.

If it imposed a liability on one person to keep in repair a work in the possession of another, it would be understood as impliedly imposing on the latter the obligation of giving notice of the needed repair to the party liable (*a*).

A public body, authorised to make a bridge or tow-path and to take tolls for its use, is impliedly bound to keep it in proper repair, as long as it takes the tolls and invites the public to use the work; or at least, to give those whom they invite to use it, due warning of the defect which makes it unfit for use (*b*).

If statutory authority is given to persons, primarily for their own benefit and profit rather than for any advantage which the public may incidentally derive, such as to cut through a highway and throw a bridge over the cutting, or to substitute a new road for the old one; the burden of maintaining the new work in repair would be impliedly cast on them, and not on the county or parish (*c*). Another duty which would also be

(*a*) *London & S. W. Ry. Co.* v. *Flower*, 1 C. P. D. 77; *Makin* v. *Watkinson*, L. R. 6 Ex. 25. See *Scaltock* v. *Harston*, 1 C. P. D. 106; *Brown* v. *G. E. Ry. Co.*, 2 Q. B. D. 406.

(*b*) *Winch* v. *Thames Conservators*, L. R. 9 C. P. 378; *Nicholl* v. *Allen*, 31 L. J. Q. B. 283; *Forbes* v. *Lee Cons. Board*, 4 Ex. D. 116. *Comp. Ching* v. *Surrey C. C.*, 78 L. J. K. B. 927, affd. 79 L. J. K. B. 481; *Morris* v. *Carnarvon C. C.*, 79 L. J. K. B. 670; *Gillow* v. *Durham C. C.*, 80 L. J. K. B. 380.

(*c*) *R.* v. *Kent*, 12 R. R. 330; *R.* v. *Lindsey*, 12 R. R. 529;

impliedly imposed on them by such an enactment would be that of protecting the public from any danger attending the use of the new work. If it was a swing bridge, for instance, they would be bound to take due precautions to prevent persons from attempting to cross it, while it was open (*a*). If the work was a railway, crossing a highway on a level, they would be impliedly bound to keep the crossing in a proper state to admit of the use of the highway by carriages, without damage to them (*b*).

And this implied obligation would not be excluded on the principle *expressum facit cessare tacitum*, by the fact that certain duties are expressly imposed by statute on railway companies who make such crossings; *ex. gr.*, to erect and maintain gates where the public road crosses the railway, and to employ men to open and shut them, and to keep them closed except when carriages have to cross (*c*). So, notwithstanding all such

R. v. *Kerrison*, 14 R. R. 491; *R.* v. *Ely* (1850), 19 L. J. M. C. 223; *Hertfordshire C. C.* v. *New River Co.* (1904), 74 L. J. Ch. 49; *North Staffordshire Ry. Co.* v. *Dale*, 27 L. J. M. C. 147; *Leech* v. *North Staffordshire Ry. Co.*, 29 L. J. M. C. 150; *Lancashire & Yorkshire Ry. Co.* v. *Bury*, 14 App. Cas. 417.

(*a*) *Manley* v. *St. Helen's Co.*, 27 L. J. Ex. 159.

(*b*) *Oliver* v. *N. E. Ry. Co.* (1874), L. R. 9 Q. B. 409. See *Jenner* v. *S. E. Ry.*, 55 S. J. 553.

(*c*) *Oliver* v. *N. E. Ry. Co.* (1874), sup.; *N. E. Ry. Co.* v. *Wanless*, L. R. 7 H. L. 12. See also *Wyatt* v. *G. W. Ry.* (1865), 34

express provisions, the company would be bound, by implication, to prevent all passage along the portion of the highway thus intersected, when it was dangerous to cross (*a*).

But power to pull down the wall of a house without causing unnecessary inconvenience would not impliedly involve the obligation of putting up a hoarding for the protection of the rooms exposed by the demolition (*b*). A statutory obligation so to do is, however, imposed by the London Building Act, 1894 (*c*).

Sometimes the express imposition of one duty impliedly imposes another. Thus, when it was enacted that no license for the sale by retail of beer, cider or wine, not to be consumed on the premises, should be refused except on one or more of four specified grounds, the obligation was imposed by implication on the justices, of stating on which of the specified grounds they based their refusal (*d*). The Ballot Act, 1872, which imposes,

L. J. Q. B. 204; distinguished in *Gorman* v. *Waterford &c. Ry.*, [1900] 2 Ir. R. 341, see p. 348.

(*a*) *Lunt* v. *London & N. W. Ry. Co.*, L. R. 1 Q. B. 277.

(*b*) *Thompson* v. *Hill* (1870), L. R. 5 C. P. 564.

(*c*) 57 & 58 Vict. c. ccxiii., s. 90 (2).

(*d*) 32 & 33 Vict. c. 27, s. 8 (repealed, 10 Edw. VII. and 1 Geo. V. c. 24, s. 112, Sched. 7); *R.* v. *Sykes* (1875), 1 Q. B. D. 52; 45 L. J. M. C. 39; *Smith, Exp.*, 3 Q. B. D. 374; *R.* v. *Chertsey JJ.* (1878), 47 L. J. M. C. 104.

in express terms, certain specific duties on the presiding officers at polling stations, casts also on those officers, by implication, the duty of being present at their stations during an election, and of providing the voters with voting papers bearing the official mark required by the Act (*a*).

A duty or right imposed or given to one, may also cast by implication a corresponding burthen on another, as in the case of the proviso in the Commission of the Peace, requiring the Quarter Sessions not to give judgment in cases of difficulty unless in the presence of one of the Judges of Assize; which impliedly requires the judge to give his opinion (*b*). So, the Charitable Trusts Amendment Act, 1855 (*c*), which enacts that it shall not be lawful for the trustees of a charity to make any grant otherwise than (among other things) with the approval of the Charity Commissioners, was considered as requiring the Commissioners to give their approval in a case where the grant was made before the Act was passed (*d*).

The grant of a privilege or of property to one, may sometimes impliedly give a right to another

(*a*) *Pickering* v. *James* (1873), L. R. 8 C. P. 489; considered in *Ackers* v. *Howard* (1886), 55 L. J. Q. B. 273.

(*b*) *Per* Cur., *R.* v. *Chantrell*, L. R. 10 Q. B. 587.

(*c*) 18 & 19 Vict. c. 124, s. 29 (repealed in part, 23 & 24 Vict. c. 136, s. 1).

(*d*) *Moore* v. *Clench* (1875), 1 Ch. D. 447; 45 L. J. Ch. 80.

person. Thus, an Act which empowered a hospital to take and hold lands by will, gift, or purchase, without incurring the penalties of the Mortmain Acts, was held to empower persons to devise or convey lands to it; it being considered that the Act would otherwise be nugatory (*a*). But power given to a corporation to take lands only avoided the necessity of obtaining a license to hold in mortmain, and did not affect the disability of the grantor (*b*). And an Act which gave one railway company power to purchase certain lands and to construct a railway according to the deposited plans and books of reference, would not give by implication to another company the correlative power to sell any of those lands to it (*c*).

Again, in giving judicial powers to affect prejudicially the rights of person or property, a statute is understood as silently implying, when it does not expressly provide, the condition or qualification that the power is to be exercised in accordance with the fundamental rules of judicial procedure, such, for instance, as that which requires that, before its exercise, the person sought to be

(*a*) *Perring* v. *Trail* (1874), 43 L. J. Ch. 775; *comp. Nethersole* v. *Indigent Blind*, 40 L. J. Ch. 26.

(*b*) *Mogg* v. *Hodges*, 2 Ves. sen. 52, cited in *Webster* v. *Southey* (1887), 36 Ch. D. 9.

(*c*) *R.* v. *S. Wales Ry. Co.*, 19 L. J. Q. B. 272.

prejudicially affected shall have an opportunity of defending himself (*a*).

On this ground, under the Poor Law Amendment Act, 1834, 4 & 5 Will. IV. c. 76, s. 27 (*b*), which authorises justices "at their just and proper discretion" to order out-door relief to an aged or infirm pauper who is unable to work, no such order could be made without summoning those on whom the order was to be made (*c*). So, where an Act authorised justices, where it appeared that the appointment of special constables had been occasioned by the behaviour of persons employed by railway or other companies, in executing public works, to make an order on the treasurer of the company to pay the special constables for their services, which order, if allowed by a Secretary of State, should be binding on the company; it was held that no such order could be validly made without giving the company notice, and an

(*a*) *Bagg's Case*, 11 Rep. 99; *R.* v. *Univ. of Cambridge*, Stra. 557; *Emerson* v. *Newfoundland*, 8 Moo. P. C. 157; *Exp. Ramshay*, 21 L. J. Q. B. 238; *Thorburn* v. *Barnes*, L. R. 2 C. P. 384; *Re Pollard*, L. R. 2 P. C. 106; *R.* v. *Jenkins*, 32 L. J. M. C. 1. "Neque Scythæ neque Sarmatæ ita unquam judicarunt, judicium ab unâ parte ferentes, absenti eo qui accusatur neque recusanti judicium."—Chrysostom, Epist. ad Innocentem.

(*b*) Repealed S. L. R., 1874.

(*c*) *R.* v. *Totnes Union* (1845), 14 L. J. M. C. 148.

opportunity of being heard against it (*a*). So an Act which gives a constable power to seize pirated copies of music, and provides that on the seizure of any such copies, a Court of summary jurisdiction shall, on proof that they are infringements of copyright, order them to be forfeited or destroyed, gives the Court no power in the absence of a summons duly served on the person from whom the music was seized (*b*). Again, where a Colonial enactment authorised the Governor to declare a lease forfeited, if it was proved to the satisfaction of a Commissioner that the lessee had failed to reside on the demised land, the Commissioner could not lawfully be satisfied without summoning the lessee and holding a judicial inquiry (*c*).

The Metropolis Management Act, 1855, which required that before laying the foundations of a building a seven days' notice should be given to the district board, and authorised that board to order the demolition of any building erected without such notice, was construed as impliedly imposing on the board the condition of either giving the presumed defaulter a hearing before making the order, or notice that the order had been made,

(*a*) 1 & 2 Vict. c. 80; *R.* v. *Cheshire Lines Committee*, L. R. 8 Q. B. 344.

(*b*) 2 Edw. VII. c. 15. See 6 Edw. VII. c. 36; *Francis, Exp.*, [1903] 1 K. B. 275.

(*c*) *Smith* v. *R.*, 3 App. Cas. 614.

so that he might remonstrate, or appeal, before proceeding to the demolition of his building; and a district board, which had confined itself to the letter of the Act, and had demolished a building respecting which it had received no notice, without first calling on the owner to show cause against its order for doing so, was held liable in an action, as a wrong-doer (*a*). A statute which required justices to issue a distress warrant to enforce a rate or other charge, even though it directed them to issue it "on proof of demand and non-payment," would nevertheless be construed as impliedly requiring that they should not do so, without first summoning the party against whom it was demanded, and giving him a hearing against the step proposed to be taken against him (*b*).

An Act which empowered a bishop, when it appeared to his satisfaction, either from his own knowledge or from proof laid before him, that the duties of a benefice were inadequately performed, to require the incumbent to appoint and pay a curate; and if he failed to comply within three months,

(*a*) 18 & 19 Vict. c. 120, s. 76 (amended 25 & 26 Vict. c. 102); *Cooper* v. *Wandsworth Board* (1863), 32 L. J. C. P. 185; *Clerkenwell Vestry* v. *Feary*, 24 Q. B. D. 703; *Hopkins* v. *Smethwick Local Board*, 24 Q. B. D. 712; *A.-G.* v. *Hooper*, [1893] 3 Ch. 484.

(*b*) See *Harper* v. *Carr*, 4 R. R. 440; *R.* v. *Hughes*, 3 A. & E. 425; *Painter* v. *Liverpool Gas Co.*, Id. 433.

himself to make the appointment and to fix th stipend; was considered as importing the sam condition of giving a hearing before exercising th power; and, therefore, as not authorising th bishop, even when acting on his own person knowledge, to issue the requisition (which was i the nature of a judgment) without having give the holder of the benefice an opportunity of bein heard (*a*).

A power to remove a person from his office o employment for lawful cause only, would, on th same principle, involve the condition that it wa to be exercisable only after a due hearing, or th opportunity of being heard, had been given to th person proposed to be removed (*b*). But it would of course, be different if the person was remov able arbitrarily and without any cause being assigned (*c*).

It is obvious that where an Act which creates new jurisdiction, gives any person dissatisfied witl

(*a*) *Capel* v. *Child* (1832), 37 R. R. 761; 1 L. J. Ex. 205 questioned by Alderson B. in *Hammersmith Rent Charge, R* (1849), 4 Ex. 94. See *Bonaker* v. *Evans*, 20 L. J. Q. B. 137 *Bartlett* v. *Kirwood*, 23 L. J. Q. B. 9. *Comp. Marquis of Abergavenny* v. *Llandaff* (*Bp.*) (1888), 20 Q. B. D. 460; 57 L. J. Q. B. 233.

(*b*) *R.* v. *Smith*, 13 L. J. Q. B. 166.

(*c*) *Teather, Exp.*, 19 L. J. M. C. 70; *R.* v. *Darlington School*, 14 L. J. Q. B. 67; *R.* v. *Bayly*, [1898] 2 Ir. R. 335, 347; *Sandys, Exp.*, 4 B. & Ad. 863.

its decision an appeal to another judicial authority, which is empowered to confirm or annul the decision, as to it shall appear just and proper, the right of being heard in support of his appeal is impliedly given to the appellant (*a*).

Under the provision of the first County Court Act (9 & 10 Vict. c. 95) (*b*), which empowered the judge, if satisfied on the hearing of a judgment debtor's summons that the judgment debtor had the means of paying his debt, to order him to pay it either in one sum or by instalments, and if he failed to obey, to commit him to jail; it was held that an order to pay by future instalments, and in default of paying any of them to be committed, was invalid; for it made the debtor liable to imprisonment for not making a payment at a future time, without then having an opportunity of defending himself. As the language of the Act was not inconsistent with the general principle that a person ought not to be punished without having had an opportunity of being heard, it was construed as tacitly embodying it. The judge could not properly exercise any discretion until the time of commitment (*c*).

(*a*) *R.* v. *Canterbury* (*Archbp.*), 28 L. J. Q. B. 154. See other instances, *Phillips' Charity, Re*, 9 Jur. 959; *Fremington School, Re*, 10 Jur. 512; *Davenport* v. *R.*, 3 App. Cas. 115.

(*b*) Repealed 51 & 52 Vict. c. 43, s. 188.

(*c*) See *Kinning's Case*, 10Q. B. 730; *Kinning* v. *Buchanan*,

It would be different where the statute gave a power of immediate commitment in default of immediate payment (*a*). And again, if the opportunity of defence was provided at another stage, there would be no adequate ground for thus implying the condition in question. For instance, when a statute provided that if a rent-charge was in arrear, it might be levied by distress, and that if it remained in arrear for 40 days and there was no distress, a judge, upon an affidavit of these facts, might order the sheriff to summon a jury to assess the arrears unpaid; it was held that such an order might well be made *ex parte*. The party subject to prejudice had his opportunity of defence before the sheriff (*b*). So, where an Act authorised justices to inquire and adjudge the settlement of a pauper lunatic, and to make an order on his parish to pay for his maintenance, and empowered the parish to appeal against any such order; it was held that the order might be made without giving the parish sought to be affected notice of the intended inquiries (*c*). And

8 C. B. 271; *Abley* v. *Dale*, 10 C. B. 62. See also *Hesketh* v. *Atherton*, L. R. 9 Q. B. 4; *Lovering* v. *Dawson*, L. R. 10 C. P. 711. *Comp. Stonor* v. *Fowle* (1887), 57 L. J. Q. B. 387; *Watson, In re* (1892), 62 L. J. Q. B. 85.

(*a*) *Arnold* v. *Dimsdale*, 22 L. J. M. C. 161.

(*b*) *Hammersmith Rent Charge, Re* (1849), 19 L. J. Ex. 66.

(*c*) *Monkleigh, Exp.*, 5 D. & L. 404.

an application to the Court by a trustee in bankruptcy for leave to prosecute a bankrupt for an offence under certain repealed sections of the Debtors Act, 1869 (*a*), was properly made *ex parte* and without notice to the bankrupt (*b*).

An Act which empowers two or more justices, or other persons (*c*), to do any act of a judicial, as distinguished from a ministerial, nature impliedly requires that they should all be personally present and acting together in its performance, whether to hear the evidence, or to view when they are to act on personal inspection (*d*); to consult together, and form their judgment (*e*); and in the case of justices authorised to try offences summarily, to abstain from exercising their jurisdiction when it appears that a *bonâ fide* claim of right or title is set up (*f*).

(*a*) See 8 Edw. VII. c. 15, s. 10 (1), and 4 & 5 Geo. V. c. 59, s. 168, Sched. 6.

(*b*) *Marsden, Exp.* (1876), 2 Ch. D. 786.

(*c*) So, directors of companies, *D'Arcy* v. *Tamar Ry. Co.* (1866), L. R. 2 Ex. 158; *Haycraft Gold Reduction & Mining Co., In re* (1900), 69 L. J. Ch. 497. But see *Duck* v. *Tower Galvanising Co.* (1901), 70 L. J. K. B. 625.

(*d*) *R.* v. *Cambridgeshire*, 4 A. & E. 111.

(*e*) *Billings* v. *Prinn*, 2 W. Bl. 1017; *R.* v. *Hamstall Ridware*, 3 T. R. 380; *R.* v. *Forrest*, Id. 38; *R.* v. *Winwick*, 8. T. R. 454; *Battye* v. *Gresley*, 8 East, 319; *Grindley* v. *Barker*, 4 R. R. 787; *Cook* v. *Loveland*, 5 R. R. 533; *R.* v. *Mills*, 2 B. & Ad. 578; *R.* v. *Totnes*, 18 L. J. M. C. 46; *R.* v. *Aldborough*, 18 L. J. M. C. 81.

(*f*) *Per* Blackburn J., *White* v. *Feast* (1872), L. R. 7 Q. B.

When the act to be performed is ministerial, it i
not necessary, on general principles, that the per
sons authorised to do it should meet together fo
the purpose; and the statute which gave such
authority would therefore not be construed a
impliedly requiring it (*a*).

When a new jurisdiction is given to an existing
Court to deal with new matter in a different mode
and a different procedure, it is understood, unless
the contrary be expressed or plainly implied, to be
intended to be exercised according to the general
inherent powers of the Court (*b*).

It has been already mentioned that when a power
is conferred to do some act of a judicial nature, or
of public concern and interest, there is implied an
obligation to exercise it, when the occasion for it
arises (*c*). This implied obligation is usually said
to modify the language creating the power, when
permissive, by making it imperative; but it seems
to be a matter of implied enactment, rather than
of verbal interpretation.

358; 41 L. J. M. C. 81; *Birnie* v. *Marshall* (1876), 35 L. T.
373; *Brooks* v. *Hamlyn* (1899) 79 L. T. 734.

(*a*) *Hopper, Re* (1867), L. R. 2 Q. B. 367. Explained in
Dawdy, In re (1885), 15 Q. B. D. 426; 54 L. J. Q. B. 474.

(*b*) *Dale's Case* (1881), 6 Q. B. D. 376.

(*c*) Sup. pp. 424-443.

SECTION III.—IMPERATIVE OR DIRECTORY.

When a statute requires that something shall be done, or done in a particular manner or form, without expressly declaring what shall be the consequence of non-compliance, the question often arises, what intention is to be attributed by inference to the Legislature? Where, indeed, the whole aim and object of the Legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other, no doubt can be entertained as to the intention. The enactment, for instance, of the Metropolitan Building Act, 1855 (*a*), that the walls of buildings should be constructed of brick, stone, or other incombustible material, though containing no prohibitory words, obviously prohibited by implication and made illegal their construction with any other (*b*). So, the directions in the rubrics of the Prayer Book for the performance of the rites and ceremonies of the Church, are equally imperative in prohibiting all omissions and additions (*c*). Again, where

(*a*) 18 & 19 Vict. c. 122, s. 12 (repealed, 57 & 58 Vict. c. ccxiii., s. 215, Sched. 4).

(*b*) *Stevens* v. *Gourley*, 29 L. J. C. P. 1.

