THE CONSTRUCTION AND EFFECT OF STATUTE LAW.

A TREATISE

ON THE

CONSTRUCTION AND EFFECT

OF

STATUTE LAW.

With Appendices

CONTAINING

WORDS AND EXPRESSIONS USED IN STATUTES WHICH HAVE BEEN JUDICIALLY OR STATUTABLY CONSTRUED,

AND

THE POPULAR AND SHORT TITLES OF CERTAIN STATUTES.

BY

HENRY HARDCASTLE,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

SECOND EDITION, REVISED AND ENLARGED.

Third " 1901.

BY

WILLIAM FEILDEN CRAIES, M.A.,

OF THE INNER TEMPLE AND WESTERN CIRCUIT,
BARRISTER-AT-LAW.

LONDON:

STEVENS AND HAYNES,

Law Publishers,

BELL YARD, TEMPLE BAR.

1892.

PREFACE TO THE SECOND EDITION.

In preparing this edition the Editor has had the great advantage of the Author's notes up to the year 1885. The method and arrangement of the first edition have in the main been followed, but very considerable additions and alterations have been made, in order to bring this edition up to date, and to include the substance of the many important decisions given since 1879 with reference to statutes, so that this work might be made as far as possible a complete book of reference on the subject of statute law.

The Interpretation Act, 1889, has done much to simplify the language and facilitate the interpretation of statutes; but its practical and far-reaching effect is not yet fully realised. An endeavour has been made in this edition to show how far the Act alters or adopts pre-existing rules of construction, and also to deal with the effect of Consolidation and Revision Acts. The Author's Appendix of Words judicially and statutably construed has been much enlarged; but neither time nor space permitted the Editor to make the Appendix a complete

dictionary of statutory terms. The second Appendix, of popular and short titles, is new, and intended to meet a need which the Editor has often himself experienced, but which will now be satisfied to a great extent by the Short Titles Act, 1892.

For the Table of Contents in the first edition has been substituted a table of contents at the head of each chapter; and the Index has been reduced in bulk, and simplified. The date of each case is inserted, to facilitate reference to sets of Reports not specified in the text or Table of Cases.

W. F. CRAIES.

3 TEMPLE GARDENS,
July 1892.

PREFACE TO THE FIRST EDITION.

THE present treatise was jointly projected by my friend Mr. EDWARD JENKINS, M.P., and myself, about nine years since. Shortly after that time my friend relinquished his practice at the Bar for other pursuits, literary and political, and thenceforward the task of collecting and comparing authorities devolved upon me. I am, therefore, solely answerable both for the form and matter of this compilation.

H. H.

PAPER BUILDINGS, TEMPLE,
August 1879.

TABLE OF CONTENTS.

PAGE

AUTHORS CITED xi

TABLE OF CASES xiii

TABLE OF STATUTES lix

PRELIMINARY.

CHAP.

I. INTRODUCTORY . . . . . 1—19

II. THE DRAFTING OF STATUTES . . . . . 20—33

III. AUTHENTICATION AND CITATION . . . . . 34—61

IV. CLASSIFICATION OF STATUTES . . . . . 62—75

PART I.

CONSTRUCTION OF STATUTES.

I. GENERAL RULES OF CONSTRUCTION WHERE THE MEANING IS PLAIN 76—109

II. RULES OF CONSTRUCTION WHEN THE MEANING IS NOT PLAIN . 110—126

III. WHAT MAY AND MAY NOT BE IMPLIED WHEN THE MEANING IS NOT PLAIN . . . . . 127—141

IV. WHAT SOURCES OF INFORMATION OUTSIDE A STATUTE MAY BE USED FOR THROWING LIGHT ON ITS MEANING . . . . 142—171

V. INTERPRETATION OF WORDS . . . . . 172—209

VI. EFFECT OF ONE PART OF A STATUTE UPON THE CONSTRUCTION OF THE OTHER PARTS . . . . . 210—246

PART II.

EFFECT AND OPERATION OF STATUTES.

CHAP.		PAGE
I.	EFFECT OF STATUTES CREATING DUTIES	247—269
II.	ENABLING ACTS	270—319
III.	EFFECT ON COMMON LAW AND EQUITY	320—330
IV.	EFFECT ON PRIOR ENACTMENTS	331—363
V.	COMMENCEMENT AND DURATION OF EFFECT OF STATUTES	364—408
VI.	EFFECT ON THE CROWN	401—421
VII.	TERRITORIAL EFFECT OF STATUTES	422—460
VIII.	MISTAKE	461—471

PART III.

PENAL ACTS.

I.	DEFINITION AND CONSTRUCTION OF PENAL ACTS	472—480
II.	EFFECT OF PENAL ACTS	481—497

PART IV.

PRIVATE ACTS.

I.	NATURE AND CONSTRUCTION OF PRIVATE ACTS	498—518
II.	EFFECT OF PRIVATE ACTS	519—529

APPENDIX A.	530—603
APPENDIX B.	604—617
INDEX	619—659

AUTHORS CITED.

Bacon, Abridgement, tit. "Statute."
Barrington, "Observations on the Statutes."
Blackstone, "Commentaries."
Chambers, "Opinions of Eminent Lawyers."
Clifford, "History of Private Bill Legislation."
Coke, "Institutes."
Comyns, "Digest," tit. "Parliament," R., and tit. "Statute," F.
Dwarris, "Statutes" (2nd ed.).
Greaves, "Criminal Law Consolidation Acts."
Kent, "Commentaries."
"Law Quarterly Review," ed. by Sir F. Pollock.
Lumley, "On Bylaws."
Maxwell, "Interpretation of Statutes."
May, "Parliamentary Practice" (9th ed.).
Plowden, "Commentaries."
Sedgwick, "Statutory and Constitutional Law" (2nd ed., by John Norton Pomeroy, LL.D.). New York: Baker, Voorhis & Co. 1874.
Stephen, "Digest of Criminal Law."
Story, "Conflict of Laws."
Thring, "Practical Legislation."
" "Simplification of the Law."
Wilberforce, "On Statute Law."
Wooddeson, "Vinerian Lectures."
Wynne, "Dialogues."

CORRIGENDA.

Page 140, *n.*, for "*Dale* v. *Chapman*" read "*Chadwick* v. *Ball.*"

,, 207, for "*Re Blanc* (1883)," &c., read "*R.* v. *Blane* (1843), 13 Q. B. 769."

,, 286, for "*Hemblethwaite*" read "*Hebblethwaite.*"

,, 448, *Citizens' Ins. Co.* v. *Parsons*, for "(1883), 9 App. Cas. 96," read "(1881), 7 App. Cas. 96."

TABLE OF CASES.

PAGE

ABD-UL-MESSIH *v.* Farrah (1887), 13 App. Cas. 431 434
Abel *v.* Lee (1871), 6 C. P. 365; 40 L. J. C. P. 154; 23 L. T. 844; 19 W. R. 625 106
Abley *v.* Dale (1851), 20 L. J. C. P. 233 101
Accidental Marine, &c., Co. *v.* Mercati (1866), 3 Eq. 200 . . . 569
Advocate-General *v.* Ranee Surnomoyee Dossee (1839), 2 Moore P. C. N. S. 59; 9 Moore Ind. App. 387; 9 Jur. N. S. 778; 8 L. T. 843 . 455, 456
Advocate (Lord) *v.* Hamilton (1852), 1 Macq. H. L. (Sc.) 46 . . 240
—— *v.* Sinclair (1867), 1 H. L. (Sc.) 131 . . . 165, *n.*
Aërated Bread Co. *v.* Gregg (1873), 8 Q. B. 355; 42 L. J. M. C. 117; 28 L. T. 816 95
Ainsley *v.* Nicholson (1890), 24 Q. B. D. 144; 59 L. J. Q. B. 102; 61 L. T. 809 540
Aiton *v.* Stephen (1876), 1 App. Cas. 456 . . . . . 66, 506
Albon *v.* Pyke (1842), 4 M. & G. 421; 11 L. J. C. P. 266 . . . 140
Alderson *v.* Maddison (1883), 52 L. J. Q. B. 737; 49 L. T. 303; 31 W. R. 820; 8 App. Cas. 467 87
Alexander *v.* Brame (1855), 7 D. M. & G. 539; 30 Beav. 153; 1 Jur. N. S. 889; 9 W. R. 719 91
—— *v.* Jeffries (1860), 8 H. L. C. 603 212
—— *v.* Jones (1866), 1 Ex. 133 552
—— *v.* Kirkpatrick (1874), 2 H. L. (Sc.) 397 163
—— *v.* Scotland, Officers of State for (1868), 1 H. L. (Sc.) 276 . 410
Alexandre *v.* Alexandre (1870), 2 P. & D. 164; 39 L. J. P. & M. 84; 23 L. T. 268; 18 W. R. 1087 540
Alison *v.* Burns (1889), 15 App. Cas. 44; 59 L. J. P. C. 34; 61 L. T. 847 . . . . . 156, 197, *n.*, 460
Allchurch *v.* Hendon Assessment Committee (1891), 2 Q. B. 436 . 553
Allcroft *v.* London (Bishop of) (1891), A. C. 666; 65 L. T. 92 . . 290
Allen *v.* Flicker (1839), 10 A. & E. 640; 3 Jur. 1029 356
Alston, R. L. (The) (1883), 8 P. D. 5; 48 L. T. 469; 5 Asp. Mar. Cas. 43 111
Alton Woods, case of (1595), 1 Co. Rep. 472 240
Altrincham Union *v.* Cheshire Lines Committee (1885), 15 Q. B. D. 597 509
Amalia (The) (1863), 1 Moore P. C. N. S. 474; 32 L. J. Adm. 191; 9 Jur. N. S. 1111; 8 L. T. 805; 12 W. R. 29 . . . . . 436, 437

PAGE

Amesbury (Guardians) *v.* Wilts Justices (1883), 10 Q. B. D. 480; 52 L. J. M. C. 64; 31 W. R. 521 567
Amicable Society *v.* Bolland (1830), 4 Bligh N. S. 194; 1 D. & Cl. 1 . 197
Amos, *Re* (1891), 3 Ch. 157; 60 L. J. Ch. 570; 65 L. T. 69 . . 584
Amy Townsend's case. *See* Townsend.
Anderson's case (1877), 7 Ch. D. 113; 50 L. J. Ch. 269; 43 L. T. 723; 29 W. R. 372 543
Anglesea, Doe d., *v.* Rugeley (1844), 6 Q. B. 107 383
Anonymous (1698), 12 Mod. 249 508
Anthony *v.* Seger (1789), 1 Hagg. (Consist.) 13 . . . . . 208, *n.*
Archer *v.* James (1861), 2 B. & S. 74; 10 W. R. 565 601
Arding *v.* Bonner (or Holmer) (1856), 1 H. & N. 85; 2 Jur. N. S. 763; 25 L. J. Ex. 231 145
Argos, Cargo *ex* (1872), 5 P. C. 145; 28 L. T. 745; 21 W. R. 707 . 41, 86, 122, 204
Arnold *v.* Gravesend (Mayor, &c., of) (1856), 2 K. & J. 591; 20 Jur. 13, 703; 26 L. T. O. S. 182; 27 do. 97; 4 W. R. 478, 763 . 134, *n.*
Arthur *v.* Bokenham (1708), 11 Mod. 150 . . . . . 138, 208
Artola, *Re* (1890), 24 Q. B. D. 640; 59 L. J. Q. B. 254; 62 L. T. 781 . 435, 449
Ashburnham *v.* Bradshaw (1740), 2 Atk. 36 372
Ashbury Carriage Co. *v.* Riche (1875), 7 H. L. 653; 44 L. J. Ex. 185; 33 L. T. 451 . . . . . 201, 286, 290, 292, 329
Atkinson *v.* Newcastle Water Works Co. (1877), 2 Ex. D. 441; 46 L. J. Ex. 775; 36 L. T. 761; 20 W. R. 35 . . . 252, 253, 260
Att.-Gen. *v.* Allgood (1743), Parker's Rep. 1 416
—— *v.* Andrews (1850), 2 Macn. & G. 225; 20 L. J. Ch. 467; 14 Jur. 905 291
—— *v.* Bailey (1847), 1 Ex. 281; 17 L. J. Ex. 9 181
—— *v.* Ball (1846), 10 Ir. Eq. Rep. 161 . . . . 504, 505
—— *v.* Barker (1871), 7 Ex. 177 412
—— *v.* Barry (1859), 4 H. & N. 470; 28 L. J. Ex. 211; 7 W. R. 488 576
—— *v.* Birkbeck (1884), 12 Q. B. D. 605; 53 L. J. Q. B. 378; 51 L. T. 199; 32 W. R. 905 . . . . . 535, 563
—— *v.* Bradlaugh (1884), 14 Q. B. D. 667; 54 L. J. Q. B. 205; 52 L. T. 589; 33 W. R. 673 . . . . . 159, 592
—— *v.* Campbell (1872), 5 H. L. 524; 41 L. J. Ch. 611; 21 W. R. 34, *n.* 438
—— *v.* Cast Plate Co. (1792), 1 Anstr. 39 592
—— *v.* Cecil (1870), 5 Ex. 263; 39 L. J. Ex. 201; 22 L. T. 20; 18 W. R. 949 12
—— *v.* Chelsea Water Works Co. (1728), Fitzgibbon 95 . . 240
—— *v.* Cockermouth (1874), 18 Eq. 172; 44 L. J. Ch. 118; 30 L. T. 590; 22 W. R. 619 252
—— *v.* Constable (1879), 4 Ex. D. 172; 48 L. J. Ex. 455; 27 W. R. 661 412
—— *v.* Dardier (1883), 11 Q. B. D. 166; 52 L. J. Q. B. 329; 48 L. T. 582; 31 W. R. 499 583
—— *v.* Donaldson (1842), 10 M. & W. 117 . . . . 403, 413
—— *v.* Edison (1881), 6 Q. B. D. 244; 50 L. J. Q. B. 145; 43 L. T. 697; 29 W. R. 428 596