(*c*) *Westerton* v. *Liddell* (1857), reported by Moore, p. 187; *Martin* v. *Maconochie* (1868), L. R. 2 P. C. 365; 38 L. J. Ecc. 187.

compliance is made, in terms, a condition precedent, to the validity or legality of what is done; as when, for example, the deed of a married woman was to take effect "when" the certificate of her acknowledgment of it was filed (*a*); or where in bankruptcy it was provided that no appeal should be entertained "unless" certain rules were complied with (*b*); the neglect of the statutory requisites would obviously be fatal. It is now, however, enacted by s. 147 (1) of the Bankruptcy Act, 1914, that no formal defect shall invalidate proceedings.

The reports are full of cases without any indications of intention; in some of which the conditions, forms, or other attendant circumstances, prescribed by the statute have been regarded as essential to the act or things regulated by it, and their omission has been held fatal to its validity; while in others, such prescriptions have been considered as merely directory, the neglect of which did not affect its validity, or involve any other consequence than a liability to a penalty, if any were imposed, for breach of the enactment (*c*). The propriety, indeed, of ever treating the pro-

(*a*) 3 & 4 Will. IV. c. 74, s. 86 (repealed, 45 & 46 Vict. c. 39, s. 7); *Jolly* v. *Hancock*, 22 L. J. Ex. 38.

(*b*) 32 & 33 Vict. c. 71 (repealed, 46 & 47 Vict. c. 52, s. 169); *Dickinson, Re* (1882), 51 L. J. Ch. 736.

(*c*) *Comp.* sup. p. 424 *et seq.*

visions of any statute in the latter manner has been sometimes questioned (*a*); but it is justifiable in principle as well as abundantly established by numerous authorities.

It has been said that no rule can be laid down for determining whether the command is to be considered as a mere direction or instruction involving no invalidating consequence in its disregard, or as imperative, with an implied nullification for disobedience, beyond the fundamental one that it depends on the scope and object of the enactment (*b*). It may, perhaps, be found generally correct to say that nullification is the natural and usual consequence of disobedience; but the question is in the main governed by considerations of convenience and justice (*c*), and when that result would involve general inconvenience or injustice to innocent persons, or advantage to those guilty of the negleot, without promoting the real aim and object of the enactment, such an intention is not to be attributed to the Legislature.

In the first place, a strong line of distinction may be drawn between cases where the prescriptions

(*a*) *Per* Martin B., *Bowman* v. *Blyth*, 7 E. & B. 47; Sedgwick on Interp. of Stats., p. 375.

(*b*) *Per* Lord Campbell, *Liverpool Borough Bank* v. *Turner*, 2 De G. F. & J. 507; *per* Lord Penzance, *Howard* v. *Bodington*, 2 P. D. 211.

(*c*) See *per* Lush J., *R.* v. *Ingall*, 2 Q. B. D. 208.

of the Act affect the performance of a duty, and where they relate to a privilege or power (*a*). Where powers or rights are granted, with a direction that certain regulations or formalities shall be complied with, it seems neither unjust nor inconvenient to exact a rigorous observance of them as essential to the acquisition of the right or authority conferred: and it is therefore probable that such was the intention of the Legislature. But when a public duty is imposed, and the statute requires that it shall be performed in a certain manner, or within a certain time, or under other specified conditions, such prescriptions may well be regarded as intended to be directory only in cases when injustice or inconvenience to others who have no control over those exercising the duty would result if such requirements were essential and imperative.

Taking the former class of cases, it seems that when a statute confers a right, privilege, or immunity, the regulations, forms, or conditions which it prescribes for its acquisition are imperative, in the sense that non-observance of any of them is fatal. Thus, where the repealed Engraving Copyright Act, 1734, gave to the designers of prints the sole right of printing them for 14 years after the day of publication, adding, "which (day) shall be truly engraved, with the name of

(*a*) See *per* Denman J., *Caldow* v. *Pixell*, 2 C. P. D. 562.

the proprietor, on each plate"; it was held that the neglect to comply with this provision was fatal to the copyright (*a*). So, under the repealed Copyright Act, 1842, that no proprietor of copyright in a book should be entitled to sue for its infringement unless he had made an entry at Stationers' Hall of the title and time of the first publication of the book, and the name and abode of the publisher, it was held that a suit was not maintainable, where the day of publication was not stated truly, or only the month was stated; or the publishers were not described correctly, that is, neither by the style of the firm, nor by the names of the individual partners (*b*). The innkeeper whose common law liability for the goods of his guests is limited, if he posts up a notice as required by 26 & 27 Vict. c. 41, does not obtain the exoneration, if his notice is inaccurate in any material particular (*c*). So it was held

(*a*) 8 Geo. II. c. 13, repealed 1 & 2 Geo. V. c. 46, s. 36, Sched. 2; *Newton* v. *Cowie*, 29 R. R. 541; *Brooks* v. *Cock*, 42 R. R. 348; *Avanzo* v. *Mudie*, 10 Ex. 203.

(*b*) 5 & 6 Vict. c. 45 (repealed 1 & 2 Geo. V. c. 46, s. 36, Sched. 2). See also 7 & 8 Vict. c. 12 (repealed 1 & 2 Geo. V. c. 46, s. 36, Sched. 2). For a disquisition on the Copyright Act, 1911, which consolidates the law of Copyright, see Clerk and Lindsell on Torts, Chap. XXI.; *Low* v. *Routledge*, 33 L. J. Ch. 717; *Wood* v. *Boosey*, L. R. 2. Q. B. 340; *Mathieson* v. *Harrod*, L. R. 7 Eq. 270; *Henderson* v. *Maxwell*, 5 Ch. D. 892.

(*c*) *Spice* v. *Bacon* (1877), 2 Ex. D. 463. See *Gregson* v. *Potter*, 4 Ex. D. 142; *Mather* v. *Brown*, 1 C. P. D. 596.

that a declaration made by a lodger under the repealed Lodgers' Goods Protection Act, 1871 (*a*), must rigidly comply with the provisions of that Act, which was made for the benefit of the landlord as well as the lodger, and consequently a declaration made at the time of levying one distress would not protect the lodger against a subsequent distress, but he must make a fresh declaration (*b*). A repealed Act which, in authorising the confinement of lunatics, prohibited their reception in asylums without medical certificates in a given form, setting forth several particulars, and among them, the street and number of the house where the supposed lunatic was examined, made a strict compliance with those provisions imperative; so that a certificate which omitted the street and number of the house where the examination took place, was held insufficient to justify the detention of the lunatic (*c*). Where it

(*a*) Repealed by 8 Edw. VII. c. 53, s. 8.

(*b*) 34 & 35 Vict. c. 79, s. 1; *Thwaites* v. *Wilding*, 52 L. J. Q. B. 734; *Godlonton* v. *Fulham & Hampstead Property Co.*, 74 L J. K. B. 242. The following are decisions under the Law of Distress Amendment Act, 1908: *Jarvis* v. *Hemmings (No.* 1), [1912] 1 Ch. 462; *Rogers, Eungblut & Co.* v. *Martin* (1910), 26 T. L. R. 459; affirmed, [1911] 1 K. B. 19, C. A. As to goods comprised in a hire purchase agreement, see *London Furnishing Co.* v. *Solomon* (1912), 28 T. L. R. 265; *Jay's Furnishing Co.* v. *Brand & Co.*, [1914] 2 K. B. 132; affirmed, [1915] 1 K. B. 458; but see *Hackney Furnishing Co.* v. *Watts* (1912), 28 T. L. R. 417.

(*c*) 16 & 17 Vict. c. 96. The care and treatment of lunatics

was enacted that a person who objected to a voter's qualification might be heard in support of his objection, if he had given notice to the voter; and it was provided that, besides the ordinary way of serving it, the notice might be sent by post, addressed to his place of abode "as described" in the list of voters prepared by the clerk of the peace; it was held that to send by post a notice, not to the address so given, which was incorrect, but to the true address, was not a compliance with the Act, and therefore that the objector could not be heard on mere proof of posting the notice (*a*).

Sec. 55, Merchant Shipping Act, 1854 (repealed, s. 24, Merchant Shipping Act, 1894), which enacted that ships should be transferred by an instrument in a form containing certain particulars, and executed with certain formalities, and registered, was deemed to render an unregistered mortgage of a ship inoperative (*b*); although

is now regulated by 53 & 54 Vict. c. 5. As to cases of mental deficiency, see 3 & 4 Geo. V. c. 28; *R.* v. *Pinder*, 24 L. J. Q. B. 148. *Comp. Shuttleworth, Re*, 16 L. J. M. C. 18.

(*a*) *Noseworthy* v. *Buckland*, 43 L. J. C. P. 27. See *Gifford* v. *St. Luke's, Chelsea* (1889), 24 Q. B. D. 141 (not followed in *Gage* v. *M'Daid*, [1898] W. N. 104); *Smith* v. *Huggett*, 31 L. J. C. P. 38; *Hinks* v. *Safety Lighting Co.*, 4 Ch. D. 607.

(*b*) *Per* Lord Campbell, *Liverpool Borough Bank* v. *Turner*, 30 L. J. Ch. 379. *Comp. Ward* v. *Beck*, 32 L. J. C. P. 113; *Stapleton* v. *Haymen*, 33 L. J. Ex. 170. See *The Andalusian* (1878), 3 P. D. 182; *Chasteauneuf* v. *Capeyron*, 7 App. Cas. 127.

there was no express declaration, as in the earlier and repealed Act *in pari materiâ*, that transfers in any other form should be null and void (*a*). So, it was held in one case, that s. 97 of the Companies Clauses Consolidation Act, 1845, which prescribes the form in which contracts "may" be entered into on behalf of companies, was imperative (*b*); but in another it was thought that, being in the affirmative, they did not take away pre-existing rights and powers, and that a contract, not complying with its provisions, but partly performed (*c*), might be enforced (*d*). When a company or public body is incorporated or established by statute for special purposes only, and is altogether the creature of statute law, the prescriptions for its acts and contracts are imperative and essential to their validity (*e*). If its articles of

(*a*) *Comp. Le Feuvre* v. *Miller*, 26 L. J. M. C. 175; as to mortgages of ships sold to foreigners, see s. 52, 6 & 7 Edw. VII. c. 48 (Merchant Shipping Act, 1906).

(*b*) *Leominster Canal Co.* v. *Shrewsbury &c. Ry. Co.* (1857), 26 L. J. Ch. 764.

(*c*) See sup. p. 454 *et seq.*

(*d*) *Wilson* v. *West Hartlepool Co.*, 34 L. J. Ch. 241. See *Green* v. *Jenkins*, 29 L. J. Ch. 505.

(*e*) *Cope* v. *Thames Haven &c. Co.*, 18 L. J. Ex. 345; *Diggle* v. *London & Blackwall Ry. Co.*, 19 L. J. Ex. 308; *Frend* v. *Dennett*, 27 L. J. C. P. 314. See also *Cornwall Mining Co.* v. *Bennett*, 29 L. J. Ex. 157; *Irish Peat Co.* v. *Phillips*, 30 L. J. Q. B. 363; *Young* v. *Leamington* (*Mayor*), 8 App. Cas. 517; *Bottomley's Case*, 16 Ch. D. 681. See further, sup. pp. 618, 619.

association prescribed the attestation of proxies the omission of this formality would vitiate them (*a*). Such a company, empowered to borrow by mortgage, under certain circumstances, not more than a given sum, to be applied in carrying out the Act, would be limited to its statutory power, and all borrowing not so expressly authorised would be invalid as regarded the company (*b*).

So, enactments regulating the procedure in Courts seem usually to be imperative and not merely directory (*c*). If, for instance, an appeal from a decision be given, with provisions requiring the fulfilment of certain conditions, such as giving notice of appeal and entering into recognisances, or transmitting documents within a certain time, a strict compliance would be imperative, and non-compliance would be fatal to the appeal (*d*). The 57 Geo. III.

(*a*) *Harben* v. *Phillips*, 23 Ch. D. 14; distinguished in *Browne* v. *La Trinidad* (1887), 37 Ch. Div. 1.

(*b*) *Wenlock* v. *River Dee Co.* (1885), 10 A. C. 354, H. L. (E.); *South Yorkshire Ry. Co.* v. *Great N. Ry. Co.*, sup. p. 619; *Chambers* v. *Manchester &c. Ry. Co.*, 33 L. J. Q. B. 268. *Comp. Cork and Youghal Ry. Co., Re* L. R., 4 Ch. 748. See *Coltman, Re*, 19 Ch. D. 64. As to an implied right to borrow, see *General Auction Estate and Monetary Co.* v. *Smith*, [1891] 3 Ch. 432, and sup. p. 626 n.

(*c*) See, however, inf. p. 672 *et seq.*

(*d*) *R.* v. *Oxfordshire*, 1 M. & S. 446; *R.* v. *Carnarvon*, 22 R. R. 636; *R.* v. *Bond*, 6 A. & E. 905; *R.* v. *Lancashire*, 27 L. J. M. C. 161; *Morgan* v. *Edwards*, 29 L. J. M. C. 108; *Woodhouse* v. *Woods*, 29 L. J. M. C. 149; *Fox* v. *Wallis*, 2 C. P. D.

c. 99 (*a*), which required that no action should be brought against a clergyman for any penalty incurred under it, until notice had been delivered to him, and also to the bishop "by leaving the same at the registry of his diocese," was held, with perhaps extreme rigour, not complied with by a delivery to the deputy registrar at the house of the latter, who carried it next day to the registry (*b*). The County Court rule, which required that in actions to recover land the summons should be delivered to the bailiff 40 days at least before the return day, and be served within 35 days before that day, was similarly held imperative; so that if the summons were not delivered to the bailiff in due time, though the latter should serve it in the prescribed time, the judge would have no jurisdiction to try the cause (*c*).

The provision of the Public Health Act, 1875, that "every appointment of an arbitrator under the Act when made on behalf of the local authority

45; *R.* v. *Anglesey Jus.*, [1892] 2 Q. B. 29; *Peacock* v. *The Queen*, 27 L. J. C. P. 224; *Aspinall* v. *Sutton*, 63 L. J. M. C. 205; *Simpkin, Exp.*, 29 L. J. M. C. 23.

(*a*) Repealed, 1 & 2 Vict. c. 106, s. 1.

(*b*) *Vaux* v *Vollans*, 38 R. R. 305; 4 B. & Ad. 525; referred to in *Howard* v. *Bodington* (1877), 2 P. D., at p. 211.

(*c*) *Barker* v. *Palmer*, 8 Q. B. D. 9. The rule was amended in 1883 so as to meet the point raised in this case. See also *Brown* v. *Shaw*, 1 Ex. D. 425; *Tennant* v. *Rawlings*, 4 C. P. D. 133; *Williams* v. *Swansea Canal Co.*, L. R. 3 Ex. 158.

shall be under their common seal, and on behalf of any other party under his hand," has similarly been held to be mandatory (*a*).

The same imperative effect seems, in general, presumed to be intended, even where the observance of the formalities is not a condition exacted from the party seeking the benefit given by the statute, but a duty imposed on a Court or public officer in the exercise of the power conferred on him; when no general inconvenience or injustice calls for a different construction. The 5 Eliz. c. 23, requiring that the writ *De Contumace Capiendo* shall be brought into the Queen's Bench, and be there opened in the presence of the judges, the omission of this apparently idle ceremony was deemed fatal to the validity of an arrest made in pursuance of the writ, though it had been enrolled in the Crown Office (*b*). An enactment which provided that every warrant issued by a Court should be under its seal, was equally imperative, and not only was a commitment under an unsealed warrant invalid, but the person who had obtained it without taking care that the Court performed

(*a*) 38 & 39 Vict. c. 55, s. 180; *Gifford and Bury, Re*, 57 L. J. Q. B. 181. As to jurisdiction of an arbitrator when one of the parties has withdrawn his notice disputing apportionment, see *Stoker* v. *Morpeth Corp.*, [1915] 2 K. B. 511.

(*b*) *Dale's Case* (1881), 6 Q. B. D. 376; note pp. 402, 403, as to repeal by necessary implication of the Act of Elizabeth.

its duty of sealing it, was held liable in damages t
the person arrested under it (*a*). This was hard c
the former, but it was essential for the latter tha
the warrant should be duly authenticated. So, th
strict observanoe of the Provision in the Publ
Worship Regulation Act, 1874, requiring that th
bishop shall send to the inculpated olergyman
copy of the representation of the illegal act
imputed to him, within 21 days, was held esser
tial to the validity of the proceedings subsequentl
taken against him; so that those proceedings wer
void where the copy had not been sent till after th
prescribed time (*b*). If oommissioners, authorise
to fix the boundaries of a parish, were required b
the Act to advertise the boundaries which theyfixed
and to insert them in their award, and the Ac
declared that the boundaries "so fixed" should b
conclusive; a variation between the boundaries se
forth in the award and those advertised woul
vitiate the award, as the requisites of the Act woul
not have been complied with (*c*). Where a statut
enacts that convictions or orders shall be in

(*a*) *Van Sandau, Exp.*, De G. 303. So, a rate under 11 & 1
Vict. c. 63, s. 149 (repealed, 38 & 39 Vict. c. 55, s. 343, Sched. V
pt. III.); *R.* v. *Worksop Board*, 34 L. J. M. C. 220; discusse
Smith v. *Southampton Corp.*, [1902] 2 K. B., at p. 250.

(*b*) *Howard* v. *Bodington* (1877), 2 P. D. 203.

(*c*) *R.* v. *Washbrook*, 4 B. & C. 732; *R.* v. *Arkwright*, 1
L. J. Q. B. 26.

certain form, it is peremptory and not merely directory (*a*). The provision of the Union Assessment Committee Act, 1862 (repealed in part as to London, 32 & 33 Vict. c. 67, ss. 74, 77), regarding the deposit of the valuation list for inspection was held obviously imperative: for the omission would have left persons aggrieved by any alterations, without a timely opportunity for appealing (*a*).

On the other hand, where the prescriptions of a statute relate to the performance of a public duty; and to invalidate acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those intrusted with the duty, without promoting the essential aims of the Legislature; such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or, in other words, as directory only. The neglect of them may be penal (*b*), indeed, but it does not affect the validity of the act done in disregard of them. It has often been held, for instance, when an Act ordered a thing to be done by a public body or public officers, and pointed out the specific time when it was to be done, that the Act was directory only, and might be complied with after the

(*a*) *R.* v. *Chorlton Union*, L. R. 8 Q. B. 5; *R.* v. *Ingall*, 2 Q. B. D. 199.

(*b*) See ex. gr. *Clarke* v. *Gant*, 22 L. J. Ex. 67.

prescribed time (*a*). Thus, the 13 Hen. IV. c. 7 which required justices to try rioters "within month" after the riot, was held not to limit th authority of the justices to that space of time, bu only to render them liable to a penalty fo neglect (*b*). To hold that an Act which require an officer to prepare and deliver to another office a list of voters, on or before a certain day, unde a penalty, made a list not delivered till a later da invalid, would, in effect, put it in the power of th person charged with the duty of preparing it, t disfranchise the electors; a conclusion too un reasonable for acceptance (*c*).

The Poor Law Amendment Act, 1834 (*d*), i providing that the Commissioners should direct th elections of one or more guardians for each paris included in the Union, did not make the constitu tion of the Board of Guardians invalid becaus one parish refused to elect a guardian (*e*). Th enactment in the Ecclesiastical Dilapidations Act

(*a*) *Per* Littledale J., *Smith* v. *Jones*, 1 B. & Ad. 334.

(*b*) *R.* v. *Ingram*, 2 Salk. 593.

(*c*) 5 & 6 Will. IV. c. 76 (repealed, 45 & 46 Vict. c. 50, s. 5) *R.* v. *Rochester* (1851), 7 E. & B. 910; *Hunt* v. *Hibbs*, 29 L. J Ex. 222; *Morgan* v. *Parry*, 25 L. J. C. P. 141; *Brumfitt* v *Bremner*, 30 L. J. C. P. 33; *R.* v. *Lofthouse*, L. R. 1 Q. B. 433 *R.* v. *Ingall*, 2 Q. B. D. 199.

(*d*) 4 & 5 Will. IV. c. 76

(*e*) *R.* v. *Todmorden* (1841), 1 Q. B. 185.

1871 (*a*), which provides that within three months of the avoidance of a benefice, the bishop shall direct the surveyor to report the sum required to make good the dilapidations, is directory only, as to the time; for it was a duty, not a privilege, which the statute imposed on the bishop; and his neglect would otherwise have defeated the object of the statute by rendering the estate of the late incumbent exempt from liability for his dilapidations (*b*). 5 Geo. IV. c. 84, having enacted that when any convict adjudged to transportation by any British Court out of the United Kingdom was brought to England to be transported, it should be lawful to imprison him in any place of confinement provided under the Act, it was held that if the place in which a prisoner was confined was not one of the appointed places, the officers concerned might be liable to censure, but the detention was not unlawful so as to entitle the prisoner to be discharged (*c*).