PAGE

Att.-Gen. *v.* Edwards (1891), 1 Ch. 194 ; 63 L. T. 639 . . 537, 557, 589
—— *v.* Emerson (1891), A. C. 649 ; 65 L. T. 564 ; 38 W. R. 102 405, 568
—— *v.* Great Eastern Rail. Co. (1872), 7 Ch. App. 475 ; 41 L. J. Ch. 505 ; 26 L. T. 749 ; 20 W. R. 599 ; affd. 6 H. L. 367 ; 22 W. R. 281 245
—— *v.* Great Eastern Rail. Co. (1879), 11 Ch. D. 449 ; 48 L. J. Ch. 429 ; 40 L. T. 265 ; 27 W. R. 759 . . 217, 218, 517
—— *v.* Great Eastern Rail. Co. (1880), 5 App. Cas. 578 . . 292
—— *v.* Great Western Rail. Co. (1877), 4 Ch. D. 735 ; 46 L. J. Ch. 192 ; 35 L. T. 921 ; 25 W. R. 330 . . . . 25, 562
—— *v.* Hackney Local Board (1875), 20 Eq. 626 ; 44 L. J Ch. 545 ; 33 L. T. 244 120
—— *v.* Hertford (Marquis of) (1849), 3 Ex. 670 ; 18 L. J. Ex. 332 . 381
—— *v.* Hope (1834), 1 C. M. & R. 530 ; 4 Tyr. 878 ; 2 Cl. & F. 84 ; 8 Bligh N. S. 44 429
—— *v.* Lamplough (1878), 3 Ex. D. 214 ; 47 L. J. Ex. 553 ; 38 L. T. 87 ; 26 W. R. 323 . . . . . 237, 393
—— *v.* Lockwood (1842), 9 M. & W. 378 ; 10 M. & W. 464 ; 6 Jur. 171 . . . . . 98, 351
—— *v.* Marrett (1846), 10 Ir. Eq. Rep. 167 505
—— *v.* Mitchell (1881), 6 Q. B. D. 548 ; 50 L. J. Q. B. 406 ; 44 L. T. 580 ; 29 W. R. 683 . . . . . 184, *n.*
—— *v.* Morgan (1891), 1 Ch. 432 ; 59 L. J. Ch. 772 ; 63 L. T. 337 ; 39 W. R. 169 . . . . 167, 342, 413, 557, 576
—— *v.* Mylchreest (1879), 4 App. Cas. 294 570
—— *v.* Noyes (1881), 8 Q. B. D. 125 ; 51 L. J. Q. B. 135 ; 45 L. T. 520 ; 30 W. R. 434 . . . . . 85, 88
—— *v.* Panter (1772), 6 Brown P. C. 486 367
—— *v.* Pougett (1816), 2 Price 381 . . . . . 17, 381
—— *v.* Pratt (1874), 9 Ex. 140 ; 43 L. J. Ex. 108 ; 30 L. T. 531 ; 22 W. R. 615 429
—— *v.* Rochester (1854), 5 De G. M. & G. 797 96
—— *v.* Saggers (1814), 1 Price 182 593
—— *v.* Sillem (Alexandra case) (1864), 10 H. L. C. 704 ; 2 H. & C. 431 ; 33 L. J. Ex. 92 ; 11 L. T. 223 ; 12 W. R. 257 . . 5, 78, 79, 108, 109, 112, 114, 119, 125, 139, 144, 476, 478, 577
—— *v.* Stewart (1817), 2 Merivale 156 . . . 451, 453, 454
—— *v.* Theobald (1890), 24 Q. B. D. 557 ; 62 L. T. 768 ; 39 W. R. 527 . . . . . 377, 381
—— *v.* West Hartlepool Commissioners (1870), 10 Eq. 152 ; 39 L. J. Ch. 624 ; 18 W. R. 685 287
—— *v.* Weymouth (Lord) (1743), Ambler 22 212
—— *v.* Winstanley (1831), 2 D. & Cl. 302 180
—— for Canada *v.* Att.-Gen. for British Columbia (1889), 14 App. Cas. 295 ; 58 L. J. P. C. 88 ; 60 L. T. 712 413
—— for Canada *v.* Flint (1884), 17 Canada 707 459
—— for Straits Settlements *v.* Wemyss (1888), 13 App. Cas. 192 ; 57 L. J. Q. B. 62 ; 58 L. T. 358 420
—— of Ontario *v.* Mercer (1883), 8 App. Cas. 767 ; 52 L. J. P. C. 84 ; 49 L. T. 312 . . . . . 202, 413, 588

PAGE
Auchterarder *v.* Kinnoull (Lord) (1839), 2 Cl. & F. 646 . . . 121
Avery *v.* Wood (1891), 65 L. T. 122 ; 39 W. R. 577 544
Avis *v.* Newman (1889), 41 Ch. D. 532 ; 60 L. T. 891 ; 37 W. R. 612 . 64

BACUP (Corporation of) *v.* Smith (1890), 44 Ch. D. 395 . . . 576
Badger *v.* South Yorkshire Rail. Co. (1857), 1 E. & E. 347 ; 28 L. J. Q. B. 118 219
Bahia (The) (1863), Br. & Lush. 61 ; 11 Jur. N. S. 90 ; 12 L. T. 145 . 204
Bailey's case (1800), Russ. & R. 4 367
Bailey *v.* Williamson (1873), 8 Q. B. 118 ; 42 L. J. M. C. 49 ; 28 L. T. 28 ; 21 W. R. 404 311
Baily *v.* De Crespigny (1869), 4 Q. B. 180 ; 38 L. J. Q. B. 98 ; 19 L. T. 681 ; 17 W. R. 494 383
Baker *v.* Portsmouth (Mayor, &c., of) (1878), 3 Ex. D. 4, 157 ; 37 L. T. 381 ; 26 W. R. 303 593
Balfour *v.* Malcolm (1842), 8 Cl. & F. 500 140
Ballard *v.* Way (1836), 1 M. & W. 529 ; 2 Gale 61 505
Banbury *v.* Page (1881), 8 Q. B. D. 97 573
Bank of England *v.* Vagliano (1891), A. C. 107 ; 60 L. J. Q. B. 145 ; 64 L. T. 353 ; 39 W. R. 657 . . . . 167, 344, 555
—— India *v.* Wilson (1878), 3 Ex. D. 113 598
—— Ireland *v.* Evans's Charity (1855), 5 H. L. C. 405 . . . 170
—— London, *Re* (1871), 6 Ch. App. 421, 426 ; 40 L. J. Ch. 562 ; 19 W. R. 484 122
—— Toronto *v.* Lambe (1887), 12 App. Cas. 575 44
Barker, *Re* (1861), 7 H. & N. 117 ; 30 L. J. Ex. 407 180
—— *v.* Palmer (1881), 8 Q. B. D. 9 ; 51 L. J. Q. B. 110 ; 45 L. T. 480 ; 30 W. R. 59 275
Barlow *v.* Kensington Vestry (1886), 11 App. Cas. 257 ; 55 L. J. Ch. 680 ; 34 W. R. 521 537
—— *v.* Teal (1884), 5 Q. B. D. 403, 501 ; 54 L. J. Q. B. 400, 564 ; 53 L. T. 52 ; 34 W. R. 54 . . . . . 156, 192
Barnes *v.* White (1845), 1 C. B. 192 ; 14 L. J. M. C. 65 ; 9 Jur. 182 . 391
Barnett *v.* Cox (1847), 9 Q. B. 617 ; 16 L. J. M. C. 27 ; 11 Jur. 118 . 507
—— *v.* King (1891), 1 Ch. 4 ; 60 L. J. Ch. 148 ; 63 L. T. 501 ; 39 W. R. 39 566
Barrington's case (1611), 8 Rep. 136 . . . . . 504, 520
Barrow Hæmatite Co., *Re* (1888), 39 Ch. D. 582 586
—— *v.* Wadkin (1857), 24 Beav. 330 . . . . . 24, 218
Barrow's case (1880), 14 Ch. D. 432 ; 49 L. J. Ch. 498 ; 42 L. T. 891 286, *n.*
Barry *v.* Arnaud (1839), 10 A. & E. 646 ; 2 P. & D. 633 . . . 254
Bartlett *v.* Gibbs (1843), 5 M. & G. 96 ; 13 L. J. C. P. 40 . . . 237
—— *v.* Viner (1692), Skinner 323 494
Barton *v.* London and North-Western Rail. Co. (1890), 24 Q. B. D. 89 599
—— *v.* Muir (1874), 6 P. C. 134 ; 44 L. J. P. C. 19 ; 31 L. T. 593 ; 23 W. R. 427 89
Bassett *v.* Bassett (1744), 3 Atk. 206 . . . . . 88, 97, 225
Bateman *v.* Service (1881), 6 App. Cas. 386 ; 50 L. J. C. P. 41 ; 44 L. T. 436 434

PAGE

Bathurst (Borough of) *v.* Macpherson (1879), 4 App. Cas. 256; 48 L. J. P. C. 61; 41 L. T. 778 . . . . . 252, *n.*
Battersby *v.* Kirk (1836), 2 Bing. N. C. 584; 3 Scott 11 161
Baxter *v.* Langley (1868), 4 C. P. 21 554
Bayly *v.* Murin (1675), 1 Vent. 246 150
Bazett *v.* Morgan (1889), 24 Q. B. D. 48; 61 L. T. 434; 38 W. R. 108 . 22
Bazing *v.* Skelton (1792), 5 T. R. 16 150
Beal, *Ex parte* (1868), 3 Q. B. 387; 37 L. J. Q. B. 161; 18 L. T. 285; 16 W. R. 852 492
Beauchamp (Earl) *v.* Madresfield (1873), 8 C. P. 245; 42 L. J. C. P. 32; 27 L. T. 606; 21 W. R. 124 582
Beaufort (Duke of) *v.* Smith (1850), 4 Ex. 470; 19 L. J. Ex. 97 . . 464
—— *v.* Crawshay (1866), 1 C. P. 699; 35 L. J. C. P. 342; 14 L. T. 729; 14 W. R. 989 5
Beck *v.* Beverley (1843), 11 M. & W. 845 61
Becke *v.* Smith (1836), 2 M. & W. 191 101
Beckford *v.* Wade (1805), 17 Ves. 92 204
Bedson's Trusts, *In re* (1885), 28 Ch. D. 525 9
Bell *v.* Crane (1873), 8 Q. B. 481; 42 L. J. M. C. 122; 29 L. T. 217; 21 W. R. 911 288
— *v.* Master in Equity (1877), 2 App. Cas. 560; 36 L. T. 936 . . 94
Bellencontre, *In re* (1891), 1 Q. B. 141; 60 L. J. M. C. 83 . . . 70
Bellyse *v.* M'Ginn (1891), 2 Q. B. 227; 65 L. T. 318 597
Bennett *v.* Brumfitt (1867), 3 C. P. 28; 37 L. J. C. P. 35; 17 L. T. 213; 16 W. R. 131 591
Bentham *v.* Hoyle (1878), 3 Q. B. D. 289; 47 L. J. M. C. 51; 37 L. T. 753; 26 W. R. 314 310
Bentley *v.* Rotherham (1877), 4 Ch. D. 588; 46 L. J. Ch. 284 . . 115
Bentley's (Dr.) case (1722), 11 Strange 557; Ld. Raym. 1334; 8 Mod. 148 136
Benwell, *Ex parte* (1884), 14 Q. B. D. 30; 54 L. J. Q. B. 53; 51 L. T. 677 . . . . . 201, 561
Benyon *v.* Benyon (1890), 15 P. D. 54; 55 L. J. P. 39 597
Beresford-Hope *v.* Sandhurst (Lady) (1889), 23 Q. B. D. 79 . . 134, 209
Berkley *v.* Thomson (1884), 10 App. Cas. 45; 54 L. J. M. C. 57 . . 445
Berrie *v.* Howitt (1869), 9 Eq. 1; 39 L. J. Ch. 119 586
Berwick (Mayor of) *v.* Oswald (1854), 23 L. J. Q. B. 324; 5 H. L. C. 856 383
Bethell's case (1887), 38 Ch. D. 220; 57 L. J. Ch. 487; 58 L. T. 674; 36 W. R. 503 93
Bethlem Hospital, *Re* (1875), 19 Eq. 457; 44 L. J. Ch. 406; 23 W. R. 644 119
Betts' Patent, *Re* (1862), 1 Moore P. C. N. S. 49; 9 Jur. N. S. 137; 7 L. T. 577; 11 W. R. 221 594
Biddulph *v.* Biddulph (1790), Cruise, Dig. vol. 5, 28 526
—— *v.* Lees (1858), E. B. & E. 289 9
Bill *v.* Bament (1841), 9 M. & W. 36; 5 Jur. 510 96
Bird *v.* Bird (1866), 1 P. & M. 231; 35 L. J. Mat. 44; 14 L. T. 860; 14 W. R. 1023 189
Birkenhead Trustees *v.* Laird (1854), 23 L. J. Ch. 457; 4 D. M. & G. 732; 18 Jur. 833 525

PAGE
Birmingham Benefit Society, *Re* (1830), 3 Sim. 423 563
—— (Mayor, &c., of), *Ex parte* (1860), 3 E. & E. 222 . . 581
Birtwhistle *v.* Vardell (1840), 7 Cl. & F. 929; 9 Bligh 32; 4 Jur. 1076 . . . . . 214, 426
Bishop Auckland, L. B. *v.* Bishop Auckland Iron Co. (1882), 10 Q. B. D. 138; 52 L. J. M. C. 38; 48 L. T. 223; 31 W. R. 288 . . . 574
Blackburn *v.* Flavelle (1882), 7 App. Cas. 628; 50 L. J. P. C. 58; 42 L. T. 151; 28 W. R. 672 273
Blackmore *v.* Glamorgan Canal Co. (1832), 1 M. & K. 162 . . . 513
Blackwood *v.* R. (1882), 8 App. Cas. 82; 52 L. J. P. C. 10; 48 L. T. 441; 31 W. R. 645 . . . . . 199, 429, 460, 565, 582
Blades *v.* Lawrence (1874), 9 Q. B. 374; 43 L. J. Q. B. 133; 38 L. T. 115; 26 W. R. 300 154
Blaiberg, *Ex parte* (1883), 23 Ch. D. 25; 52 L. J. Ch. 463; 49 L. T. 16; 31 W. R. 906 160
Blain, *Ex parte* (1879), 12 Ch. D. 522; 41 L. T. 46; 28 W. R. 334 . . . . . 205, 207, 434
Blair *v.* Bromley (1848), 2 Ph. 354; 5 Hare 542 321
Blake *v.* Attersoll (1824), 2 B. & C. 882 . . . . . 153, *n.*
—— *v.* Beech (1876), 1 Ex. D. 320 562
—— *v.* Midland Rail. Co. (1852), 18 Q. B. 98, 109; 21 L. J. Q. B. 233; 16 Jur. 562 . . . . . 15, 216
Blake's Patent, *Re* (1873), 4 P. C. 537 594
Blamires *v.* Lancashire Rail. Co. (1873), 8 Ex. 283 256
Blashill *v.* Chambers (1885), 14 Q. B. D. 479; 53 L. T. 38 . . 312, 592
Blewitt, *Re* (1880), 5 P. D. 116; 49 L. J. P. 31; 42 L. T. 329; 28 W. R. 768 591
—— *v.* Gordon (1842), 1 Dowl. P. C. N. S. 815; 6 Jur. 825 . . 325
Bloomfield Peerage (1831), 2 Dow & Cl. 346 . . . . . 402, *n.*
Bloxam *v.* Favre (1883), 8 P. D. 101; 52 L. J. P. 42; 31 W. R. 616 . 435
Bolland, *Ex parte* (1872), 7 Ch. App. 27; 29 L. T. 525 . . . 601
Bond *v.* Evans (1888), 21 Q. B. D. 249; 57 L. J. M. C. 105 . . . 126, 486, 594
Bonham's (Dr.) case (1610), 8 Rep. 118 81
Bonne Amélie (The) (1866), 1 Adm. & Eccl. 19 573
Boon *v.* Howard (1874), 9 C. P. 277, 308; 43 L. J. C. P. 115; 22 W. R. 535; 29 L. T. 382 182
Booth *v.* Ferrett (1890), 25 Q. B. D. 87; 59 L. J. M. C. 136; 63 L. T. 346; 38 W. R. 718 541
—— *v.* Trail (1883), 12 Q. B. D. 8; 53 L. J. Q. B. 24; 49 L. T. 471; 32 W. R. 122 328
Boston *v.* Lelièvre (1870), 3 P. C. 157; 39 L. J. P. C. 17; 22 L. T. 735; 18 W. R. 408 . . . . . 343, *n.*
Boucicault *v.* Chatterton (1877), 5 Ch. D. 267; 46 L. J. Ch. 305; 35 L. T. 745; 25 W. R. 287 . . . . . 431, 584
Bound *v.* Lawrence (1892), 1 Q. B. 226 568
Bowman *v.* Blyth (1856), 7 E. & B. 26, 47; 26 L. J. M. C. 67 . . 273
Boyd, *Ex parte* (1888), 21 Q. B. D. 264; 57 L. J. Q. B. 553; 59 L. T. 806; 36 W. R. 772 22
Bradford Union *v.* Wilts (1868), 3 Q. B. 604; 37 L. J. M. C. 129; 18 L. T. 514; 16 W. R. 1197 373