It is no impediment to this construction, that there is no remedy for non-compliance with the direction. 2 Hen. V. c. 4 (*d*), which requires

(*a*) 34 & 35 Vict. c. 43 (amended 35 & 36 Vict. c. 96, and 44 & 45 Vict. c. 25).

(*b*) *Per* Denman J., *Caldow* v. *Pixell*, 2 C. P. D. 566; *Gleaves* v. *Marriner* (1876), 1 Ex. D. 107.

(*c*) *Brenan's Case*, 16 L. J. Q. B. 285. Transportation abolished. See sup. p. 262.

(*d*) Repealed as to England by S. L. R., 1863, save s. 2.

justices to hold their sessions in the first week after Michaelmas, Epiphany, Easter, and the translation of St. Thomas the Martyr, has always been held to be merely directory (*a*). So, 6 Rich. II. c. 5, which requires the justices to hold their sessions in the principal towns of their county, was held to be directory, not coercive (*b*). And yet it would be difficult to say that there would be any remedy against justices for appointing their sessions on other days or places than those prescribed by the statute (*c*).

The same construction was put on 54 Geo. III. c. 84, which enacted that the Michaelmas sessions should be held in the week after the 11th of October, instead of the time then appointed (*d*); though such a construction would seem to have left the earlier law substantially unaltered, an intention not lightly to be imputed to the Legislature.

Though 43 Eliz. c. 2 requires that overseers of the poor shall be appointed yearly in Easter week, they may lawfully be appointed at any other time of the year (*e*). In the same way, enactments fixing the time for the election of churchwardens and

(*a*) 2 Hale, P. C. 50.
(*b*) Id. 39.
(*c*) *Per* Parke B., *Gwynne* v. *Burnell*, 2 Bing. N. C. 39.
(*d*) *R.* v. *Leicester*, 7 B. & C. 6.
(*e*) *R.* v. *Sparrow*, 2 Strn. 1123.

other parochial and municipal officers, have been held to be directory only (*a*); or, at all events, if imperative, they would not be construed as depriving by implication the Court of Queen's Bench of the power of ordering an election at a different time from that prescribed, where there had been a wrongful omission to hold it at the proper time, and public inconvenience resulted from the omission (*b*).

So, the regulations for the conduct of elections under the Ballot Act, 1872 (*c*), are so far directory only, that an election is not invalidated by the non-observance of them, unless the non-observance was of a character contrary to the principle of the Act, or might have affected the result of the election (*d*); and, under the same Act, the requirement that the presiding officer shall stamp his mark on the face of each ballot paper delivered to a voter is directory, whilst a like requirement as regards the mark on the back of the ballot paper is, without doubt, imperative (*e*).

(*a*) *Anon.*, 1 Ventr. 267; *R.* v. *Corfe Mullen*, 1 B. & Ad. 211; *R.* v. *Denbyshire*, 4 East, 142; *R.* v. *Norwich*, 1 B. & Ad. 310; *R.* v. *Sneyd*, 61 R. R. 843.

(*b*) *R.* v. *Sparrow*, 2 Stra. 1123; *R.* v. *Rochester*, 7 E. & B. 910.

(*c*) 35 & 36 Vict. c. 33.

(*d*) *Woodward* v. *Sarsons*, L. R. 10 C. P. 733; *Phillips* v. *Goff*, 17 Q. B. D. 805.

(*e*) *Akers* v. *Howard*, 55 L. J. Q. B. 273.

The 26 Geo. II. c. 14 (*a*), which "required" the justices of the peace in England to settle a table of fees at their quarter sessions "held next after the 24th of June, 1753," and, such table being approved by the justices "at the next succeeding general quarter sessions," to lay it before the judges at the next assize for confirmation, was held imperative as to the requirement that a table settled at one sessions should be confirmed at the next; so that one which had been submitted for confirmation at the next, but had not been confirmed till a later sessions, to which its consideration had been adjourned, was invalid (*b*). But, prior to the passing of the Criminal Justice Administration Act, 1914, which alters the law, it would have been competent to the justices at quarter sessions to settle a table at a subsequent date to that prescribed, though the statute required them to do it in 1753. It was a duty which they might be compelled to perform; and in this respect the statute was directory (*c*).

The usual provision in the commission of the peace that no justice named in it shall be capable of acting or authorised to act unless he shall have

(*a*) Repealed, 4 & 5 Geo. V. c. 58, s. 44, Sched. 4. As to existing scale of fees, see s. 6 and Sched. 1, Criminal Justice Administration Act, 1914.

(*b*) *Bowman* v. *Blyth*, 26 L. J. M. C. 57. See also *Williams* v *Swansea Nav.*, L. R. 3 Ex. 158.

(*c*) *Lewis* v. *Davies*, L. R. 10 Ex. 86.

taken the oaths required by law, would lead to intolerable inconvenienoe and injustice if it were imperative, and struck with invalidity every act of an nnqualified justice. If his acts were held void, it was pointed out by the King's Bench, all persons who acted in the exeoution of a warrant issued by him, would aot without authority; a constable who arrested, and a gaoler who received the arrested person, nnder it, would be trespassers. Resistance to them would be lawful; everything done by them would be unlawful; and a constable, and the persons aiding him might become amenable even to a charge of mnrder, for acting under an authority which they reasonably considered themselves bound to obey, and of the invalidity of which they were wholly ignorant (*a*). Such conseqnences could not reasonably be supposed to have been intended; the interest of the public required that the acts should be sustained; and the just conclusion was that the Legislature intended by the prohibition only to impose a penalty for its infringement.

On the same general gronnd, the acts of aldermen who had been in office for several years

(*a*) 18 Geo. II. c. 20 (repealed, 6 Edw. VII. c. 16, s. 5 (2), Sched., which see for existing qualifications); 51 Geo. III. c. 36 (repealed as to certain places, 18 & 19 Vict. c. 48, s. 5); *Margate Pier Co.* v. *Hannam*, 3 B. & Ald. 266. *Comp. R.* v. *Verelst*, 14 R. R. 775.

without re-election, were held valid until their successors were appointed; the provision that they should be elected annually being regarded as directory only (*a*).

The provision in s. 55, of the Act relating to Mutiny, 13 & 14 Vict. c. 5 (repealed, s. 80, Army Act, 1881, modified by subsequent legislation), that a recruit shall, on enlistment, be asked certain questions touching his personal history was considered merely directory, and the omission to ask them did not invalidate the enlistment (*b*); for another section provided that every person who received enlisting money should be deemed an enlisted soldier. The Parochial Assessments Act, 1836 (6 & 7 Will. IV. c. 96), after requiring that every poor rate should set forth a number of particulars given in a form, respecting the persons and properties rated, and that the churchwardens and overseers should sign a declaration at the foot of the form, added that "otherwise the rate shall be of no force" (*c*); it was held that these last words were confined to the signatures, and did not affect the validity of the rate when the other

(*a*) *Foot* v. *Truro*, 1 Stra. 625. See also *Scadding* v. *Lorant*, 13 Q. B. 687, and *Holgate* v. *Slight*, 21 L. J. Q. B. 74. See *R.* v. *Corfe Mullen*, 1 B. & Ad. 211.

(*b*) *Wolton* v. *Gavin*, 20 L. J. Q. B. 73.

(*c*) This provision is repealed as regards the Metropolis by 32 & 33 Vict. c. 67, s. 77.

requisites were neglected; because a different construction would have led to inconveniences which the Legislature must be presumed not to have intended (*a*). The Public Health Act, 1848, in requiring that rates made under it should be published like a poor rate, was also held directory only; on the ground of the great inconvenience which would result from nullifying a rate whenever any of the particulars and forms required were not accurately given and followed (*b*). The latter Act, indeed, omitted the nullifying words which the former contained; and the omission was considered to show an intention that such an inconvenience should not follow (*c*).

The Act which enacted that no copy of a bill of sale should be filed in any Court unless the original was produced to the officer duly stamped, did not invalidate the registration if the bill was not duly stamped when so produced. The object of the enactment was to protect the revenue; and this was thought sufficiently attained if the deed was afterwards duly stamped, without going to the extreme of holding the registration void (*d*).

(*a*) *R.* v. *Fordham*, 11 A. & E. 73. See *Cole* v. *Greene*, 13 L. J. C. P. 30.

(*b*) 11 & 12 Vict. c. 63 (repealed, 38 & 39 Vict. c. 55, s. 343, Sched. V. pt. III.); *Le Feuvre* v. *Miller*, 26 L. J. M. C. 175.

(*c*) See sup. pp. 560–561. *Comp. Liverpool Borough Bank* v. *Turner &c.*, sup. p. 649.

(*d*) 24 & 25 Vict. c. 91. s. 34 (repealed, 33 & 34 Vict. c. 99);

The provision of 7 Geo. IV. c. 57, which required the Court to cause notice of the filing of an insolvent's position to be given to the creditors, was held to be merely a direction to the Court, and compliance with it not a condition precedent to the validity of the discharge (*a*).

So, an Act (12 Geo. II. c. 29) which empowered the Quarter Sessions to appoint treasurers, "first giving security to be accountable," was held directory as regards this provision, and as not affecting the validity of the appointment, which was held complete though no security was given (*b*).

It has been held that the neglect of mere formal requisites in keeping the register of the shareholders of a joint stock company, however fatal for some purposes, is immaterial as regards others. Thus, the provision that the register should be sealed, though essential to its being producible in evidence, is immaterial as regards making a person a shareholder, if there be in fact a book *bonâ fide* intended to be a register. But the neglect to number and appropriate the shares

Bellamy v. *Saull*, 32 L. J. Q. B. 366. As to existing law, see 54 & 55 Vict. c. 39, s. 41.

(*a*) Repealed, S. L. R., 1783; *Reid* v. *Croft*, 5 Bing. N. C. 68. So, as to sales of real estate (1 & 2 Vict. c. 110, s. 47), *Wright* v. *Maunder*, 4 Beav. 512.

(*b*) *R.* v. *Patteson* (1832), 38 R. R. 191; 2 L. J. K. B. 33.

would be fatal (*a*). And the provisions in the Companies Act, 1862 (repealed, s. 93, Companies (Consolidation) Act, 1908), directing that a register shall be kept of all mortgages and charges on the property of the company, to be open to the inspection of creditors, and imposing penalties on any of the company's officers who contravene them, are directory, so that they do not affect the validity of unregistered mortgages (*b*).

Where an Act (*c*) provided that no beer license should be granted to any person who was not a "resident occupier" of the premises sought to be licensed, under the penalty of the license being null and void; and it required, further, that the applicant should produce to the licensing officer a certificate from the overseer of the parish, that he was such resident occupier; the latter provision was considered to be only directory, and a license obtained without the certificate good. The omission, from the later passage, of the nullifying words which were appended to the

(*a*) *Per* Cur., *Henderson* v. *Royal British Bank*, 26 L. J. Q. B. 112; *Wolverhampton Waterworks Co.* v. *Hawksford* (1859), 31 L. J. C. P. 184; *Vallance* v. *Fall* (1884), 53 L. J. Q. B. 459.

(*b*) *Wright* v. *Horton* (1887), 12 App. Cas. 371; *Randall, Ltd.* v. *British & American Shoe Co.* (1902), 71 L. J. Ch. 683; *Marine Mansions Co., Re*, L. R. 4 Eq. 601; *comp. Patent Bread Co., Re*, L. R. 7 Ch. 289. See another illustration in *Bosanquet* v. *Woodford*, 13 L. J. Q. B. 93.

(*c*) 3 & 4 Vict c. 61, s. 1.

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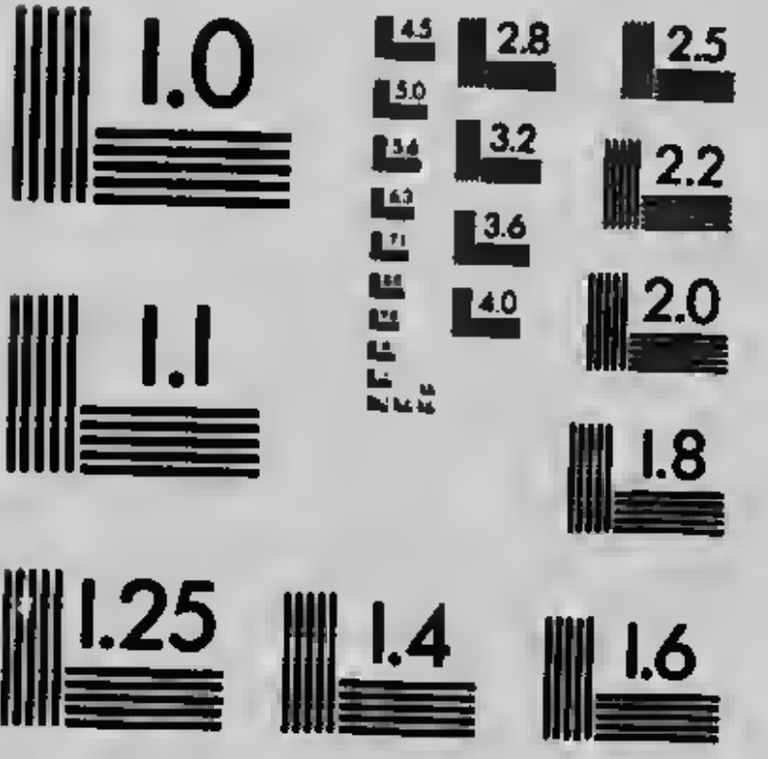

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former was some indication of a difference of intention; besides, though it was reasonable that a license to a person not properly qualified should be void, it would hardly be reasonable that it should be void, if the holder was duly qualified, merely because the licensing officer had not been satisfied of the qualification by the particular means provided by the Act; which might have been wrongfully withheld by the overseer (*a*). And it is now provided by 10 Edw. VII. and 1 Geo. V. c. 35, s. 2, that "a person shall not be disqualified for receiving a beer retailer's license by reason only that the premises in respect of which he applies for a license are not a dwelling-house, or that he is not the real resident owner and occupier of the premises." . . . Again, a provision (*b*) that convictions for sporting without a certificate should be registered with the commissioners of taxes was held directory only, so that the omission to register it did not affect the validity of the conviction (*c*).

The Public Health Act, 1848, in empowering the Local Board of Health to enter into all contracts necessary for carrying the Act into execution, contained two provisions which may be taken

(*a*) *Thompson* v. *Harvey* (1859), 28 L. J. M. C. 163.

(*b*) 52 Geo. III. c. 93 (repealed, 32 & 33 Vict. c. 14, s. 39 which see).

(*c*) *Mason* v. *Barker* (1843), 1 C. & K. 100.

as illustrating the distinction under consideration. It enacted that contracts exceeding £10 in value should be sealed with the seal of the board; that they should contain certain particulars; and that "every contract so entered into shall be binding; provided always . . . that before contracting for the execution of any work, the board shall obtain from the surveyor a written estimate of the probable expense of executing it and keeping it in repair." The first of these requisites was decided to be imperative, and a contract unsealed was consequently held inoperative against the board and the rates. The power to contract so as to bind the rates could not have been exercised if it had not been given by the Act; and, being entirely the creature of the statute, it could not be exercised in any other manner than that prescribed by the statute (*a*). But the provision whioh required an estimate was held to be merely a direction or instruction for the guidance of the

(*a*) 11 & 12 Vict. c. 63, s. 85, repealed and re-enacted in substance by 38 & 39 Vict. c. 55, ss. 173, 174; *Frend* v. *Dennett*, 27 L. J. C. P. 314; *Hunt* v. *Wimbledon Loc. Bd.*, 48 L. J. C. P. 207; *Ashbury* v. *Riché*, L. R. 7 H. L. 653; *Eaton* v. *Basker*, 7 Q. B. D. 529; *Young* v. *Royal Leamington Spa* (1883), 52 L. J. Q. B. 713; *Tunbridge Wells Improvement Commissioners* v. *Southborough Loc. Board* (1888), 60 L. T. 172; *Brooks* v. *Torquay*, 71 L. J. K. B. 109; *British Insulated Wire Co. v. Prescot U. D. C.*, [1895] 2 Q. B. 463. *Comp. Cole* v. *Green*, 13 L. J. C. P. 30; *Mellish* v. *Shirley Loc. Bd.*, 16 Q. B. D. 446.

board, and not a condition precedent the performance of which was essential to the validity of the contract (*a*). It was remarked that in the former case the party contracted with knew, or had the means of knowing, what forms were required by the Act, and could see to their observance; while in the latter, he had not, it was said, the same facility for ascertaining whether the board had consulted their surveyor. The non-observance of the latter provision would, however, probably impose on the board the penalty of having no remedy against their constituents for reimbursement (*b*).

It has been said that there is no such exact division of sections in Acts of Parliament into those that are directory and those that are imperative as is ordinarily assumed to be a categorical division which exhausts every possible class of section. A section may be imperative as regards the voluntary action of parties, but not so where such events happen that its provision cannot be attended to. The provision, therefore, of s. 42 (13) of the Valuation (Metropolis) Act, 1869 (32 & 33

(*a*) *Nowell* v. *Worcester (Mayor)*, 23 L. J. Ex. 139; *Bonar* v. *Mitchell*, 19 L. J. Ex. 302.

(*b*) *Per* Parke B., *Nowell* v. *Worcester*, sup. See *East Anglian Ry.* v. *E. C. Ry.*, 21 L. J. C. P. 23; *McGregor* v. *Deal &c. Ry. Co.*, 22 L. J. Q. B. 69; *Royal British Bank* v. *Turquand*, 24 L. J. Q. B. 327; *Nugent* v. *Smith*, 1 C. P. D. 423.

Vict. c. 67), that the assessment sessions shall be held after February 1st, but so that all appeals shall be determined before March 31st, while imperatively requiring that the Court shall do all in its power to obey its mandate, would not operate so as to prevent a continuance of the sessions after March 30th, where, through necessity or default of the Court itself, whether culpable or not, the business was not then concluded. Parties who have done all that the statute requires of them are not to lose their right of appeal because the final hour was struck on March 30th. The enactment must be read, as all enactments are, subject to their not being made absurd by matters which never could have been within the calculation or consideration of the Legislature (*a*).

SECTION IV.—LEX NON COGIT AD IMPOSSIBILIA—CUILIBET LICET RENUNTIARE JURI PRO SE INTRODUCTO.

Enactments which impose duties on conditions are, when these are not conditions precedent to the exercise of a jurisdiction, subject to the maxim that *lex non cogit ad impossibilia aut inutilia.* They are understood as dispensing with the performance of what is prescribed, when performance is idle or impossible (*b*).

(*a*) 32 & 33 Vict. c. 67; *R.* v. *London Jus. and London C. C.*, [1893] 2 Q. B. 476.

(*b*) As to performance, where the duty has not been imposed

Thus, where an Act provided that an appellant should send notice to the respondent of his having entered into a recognisance, in default of which the appeal should not be allowed, it was held that the death of the respondent before service was not fatal to the appeal, but dispensed with the service (*a*). In the same way, the provision of 20 & 21 Vict. c. 43, s. 2, which similarly makes the transmission by the appellant, of a case stated by justices to the Superior Courts, within three days from receiving it, a condition precedent to the hearing of the appeal (*b*), was held dispensed with, when the Court was closed during the three days; since compliance was impossible (*c*).

by superior authority, but has been voluntarily assumed, see *Paradine* v. *Jane*, Aleyn, 26, and the cases cited in *Hall* v. *Wright*, 29 L. J. Q. B. 43. See also *Taylor* v. *Caldwell*, 32 L. J. Q. B. 164; *Boast* v. *Firth*, L. R. 4 C. P. 1; *Appleby* v. *Myers*, L. R. 1 C. P. 615; 2 Id. 651; *Clifford* v. *Watts*, L. R. 5 C. P. 577; *Howell* v. *Coupland*, 1 Q. B. D. 258; *Nichols* v. *Marsland*, 2 Ex. D. 1; *Jacobs* v. *Crédit Lyonnais*, 12 Q. B. D. 589.

(*a*) *R.* v. *Leicestershire*, 19 L. J. M. C. 209. See also *Brumfitt* v. *Roberts*, sup. p. 169.