PAGE

Bradlaugh *v.* Clarke (1883), 8 App. Cas. 354; 52 L. J. Q. B. 508; 48 L. T. 681; 31 W. R. 677 . . . . . 55, 99, 114, 118, 155, 407, 475, 490

—— *v.* Gosset (1884), 12 Q. B. D. 271; 53 L. J. Q. B. 209; 50 L. T. 620; 32 W. R. 552 42

Bradley *v.* Baylis (1881), 8 Q. B. D. 210; 51 L. J. Q. B. 183; 46 L. T. 253; 30 W. R. 823 . . . . . 22, 232, 552, 567

—— *v.* Bradley (1878), 3 P. D. 49 575

Bramston *v.* Colchester (1856), 6 E. & B. 246; 25 L. J. M. C. 73; 2 Jur. N. S. 809 360

Brandling *v.* Barrington (1827), 6 B. & C. 467 118

Brannigan *v.* Robinson (1892), 1 Q. B. 344 602

Braybrooke *v.* Att.-Gen. (1861), 9 H. L. C. 150; 31 L. J. Ex. 177; 4 L. T. 218; 4 W. R. 601 132

Brett *v.* Beales (1829), M. & Malkin 421 . . . . . 503, 505

—— *v.* Brett (1826), 3 Addams 210 . . . . . 116, 213, 224

Breull or Brewell, *Ex parte* (1881), 16 Ch. D. 484; 50 L. J. Ch. 384; 43 L. T. 580; 29 W. R. 299 . . . . . 537, 587

Brewster *v.* Kitchell (1697), 1 Salk. 198 382

Bright *v.* North (1847), 2 Phill. 216 291

—— *v.* Tyndall (1876), 4 Ch. D. 196 559

Brighton *v.* Strand Union (1891), 2 Q. B. 156; 60 L. J. M. C. 105 . 577

Brinkley *v.* Att.-Gen. (1890), 15 P. D. 76; 59 L. J. P. 51; 62 L. T. 911 93

Bristol Athenæum, *Re* (1889), 43 Ch. D. 236; 38 W. R. 396 . . 537

—— &c., Railway, *Re* (1877), 3 Q. B. D. 10; 47 L. J. Q. B. 48; 37 L. T. 527; 26 W. R. 236 257

Britain *v.* Rossiter (1882), 11 Q. B. D. 123; 48 L. J. Ex. 362; 40 L. T. 240; 27 W. R. 482 87

British Columbia (Att.-Gen. for) *v.* Canada (Att.-Gen. for) (1889), 14 App. Cas. 295 . . . . . 413, 459

—— India Co. *v.* Inland Revenue Commissioners (1881), 7 Q. B. D. 165 548

Brook *v.* Badley (1868), 3 Ch. App. 672 78

Brooke *v.* Milliken (1789), 3 T. R. 509 492

Brown, *Ex parte* (1864), 5 B. & S. 290 555

—— *v.* Cocking (1868), 3 Q. B. 672 587

—— *v.* Duncan (1829), 10 B. & C. 93; 5 M. & R. 114 495

—— *v.* Holyhead L. B. (1862), 1 H. & C. 601; 32 L. J. Ex. 25; 7 L. T. 332; 11 W. R. 71 308

—— *v.* London & North-Western Rail. Co. (1863), 32 L. J. Q. B. 318 538

—— *v.* Shaw (1876), 1 Ex. D. 425 313

Brumfitt *v.* Roberts (1870), 5 C. P. 224; 39 L. J. Ch. 95; 22 L. T. 301; 18 W. R. 678 72

Brunswick (Duke of) *v.* Hanover (King of) (1848), 2 H. L. C. 1; 6 Beav. 1 413

Bryan *v.* Child (1850), 5 Ex. 368; 19 L. J. Ex. 264; 14 Jur. 510 . 141, 228

—— *v.* White (1850), 2 Robertson 317 535

Bryant *v.* Withers (1813), 2 M. & S. 123; 2 Rose 8 . . . . 59, 367

Buccleuch, (Duke of) (1891), A. C. 310 301

PAGE
Budd *v.* Lucas (1891), 1 Q. B. 408 ; 60 L. J. M. C. 95 ; 64 L. T. 692 . 598
Budge *v.* Andrews (1878), 3 C. P. D. 510 ; 47 L. J. C. P. 586 ; 39 L. T. 166 232
Bulkeley *v.* Schutz (1871), 3 P. C. 764 ; 6 Moore P. C. N. S. 481 . 436
Burkill *v.* Thomas (1892), 1 Q. B. 99 . . . . . 112, *n.*
Burn *v.* Carvalho (1835), 4 Nev. & Mann. 893 366
Burns *v.* Nowell (1880), 5 Q. B. D. 444 368
Busfield, *Re* (1886), 32 Ch. D. 123 ; 53 L. J. Ch. 467 ; 54 L. T. 220 ; 34 W. R. 372 . . . . . 335, 424
Butcher *v.* Henderson (1868), 3 Q. B. 335 ; 37 L. J. Q. B. 139 ; 16 W. R. 855 395
Butler and Baker's case (1591), 3 Rep. 31 a 161
—— *v.* Butler (1890), 15 P. D. 67 ; 59 L. J. P. 86 ; 63 L. T. 260 . 540
Buxton *v.* North-Eastern Railway (1868), 3 Q. B. 549 ; 37 L. J. Q. B. 258 ; 18 L. T. 795 ; 16 W. R. 1124 255
Bywater, Doe dem., *v.* Brandling (1828), 7 B. & C. 643 ; 1 M. & R. 600 116

CAHILL *v.* London and North-Western Rail. Co. (1861), 10 C. B. N. S. 154 ; 30 L. J. C. P. 289 ; 7 Jur. N. S. 1164 ; 9 W. R. 653 . . 522
Cairns *v.* Linton (1889), 16 Rettie (Justiciary) 84 530
Calder *v.* Bull (1798), 3 Dallas (U. S.) 391 370
Caldow *v.* Pixell (1877), 2 C. P. D. 562 262
Caledonian Rail. Co. *v.* North British Rail. Co. (1881), 6 App. Cas. 114 ; 29 W. R. 685 . . . . . 5, 99, 100
Callaghan *v.* S. P. C. A. (1885), 16 L. R. Ir. 325 16
Cambrian Rail. Co., *Re* (1868), 3 Ch. App. 278 ; 16 W. R. 346 . . 560
Cambridge University *v.* Bryer (1812), 16 East, 317 466
Campbell, *Ex parte* (1870), 5 Ch. App. 703 ; 23 L. T. 289 ; 18 W. R. 1056 156
—— *v.* Dalhousie (Earl of) (1868), 1 H. L. (Sc.) 259 . . . 284
—— *v.* Maund (1836), 5 A. & E. 865 208
—— *v.* Strangeways (1878), 3 C. P. D. 105 547
Campbell's Trustees *v.* Leith (Police Commissioners of) (1870), 2 H. L. (Sc.) 1 292
Canada (Att.-Gen. for) *v.* Flint (1884), 17 Canada 707 . . . 459
—— Southern Rail. Co. *v.* International Bridge Co. (1883), 8 App. Cas. 723 244
Canadian Prisoners' case (The) (1839), 3 St. Tr. N. S. 963 . . . 457
Canterbury's (Archbishop of) case (1596), 2 Co. Rep. 46 a . . . 201
Carnarvon (Earl of) *v.* Villebois (1884), 13 M. & W. 313 . . . 463
Carr *v.* Griffiths (1879), 12 Ch. D. 655 551
Carrier *v.* Price (1891), 3 Ch. 157 ; 65 L. T. 69 ; 39 W. R. 550 . . 584
Carruthers, *Ex parte* (1807), 9 East 44 353
Carter *v.* Crawley (1681), Sir T. Raym. 496 18
—— *v.* Drysdale (1883), 12 Q. B. D. 91 ; 32 W. R. 171 . . . 548
—— *v.* Molson (1883), 6 App. Cas. 530 ; 52 L. J. P. C. 46 ; 49 L. T. 83 114
Casanova *v.* R. (1866), 1 P. C. 268 153
Casement *v.* Fulton (1845), 5 Moore P. C. 141 . . . . . 158, 554

PAGE

Casher *v.* Holmes (1831), 2 B. & Ad. 592 202
Castioni, *Re* (1891), 1 Q. B. 149 ; 60 L. J. M. C. 22 ; 64 L. T. 344 ; 39 W. R. 202 . . . . . 175, 580
Castrique *v.* Page (1853), 13 C. B. 461 351
Cate *v.* Devon Newspaper Co. (1890), 40 Ch. D. 500 ; 58 L. J. Ch. 288 ; 60 L. T. 672 ; 37 W. R. 87 544
Catterall *v.* Sweetman (1845), 9 Jur. 954 ; 1 Rob. Eccl. 580 . 149, 277
Chadwick *v.* Ball (1885), 14 Q. B. D. 855 ; 54 L. J. Q. B. 396 . 140, *n.*
Chapman *v.* Auckland Guardians (1889), 23 Q. B. D. 294 ; 58 L. J. Q. B. 504 ; 61 L. T. 446 . . . 120, 252, 399, 563
—— *v.* Royal Bank (1881), 7 Q. B. D. 136 560
Charlotta (The) (1814), 1 Dods. Adm. 392 4
Charrington *v.* Meatheringham (1837), 2 M. & W. 228 . . . 392
Charterhouse (Governors of) *v.* Lamarque (1890), 25 Q. B. D. 121 . . 560
Chick, *Ex parte* (1879), 11 Ch. D. 731 . . . . . 145, *n.*
—— *v.* Smith (1840), 8 Dowl. 340 547
Child *v.* Hearn (1874), 9 Ex. 176 538
Chilton *v.* Corporation of London (1878), 7 Ch. D. 735 . . 16, 49, 508
Chinery, *Ex parte* (1883), 12 Q. B. D. 342 ; 50 L. T. 342 . . 555, 564
Chisholm *v.* Doulton (1889), 22 Q. B. D. 736 ; 58 L. J. Q. B. 133 ; 60 L. T. 966 ; 37 W. R. 749 488
Chorlton *v.* Lings (1868), 4 C. P. 374 134
Christ (College of) *v.* Martin (1877), 3 Q. B. D. 18 597
Christie *v.* Richardson (1842), 10 M. & W. 688 561
Christopherson *v.* Lotinga (1864), 33 L. J. C. P. 123 103
Churchill *v.* Crease (1828), 5 Bing. 177 ; 2 M. & P. 415 . . . 243
Citizens' Insurance Co. *v.* Parsons (1881), 7 App. Cas. 96 . . . 448
City and South London Subway Co. *v.* London County Council (1891), 2 Q. B. 513 ; 60 L. J. M. C. 149 ; 40 W. R. 167 . . 354, 523
— of Moscow Gas Co. *v.* International Financial Society (1882), 7 Ch. App. 225 569
Clarence Ry. *v.* G. N. of England Ry. (1845), 13 M. & W. 706 . . 271
Clark *v.* Denton (1830), 1 B. & Ad. 92 309
Clarke *v.* Bradlaugh (1881), 7 Q. B. D. 151 547
—— (1881), 8 Q. B. D. 63 . . . . . 341, 397, 398
Clarke's case (1878), 8 Ch. D. 635 563
Clarkson *v.* Musgrave (1881), 9 Q. B. D. 386 . . . . . 148, 343
Claydon *v.* Green (1868), 3 C. P. 511 ; 37 L. J. C. P. 226 ; 18 L. T. 607 ; 16 W. R. 1126 212
Clayton *v.* Fenwick (1856), 6 E. & B. 131 203
Cleaver *v.* Mutual Reserve Fund (1891), 1 Q. B. 147 ; 39 W. R. 638 . 197
Clelland *v.* Ker (1843), 6 Ir. Eq. Rep. 35 240
Clementson *v.* Mason (1875), 10 C. P. 209 12
Clemson *v.* Hubbard (1875), 1 Ex. D. 179 551
Clergyman, *Ex parte* (1873), L. R. 15 Eq. 154 319
Clerical, &c., Assurance Co. *v.* Carter (1889), 22 Q. B. D. 444 . 93, 563
Cliff *v.* Midland Ry. (1870), 5 Q. B. 258 256
Clover *v.* Adams (1880), 6 Q. B. D. 622 586
Clowes *v.* Staffordshire Potteries (1873), 8 Ch. App. 125 ; 42 L. J. Ch. 107 ; 27 L. T. 521 ; 21 W. R. 32 511
Clugas *v.* Penaluna (1791), 4 T. R. 466 264