(*b*) *Morgan* v. *Edwards* (1860), 29 L. J. M. C. 108; *Woodhouse* v. *Woods*, 29 L. J. M. C. 149; *Stone* v. *Dean*, 27 L. J. Q. B. 319; *Norris* v. *Carrington*, 16 C. B. N. S. 10; *Harrison, Exp.*, 2 De G. & J. 229. See, however, inf. pp. 683–684.

(*c*) *Mayer* v. *Harding*, L. R. 2 Q. B. 410. See *R.* v. *Allan*, 33 L. J. M. C. 98; *R.* v. *Bloomsbury County Court Judge*, 17 Q. B. D. 788. See also *R.* v. *London Jus. and London C. C.*, sup. p. 673.

In such cases, the provision or condition is dispensed with, when compliance is impossible in the nature of things. It would seem to be sometimes equally so where compliance was, though not impossible in this sense, yet impracticable, without any default on the part of the person on whom the duty was thrown. An Act, for instance, which made actual payment of the rent, as well as the renting of a tenement, essential to the acquisition of a settlement, would probably be complied with, if the rent was tendered, though it was not accepted (*a*). If the respondent in an appeal kept out of the way to avoid service of the notice of appeal, or at . events could not be found after due diligence in searching for him, the service required by the statute would probably be dispensed with (*b*). So, if the appellant was entitled to appeal, subject to the condition of giving security for costs within a certain time, he would be held to have complied with the condition, if he

As to when notice of appeal to respondent's solicitor satisfies the Act, see *Godman* v. *Crofton*, [1914] 3 K. B. 803. A technical omission to serve justices, with notice of appeal, in time does not necessarily oust jurisdiction, *Simmonds* v. *Elliott*, [1917] 2 K. B. 894. As to what is such a determination by justices as will justify an appeal, *Oaten* v. *Auty*, [1919] 2 K. B. 278.

(*a*) *Per* Bayley J., *R.* v. *Ampthill*, 2 B. & C. 847.

(*b*) *Per* Cur., *Morgan* v. *Edwards*, and *per* Crompton and Hill JJ., *Woodhouse* v. *Woods*, sup. p. 674. See also *Syred* v. *Carruthers*, 27 L. J. M. C. 273.

offered and was ready to complete the security within the limited time, though it was, owing to the act of the Court, or of the respondent, not completed till long after (*a*). Indeed, the Courts will sometimes exercise a discretion in extending time (when not going to the jurisdiction) where the non-compliance arose from excusable mistake (*b*).

Where, however, the act or thing required by the statute is a condition precedent *to the jurisdiction* of the tribunal, compliance cannot be dispensed with; and if it be impossible, the jurisdiction fails. It would not be competent to a Court to dispense with what the Legislature had made the indispensable foundation of its jurisdiction. Thus, the Act which enacts that justices, at the hearing of a bastardy summons, "shall hear the evidence" of the mother, and such other evidence as she may adduce; and which authorises them to make an affiliation order "if the mother's evidence be corroborated in some material particular by other testimony," makes the evidence of the mother so essential to the jurisdiction that no order could be made without it, although the woman died before the hearing (*c*). But an appeal may be heard

(*a*) *Waterton* v. *Baker*, L. R. 3 Q. B. 173. See also *R.* v. *Aston*, 19 L. J. M. C236.

(*b*) *Cusack* v. *L. & N. W. Ry. Co.*, [1891] 1 Q. B. 347.

(*c*) *R.* v. *Armitage* (1872), L. R. 7 Q. B. 773; 42 L. J. M. C. 15. *Comp. Ditton's Case*, 2 Salk, 490, sup. p. 370.

although the mother be dead (*a*). So, under the (repealed) County Courts Act, 1875, which empowered a party to move the appellate Court or a judge at chambers for a new trial "within eight days after the decision," the time could not be extended by either Court or judge (*b*). Under s. 13, Admiralty Court Act, 1861 (*c*), which gave the Court of Admiralty the same powers, when a vessel or its proceeds was under arrest, as the Court of Chancery had under the Merchant Shipping Act, 1854 (now Merchant Shipping Act, 1894) (*d*), over suits for limiting the liability of shipowners, no jurisdiction could be exercised by the former Court, when the ship was lost. The jurisdiction of the Court depended on the ship, or the proceeds of its sale, being under arrest; and the shipowner could not give it jurisdiction by paying

(*a*) *R.* v. *Leicestershire JJ.* (1850), 19 L. J. M. C. 209.

(*b*) 38 & 39 Vict. c. 50. As to present procedure on appeals, see s. 120, County Courts Act, 1888. *Brown* v. *Shaw* (1876), 1 Ex. D. 425; *Tennant* v. *Rawlings*, 4 C. P. D. 133. See also *R.* v. *Salop*, 6 Q. B. D. 669; *Ahier* v. *Ahier*, 10 P. D. 110; *Ashdown* v. *Curtis*, 31 L. J. M. C. 216; *Edwards* v. *Roberts*, [1891] 1 Q. B. 302.

(*c*) 24 & 25 Vict. c. 10, s. 13.

(*d*) As to when the limitation does not apply, see ss. 502–509. *Asiatic Petroleum Co.* v. *Lennard's Carrying Co.*, [1914] 1 K. B. 419; but see *Ingram and Royle* v. *Services Maritimes du Trèport*, [1914] 1 K. B. 541, C. A. As to when a substituted authority is liable for negligence, *The Oscar II.*, [1919] P. 171.

into Court a sum equivalent to its value or pr
ceeds (*a*).

Another maxim which sanctions the non-obse
vance of a statutory provision, is that, *cuili*
licet renuntiare juri pro se introducto. Every o
has a right to waive, and to agree to waive th
advantage of a law or rule made solely for th
benefit and protection of the individual, in h
private capacity (*b*), and which may be dispens
with without infringing on any public right
public policy. Thus a person may agree to wai
the benefit of a Statute of Limitation (*c*). Th
trustees of a turnpike road may, in demising th
tolls, waive the provision of the Act which requir
that the demise shall be signed by the sureti
of the lessee (*d*). A passenger may waive th
benefit of an enactment which entitles him
carry so many pounds of luggage with him; an
he does so, it may be added, by taking a tick
with the express condition that he shall car
no luggage (*e*). The only person intended to

(*a*) *James* v. *S. W. Ry. Co.* (1872) L. R. 7 Ex. 287. See al
R. v. *Belton*, 17 L. J. M. C. 70; *R.* v. *Shurmer*, 17 Q. B. D. 32

(*b*) *McAllister* v. *Rochester* (*Bp.*), 5 C. P. D. 194.

(*c*) *E. I. Co.* v. *Paul*, 7 Moo. P. C. 85; *Lade* v. *Trill*, 6 J
272, *per* Knight Bruce V.-C.

(*d*) *Markham* v. *Stanford*, 14 C. B. N. S. 376.

(*e*) *Rumsey* v. *N. E. Ry. Co.* (1863), 14 C. B N. S. 641;
L. J. C. P. 244; discussed and distinguished in *Mercantile Ba*
v. *Gladstone* (1868), L. R. 3 Ex. 233; 37 L. J. Ex. 130.

benefited by such an enactment is, obviously, the passenger himself, and no consideration of public policy is involved in it (*a*). A statute authorising a trading company to levy tolls within a specified maximum does not bind them to enact uniform tolls from all persons alike; but they are entitled, in the absence of an express provision requiring equality, to remit any part of the tolls to particular persons, at their discretion (*b*).

When a person does waive the benefit of any such law, he cannot recall the concession, after it has been acted on, and insist on the right which the rule gave him. A tenant, for instance, whose goods had been distrained, might waive the enactment (s. 1, 2 Will. & Mary, c. 5), which required an appraisement before the sale of the goods; and he could not, after the sale, be heard to complain that no appraisement had been made (*c*). Where a question between two railway companies has been tried on the merits without either party raising the point that the matter ought to be referred to arbitration, it is too late on the hearing

(*a*) *Mercantile Bank* v. *Gladstone*, sup. p. 678; *per* Willes J.

(*b*) *Hungerford Market Co.* v. *City Steamboat Co.* (1860), 30 L. J. Q. B. 25; *Northampton Corp.* v. *Ellen* (1904), 70 L. J. K. B. 329.

(*c*) *Bishop* v. *Bryant*, 6 C. & P. 484. See also *Atkins* v. *Kilby*, 11 A. & E. 777. By s. 5, 51 & 52 Vict. c. 21, appraisement before sale is now unnecessary, except where the tenant, or owner of the goods, requires it by writing.

of an appeal to insist that the case should be so referred (*a*).

The regulations concerning the procedure and practice of Civil Courts may in the same way, when not going to the jurisdiction, be waived by those of whose protection they were intended. Thus, s. 14, 13 & 14 Vict. c. 61 (*b*), which gave an appeal from a County Court, provided the appellant, within ten days, gave notice of appeal and security for costs; and after directing that the appeal should be in the form of a case, enacted that no judgment of a County Court Judge should be removed into any other Court, except in the manner and under the provisions above mentioned; it was held that the want of due notice and security might be waived. The provision was intended for the benefit of the respondent, and was not a matter of public concern (*c*). So, a defendant in an action in a County Court which has jurisdiction over the case subject to leave

(*a*) *L. C. & D. Ry.* v. *S. E. Ry.*, 40 Ch. D. 100.

(*b*) See County Courts Act, 1888, s. 120.

(*c*) *Park Gate Iron Co.* v. *Coates* (1870), L. R. 5 C. P. 634; *Waterton* v. *Baker* (1868), 37 L. J. Q. B. 65. See also *R.* v. *Long*, 1 Q. B. 749; *Tyerman* v. *Smith*, 25 L. J. Q. B. 359; *Freeman* v. *Read*, 30 L. J. M. C. 123; *Palmer* v. *Metrop. Ry. Co.*, 31 L. J. Q. B. 259; *Regent U. S. Stores, Re*, 8 Ch. D. 75. Application to the County Court Judge to take a note of point of law raised is not a condition precedent to appeal, *Abrahams* v. *Dimmock*, [1914] W. N. 449.

being given, may waive want of leave (*a*); and a defendant, even in a criminal case before justices if the subject matter be within their jurisdiction, may waive any irregularity in the summons, or indeed dispense with the summons altogether; and he does so in such cases not, indeed, by appearing merely (*b*), but by appearing and entering on the case on its merits. The tribunal having jurisdiction over the matter, he would not be allowed to take his chance of prevailing on the merits, and to reserve his objections to a mere preliminary irregularity (*c*). So where a statute requires justices to make known to a party his right to appeal, and the steps necessary to carry out this right, such as giving notice of appeal and entering into recognisances, the party may waive this provision (*d*).

But when public policy requires the observance

(*a*) *Moore* v. *Gamgee* (1890), 25 Q. B. D. 244; 59 L. J. Q. B. 505. And see *Alderson* v. *Palliser* (1901), 70 L. J. K. B. 935.

(*b*) *R.* v. *Carnarvon*, 5 Nev. & M. 364; *R.* v. *Shaw*, 24 L. J. M. C. 169; *R.* v. *Hughes*, 4 Q. B. D. 614. *Comp. Dixon* v. *Wells*, 25 Q. B. D. 249.

(*c*) *R.* v. *Barret*, 1 Salk. 383; *R.* v. *Johnson*, 1 Stra. 261; *R.* v. *Aikin*, 3 Burr. 1785; *R.* v. *Stone*, 1 East, 639; *R.* v. *Berry* (1859), 28 L. J. M. C. 86; *R.* v. *Fletcher*, L. R. 1 C. C. R. 320; *R.* v. *Smith*, Id. 110; *R.* v. *Widdop*, L. R. 2 C. C. R. 3; *Bolton* v. *Bolton*, 2 Ch. D. 217.

(*d*) *R.* v. *Yorkshire*, 3 M. & S. 493; and does so by declaring that he does not intend to appeal.

of the provision, it cannot be waived by an individual. *Privatorum conventio juri publico non derogat* (*a*). Private compacts are not permitted either to render that suffioient, between themselves, which the law declares essentially insuffioient; or to impair the integrity of a rule neoessary for the common welfare; such, for instance, as the enactment which requires the attestation of Wills (*b*). Thus, the invalidity of the service of a writ on a Sunday oannot be waived; for it is a matter of public policy that no such proceeding should take place on Sunday (*c*). It has been held that the maxim *volenti non fit injuria* is not to be applied to cases of injury ocoasioned by the breach of a statutory duty imposed for the benefit of others as well as the injured party (*d*). On the same principle a public body, such as a local authority, which is authorised to make by-laws, cannot dispense with them in particular cases, the by-laws not being for its benefit but for that of the public (*e*). It is said to be a general understanding

(*a*) Dig. 50, 17, 45.

(*b*) *Per* Wilson J., *Habergham* v. *Vincent* (1793), 2 Ves. jun. 227; *Croker* v. *Hertford* (*Marquis*) (1844), 4 Moore P. C. 339, 366. See New York Civ. Code, Art. 1968, n. 2.

(*c*) *Taylor* v. *Phillips*, 6 R. R. 575.

(*d*) *Baddeley* v. *Earl Granville*, 19 Q. B. D. 423; *Thomas* v. *Quartermaine*, 18 Q. B. D. 685.

(*e*) *McIntosh*, *Re*, 61 L. J. Q. B. 164. See, however, *G. E. Ry.*

in the profession that a prisoner can consent to nothing; at least, in the course of his trial (*a*). In criminal matters, a person cannot waive what the law requires (*b*). Where, upon a trial for felony, the jury was discharged, and, at the new trial, some of the witnesses, after being sworn, had their evidence read over to them by the judge from his notes, and the counsel for the Crown and the prisoner had afterwards liberty to examine and cross-examine them, it was held that this course of proceeding vitiated the trial, and that the consent or acquiescence of the prisoner did not cure the irregularity (*c*). The object of a criminal trial, it was observed, was the administration of justice in a course as free from doubt or chance of miscarriage as human administration of it can be; not the interests of either party.

Consent cannot give jurisdiction (*d*); and there-

v. *Goldsmid*, 54 L. J. Ch. 162, on which see *Haynes* v. *Ford*, 80 L. J. Ch. 234.

(*a*) *Per* Cur., *R.* v. *Bertrand* (1867), L. R. 1 P. C. 520.

(*b*) *Per* M. Smith J., *Park Gate Iron Co.* v. *Coates* (1870), L. R. 5 C. P. 639.

(*c*) *R.* v. *Bertrand*, sup. See also *R.* v. *Blorham*, 6 Q. B. 528; *per* Pollock C.B. and Alderson B., *Graham* v. *Ingleby*, 1 Ex. 651. *Comp. R.* v. *Thornhill*, 8 C. & P. 575; *R.* v. *Monson* (1903) (The Veronica Case), 67 J. P. 267; *R.* v. *Lawrence* (1909), 25 T. L. R. 374. See *Best, Exp.*, 18 Ch. D. 488.

(*d*) *Lawrence* v. *Wilcock*, 11 A. & E. 941; *Lismore* v. *Beadle*, 1 Dowl. N. S. 566; *Exp. Robertson*, 44 L. J. Bank. 99; *Jackson* v. *Beaumont*, 24 L. J. Ex. 301.

fore any statutory objection which goes to the jurisdiction does not admit of waiver. Thus, s. 33, Summary Jurisdiction Act, 1879, which empowers either party, after the determination of an information by justices to apply to the Court to state a case, requires that the application should be made to all who heard it, and the objection that the case was stated by some only of them cannot be waived, because it goes to the jurisdiction (*a*); and the provision of 20 & 21 Vict. c. 43, s. 2, which requires the appellant from a decision of justices to transmit the case in three days to the Court of Appeal, could not be waived by the respondent, on the ground either that it went to the jurisdiction, or that it related to a criminal case, or that the justices had an interest in the observance of the rule (*b*). So, a provision that a summons shall be served within a certain time goes to the jurisdiction, and must be observed (*c*).

(*a*) 42 & 43 Vict. c. 49; *Westmore* v. *Paine*, [1891] 1 Q. B. 482. This provision does not apply to an adjudication by justices on a matter within s. 164 of the Merchant Shipping Act, 1894, *Wells* v. *McSherry*, [1914] 1 K. B. 616.

(*b*) *Morgan* v. *Edwards* (1860), 29 L. J. M. C. 108; *Peacock* v. *R.*, 27 L. J. C. P. 224. *Comp. Peters* v. *Sheehan*, 12 L. J. Ex. 177; *Great N. Committee* v. *Inett*, 2 Q. B. D. 284; *R.* v. *Hughes*, 4 Q. B. D. 614. See the remarks in *Park Gate Iron Co.* v. *Coates*, L. R. 5 C. P. 634, dubit. Keating J.; *Bennett* v. *Atkins*, 4 C. P. D. 80.

(*c*) *Dixon* v. *Wells*, 25 Q. B. D. 249.

It may be added here, that a person is sometimes estopped by his own conduct from availing himself of legislative provisions intended for his benefit. For instance, a prisoner for debt, representing a person to be an attorney, to attest a warrant of attorney, who did not belong to that profession, could not afterwards be allowed to impeach the warrant on the ground of inadequate attestation (*a*); and the grantee of an annuity, on whom the duty is cast of enrolling the deed of grant, would be estopped from taking any advantage from his neglect to enrol it (*b*).

Where an Act of Parliament compels a breach of a private contract, the contract is impliedly repealed by the Act, so far as the latter extends; or the breach is excused, or is considered as not falling within the contract (*c*). The intervention of the Legislature, in altering the situation of the contracting parties, is analogous to a convulsion of nature, against which they, no doubt, may provide; but if they have not provided, it

(*a*) *Jeyes* v. *Booth*, 1 B. & P. 97; *Cox* v. *Cannon*, 4 Bing. N. C. 453.

(*b*) *Molton* v. *Camroux*, 18 L. J. Ex. 356; *Turner* v. *Browne*, 15 L. J. C. P. 223. See also *Re Connon*, 20 Q. B. D. 690; *Musgrove, Exp.*, 3 M. D. & D. 386, and *Greener, Exp.*, 15 Ch. D. 457.

(*c*) *Per* Cur., *Brewster* v. *Kitchell* or *Kitchin* (1697), 1 Salk. 198; discussed and applied, *Austerberry* v. *Oldham Corp.* (1885), 29 Ch. D. 750, C. A.

is generally to be considered as excepted out of the contract (*a*). Thus, where land was leased to certain persons, who covenanted to build a workhouse on it, and not to use the house or land for any other purpose than the support of the poor of the parish; and the Poor Law Commissioners, under 4 & 5 Will. IV. c. 76, incorporated the parish in a Union, and removed the paupers to the Union workhouse, whereupon the house was shut up and the land was let at a rack rent which was applied in aid of the rates; it was held, that the covenant had not been broken, or, alternatively, that the breach was excused by legislative compulsion (*b*).

And a like rule applies where urgent national stress or danger precludes a contractor from carrying out certain clauses of contractual obligations (*c*).

If a man covenants not to do a thing which was unlawful at the time of the covenant, and an Act subsequently makes it lawful only, but not imperative, to do it; the covenant is unaffected by the Act (*d*). Where a lessee covenanted, for himself and his "assigns," that he would not build on the demised premises; and he was afterwards

(*a*) *Per* Pollock C.B., *Berwick* v. *Oswald*, 3 E. & B. 678.

(*b*) *Doe* v. *Rugeley* (1844), 13 L. J. M. C. 137. See *Devonshire* (*Duke*) v. *Barrow Steel Co.*, 2 Q. B. D. 286.

(*c*) 7 & 8 Geo. V. c. 25.

(*d*) *Per* Cur., *Brewster* v. *Kitchell* or *Kitchin*, 1 Salk. 198.

compelled, under an Act of Parliament, to sell the land to a railway company, who built on it; it was held that the company was not an "assign" within the meaning of the covenant. The Legislature, it was considered, had, in compelling the sale, created a kind of assign not contemplated by either lessor or lessee when the contract was entered into; and so, the lessee could not justly be held responsible for the acts of such an assign. It was not reasonable to impute to the Legislature the intention that he should remain liable for the non-performance of that which it had, itself, prevented him from performing (*a*).

(*a*) *Baily* v. *De Crespigny* (1869), L. R. 4 Q. B. 180. See also *Wadham* v *Postmaster-General*, 40 L. J. Q. B. 310; *Brown* v. *London (Mayor)*, 30 L. J. C. P. 225; *Newington* v. *Cottingham*, 48 L. J. Ch. 226. But see *Long Eaton Recreation Grounds Co.* v. *Midland Ry.* (1902), 71 L. J. K. B. 837.