PAGE
Clyde Navigation (Trustees of) *v.* Laird (1883), 8 App. Cas. 658 164, *n.*, 168
Coalheaver's case (1768), 1 Leach C. C. 2nd ed. 61 328
Cock *v.* Gent (1843), 12 M. & W. 234 ; 13 L. J. Ex. 24 . . . 507
Cocker *v.* Cardwell (1869), 5 Q. B. 15 110
Cohen *v.* South-Eastern Railway (1877), 2 Ex. D. 253 238
Colam *v.* Pagett (1884), 12 Q. B. D. 66 ; 53 L. J. M. C. 64 ; 32 W. R. 289 552
Colchester (Lord) *v.* Kewney (1876), 1 Ex. 368 . . . . 204, 560
Cole *v.* N. W. Bank (1875), 10 C. P. 354 193
Colley *v.* Hart (1890), 44 Ch. 179 583
Collier *v.* Worth (1876), 1 Ex. D. 468 598
Collins *v.* Blantern (1767), 1 Smith L. C. 9th ed. 406 . . 263, 267, 268
—— *v.* Locke (1879), 4 App. Cas. 674 . . . . . 198, *n.*
Colonial Bank *v.* Whinney (1885), 30 Ch. D. 261 ; 53 L. T. 272 . . 597
Colquhoun *v.* Brooks (1889), 14 App. Cas. 493 ; 61 L. T. 518 . . 117
173, 206, *n.*, 426, 438, 556
—— *v.* Heddon (1890), 25 Q. B. D. 129 ; 62 L. T. 853 205, 426, *n.*
Colvill *v.* Wood (1846), 2 C. B. 210 534
Combe *v.* Pitt (1763), 3 Burr. 1143 547
Combined Weighing and Advertising Machine Co. (1889), 43 Ch. D. 99. 545
Comfort *v.* Betts (1891), 1 Q. B. 737 ; 60 L. J. Q. B. 650 ; 39 W. R. 595 531
Commissioners of Stamps *v.* Hope (1891), A. C. 477 ; 65 L. T. 268 . 429
Conelly *v.* Steer (1881), 7 Q. B. D. 570 176
Constable *v.* Constable (1880), 11 Ch. D. 681 385
Conybeare *v.* London School Board (1891), 1 Q. B. 118 ; 39 W. R. 288 546
Cooke *v.* Butler (1872), 8 C. P. 256 585
—— *v.* Gill (1872), 8 C. P. 107 538
—— *v.* New River Co. (1889), 14 App. Cas. 698 ; 59 L. J. Ch. 333 . 23
Cookson *v.* Lee (1854), 23 L. J. Ch. 473 130
Coomber *v.* Berks (Justices of) (1882), 9 Q. B. D. 17 ; 10 Q. B. D. 267 ; 52 L. J. Q. B. 81 ; 47 L. T. 687 ; 31 W. R. 356 . . . 213, 408
Cooper *v.* Cooper (1888), 13 App. Cas. 88 15
—— *v.* Phibbs (1867), 2 H. L. 149 . . . . . 5, *n.*
—— *v.* Slade (1858), 27 L. J. Q. B. 449 123
—— *v.* Stuart (1889), 14 App. Cas. 286 . . . . 451, 454, 588
—— *v.* Wandsworth L. B. (1863), 14 C. B. N. S. 187 . . . 136
Cope *v.* Cope (1890), 137 U. S. 682 353
— *v.* Doherty (1858), 2 De G. & J. 614 ; 27 L. J. Ch. 600 ; 4 Jur. N. S. 699 . . . . . 206, 207
— *v.* Rowlands (1836), 2 M. & W. 149 264
Copeland, *Ex parte* (1853), 22 L. J. Bank. 21 ; 2 De G. M. & G. 914 ; 17 Jur. 121 147
Copeman *v.* Gallant (1716), 1 P. Wms. 317 . . . . . 223, 224
Copland *v.* Davis (1872), 5 H. L. 358 ; 21 W. R. 1 . . . 190, 195, 225
Corbett, *Ex parte* (1880), 14 Ch. D. 122 102
Cork and Youghal Railway, *Re* (1869), L. R. 4 Ch. App. 748 . . 494
Cornell *v.* Saunders (1863), 32 L. J. M. C. 9 489
Corrance *v.* Corrance (1868), 1 P. & M. 495 189
Cory *v.* Pepper (1679), 2 Levinz 222 326
Coster *v.* Hetherington (1859), 1 E. & E. 802 556
Cother *v.* Midland Railway (1847), 2 Phill. 469 ; 5 Rail. Cas. 187 . 232

PAGE

Cotterill *v.* Lemprière (1890), 24 Q. B. D. 637 ; 59 L. J. M. C. 133 . 479
Cotton, *Ex parte* (1883), 11 Q. B. D. 301 ; 49 L. T. 52 ; 33 W. R. 58 . 586
Couch *v.* Jeffries (1769), 4 Burr. 2460 376
—— *v.* Steel (1854), 23 L. J. Q. B. 125 ; 3 E. & B. 402 ; 18 Jur. 515 . 250, 253, 260
Courtauld *v.* Legh (1869), 4 Ex. 126 186
Cousins *v.* Lombard Deposit Bank (1876), 1 Ex. D. 404 . . . 139
Coulbert *v.* Troke (1875), 1 Q. B. D. 1 573
Coverdale *v.* Charlton (1879), 4 Q. B. D. 117 601
Cowles *v.* Dunbar (1827), 2 C. & P. 567 ; M. & M. 37 587
Cowper Essex *v.* Acton L. B. (1889), 14 App. Cas. 153 ; 58 L. J. Q. B. 594 ; 61 L. T. 1 ; 38 W. R. 209 . . . 121, 324, 559, 562, 591
Cox *v.* Andrews (1883), 12 Q. B. D. 126 ; 53 L. J. M. C. 34 ; 32 W. R. 289 341
— *v.* G. W. Ry. Co. (1882), 9 Q. B. D. 106 599
— *v.* Hakes (1890), 15 App. Cas. 506 ; 63 L. T. 392 . . 78, 79, 198, 546
— *v.* Leigh (1874), 9 Q. B. 333 164
— *v.* Rabbits (1878), 3 App. Cas. 473 ; 47 L. J. Q. B. 385 ; 38 L. T. 430 ; 26 W. R. 483 132
— *v.* Thomason (1832), 2 Cr. & J. 499 376
Coxhead *v.* Mullis (1878), 3 C. P. D. 439 107
Crake *v.* Powell (1852), 2 E. & B. 210 ; 21 L. J. Q. B. 183 ; 1 Ex. 210 . 317
Crane *v.* Lawrence (1890), 25 Q. B. D. 152 ; 59 L. J. M. C. 110 . . 554
Crawford *v.* Spooner (1846), 6 Moore P. C. 9 82
Credland *v.* Potter (1874), 10 Ch. App. 8 543
Crepps *v.* Durden (1777), Cowp. 640 492
Crespigny *v.* Wittenoom (1792), 4 T. R. 609 223
Crichton *v.* Duncan (1892), Sc., not yet reported 302
Cripps *v.* Judge (1884), 13 Q. B. D. 583 ; 53 L. J. Q. B. 517 ; 51 L. T. 182 549
Crocker *v.* Waine (1864), 5 B. & S. 697 551
Crooke's case (1690), 1 Show. 208 417
Crosby *v.* Wadsworth (1805), 6 East 602 87
Crossley *v.* Arkwright (1788), 2 T. R. 609 150
Crowder *v.* Stewart (1880), 16 Ch. D. 368 ; 50 L. J. Ch. 136 ; 29 W. R. 331 223
Cubitt *v.* Maxse (1874), 8 C. P. 704 274
Cuckfield Burial Board, *Re* (1855), 24 L. J. Ch. 585 ; 19 Beav. 153 . 411
Cundy *v.* Lecocq (1884), 13 Q. B. D. 207 ; 53 L. J. M. C. 125 ; 51 L. T. 265 ; 32 W. R. 769 485
Cuno, *Re* (1889), 43 Ch. D. 12 ; 62 L. T. 15 . . . . . 135, 568
Curran *v.* Treleaven (1891), 2 Q. B. 551 145
Curtis *v.* Hutton (1808), 14 Ves. 537 427
—— *v.* Kesteven C. C. (1890), 45 Ch. D. 504 ; 63 L. T. 543 . . 588
—— *v.* Marsh (1858), 28 L. J. Ex. 38 597
—— *v.* Perry (1802), 6 Ves. 639 87
—— *v.* Stovin (1889), 22 Q. B. D. 513 ; 58 L. J. Q. B. 674 ; 60 L. T. 772 ; 37 W. R. 315 . . . . . 5, 22, 82, 111
Cushing *v.* Dupuy (1880), 5 App. Cas. 409 412