CHAPTER XIII.

SECTION I.—CONTRACTS CONNECTED WITH ILLEGAL ACTS

It is, and has always been, an established rul of law that no action can be maintained on contract made for or about any matter or thing which is prohibited and made unlawful by statute Such a contract is void (*a*). What has been done in contravention of an Act of Parliament cannot be made the subject of an action (*b*). Thus as the Metropolitan Building Act, 1855, 18 & 19 Vict. c. 122 (*c*), prohibits the use of combustible materials for building walls in the metropolis, the builder of any such walls could not maintain an action for the price of erecting them (*d*). As s. 14, 55 Geo. III. c. 194, forbids medical practice by unqualified persons, a contract made between

(*a*) *Bartlett* v. *Vinor*, Carth. 252; *per* Bowen L.J., *Melliss* v. *Shirley*, 16 Q. B. D. 453.

(*b*) *Per* Lord Ellenborough, *Langton* v. *Hughes*, 1 M. & S. 593.

(*c*) Repealed by 57 & 58 Vict. c. ccxiii., s. 215, Sched. 4, which Act see.

(*d*) *Stevens* v. *Gourley* (1359), 29 L. J. C. P. 1. Recognised but distinguished, *Harris* v. *de Pinna* (1886), 33 Ch. Div. 238, p. 248.

suoh a person and a duly qualified medioal practitioner, that the latter should assist the former in oarrying on a medical praotice, would be void for illegality (*a*). And in like manner although s. 2 of the Poisons and Pharmaoy Act, 1908, adds to the category of persons who may sell poisons, persons lioensed by a looal authority under the seotion, it does not confer upon an unlicensed assistant of suoh licensed person the right to sell a poisonous substance on behalf of his employer (*b*). It would seem, however, that this would not be so if the unqualified person did not himself practise, but merely employed a duly qualified assistant to do so, and a like rule applies to a oorporation (*c*). A waterman being prohibited by a looal statute from taking an apprentioe, unless he was the occupier of a tenement wherein to lodge him; it was held that no settlement was gained by servioe under an indenture of apprentioeship made contrary to this provision (*d*).

When a penalty is imposed for doing or omitting an act, the act or omission is thereby prohibited

(*a*) *Davies* v. *Makuna* (1885), 29 Ch. D. 596; 54 L. J. Ch. 1148.

(*b*) *Pharmaceutical Society* v. *Nash* (1911), 80 L. J. K. B. 416; *Pharmaceutical Society* v. *Jacks* (1911), 80 L. J. K. B. 767.

(*c*) *Pharmaceutical Society* v. *London and Provincial Supply Association*, 49 L. J. Q. B. 736; 5 App. Cas. 857, H. L. (E.).

(*d*) 10 Geo. II. c. 31; repealed 7 & 8 Geo. IV. c. lxxv., s. 1; *R.* v. *Gravesend*, 3 B. & Ad. 240.

and made unlawful; for a statute would not infli
a penalty on what was lawful (*a*). Consequentl
when the thing in respect of which the penal
is imposed is a contract, it is illegal and voi
In the case cited above, the Act had declar
that it should not be lawful to take the apprentic
and imposed a penalty for doing so (*b*); and
another, where service under an indenture
apprenticeship as a sweep was similarly treate
the statute had not only declared the apprentic
ship "void," but imposed a penalty on t
master (*c*). Sec. 24 of the repealed 7 & 8 Vic
c. 110, in enacting that every promoter of a joi
stock company concerned in making contracts
its behalf before its provisional registration, shou
be subject to a penalty of £25, impliedly render
every such contract illegal and therefore void (*
So, 25 & 26 Vict. c. 89, in enacting that no co
pany of more than 20 persons should be formed f
carrying on any business for gain unless it we
registered, rendered illegal and void all contrac

(*a*) *Per* Lord Holt, *Bartlett* v. *Vinor*, sup, p. 688; *per* Lo
Hatherley, *Cork &c. Ry. Co., Re*, L. R. 4 Ch. 748.

(*b*) *R.* v. *Gravesend*, sup. p. 689.

(*c*) 28 Geo. III. c. 48 (repealed S. L. R., 1871); *R.* v. *Hi*
well, 8 B. & C. 466.

(*d*) *Bull* v. *Chapman*, 22 L. J. Ex. 257. See also *Abbott*
Rogers, 24 L. J. C. P. 158. As to restrictions on commenci
business under Companies (Consolidation) Act, 1908, see s.
of that Act.

for carrying on its business if the company was not registered (*a*). The Act which imposes a penalty on certain classes of persons for exercising their ordinary callings on Sunday, not only subjects the offender to the penalty, but invalidates every contract made in the course of any such prohibited exercise, so far as the right of the offender, and of any person with whom he contracted if privy to what made it illegal, are concerned (*b*).

Sec. 46, Highway Act, 1835 (5 & 6 Will. IV. c. 50), in imposing a penalty of £10 on a road surveyor who had any share in a contract for supplying work or materials, or horse labour, for any of his highways, without the written license of two justices, was equally fatal to his recovering any payment for such supplies or services (*c*). Sec. 50, Merchant Shipping Act, 1854 (repealed, s. 15, Merchant Shipping Act, 1894), which enacted that the certificate of a ship's registry shall be used only in relation to the navigation of the ship, and imposed a penalty on any person, in possession of

(*a*) *Padstow Assur. Assoc., Re*, 20 Ch. D. 137; *Jennings* v. *Hammond*, 2 Q. B. D. 225; *Shaw* v. *Benson*, 11 Q. B. D. 563. In the case of Banks the number of persons is now reduced to 10. See s. 1 (1), Companies (Consolidation) Act, 1908.

(*b*) *Fennell* v. *Ridler* (1826), 5 B. & C. 406; *Smith* v. *Sparrow* (1827), 29 R. R. 514; *Bloxsome* v. *Williams* (1824), 27 R. R. 337.

(*c*) *Barton* v. *Piggott* (1874), L. R. 10 Q. B. 86.

it, who refused to give it up to the person entitled to its custody for the purposes of navigation, impliedly prohibited its use for any other purpose; and rendered a pledge of it illegal and void, and giving no right to detain it even against the pledgor, if the right of possession and property had vested in him (*a*).

Further, any contract connected with or growing out of an act which is illegal is also invalid. Thus, a contract to dance at a theatre not duly licensed cannot be enforced by action (*b*). It being unlawful for any agent at an election, except the expense agent, to make any payments on behalf of a candidate, even for current expenses, a sub-agent who made any such payments could not, for this reason, recover the amount from his principal (*c*). So, a contract to make bets (which are, by 8 & 9 Vict. c. 109, irrecoverable) cannot be enforced (*d*). It is a contract to make void contracts. But as a betting contract is void only and not illegal, when a bet has been received by an agent the principal may recover it from him (*e*).

(*a*) *Wiley* v. *Crawford*, 30 L. J. Q. B. 319.

(*b*) *Gallini* v. *Laborie*, 2 R. R. 581. See also *De Begnis* v. *Armistead*, 38 R. R. 406; *Levy* v *Yates*, 8 A. & E. 129; *Elliott* v *Richardson*, L. R. 5 C. P. 744.

(*c*) 26 & 27 Vict. c. 29 (repealed and re-enacted, 46 & 47 Vict. c. 51, s. 28); *Parker, Re*, 52 L. J. Ch. 159.

(*d*) *Cohen* v. *Kittell*, 58 L. J. Q. B. 241.

(*e*) *Bridger* v. *Savage*, 54 L. J. Q. B. 464. See, however,

As 39 & 40 Geo. III. c. 99 (*a*), required that for the better manifesting by whom the business of a pawnbroker was carried on, every person who carried it on should cause his name to be painted over the shop; an agreement for a partnership in that business, which included a stipulation that the name of one of the partners should not be painted up, was illegal and void (*b*). And so would be an agreement to let premises to a person, with the object of enabling him to sell spirituous liquors there without a license (*c*), or to use it as a brothel (*d*), or to be used by a "kept" woman for the purpose of receiving her one paramour (*e*).

Where an Act provided that before a ship

Rosewarne v. *Billing*, 33 L. J. C. P. 55; *Read* v. *Anderson*, 52 L. J. Q. B. 219, on which see 55 & 56 Vict. c. 9, considered in *De Mattos* v. *Benjamin*, 63 L. J. Q. B. 248, *Tatam* v. *Reeve*, 62 L. J. Q. B. 30, *Levy* v. *Warburton*, 70 L. J. K. B. 708, and *Saffery* v. *Mayer*, Id. 145.

(*a*) Repealed and replaced, 35 & 36 Vict. c. 93, which by s. 13 requires that the names of all persons carrying on the business of a pawnbroker shall be legibly painted over the door of the place of business.

(*b*) *Armstrong* v. *Lewis* (1834), 41 R. R. 10; 3 L. J. Ch. 101; *Warner* v. *Armstrong*, 3 M. & K. 45; *Gordon* v. *Howden*, 12 Cl. & F. 237; *Fraser* v. *Hill*, 1 Macq. H. L. C. 392.

(*c*) *Ritchie* v. *Smith*, 18 L. J. C. P. 9.

(*d*) *Crisp* v. *Churchill*, cited 1 B. & P. 340; *Smith* v. *White*, 35 L. J. Ch. 454.

(*e*) *Upfill* v. *Wright*, 80 L. J. K. B. 254.

sailed, the master should obtain the clearin officer's certificate that the whole cargo was belo deck, and forbade him, under a penalty, to sa without the certificate or to place any cargo o deck; a voyage in contravention of these pr visions would be illegal, and a policy of insuranc on the cargo effected by its owner, who was priv to the transaction, void (*a*).

Where a statute prohibited brewers from usin any ingredients but malt and hops in brewin beer, it was held that a druggist who sold drug to a brewer with the knowledge that they wer to be used in making beer, contrary to the Ac and under circumstances which made him participator in the illegal transaction, could no recover the price of the drugs (*b*).

But mere knowledge of the purposed illegality

(*a*) See the two cases of *Cunard* v. *Hyde* (1858), 2 E. & E. and E. B. & E. 670; *Wilson* v. *Rankin*, L. R. 1 Q. B. 162 *Dudgeon* v. *Pembroke* (1874), L. R. 9 Q. B. 581; *West Indi Tele. Co.* v. *Home & Colonial Marine Insurance Co.* (1896), 6 L. J. Q. B. 616.

(*b*) See *Holman* v. *Johnson*, 1 Cowp. 341; *Abbott* v. *Roger* 24 L. J. C. P. 158; *Langton* v. *Hughes* (1855), 14 R. R. 531 *Hodgson* v. *Temple*, Id. 738; *Paxton* v. *Popham*, 9 East, 408 *Gaslight Co.* v. *Turner*, 54 R. R. 808. See also *Fisher* v. *Bridges* 23 L. J. Q. B. 276; *Geere* v. *Mare*, 33 L. J. Ex. 50; *Clay* v. *Ray*, 17 C. B. N. S. 188; *Hobbs* v. *Henning*, 34 L. J. C. P. 117 *Beeston* v. *Beeston*, Ex. D. 13; *Brooker* v. *Wood*, 5 B. & Ad. 1052.

without actual participation or privity in it, would not affect the contract. Thus, a sale of goods in a foreign country, with the knowledge that the purchaser intended to smuggle them into England, but without any participation in the transaction, would not be invalid (*a*).

The question has frequently arisen, when an Act prescribes regulations, forms, or other attendant circumstances, more or less immediately connected with contracts, either with or without penalties for non-compliance, whether a contract entered into in disregard of any of them is thereby prohibited, and so illegal, or whether the object of the Act is not sufficiently attained by the imposition of the penalty; and the chief test for its decision seems to be whether the provisions have, or have not, some object of general policy, which requires that the contract should be invalidated.

Thus, it has been held that enactments which required, under penalties, that all bricks made for sale should be of at least certain specified dimensions (*b*); or that persons who sold corn, except by certain measures, should be liable to

(*a*) *Holman* v. *Johnson*, 1 Cowp. 341; *Comp. Waymell* v. *Read*, 2 R. R. 675; *Lightfoot* v. *Tenant*, 4 R. R. 735. See *Hobbs* v. *Henning*, 34 L. J. C. P. 117.

(*b*) *Law* v. *Hodson*, 10 R. R. 513.

a penalty (*a*); or that vendors of coals shoul
under a penalty, deliver, with the coals sold,
ticket setting forth their weight and the numb
of sacks in which they are contained (*b*); or th
farmers and others should sell butter in firki
of a certain size, branded with their own and th
makers' names (*c*); prohibited all contracts ma
in disregard of such provisions, and made the
void, so that no action could be maintained f
the price of the goods sold. On the same groun
where printers were required to affix their nam
to the books which they printed, it was held th
a printer could not maintain an action for h
work and materials in printing a book in whi
he had omitted to comply with this statutory pr
vision (*d*). The policy of these Acts was to preve
all such dealings; and it would have been in
perfectly attained, if the sellers had been merel
subjected to a penalty, while the purchase
remained liable to be sued.

The same stringent effect has been given
enactments which imposed, under a penalty, reg
lations relating to personal qualification. Thu

(*a*) *Tyson* v. *Thomas*, McCl. & Yo. 119.

(*b*) *Little* v. *Poole*, 9 B. & C. 192; *Cundell* v. *Dawson*,
L. J. C. P. 311.

(*c*) *Forster* v. *Taylor*, 39 R. R. 698.

(*d*) *Bensley* v. *Bignold*, 24 R. R. 401. See also *Stephen*
Robinson, 2 C. & J. 209.

an Act which imposed a penalty on an unqualified person who drew conveyances for reward, would invalidate any contract with him for such a purpose (*a*). So, a local Act which imposed penalties on persons for acting as brokers in the City of London, who had not been admitted and paid certain fees for the benefit of the City (inasmuch as its object was, not the enrichment of the citizens of London, but the protection of the public by preventing improper persons from acting as brokers), was held to invalidate the dealings of an unqualfied broker, so far as to prevent him from recovering payment for his services in that capacity (*b*). But it would not affect his right to recover from his employer money paid on his behalf to complete the irregular purchase; for this was a transaction distinct from his character of broker (*c*). It has been held that an enactment, which provided that no person interested in a contract with a company should be capable of being a director, and that if a director of a company were concerned in any contract

(*a*) 44 Geo. III. c. 98, s. 14; *Taylor* v. *Crowland Gas Co.* (1854), 23 L. J. Ex. 254.

(*b*) 6 Anne, c. 16, s. 4 (2), altered as to amount of penalty by 57 Geo. III. c. 60; *Cope* v. *Rowlands* (1836), 6 L. J. Ex. 63. Observations applied, *Mellis* v. *Shirley Local Board* (1885), 55 L. J. Q. B. 143.

(*c*) *Smith* v. *Lindo*, 27 L. J. C. P. 196, 335. *Comp. Steel* v. *Henley*, 1 C. & P. 574; *Latham* v. *Hyde*, 1 C. & M. 128.

with the company, he should cease to be a director, did not, at law, invalidate such a contract (*a*); probably, in equity the contract would be void (*b*). If, however, the company or the directors, after full disclosure of the interest of the contracting directors, chose to affirm the contract it would probably be binding on the company even in equity (*c*).

But where the object of the Act is sufficiently attained without giving the prohibition so stringent an effect, and where it is also collateral to or independent of the contract, the statute is understood as not affecting the validity of the contract.

Thus it has been held by the House of Lords that the provision of s. 43, Companies Act, 1862, which imposed a penalty of £50 upon every officer of a limited company who knowingly and wilfully authorised or permitted the non-registration of mortgages, or charges specifically affecting the property of a company, was not to be construed as also invalidating debentures issued to a director, because he had omitted to register them (*d*).

(*a*) *Foster* v. *Oxford &c. Ry. Co.* (1853), 22 L. J. C. P. 99. *Comp. Barton* v. *Port Jackson Co.*, 17 Barbour, New York R. 397.

(*b*) *Aberdeen Ry. Co.* v. *Blaikie* (1854), 1 Macq. H. L C. 461.

(*c*) *Murray* v. *Epsom Local Board* (1896), 66 L. J. Ch. 107, at p. 109.

(*d*) 25 & 26 Vict. c. 89, s. 43, repealed, s. 100 (2), Companies (Consolidation) Act, 1908; *Wright* v. *Horton*, 12 App. Cas. 371.

And where an Act subjected every licensed distiller to a penalty of £200, if he sold spirits by retail, or even wholesale, anywhere within two miles of the distillery, and required that every license should state the name and abode of every person licensed; it was held that the omission, in the license, of the name and abode of one of the five partners in a distillery, and the retailing of spirits by him, did not affect the sale, so as to prevent the partnership from recovering the price (*a*). So, the provisions of an Act which imposed penalties on every dealer in tobacco who omitted to paint his name over the entrance of his premises, or who dealt in tobacco without a license, were understood as not affecting the validity of a contract by a tobacconist who had neglected to comply with them. They were mere fiscal regulations, the breach of which was unconnected with the contract; their object was to protect the revenue, and this was completely attained by the enforcement of the penalty (*b*). On the same ground it has been held that the omission of a broker to send to his principal a stamped contract note in respect of a sale of

(*a*) *Brown* v. *Duncan* (1829), 5 Man. & Ry. 114; *Hodgson* v. *Temple*, 14 R. R 738; *Johnson* v. *Hudson*, 10 R. R. 465; *Wetherell* v. *Jones*, 3 B. & Ad. 221; *Bailey* v. *Harris*, 18 L. J. Q. B. 115.

(*b*) *Smith* v. *Mawhood*, 15 L. J. Ex. 149.

stock on the Stock Exchange, as required b
s. 17 (1), Revenue Act, 1888, though subjectin
the former to a penalty of £20 does not prever
him from recovering from the latter his con
mission on such sale (*a*).

39 & 40 Geo. III. c. 99 (*b*), already referred t
(p. 693), affords an illustration of the two classes
cases. It required a pawnbroker to paint h
name and business over his door: and it als
required that before he made any advance on
pledge, he should make certain inquiries of th
pledger as to his name, abode, and condition i
life, and should enter the results of them in hi
books and on the duplicate. A breach of th
former provision would not affect the validit
of a pledge; but a breach of the latter would d
so, for they are directly and immediately con
nected with the contract (*c*), and generally
contract entered into in contravention of
statutory duty, whether the prohibition is expres
or is implied from the imposition of a penalty, wi

(*a*) 51 & 52 Vict. c. 8, repealed, 54 & 55 Vict. c. 39, s. 12
for re-imposition of duty, see ss. 52–53; *Learoyd* v. *Bracke*
[1894] 1 Q. B. 114. For definition of "Contract note," see s. 7
(3), Finance (1909–10) Act, 1910.

(*b*) Repealed, 35 & 36 Vict. c. 93, s. 4.

(*c*) *Fergusson* v. *Norman* (1838), 50 R. R. 613. See als
Victorian Daylesford Syndicate, Ltd. v. *Dott*, [1905] 2 Ch
624.

not support an action (*a*). And *à fortiori* this is the case where a statute with the view of affording protection to the public imposes a penalty for doing some particular act (*b*). The object of the Legislature by imposing such regulations, being to guard against abuses, and this object would be but imperfectly attained if the contract were held good.

It was once considered a rigid rule that when the bad part of a contract was made illegal or void by statute, the whole instrument was invalidated; while, if the invalid part was void at common law, the remainder of the instrument was valid; a statute being, it was said, strict law, while the common law divided according to common reason (*c*); or again, the former like a tyrant making all void; the latter, like a nursing father making void only the part where the fault is, but preserving the rest (*d*). But this is not the true test. The question whether the whole instrument, or only the invalid part is void, depends on the more rational ground whether the

(*a*) *Cundell* v. *Dawson* (1847), 17 L. J. C. P. 311; *Forster* v. *Taylor* (1834), 3 B. & Adol. 887.

(*b*) *D'Allax* v. *Jones* (1854), 26 L. J. Ex. 79.

(*c*) *Norton* v. *Simmes*, Hob. 12.

(*d*) *Maleverer* v. *Redshaw*, 1 Mod. 35; *Mosdel* v. *Middleton*, 1 Ventr. 237.

vitiated part be severable from the rest, or not. If the one cannot be severed from the other part, the whole is void; but if it be severable, whether the illegality was created by statute or by the common law, the bad part may be rejected, and the good retained (*a*). Thus, though some of the rules of a Trade Union may be illegal and void, yet it does not follow that the whole of the rules are unenforceable (*b*). If a deed was made on a consideration, part of which was illegal, the whole instrument would be void, for every part of it would be affected by the illegal consideration (*c*); and a contract of which the consideration is in any part illegal cannot be enforced. But it would be otherwise if only some of the promises which constituted the consideration,

(*a*) See *per* Willes J., *Pickering* v. *Ilfracombe Ry. Co.*, L. R. 3 C. P. 250; *per* Turner L.J., *Jortin* v. *S. E. Ry.*, 6 De G. M. & G. 275; *Biddell* v. *Leeder*, 1 B. & C. 327; *Browning, Exp.*, L. R. 9 Ch. 583. See also *Baker* v. *Hedgecock* (1888), 39 Ch. Div. 520, *per* Chitty J., and the cases there cited; *Byrne, Exp., Burdett, In re* (1888), 20 Q. B. D. 310, C. A.; 57 L. J. Q. B. 263; *Isaacson, In re, Mason, Exp.* (1394), 64 L. J. Q. B. 191; *Continental Tyre & Rubber Co.* v. *Heath* (1913), 29 T. L. R. 308.

(*b*) *Osborne* v. *Amalgamated Socy. of Railway Servants*, 80 L. J. Ch. 315. *Comp. Swaine* v. *Wilson*, inf. p. 704.

(*c*) *Per* Tindal C.J., *Waite* v. *Jones*, 1 Bing. N. C. 662, and *Shackell* v. *Rosier*, 2 Bing. N. C. 646; *Collins* v. *Gwynne*, 51 R. R. 43.

were illegal, and the illegality did not taint the rest. Thus, although a rent-charge on a living was invalidated by a statute, which declared all chargings of benefices with pensions utterly void; a covenant in the deed which created such a charge, to pay it, was held good and was enforced (*a*). Where a bill of sale comprised real as well as personal chattels, it was held void as regards the latter, because not in accordance with the statutory form (*b*). But it was valid as regards the real chattels, because the legal and illegal portions of the deed were severable (*c*). So though a bill of sale transferring a ship by way of mortgage was void, in consequence of the omission to recite the certificate of registry, a similar covenant, by the mortgagor, to repay the money advanced, and secured by the same deed, was held valid and binding (*d*). So, a tenant may be sued on his covenant to pay his rent clear of all taxes, although in another part of the lease he covenants to pay the landlord's property tax; an

(*a*) *Mouys* v. *Leake*, 8 T. R. 411, approved by Lord Ellenborough C.J., *Kerrison* v. *Cole*, 8 East, 234.

(*b*) 45 & 46 Vict. c. 43, s. 9; *Cochrane* v. *Entwistle*, 25 Q. B. D. 116; *Brandon Hill* v. *Lamb* (1914), 59 S. J. 75; *Lester* v. *Hickling*, [1916] 2 K. B. 302.

(*c*) *Byrne, Exp., Burdett, Re*, 57 L. J. Q. B. 263. See also *Mumford* v. *Collier*, 25 Q. B. D. 279; *Isaacson, Re* (1894), 64 L. J. Q. B. 191.

(*d*) *Kerrison* v. *Cole*, 8 East, 234.

engagement which was penal and void (*a*). Whe
a miner entered into a contract of employme
with the owners of a colliery, by which he agre
not to leave his employment without givi
fourteen days' notice, and further agreed th
deductions in contravention of s. 12, Coal Mi
Regulation Act, 1887, might be made fr
his wages, it was held that the whole contr
of employment was not rendered illegal by t
latter agreement, but he was liable to p
damages to the colliery owners for leaving wi
out notice (*b*). And a friendly society or corpor
body is not disabled from suing by reason of so
of its rules being in restraint of trade a
so illegal (*c*).

On the same principle, a by-law which
partly good and partly bad is valid as to t
former part, if the latter is distinct and separa
from it (*d*); and orders of justices and of ot

(*a*) See *Gaskell* v. *King* (1809), 11 East, 165; *Howe* v. *Sy*
15 East, 440; *Readshaw* v. *Balders*, 4 Taunt. 57; *Greenwoo*
London (*Bp.*), 5 Taunt. 727; *Pallister* v. *Gravesend* (185
C. B. 774; *The Buckhurst Peerage*, 2 App. Cas. 1.

(*b*) 50 & 51 Vict. c. 58; *Kearney* v. *Whitehaven Colliery*
[1893] 1 Q. B. 700. See also *Chell* v. *Hall* (1896), 12 T. L
408.

(*c*) *Swaine* v. *Wilson*, 24 Q. B. D. 252. *Comp. Osbor*
Amalgamated Socy. of Railway Servants, sup. p. 702.

(*d*) *R.* v. *Faversham*, 8 T. R. 352; *R.* v. *Lundie*, 31 L. J. M
157; *per* Quain J., *Hall* v. *Nixon*, L. R. 10 Q. B. 160;

authorities, and the award of arbitrators are similarly treated (*a*).

SECTION II.—PUBLIC AND PRIVATE REMEDIES.

When a statute creates a new obligation, or makes unlawful that which was lawful before, a corresponding right is thereby impliedly given, either to the public, or to the individual injured by the breach of the enactment; and sometimes to both. Again, if the Legislature gives to an association of individuals (*e.g.* a Trade Union) which is neither a corporation nor a partnership nor an individual, a capacity for owning property and acting by agents, such capacity in the absence of express enactment to the contrary involves the necessary correlative of liability to the extent of such property, for the acts and defaults of such agents (*b*).

Bayley J., *Clark* v. *Denton*, 1 B & Ad. 95; *Brown* v. *Holyhead*, 1 H. & C. 601. See p. 523, sup.

(*a*) *R.* v. *Stoke Bliss* (1844), 13 L. J. M. C. 151; *R.* v. *Oxley*, 6 Q. B. 256; *R.* v. *Robinson*, 17 Q. B. 466; *R.* v. *Green*, 20 L. J. M. C. 168; *Goddard, re*, 19 L. J. Q. B. 305.

(*b*) *Per* Farwell J. (affirmed by the House of Lords) in *Taff Vale Railway* v. *Amalgamated Society of Railway Servants*, 70 L. J. K. B. 905. That decision caused a labour agitation resulting in the passing of the Trades Disputes Act, 1906, which unfortunate Act legalised breaches of contract and interferences if done "in contemplation or furtherance of a Trade Dispute," and prohibited actions of tort against a Trade Union.

Where a statute creates an offence and specifies certain persons as those by whom the provisions of the Act shall be enforced, no other person can prosecute for the offence (*a*). Where a penalty is imposed nothing being said as to who may recover it, nor is it enacted for the benefit of a party aggrieved, the offence not being against an individual, the penalty belongs to the Crown, and the Crown alone can maintain a suit for it (*b*).

If a statute prohibits a matter of public grievance (*c*), or commands a matter of public convenience (*d*), all acts and omissions contrary to its injunctions are misdemeanours; and if it omits to provide any procedure or punishment for such act or default, the common law method of redress is impliedly given; that is, the procedure by indictment, and punishment by fine or imprisonment without hard labour, or both. The Court may also require the defendant to find sureties to keep the peace and be of good behaviour (*e*). Thus, s. 7, 43 Eliz. c. 2, in

(*a*) *R.* v. *Cubitt*, 22 Q. B. D. 623; *Anderson* v. *Hamlin*, 25 Q. B. D. 221.

(*b*) 29 & 30 Vict. c. 19, s. 5; *Bradlaugh* v. *Clarke*, 8 App. Cas. 354. *Comp. A.-G.* v. *Exeter Corporation*, sup. p. 324.

(*c*) *R.* v. *Sainsbury*, 2 R. R. 433.

(*d*) *R.* v. *Davis*, Say. 133; *R.* v. *Price*, 11 A. & E. 727.

(*e*) 2 Hawk. c. 25, s. 4; and see the cases collected in Burn's J. Office II.

empowering justices to order the father or other relation of a pauper to pay for his maintenance, impliedly provided for the enforcement of the order by indictment (*a*). Churchwardens and overseers were indictable for not making a rate to reimburse constables as directed by 14 Car. II. c. 12, the word "may" in a statute being the same as "shall" in acts relating to justice or the public weal (*b*). So, refusal or neglect by the father of a child to furnish the registrar of births, when requested, the particulars required by 6 & 7 Will IV. c. 86, s. 20, is an indictable misdemeanour (*c*). Where it was enacted under the repealed Quarantine Acts (*d*) that all persons coming from a place infected by the plague should obey such orders as the King in council should make; the disobedience of any such order, being a disobedience of the Act, would be indictable, and punishable by fine and imprisonment (*e*).

But the matter must be strictly of public concern. If the statute extends only to particular persons, or to matters of a private nature, as

(*a*) *R.* v. *Robinson*, 2 Burr. 799; *R.* v. *Balme*, 2 Cowp 648; *R.* v. *Ferrall*, 2 Den. C. C. 51.

(*b*) *R.* v. *Barlow*, 2 Salk. 609.

(*c*) *R.* v. *Price*, 11 A. & E. 727.

(*d*) See the Public Health Act, 1896 (59 & 60 Vict. c. 19).

(*e*) *R.* v. *Harris*, 2 R. R. 358; *R.* v. *Haigh*, 3 T. R. 637; *R.* v. *Walker*, L. R. 10 Q. B. 355.

those relating to distresses by lords on their tenants, disobedience would not be indictable (*a*). Where the burden of repairing a private road for the use of the owners and occupiers of tenements in nine parishes, was thrown upon the owners and occupiers in six of those parishes; the latter were held not indictable for the non-repair of the road, because the duty did not concern the public, but only the individuals who had a right to use the private road (*b*).

If the statute which creates the obligation, whether private or public, provides in the same section or passage a specific means or procedure for enforcing it, no other method than that thus provided can be resorted to for that purpose (*c*). Thus, where the Land Tax Redemption Act directed that the tax should be added to the rent in all

(*a*) 2 Hawk. c. 25, s. 4.

(*b*) *R.* v. *Richards*, 5 R. R. 489. See also *R.* v. *Storr*, 3 Burr. 1698, and *R.* v. *Atkins*, Id. 1706.

(*c*) *Per* Stirling J., *Grand Junction Waterworks Co.* v. *Hampton U. C.*, 67 L. J. Ch. 610, fully cited and applied by Eve J. in *Merrick* v. *Liverpool Corp.*, 79 L. J. Ch. 756, 757. See *per* Lord Tenterden, *Doe* v. *Bridges*, 1 B. & Ad. 859; *per* Lord Denman, *R.* v. *Buchanan*, 8 Q. B. 887; *per* Lord Esher M.R., *A.-G.* v. *Bradlaugh*, 14 Q. B. D. 667; *Lamplough* v. *Norton*, 22 Q. B. D. 457; *Wake* v. *Sheffield* (*Mayor*), 12 Q. B. D. 145; *R.* v. *County Court Judge of Essex*, 18 Q. B. D. 707. This does not apply to the equitable remedy by Injunction. See ex. gr. *Cooper* v. *Whittingham*, 49 L. J. Ch. 752, followed in *Carlton*

future bishops' leases, and should be recoverable in the same way as the rent, it was held not recoverable by any other means (*a*). A breach of 5 & 6 Edw. VI. c. 25 (*b*), which enacted that no person should keep an ale-house, but such who should be admitted thereunto and allowed in open sessions, or by two justices, under the penalty of summary commitment by justices for three days, was not subject to prosecution by indictment (*c*). The 21 Hen. VIII. c. 13 (*d*), having enacted that no spiritual person should take lands to farm, on pain of forfeiting £10, it was held that an offender could not be indicted for a breach of this enactment, but could only be sued for the penalty (*e*). Similarly, no indictment will lie against an overseer of a parish for wilfully inserting the names of unqualified persons in the voters' list, or for

Illustrators v. *Coleman*, 60 L. J. K. B. 510; *Hayward* v. *East London Waterworks*, 28 Ch. D. 138; *A.-G.* v. *Basingstoke*, 45 L. J. Ch. 726. *Pasmore* v. *Oswaldtwistle U. D. C.*, [1898] A. C. 387. Distinguished in *R.* v. *Stepney Corp.* (1901), 71 L. J. K. B. 238; [1902] 1 K. B. 317.

(*a*) *Doe* v. *Bridges*, 95 R. R. 483. *Comp. Scottish Widows' Fund* v. *Craig* (1882), 51 L. J. Ch. 363. See also *Bailey* v. *Badham* (1885), 54 L. J. Ch. 1067; 30 Ch. D. 84; *Rhymney Ry. Co.* v. *Rhymney Iron Co.*, 25 Q. B. D. 146.

(*b*) Repealed, 9 Geo. IV. c. 61, s. 35.

(*c*) *R.* v. *Marriot*, 4 [illegible] l. 144; *R.* v. *Buck*, 2 Stra. 679.

(*d*) Repealed, 1 & 2 Vict. c. 106, s. 1.

(*e*) 2 Hale, P. C. 171; *R.* v. *Wright*, 1 Burr. 543. See also *per* Cur., *Couch* v. *Steel*, 23 L. J. Q. B. 121.

any other of the offences specified in s. 51, Parliamentary Voters Registration Act, 1843, as the section specifies a particular penalty for the offences created, and thereby excludes all others (*a*). Where an Act which, requiring shareholders to pay, calls on their shares, provided that in case of default the company might sue them in the courts in Dublin; it was held that an action would not lie in England (*b*).

If the newly-created duty is simply an obligation to pay money for a public purpose, the general rule would seem to be that the payment cannot be enforced in any other manner than that provided by the Act; though the provision be not contained, as in the above cases, in the same section as that in which the duty was created. Thus, 43 Eliz. c. 2, which, by s. 2, authorised the imposition of a poor rate, and, by s. 4, empowered the parochial officers to levy by distress the arrears from those who refused to pay, limited the officers to this remedy, and gave no right of action for a poor rate (*c*). Similarly, where high-

(*a*) 6 & 7 Vict. c. 18 (repealed, 7 & 8 Geo. V. c. 64, s. 47, Sched. 8); *R.* v. *Hall*, [1891] 1 Q. B. 747.

(*b*) *Dundalk Ry. Co.* v. *Tapster*, 1 Q. B. 667. See also *R.* v. *County Court Judge of Essex*, 18 Q. B. D. 704; *R.* v. *Judge of City of London Court*, 14 Q. B. D. 905.

(*c*) *Stevens* v. *Evans* (1761), 2 Burr. 1157, *per* Denison J. Discussed in *Danby* v. *Watson* (1877), 46 L. J. M. C., at p. 181.

way rates were made payable under a statute which prescribed a particular procedure for their recovery, it was held that that method only could be pursued, and that no action lay (*a*).

It is, however, a general rule, that where an Act of Parliament creates an obligation to pay money, the money may be recovered by action, unless some other specific provision is contained in the Act (*b*); that is, unless an exclusive remedy be given (*c*); and the question may arise whether the particular remedy given by the Act is cumulative or substitutional for this right of action. Where a harbour Act required the master of a ship to pay certain duties to the trustees of the harbour; and besides empowering the latter to distrain for them, enacted that any master who eluded payment should stand liable for the payment of them, and that they should be levied in the same manner as penalties were directed by the Act to be levied (that is, by action or distress), it was held that the latter remedy was cumulative,

(*a*) *Underhill* v. *Ellicombe*, McClel. & Yo. 450. See also *London B. & S. C. Ry. Co.* v. *Watson*, 4 C. P. D. 118; and sup. Chap. V. Sect. I. p. 235.

(*b*) *Per* Parke B., *Shepherd* v. *Hills*, 11 Ex. 55. See also ex. gr. *Steinson* v. *Heath*, 3 Lev. 400; *Pelham* v. *Pickersgill*, 1 R. R. 348; *Maurice* v. *Marsden*, 19 L. J. C. P. 152; *Batt* v. *Price*, 1 Q. B. D. 264; *Booth* v. *Trail*, 12 Q. B. D. 8.

(*c*) *Per* Martin B., *Hitchinson* v. *Gillespie*, 25 L. J. Ex. 109; *R.* v. *Hull & Selby Ry. Co.*, 13 L. J. Q. B. 257.

and that as the Act had made the master liable to pay the dues, an action lay for them (*a*). This decision is said to have been based on the ground that the particular remedy given by the Act did not cover the whole right (*b*). But where a by-law required a traveller without a tioket to pay the fare from the station whence the train first started to the end of his journey, and by s. 145, 8 & 9 Vict. o. 20, penalties for forfeitures imposed by the by-laws were recoverable before justices; it was held that the by-law did not create a debt recoverable in a Court of civil jurisdiction (*c*).

Where an injunction of a statute is general, and is not contained in a clause specifying only particular remedies for the breach of suoh injunction, such breach may be subjeot to the common law procedure and punishment, though there be afterwards a particular remedy given (*d*). Thus, under 10 & 11 Will. III. c. 17, whioh deolared, in

(*a*) *Shepherd* v. *Hills* (1855), 11 Ex. 55; 25 L. J. Ex. 6; distinguished in *St. Pancras Vestry* v. *Battenbury* (1857), 26 L. J. C. P. 243.

(*b*) *Per* Williams J., *St. Pancras Vestry* v. *Battenbury*, 2 C. B. N. S. 487.

(*c*) *London B. & S. C. Ry. Co.* v. *Watson*, 4 C. P. D. 118; distinguished in *G. N. Ry.* v. *Winder*, [1892] 2 Q. B. 595; 61 L. J. Q. B. 608.

(*d*) *Per* Lord Denman C.J., *R.* v. *Buchanan*, 8 Q. B. 883, citing *R.* v. *Wright*, 1 Burr. 543. See sup. 330. *R.* v. *Davis*, Say. 133; *R.* v. *Gould*, 1 Salk. 381.

the 1st section, that keeping a lottery was a public nuisance, and, by the 2nd, made the keeper of one liable to a penalty recoverable by penal action, it was held that the offender was also indictable (*a*). 6 & 7 Vict. c. 73 (*b*) having enacted, in one section, that no person should act as an attorney or solicitor who was not duly admitted and enrolled; and in another, that a breach of this prohibition should be deemed a contempt of Court; it was held that the offence was also indictable (*c*). So, where a statute prohibited the erection or maintenance of a building within ten feet of a road, declaring such an erection a common nuisance; and, in another section, authorised two justices to convict the proprietor, and to remove the structure; it was held that an indictment, also, lay for the nuisance (*d*).

The underlying principle being—as already stated—that where a statute renders acts punishable for the first time, if the statute contain no general prohibition, the acts are not punishable

(*a*) *R.* v. *Crawshaw*, 30 L. J. M. C. 58.

(*b*) Partially repealed, S. L. R. (*No.* 2), 1874, and see 23 & 24 Vict. c. 127, s. 26.

(*c*) *R.* v. *Buchanan* (1846), 15 L. J. Q. B. 227. The offender is a criminal, *Osborne* v. *Milman*, 18 Q. B. D. 471. But a solicitor struck off the rolls for allowing an unqualified person to use his name is not: *Re Eede*, 59 L. J. Q. B. 376.

(*d*) *R.* v. *Gregory*, 5 B. & Ad. 555.

by indiotment but only in the manner prescribed by the statute (*a*).

The same principle applies when the duty is a private one. Thus, the Distress for Rent Act, 1737 (11 Geo. II. o. 19), which, after (by s. 1) authorising landlords to seize the goods of their tenants, when fraudulently and clandestinely removed to elude a distress, gives them, by s. 4 (*b*), a summary remedy before justices, for recovering double the value of the goods removed, against a tenant, or any person who assisted him; was held to give them also, by implication, the right of suing for damages for the fraudulent or clandestine removal (*c*).

Where churchwardens refuse to allow an inspection of their accounts, the Court would not refuse a *mandamus* to enforce the performance of that duty, if advisable, on public grounds, merely because a peouniary penalty, applicable to the use of the poor of the parish, was imposed for the refusal (*d*).

(*a*) *R.* v. *Hall*, [1891] 1 Q. B. 747, at p. 751.

(*b*) Sec. 4 is partially repealed by 47 & 48 Vict. c. 43, s. 4.

(*c*) *Bromley* v. *Holden*, 31 R. D. 727; *Horsfall* v. *Davy*, 1 Stark, 169. See also *Collinson* v. *Newcastle Ry. Co.*, 1 C. & K. 546; *Ross* v. *Rugge-Price*, 1 Ex. D. 269; discussed in *Pulsford* v. *Devenish*, [1903] 2 Ch., at p. 634. See also *Brain* v. *Thomas*, 50 L. J. C. P. 662; and the cases collected in the note to *Ashby* v. *White*, 1 Sm. L. C. 266, 12th ed.

(*d*) *R.* v. *Clear*, 28 R. R. 498. See also *Lichfield* v. *Simpson*,

When a statute imposes a ministerial, as distinguished from a judicial, duty, for the benefit of particular individuals, any of these, if directly injured by the breach of the duty, has impliedly a right to recover, from the person on whom the duty is cast, satisfaction for the injury done to him contrary to the statute (*a*), unless, of course, a different intention is to be collected from the Act. Thus, an incorporated vestry, which refused to perform the statutory duty of removing dirt and ashes, was held liable in an action by the party aggrieved, for the expenses incurred from the refusal (*b*). Although in a later case it was decided that a statutory breach of duty by a corporation to remove street refuse from the streets within its district did not give a right of action to a person suffering special damage by reason of such breach (*c*). But, on the other hand, an unsuccessful candidate at an election is entitled to sue the returning officer for compensation, if the loss of the election was owing to the

15 L. J. Q. B. 78, and see *Gt. Northern Fishing Co.* v. *Edgehill* (1883), 11 Q. B. D., at p. 226.

(*a*) 2 Westmr. 13 Edw. I. c. 50; 1 Inst. 56a; *Anon.*, 6 Mod. 27; *per* Cur., *Couch* v. *Steel* (1854), 23 L. J. Q. B. 121; approved in *Robertson* v. *Amazon Tug & Lighterage Co.* (1881), 51 L. J. Q. B. 68, at p. 72; questioned *Atkinson* v. *Newcastle & Gateshead Waterworks Co.* (1877), 46 L. J. Ex. 775.

(*b*) *Holborn Union* v. *St. Leonard*, 2 Q. B. D. 145.

(*c*) *Saunders* v. *Holborn District Bd. of* *orks*, [1894] 1 Q. B. 64.

officer's neglect of the prescriptions of the Ballot Act, 1872, upon the ground that such duties were merely ministerial (*a*). An action was held maintainable by the party wronged against a deputy postmaster, for not delivering a letter according to his duty under the repealed 9 Anne, c. 10, s. 2; though he was also liable, under the same Act, to a penalty for detaining letters, recoverable by a common informer (*b*). Under the repealed 8 Anne, c. 19, which gave authors the sole right of printing their works for fourteen years, and provided that if any other person printed them without consent, he should forfeit the printed matter to the proprietor, and a further penny for every sheet, one half to the Queen, and the other half to the informer, the author was also entitled to sue for damages (*c*). If a railway company were prohibited, for the protection of the owner of one ferry, from making a line to another ferry, an action would lie for breach of the prohibition, without special damage (*d*).

(*a*) 35 & 36 Vict. c. 33; *Pickering* v. *James* (1873), L. R. 8 C. P. 489. See also *Fotherby* v. *Metrop. Ry. Co.*, L. R. 2 C. P. 188.

(*b*) *Rowning* v. *Goodchild*, 2 W. Bl. 906. For existing law, see 8 Edw. VII. c. 48, ss. 53 and 57 (*f*).

(*c*) *Beckford* v. *Hood*, 4 R. R. 527. See also *Novello* v. *Ludlow*, 21 L. J. C. P. 169. For existing law, see Copyright Act, 1911, and a disquisition thereon in Clerk and Lindsell on Torts, Chap. XXI.

(*d*) *Chamberlaine* v. *Chester Ry. Co.*, 18 L. J. Ex. 494.

Sec. 38, Companies Act, 1867 (repealed s. 80, Companies (Consolidation) Act, 1908), which, after requiring that every prospectus and notice of a joint-stock company, inviting persons to subscribe for shares shall specify the dates and names of the parties to contracts entered into by the company or its promoters before the issue of the prospectus or notice, declares that every prospectus which does not comply with this provision shall be deemed fraudulent on the part of those who knowingly issued it, as regards those who take shares on the faith of such prospectus, and in ignorance of the unmentioned contract, was held to give by implication to such shareholders a cause of action against every such issuer of the prospectus (*a*).

If, indeed, the breach of the new duty is made by the Act subject to a pecuniary penalty recoverable only by the party aggrieved, the inference would seem to be that this penalty was intended as a compensation for the private injury, as well as a punishment for the public wrong; and there would be no other remedy for either the one or the other (*b*). Thus, where an Act provided that

(*a*) *Charlton* v. *Hay*, 31 Law Times, 437. See *Gover's Case*, 1 Ch. D. 182, *per* James L.J. and Bramwell B.; *Twycross* v. *Grant*, 46 L. J. C. P. 636; *Shepheard* v. *Broome*, 73 L. J. Ch. 608; *per* Lord Lindley, *Calthorpe* v. *Trenchman* (1904), 75 L. J. Ch. 92.

(*b*) *Per* Cur., *Couch* v. *Steel*, sup. p. 715. See *Partridge* v.

if one fishing-boat interfered with another under certain circumstances, the party interfering should forfeit a penalty, recoverable summarily before justices to whom powers were given of enforcing their decisions by distress and imprisonment; it was held that no action for special damage was maintainable, but that the party injured was limited to the remedy given by the statute (*a*). It has been observed, indeed, respecting this case, that no duty was imposed on the defendant by the Act; that he was only prohibited, under a penalty, from exercising the right of fishing to the extent that he had it at common law: that he was not bound to perform any particular duty created by the Act, but only to forbear to do that which, but for the Act, he might have done (*b*). But it may be doubted whether the suggested distinction is substantial. If, for the protection of particular persons, an Act prohibited a railway company from making a line in a certain direction, the company would seem liable to an action by those persons for damages sustained from a breach of the enactment (*c*). At all events, the only duty created, if any, was one to the party

Naylor, Cro. Eliz. 480; sup. pp. 354, 356; *R.* v. *Hicks*, 24 L. J. M. C. 94; *Anderson* v. *Hamlin*, 25 Q. B. D. 221.

(*a*) *Stevens* v. *Jeacocke*, 17 L. J. Q. B. 163.

(*b*) *Per* Cur., *Couch* v. *Steel*, sup. p. 715.

(*c*) See *Chamberlain* v. *Chester Ry. Co.*, sup. p. 716.

injured; and as the Act, in expressly creating that duty, also provided a special remedy for its breach, none other can be implied.

The right of action, where it exists, is strictly limited to those who are directly and immediately within the scope of the enactment. The Contagious Diseases (Animals) Act, 1869 (32 & 33 Vict. c. 70, s. 57), for example, in imposing a penalty on those who send animals to market with infectious diseases, may give a right of action to the owner of an animal in the market, which caught the disease from the infected animal of the offender, the object of the Act being to protect those who expose animals for sale there; but it would not give a right of action to the purchaser of the diseased animals which had been wrongfully exposed, for the Act did not aim at the protection of buyers in the market (*a*). So, an Act which requires a railway company to fence their line, may give the adjoining landowner an action for a breach of the enactment, if his cattle are injured by getting on the line in consequence; but a passenger injured by an accident caused by such cattle getting on the line, would

(*a*) *Ward* v. *Hobbs* (1878), 48 L. J. Q. B. 281. As to existing law, see 57 & 58 Vict. c. 57, s. 22 (IX.), and see as to Clause 12 of the Animals (Transit and General) Order, 1912, and offences thereunder, *North Staffordshire Ry.* v. *Waters* (1913), L. G. R. 289.

not be entitled to an action for the neglect to fence (*a*).

The general principle was formerly considered of wider application; for it was deemed that whenever a statutory duty was created, any person who could show that he had sustained an injury from the non-performance of it, had a right of action for damages against the person on whom the duty was imposed. Accordingly, where an Act (repealed and replaced by 57 & 58 Vict. c. 60, s. 200) required the owner of a ship to keep on board a sufficient supply of medicines, under a penalty of £20 recoverable at the suit of any person and divisible between him and the Seamen's Hospital, it was held that the owner was liable also to an action by a seaman, for compensation for the special damage which he had sustained from a neglect to supply the ship with medicines, as required by the Act (*b*). But this proposition cannot be now regarded as law. Whether any such right of action arises by im-

(*a*) *Buxton* v. *N. E. Ry. Co.* (1868), L. R. 3 Q. B. 549; 37 L. J. Q B. 258. Discussed and applied, *Thomas* v. *Rhymney Ry.* (1870), 39 L. J. Q. B. 141.

(*b*) *Couch* v. *Steel*, sup. p. 715; *Holmes* v. *Clarke*, 39 L. J. Ex. 135. As to expenses of medical attendance in case of injury or illness to seamen, see 6 Edw. VII. c. 48, s. 34. For Medical Provisions in case of Emigrant Ships, see 57 & 58 Vict. c. 60, s. 303.

plication must depend on the purview of the Act (*a*).

Where it was enacted that a waterworks company should (1) fix and maintain fire-plugs; (2) furnish water for baths, wash-houses, and sewers; (3) keep the pipes always charged at a certain pressure, allowing all persons to use the water for extinguishing fires, without compensation; and (4) supply the owners and occupiers of houses with water for domestic purposes; subject to a penalty of £10 for any breach of any of those duties, recoverable by the common informer, and to a further penalty of forty shillings a day for breaches of the second and fourth duties, recoverable by any ratepayer; it was held that the owner of a house burnt down through the company's neglect to keep their pipes duly charged, had no right of action under the statute against the company. It was improbable that Parliament would impose, or the company would have consented to undertake, not only the duty of supplying gratuitously water for extinguishing fires, but, in addition, the liability of compensating every householder injured, as well as of paying the penalties attached to the neglect of their duty. Besides, the circumstance that penalties for breach

(*a*) See *Atkinson* v. *Newcastle Waterworks Co.*, 2 Ex. D. 441, *per* Lord Cairns, Cockburn C.J., and Brett L.J.; *Johnston* v. *Consumers' Gas Co. of Toronto*, 67 L. J. P. C. 33.

of the second and fourth duties were recoverable by the ratepayers, raised the inference that the other obligations were intended for the public benefit only (*a*). So where a duty was for the first time imposed by statute (17 & 18 Vict. c. 104) (*b*) on the master of a ship, subject to a penalty of £10, to give a seaman a certificate of discharge, it was held that an action for damages for breach of this duty was not maintainable (*c*).

Where, however, no penalty is provided by an Act for the contravention of its provisions, a person injured by a breach of an absolute and unqualified duty imposed by an Act, has an undoubted cause of action; and where a penalty is imposed, the cause of action remains, unless it appears from the whole purview of the Act, that the Legislature intended that the only remedy should be by proceeding for the recovery of the penalty (*d*).

The true principle is, that where the public

(*a*) *Atkinson* v. *Newcastle Waterworks Co.* (1877), 46 L. J. Ex. 775; *Johnston* v. *Consumers' Gas Co. of Toronto*, [1898] A. C. 447, P. C.

(*b*) Repealed, 57 & 58 Vict. c. 60, s. 745, and see 6 Edw. VII. c. 48, ss. 31 and 33.

(*c*) 17 & 18 Vict. c. 104, s. 172; *Vallance* v. *Falle*, 13 Q. B. D. 109. See also *G. N. Steamship Co.* v. *Edgehill* (1883), 11 Q. B. D. 225. Discussed in *Sharp* v. *Rettie* (1884), 11 Ct. of Sess. Cas. (4th ser.), 745.

(*d*) *Groves* v. *Wimborne*, [1898] 2 Q. B. 402.

duty imposed by the Act is not intended for the benefit of any particular class of persons, but for that of the public generally, no right of action accrues by implication to any person who suffers no more injury from its breach than the rest of the public. Where a specific remedy is provided by statute, proceedings must be taken to enforce it, and if no specific remedy is so provided the proper course is to proceed by indictment. A public injury is indictable; but it is not actionable, unless the sufferer from its breach has sustained some direct and substantial private and particular damage beyond and in excess of that suffered in common with the rest of the public (*a*). If A. digs a trench across the highway, he is indictable only; but if B. falls into it, A. is liable to an action by B. for the particular injury sustained (*b*). It has been held that the obstruction of a navigable river becomes a private injury as well as a public nuisance, if access is thereby prevented to the inn of the plaintiff, who loses customers in

(*a*) *Iveson* v. *Moore*, 1 Salk. 15; *R.* v. *Russell*, 8 R. R. 506; *R.* v. *Bristol Dock Co.*, 11 R. R. 440; *per* Cur., *Chamberlaine* v. *Chester &c. Ry. Co.*, sup. p. 716; *Glossop* v. *Heston Loc. Bd.*, 12 Ch. D. 102, distinguished in *Jones* v. *Llanrwst U. C.*, 30 L. J. Ch. 145; *Pasmore* v. *Oswaldtwistle U. D. C.*, [1898] A. C. 387. *Per* Wills J., *Clegg* v. *Earby Gas Co.*, [1896] 1 Q. B. 592.

(*b*) *Gould* v. *Birkenhead Corp.* (1910), 8 L. R. G. 395. And see Clerk and Lindsell on Torts, 6th ed. Chap. I., pp. 33 *et seq.*

consequence (*a*); but it is now established that a person injured in respect of goodwill by a temporary obstruction oreated under statutory powers has no remedy by action (*b*). Where, however, the public duty of repairing a sea-wall was imposed on a munioipal corporation, it was held that an individual whose house was damaged by the sea, in oonsequence of the neglect of this duty to keep the wall in repair, was entitled to sue the corporation for oompensation (*c*). But the injury must be the proximate, neoessary, or natural result of the infringement of the duty; the infringement being the *causa causans*, and not merely a *causa sine quâ non*, of the speoial damage (*d*).

Nor does any right of action arise where the duty has been imposed by the Legislature for a purpose altogether foreign to individual interests.

(*a*) *Rose* v. *Groves*, 12 L. J. C. P. 251; *Wilkes* v. *Hungerford Market Co.* (1835), 2 Bing. N. C. 281; *Lyon* v. *Fishmongers' Co.*, 1 App. Cas. 662; *Marshall* v. *Ulleswater Co.*, L. R. 7 Q. B. 171, *per* Blackburn J.; *Beckett* v. *Midland Ry.* (1867), L. R. 3 C. P. 82, at p. 96.

(*b*) *Ricket's Case* (1867), L. R. 2 H. L. 175.

(*c*) *Lyme Regis* v. *Henley*, 37 R. R. 125; *Ruck* v. *Williams*, sup. p. 173. See *Nitrophosphate Co.* v. *St. Katherine Docks Co.*, 9 Ch. D. 503. See also *per* Brett L.J., *Glossop* v. *Heston Loc. Bd.*, 12 Ch. D., at p. 121.

(*d*) *Benjamin* v. *Storr*, L. R. 9 C. P. 400; *Colchester* v. *Brooke*, 15 L. J. Q. B. 59; *Walker* v. *Goe*, 3 H. & N. 395; 4 Id. 350; *Romney Marsh* v. *Trinity House*, L. R. 5 Ex.204; 7 Id. 247.

Thus, although shipowners were required, under the repealed Contagious Diseases (Animals) Act, 1869, to provide pens and footholds for cattle on board, no action lies against them under the Act by the owners of cattle which are washed overboard, owing solely to the neglect to provide those appliances; for the Legislature, in providing or authorising such regulations, did not contemplate the protection of proprietary rights, but had in view solely the sanitary purpose of preventing the communication of infectious disease to cattle in sea transit (*a*).

So, although the parish surveyor of highways is subject to penalties under the Highway Act, 1835, for any neglect of his duties regarding the maintenance of the parish roads, he does not thereby become liable to an action at the suit of a private person who has suffered special damage from their non-repair, or from an obstruction to which the surveyor was, personally, no party. The duties thus imposed on him are duties to his parish, not to the public; the Act having been passed, not to create a new liability either in the parish or in other persons, but to provide for the fulfilment of the surveyor's duty to the parish (*b*). The duty

(*a*) 32 & 33 Vict. c. 70; *Gorris* v. *Scott* (1874), L. R. 9 Ex. 125, discussed in *Groves* v. *Wimborne* (*Lord*), [1898] 2 Q. B., at p. 407.

(*b*) *Young* v. *Davis* (1862), 7 H & N. 760; 2 H. & C 197; *McKinnon* v. *Penson* (1853), 23 L. J. M. C. 97; *Foreman* v.

of keeping the roads in repair, as regards the public, lay on the parish; and though a parish, like a county, could not be sued civilly, as it was not a corporate body, and could not be compelled to appear in Court (*a*), this furnished no logical ground for making, under the above circumstances, their officer liable to an action (*b*) for non-feasance merely, and not misfeasance (*c*). The liability of a local authority is not more extensive (*d*).

And it must now be taken as settled law that a transfer to a public corporation of the obligation to repair does not of itself render such corporation liable to an action in respect of mere non-feasance (*e*).

Canterbury, L. R. 6 Q. B. 214; *Taylor* v. *Greenhalgh*, L. R. 9 Q. B. 487; *Gibson* v. *Preston*, L. R. 5 Q. B. 218; *White* v. *Hindley Loc. Bd.*, L. R. 10 Q. B. 219; *R.* v. *Poole* (*Mayor*), 19 Q. B. D. 602.

(*a*) *Russell* v. *Men of Devon*, 1 R. R. 585. *Comp. Hartnall* v. *Ryde Commissioners*, 33 L. J. Q. B. 39.

(*b*) *Per* Cur., 2 H. & C. 198. *Comp. Blackmore* v. *Mile End Vestry*, 9 Q. B. D. 451.

(*c*) *Pendlebury* v. *Greenhalgh*, 1 Q. B. D. 36.

(*d*) *Cowley* v. *Newmarket Loc. Bd.*, [1892] A. C. 354; *Municipal Council of Sydney* v. *Bourke*, [1895] A. C. 433; *Pictou* v. *Geldert*, [1893] A. C. 524; *Moore* v. *Lambeth W. W. Co.*, 17 Q. B. D. 462; *Thompson* v. *Brighton* (*Mayor*), [1894] 1 Q. B. 332; *Steel* v. *Dartford Loc. Bd.*, 60 L. J. Q. B. 256; *Saunders* v. *Holborn Bd of Works*, [1895] 1 Q. B. 64.

(*e*) *Short* v. *Hammersmith Corp.* (1911), 104 L. T. 70.

Where a person imported cards contrary to 3 Edw. IV. c. 4 (*a*), which provided that the cards so imported should be forfeited; it was held that he was not liable to an action at the suit of one to whom the King had granted a license to import cards, paying rent to the King, and who alleged that he was thereby disabled from paying his rent; for the prohibition did not seem to have been intended for the benefit of one person to whom the license was granted. But besides, the damage may have been considered too remote (*b*).

SECTION III.—REPEAL—REVIVAL—COMMENCEMENT.

Where an Act is repealed, and the repealing enactment is repealed by another, which manifests no intention that the first shall continue repealed, the common law rule was that the repeal of the second Act revived the first; and revived it, too, *ab initio*, and not merely from the passing of the reviving Act (*c*). But this rule does not apply to repealing Acts passed since 1850. Where an

(*a*) Repealed as to England, S. L. R., 1863.

(*b*) Roll. Ab. Action sur case, M. 16, p. 106, cited in the judgment in *Couch* v. *Steel*, 3 E. & B. 402.

(*c*) 2 Inst. 686; 4 Inst. 325; *Case of Bishops*, 12 Rep. 7; *Phillips* v. *Hopwood*, 10 B. & C. 39; *Tattle* v. *Grimwood*, 3 Bing. 496, *per* Best C.J.; *Fuller* v. *Redman*, 29 L. J. Ch. 324; and see *Kemp* v. *Waddingham* (1866), L. R. 1 Q. B., at p. 358.

Act repealing, in whole or in part, a former Act, is itself repealed, the last repeal does not now revive the Act or provisions before repealed, unless words be added reviving them (*a*). It is doubtful whether this rule applies to a repeal by implication (see sup. pp. 285–295); but it seems not to apply where the first Act was only modified by the second, by the addition of conditions, and the enactment which imposed these was, itself, afterwards repealed (*b*). *Semble*, in such a case, the original enactment would revive.

Where an Act expired or was repealed, it was formerly regarded, in the absence of provision to the contrary, as having never existed, except as to matters and transactions past and closed (*c*). Where, therefore, a penal law was broken, the offender could not be punished under it, if it expired before he was convicted, although the

(*a*) 52 & 53 Vict. c. 63, s. 11.

(*b*) *Mount* v. *Taylor*, L. R. 3 C. P. 645. See also *Levi* v. *Sanderson*, L. R. 4 Q. B. 332; *Mirfin* v. *Attwood*, L. R. 4 Q. B. 330.

(*c*) For a discussion on this proposition, see *Bennett* v. *Tatton*, [1918] W. N. 291, and as to the general rule, see *per* Lord Tenterden, *Surtees* v. *Ellison*, 9 B. & C. 752; *Churchill* v. *Crease*, 5 Bing. 177. See also *Kay* v. *Goodwin*, 6 Bing. 582, *per* Tindal C.J.; *A.-G.* v. *Lamplugh* (1878), 3 Ex. Div., at p. 217; *Morgan* v. *Thorn*, 10 L. J. Ex. 125; *Steavenson* v. *Oliver*, 10 L. J. Ex. 338; *Simpson* v. *Ready*, 11 M. & W. 346, *per* Parke B. *Comp. R.* v. *West Riding*, 1 Q. B. D. 200.

prosecution was begun while the Act was still in force (*a*). An offence committed against it, while it was still in force, could not be tried after it ceased to be in force. Thus 10 & 11 Will. III. c. 23, which made larceny above five shillings a capital offence, having been repealed on the 20th of July, 1820, by 1 Geo. IV. c. 117, an offence against the earlier Act committed on the 11th of July, could not be punished in the following September; under the new Act, for it was not in force when the theft was committed, nor under the old one, for it was not in force at the time of the trial (*b*). In an action for less than forty shillings, the defendant pleaded that the debt ought to have been sued for in a local Court of Requests. But the Act establishing that Court having been repealed after the plea but before the trial, the plea failed (*c*). Where an Act which authorised the laying of rails on a road was repealed, it was doubted whether the rails could lawfully remain (*d*).

Where a plaintiff got a verdict for one shilling,

(*a*) 1 Hale, P. C. 291, 309; *Miller's Case*, 1 W. Bl. 451; *R.* v. *London Jus.*, 3 Burr. 1456; *Charrington* v. *Meatheringham*, 2 M. & W. 228; *R.* v. *Mawgan*, 8 A. & E. 496; *R.* v. *Denton*, 21 L. J. M. C. 207; *R.* v. *Swan*, 4 Cox, 108; *U. S.* v. *The Helen*, 6 Cranch, 203.

(*b*) *R.* v. *McKenzie*, Russ. & R. 429.

(*c*) *Warne* v. *Beresford*, sup. p. 401.

(*d*) *R.* v. *Morris*, 1 B. & Ad. 441.

in June, 1840, and the judge did not grant a certificate to deprive him of costs under 43 Eliz. c. 6, until the following month, by which time that Act was repealed by 3 & 4 Vict. c. 24; it was held that the power of certifying could not be exercised, in such a case, after the repeal, and that the certificate was void (*a*). So, where an action was brought and judgment recovered in 1867, in a case where title was in question, and the plaintiff would then have had his costs, either by the presiding judge's certificate, under 13 & 14 Vict. c. 61, or by a judge's order, to which he would have been entitled *ex debito justitiæ* under 15 & 16 Vict. c. 54, but he obtained neither until after the 1st of January, 1868, when both of those Acts stood repealed by 30 & 31 Vict. c. 142 (which is itself repealed by 51 & 52 Vict. c. 43); it was held that the powers under those Acts had ceased to exist, and could not be exercised in the plaintiff's favour (*b*).

Under earlier friendly societies Acts, claims

(*a*) *Morgan* v. *Thorn* (1841), 10 L. J. Ex. 125; *Butcher* v. *Henderson* (1868), L. R. 3 Q. B. 335.

(*b*) *Butcher* v. *Henderson* (1868), L. R. 3 Q. B. 335, dissenting from *Restall* v. *London & S. W. Ry. Co.*, L. R. 3 Ex. 141, where *Morgan* v. *Thorn*, sup., was not cited. See also *Wood* v. *Riley*, L. R. 3 C. P. 26; *Doe* v. *Holt*, 21 L. J. Ex. 335; *Levi* v. *Sanderson* (1869), 38 L. J. Q. B. 135 (explaining *Butcher* v. *Henderson*). *Comp. Doe* v. *Roe*, 22 L. J. Ex. 17; *Hobson* v. *Neale*, 22 Id. 175.

against a society could be enforced only by suing its officers. The 25 & 26 Vict. c. 87 (*a*), repealing those Acts, provided for the incorporation of the societies, and provided also that all legal proceedings then pending against an officer on account of a society might be prosecuted by or against the society in its registered name, without abatement. But the Act made no provision respecting the recovery of claims which were then pending, but which had not been sued for. It was held that neither the officers (*b*), nor the society itself, in its new corporate capacity (*c*), could be sued in respect of such claims; but that the individual members of the society were liable to be sued for them (*d*).

Now, under the provisions of s. 38 (2), Interpretation Act, 1889 (52 & 53 Vict. c. 63), any repeal by that Act or any subsequent Act, unless the contrary intention appears, does not

(*a*) revive anything not in force, or existing at the time at which the repeal takes effect; or

(*b*) affect the previous operation of any enact-

(*a*) Repealed by 39 & 40 Vict. c. 45, which is itself repealed by 56 & 57 Vict. c. 39.

(*b*) *Toutill* v. *Douglas*, 33 L. J. Q. B. 66.

(*c*) *Linton* v. *Blakeney Co-op. Socy.*, 34 L. J. Ex. 211.

(*d*) *Dean* v. *Mellard* (1863), 32 L. J. C. P. 282, distinguished in *Queensland Industrial Society* v. *Pickles* (1865), 35 L. J. Ex. 1.

ment so repealed or anything duly done or suffered under any enactment so repealed; or

(*c*) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed (*a*); or

(*d*) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed (*b*); or

(*e*) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed, as if the repealing Act had not been passed (*c*).

If a contract was illegal when it was entered into, and the statute which made it so is afterwards repealed, the repeal will not give validity to the contract, unless it appears that the repealing enactment was intended to have a retrospective

(*a*) *Lewis* v. *Hughes*, [1916] 1 K. B. 831, C. A.

(*b*) See as to effect on Statutory Order, *Bennett* v. *Tatton*, [1918] W. N. 292.

(*c*) See *Gwynne* v. *Drewitt*, [1894] 2 Ch. 616; 63 L. J. Ch. 870. And see *Traill* v. *McAllister* (1890), 25 L. R. (Ir.) 524.

operation, and thus to vary the relation of the parties to each other (*a*).

An enactment that offenders should be prosecuted and punished for past offences, as if the Act against which they had offended had not been repealed, was held to create no fresh power to punish, but only to preserve that which before existed; and not to authorise punishment after the Act which created the offence had ceased to exist (*b*).

Sec. 11, Interpretation Act, 1889, declares that when any Act passed after 1850 repeals another in whole or part, and substitutes some provision or provisions in lieu of the provision or provisions repealed, the latter remain in force until the substituted provision or provisions come into operation by force of the last-made Act. This provision is only declaratory of the common law rule (*c*). When the Interpretation Act, 1889, or any Act passed after its commencement repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed are, unless the contrary intention appears, to be construed as references to the provisions so re-enacted (*d*).

(*a*) *Jaques* v. *Withy*, 1 H. Bl. 65; *Hitchcock* v. *Way*, 45 R. R. 653. *Comp. Hodgkinson* v. *Wyatt*, 13 L. J. Q. B. 54.

(*b*) *The Irresistible*, 7 Wheat. 551. *Comp. R.* v. *Smith*, 31 L. J. M. C. 105.

(*c*) *Per* Cur., *Butcher* v. *Henderson*, L. R. 3 Q. B. 335.

(*d*) 52 & 53 Vict. c. 63, s. 38 (1).

If a temporary Act be continued by a subsequent one, or an expired Act be revived by a later one, all infringements of the provisions contained in it are breaches of it rather than of the renewing or reviving statute (*a*).

Where the provisions of one statute are, by reference, incorporated in another, and the earlier statute is afterwards repealed, the provisions so incorporated obviously continue in force, so far as they form part of the second enactment (*b*). Thus, when 32 & 33 Vict. c. 27 (*c*), enacted that certain provisions as to appeals to Quarter Sessions comprised in the 9 Geo. IV. c. 61, should have effect respecting the grant of certificates under the new Act, and 35 & 36 Vict. c. 94, repealed the Act of Geo. IV., it was held that those provisions remained in full force, so far as they formed part of 32 & 33 Vict. c. 27 (*d*).

Sec. 54, 9 Geo. IV. c. 40, empowered two justices of the county where a prisoner was detained in custody, who had been acquitted of felony on the ground of insanity, to determine his settle-

(*a*) *R.* v. *Morgan*, 2 Stra. 1066; *Shipman* v. *Henbest*, 4 T. R. 109; *Dingley* v. *Moor*, Cro. Eliz. 750.

(*b*) *R.* v. *Stock*, 8 A. & E. 405; *R.* v. *Merionethshire*, 6 Q. B. 334.

(*c*) Repealed, 10 Edw. VII. and 1 Geo. V. c. 24, s. 112, Sched. VII.

(*d*) *R.* v. *Smith* (1873), L. R. 8 Q. B. 146. *Comp. Bird* v. *Adcock* (1878), 47 L. J. M. C. 123.

ment, and to order his parish to pay such a sum as a Secretary of State should direct, for his maintenance; and the Act contained also provisions with reference to appeals from such orders. Sec. 7, 3 & 4 Vict. c. 54 (*a*), after reciting the above section, repealed so much of it as related to the Secretary of State, and enacted that the justices should order the payment of such sum as they should, themselves, direct. Five years later, the Act of Geo. IV. was totally repealed. It was held that the justices had authority to make the order under the Act of 3 & 4 Vict. (*b*), and that perhaps even the right of appeal had been impliedly preserved (*c*).

A law is not repealed by becoming obsolete (*d*). Thus, trial by battle,—with its oaths denying resort to enchantment, sorcery, or witchcraft, by which

(*a*) Repealed, 47 & 48 Vict. c. 64, s. 17.

(*b*) *R.* v. *Stepney*, L. R. 9 Q. B. 383.

(*c*) *Per* Blackburn J., Id. 395. See *R.* v. *Lewes Prison*, L. R. 10 Q. B. 579.

(*d*) *White* v. *Boot*, 2 T. R. 274; *per* Hullock B., *Tyson* v. *Thomas*, McCl. & Y. 126, *per* Lord Kenyon, *Leigh* v. *Kent*, 3 T. R. 362; *R.* v. *Wells*, 4 Dowl. 562; *The India* (*No.* 2), 33 L. J. P. M. & A. 193; *Hebbert* v. *Purchas* (1871), L. R. 3 P. C. 650. The reasoning in this case is disapproved in *Read* v. *Bp. of Lincoln*, [1892] A. C. 644. Acts of the Scottish Parliament may become repealed by "desuetude"; *Hoggan* v. *Wood*, [1889] 16 Rettie (Justiciary), 96.

the law of God might be depressed and the law of the devil exalted (*a*), though the trial by grand assize, introduced in the time of Henry II., had practically superseded it for centuries,—was still in force in 1819 (*b*). The writ of attaint against jurors for a false verdict was not abolished until 1825 (*c*). Until 1789, the sentence on women for treason and husband-murder was burning alive; though in practice ladies of distinction were usually beheaded, while those of inferior rank were strangled before the fire reached them (*d*). Drawing and quartering was still part of the sentence for treason until 1870. Until 1844, it was an indictable offence to sell corn in the sheaf before it had been thrashed out and measured (*e*); an Irish Act (28 Eliz. c. 2), against witchcraft, was still in force in 1821 (*f*); and, as late as 1836, insolvents in Scotland were bound to wear a coat and cap half yellow and half brown (*g*).

So, at common law eavesdroppers, or such as

(*a*) 2 Hale, P. C. 233; 3 Bl. Comm. 337.

(*b*) 59 Geo. III. c. 46. *Ashford* v. *Thornton* (1818), 19 R. R. 349; 1 B & Ald. 405; discussed in *Cobbett* v. *Grey* (1850), 19 L. J. Ex. 137; 4 Ex. 729.

(*c*) 6 Geo. IV. c. 50, s. 60.

(*d*) 3 Inst. 211; Fost. Cr. L. 268.

(*e*) 3 Inst. 197; 7 & 8 Vict. c. 24.

(*f*) 1 & 2 Geo. IV. c. 18. For the English Acts relating to Witchcraft, see p. 632, Supp. to Stroud's Judicial Dictionary.

(*g*) 6 & 7 Will. IV. c. 56, s. 18.

listen under walls or windows or the eaves of a house, to hearken after discourse, and thereupon to frame slanderous and mischievous tales, are still liable to fine (*a*); and a common scold seems still subject (after conviction upon indictment) to be placed in a certain engine of correction called the trebucket or cucking-stool, or ducking-stool, and, when placed therein, to be plunged in water for her punishment (*b*). To destroy any of the King's victualling stores seems to be still a capital offence (*c*). It is still a temporal and indictable offence to deny the being or providence of the Almighty, or, if the offender was educated in, or ever professed the Christian religion, to deny its truth, or the divine authority of the Holy Scriptures (*d*). An Act of 1786, is still in force which imposes the penalty of flogging upon persons who slaughter horses or cattle without a license, or at unlicensed hours (*e*). Suffragan

(*a*) 2 Hawk. c. 10, s. 58, 4 Bl. Comm. 169; Burn's J. Eavesdroppers.

(*b*) 1 Hawk. c. 75, s. 14; 4 Bl. Comm. 169; Burn's J. Nuisance, s. 4.

(*c*) Sec. 1, 12 Geo. III. c. 24, Dockyards &c. Protection Act, 1772. "So far as related to Scotland," this death penalty was repealed by the Statute Law Revision Act, 1892.

(*d*) 9 Will. III. c. 35, amended by 53 Geo. III. c. 160, as regards the Holy Trinity. See also Mr. Justice Stephen's Hist. Crim. L., Vol. 2, pp. 459, 483, 493.

(*e*) Sec. 8, 26 Geo. III. c. 71, the Knackers Act, 1786,

bishops are now appointed under 26 Hen. VIII. c. 14, although the Act had not been put into force for four hundred years (*a*); and at the present day s. 43 of the Customs Consolidation Act, 1876, has been so strained in its interpretation as to include numerous articles obviously never within the contemplation of the framers of the section.

But as usage is a good interpreter of law (see sup. pp. 531 *et seq.*), so non-usage lays an antiquated Act open to any construction, weakening, or even nullifying its effect (*b*). And penal laws, if they have been sleepers of long time, or if they be grown unfit for present use, should be, by wise judges, confined in the execution (*c*).

Down to the reign of Henry VII., the statutes passed in a session were sent to the sheriff of every county with a writ, requiring him to proclaim them throughout his bailiwick, and to see to their observance. Some Acts (the Triennial Act of 1641, for example) contained a section requiring that they should be read yearly at sessions and assizes. But proclamation, or any other form of promulgation, was never necessary

repealed, as regards London, by s. 142 and Sched. V. Public Health (London) Act, 1891, 54 & 55 Vict. c. 76.

(*a*) 26 Hen. VIII. c. 14, was extended by 51 & 52 Vict. c. 56, and explained by 61 & 62 Vict. c. 11.

(*b*) See ex. gr. *Leigh* v. *Kent* (1789), 3 T. R. 364.

(*c*) Lord Bacon, Essay on Judicature.

to their operation (*a*). Every one is bound to take notice of that which is done in Parliament. As soon as the Parliament has concluded anything, the law presumes that every person has notice of it; for the Parliament represents the body of the whole realm, and therefore it never was requisite that any proclamation should be made; the statute took effect before (*b*).

A statute takes effect from the first moment of the day (*c*) on which it is passed, unless another day be expressly named, in which case it comes into operation immediately on the expiration of the previous day (*d*). By a fiction of law, the whole session was formerly supposed to be held on its first day, and to last only that one day; and every Act, if no other day was expressly fixed for the beginning of its operation, took

(*a*) In France, a law took effect only from the date of its insertion in the Bulletin des Lois. In ancient Rome, a *Senatus Consultum* had no force till deposited in the Temple of Saturn; Livy, 39, 4. See Suet. Aug. 94.

(*b*) *Per* Thorpe C.J. (39 Edw. III.), cited in 4 Inst. 26.

(*c*) In a case decided early in 1882, the Supreme Court of the United States took notice of the hour when an Act was passed, for the purpose of determining whether it affected the validity of bonds issued by the town of Louisville. The bonds were issued early on the 2nd of July; the Act prohibiting their issue was passed later on the same day; and the bonds were held valid.

(*d*) Interpretation Act, 1889, s. 36 (2).

effect, by relation, from the first day of t
session. It followed that if a statute, passed
the last day of the session, made a previous
innocent act criminal or even capital (*a*), all w
had been doing it during the session, while
was still innocent and inoffensive, were liable
suffer the punishment prescribed by the statute (*b*

But to abolish a fiction so flatly absurd a
unjust (*c*), 33 Geo. III. c. 13 enacted that th
Clerk of Parliaments should indorse on every Ac
immediately after his title, the date of its passin
and receiving the Royal assent (*d*). This indors
ment is part of the Act, and is the date of it
commencement, when no other time is provided
But where a particular day is named for its com
mencement, but the Royal assent is not given ti
a later day, the Act would come into operatio
only on the later day (*e*).

(*a*) See ex. gr. *R.* v. *Thurston*, 1 Lev. 91; *R.* v. *Bailey*, Russ
& R. 1.

(*b*) 4 Inst. 25; 1 Bl. Comm. 70, note by Christian; *A.-G.* v
Panter, 6 Bro. P. C. 486; *Lailess* v. *Holmes*, 4 T. R. 660; and
the authorities cited in 1 Plowd. 79a. See *The Brig Ann*
1 Gallison, 62.

(*c*) 1 Bl. Comm., 70 n.

(*d*) Sup. pp. 72–77.

(*e*) *Burn* v. *Carvalho* (1834), 4 Nev. & M. 893. Sec. 9,
Newspaper Libel and Registration Act, 1881, 44 & 45 Vict. c. 60,
required printers to make certain returns before the 31st of July,
1881, yet it was not passed till the following 27th of August.

When a Bill to continue an Act which is to expire in the same session does not receive the Royal assent until the Act has expired, the continuing Act takes effect from the date of the expiration; except that it does not affect any person with any punishment for any breach of the Act between the expiration of the earlier and the passing of the later Act (*a*).

Every statute passed since 1850 is a public Act and judicially noticed, unless a contrary intention appears in the statute (*b*).

(*a*) 48 Geo. III. c. 106.
(*b*) Interpretation Act, 1889, s. 9.

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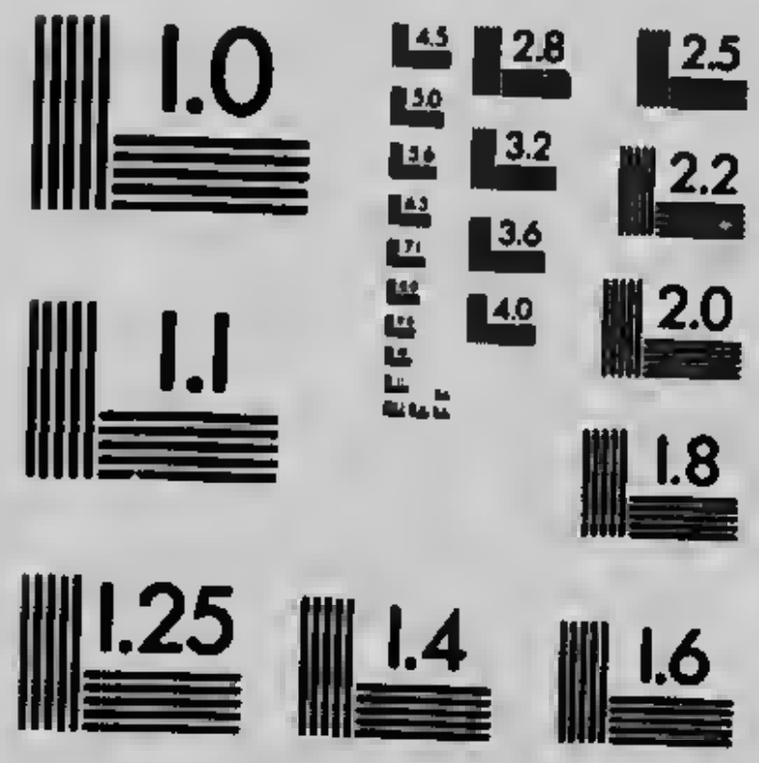

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