Dale's case (1881), 6 Q. B. D. 376 . . . . . 237, 313
Dalrymple *v.* Hall (1871), 16 Ch. D. 716 600

PAGE

Danford *v.* McAnulty (1882), 8 App. Cas. 456 ; 52 L. J. Q. B. 652 ; 49 L. T. 207 ; 31 W. R. 817 . . . . . 168, 171, 304
Dapueto (Giovanni) *v.* Wylie (1874), 5 P. C. 492 ; 43 L. J. Adm. 20 ; 30 L. T. 887 ; 22 W. R. 777 . . . . . 204, 538
David, *Re* (1890), 43 Ch. D. 27 ; 62 L. T. 141 ; 38 W. R. 162 . . 463
Davies *v.* Kennedy (1869), Ir. Rep. 3 Eq. 668 . . 112, 194, 220, 225
Davis, *Ex parte* (1872), 7 Ch. App. 526 ; 41 L. J. Bank. 69 ; 27 L. T. 53 312
—— *v.* Edmondson (1803), 3 B. & P. 382 150
—— *v.* Harvey (1874), 9 Q. B. 433; 43 L. J. M. C. 121; 22 W. R. 733 486
—— *v.* Stephenson (1890), 24 Q. B. D. 529 ; 59 L. J. M. C. 73 . . 89
Davison *v.* Farmer (1851), 6 Ex. 242 ; 20 L. J. Ex. 177 . . . 153
—— *v.* Gill (1800), 1 East 63 297
Dawe *v.* Vergara (1883), 11 Q. B. D. 241 ; 49 L. T. 41 600
Dawson *v.* Paver (1849), 5 Hare 415 ; 16 L. J. Ch. 274 ; 11 Jur. 766 503, 519
Day *v.* Savadge (1615), Hob. 87 81
Dean *v.* Green (1882), 8 P. D. 79 ; 48 J. P. 742 237
Dearden *v.* Townsend (1865), 1 Q. B. 10 306
De Bode (Baron) *v.* R. (1849), 13 Q. B. 364 ; 14 Jur. 970 . . . 418
Delancy *v.* Metropolitan Board of Works (1867), 2 C. P. 532 ; 3 C. P. 111 582
Del Campo *v.* R. (1837), 2 Moore P. C. 18 490
De Morgan *v.* Metropolitan Board of Works (1880), 5 Q. B. D. 155 300, n.
Derbyshire *v.* Staffordshire (1890), Times, June 4 332
De Sousa *v.* British South Africa Co. (1892), 8 Times L. R. 396 . . 431
De Souza *v.* Cobden (1891), 1 Q. B. 687 ; 60 L. J. Q. B. 533 . . 134
Devonshire (Duke of) *v.* Barrow, &c., Co. (1877), 2 Q. B. D. 286 . . 382
—— *v.* O'Connor (1890), 24 Q. B. D. 468 ; 38 W. R. 420 509
De Winton *v.* Brecon (1859), 28 L. J. Ch. 604 ; 26 Beav. 533 . . 243
Dickinson, *Re* (1889), 22 Q. B. D. 187 ; 58 L. J. Q. B. 1 ; 37 W. R. 130 589
—— *v.* Fletcher (1873), 9 C. P. 1 ; 43 L. J. C. P. 25 ; 29 L. T. 540 . . . . . 156, 478, 487
Dill *v.* Murphy (1864), 1 Moore P. C. N. S. 487 549
Dingley *v.* Moor (1601), Cro. Eliz. 750 389
Dinning *v.* South Shields Union (1884), 13 Q. B. D. 25 ; 53 L. J. M. C. 56, 90 ; 49 L. T. 679 ; 50 L. T. 446 ; 32 W. R. 317 . . . 544
Ditcher *v.* Denison (1857), 11 Moore P. C. 325 . . . . 121, 575
Dixon *v.* Farrer (1886), 18 Q. B. D. 43 ; 56 L. J. Q. B. 53 ; 55 L. T. 578 412
—— *v.* London Small Arms Co. (1876), 1 App. Cas. 632 ; 46 L. J. Q. B. 617 412
Dobbs *v.* Grand Junction W. W. Co. (1883), 9 App. Cas. 49 ; 53 L. J. Q. B. 50 ; 49 L. T. 541 ; 32 W. R. 433 . . . . 353, 386, 534
Doe d. Angell *v.* Angell (1846), 9 Q. B. 355 186
—— Anglesea (Marquis of) *v.* Rugeley (1844), 6 Q. B. 107; 13 L. J. M. C. 137 ; 8 Jur. 615 383
—— Netherclift *v.* Bartle (1822), 5 B. & Ald., 492 117
—— Rochester (Bishop of) *v.* Bridges (1831), 1 B. & Ad. 847 . . 259
—— Tennyson *v.* Rawding (1819), 2 B. & Ald. 449 600
—— —— *v.* Yarborough (Lord) (1822), 1 Bing. 24 . . . 150
Doherty *v.* Allman (1878), 3 App. Cas. 709 ; 39 L. T. 129 ; 26 W. R. 513 288
Dolan *v.* Macdermott (1868), 3 Ch. App. 676 539
Doolan *v.* Midland Rail. Co. (1877), 2 App. Cas. 792 590

PAGE
Dore *v.* Gray (1788), 2 T. R. 365 ; 1 Rev. Rep. 494 356
Doughty *v.* Firbank (1883), 10 Q. B. D. 358 ; 52 L. J. Q. B. 480 ; 48 L. T. 530 585
Dover Gas Light Co. *v.* Dover (Mayor, &c., of) (1855), 7 D. M. & G. 545 ; 1 Jur. N. S. 813 ; 25 L. T. O. S. 277 109
Dowling *v.* Pontypool, &c., Rail. Co. (1874), 18 Eq. 714 ; 43 L. J. Ch. 761 . . . . . 511, 549
Downe *v.* Martyr (1828), 8 B. & C. 69 ; 2 M. & R. 98 562
Dowse (The) (1870), 3 Adm. & Eccl. 135 . . . . . 203, 204
Doyle *v.* Falconer (1866), 4 Moore P. C. N. S. 203 272
Du Boulay *v.* Du Boulay (1869), 2 P. C. 430 36
Duck *v.* Addington (1791), 4 T. R. 447 150
Duckett *v.* Gover (1877), 6 Ch. D. 82 571
Dudley Canal Co. *v.* Grazebrook (1830), 1 B. & Ad. 59 . . 239, *n.*
—— (Corporation of), *Re* (1882), 8 Q. B. D. 86 ; 51 L. J. Q. B. 124 ; 45 L. T. 734 721
Duke of Buccleuch (The) (1889), 15 P. D. 86 101
Dunbar (Magistrates of) *v.* Roxburgh (Duchess of) (1835), 3 Cl. & F. 335 . . . . . 96, 169
Duncan, *Re* (1867), 2 Ch. App. 356 539
—— *Re* (1890), 139 U. S. 457 . . . . . 43, 44, 45
—— *v.* Dixon (1890), 44 Ch. D. 211 ; 59 L. J. Ch. 437 22, 239, 533, 601
—— *v.* Lawson (1889), 41 Ch. D. 394 ; 60 L. T. 732 ; 37 W. R. 524 426, 427
—— *v.* Scottish N. E. Rail. Co. (1870), 2 H. L. (Sc.) 20 . . 361
Dunelm (The) (1884), 9 P. D. 164 ; 53 L. J. P. 181 ; 51 L. T. 214 . 187
Dupays *v.* Shepherd (1698), 12 Mod. 216 504
Duranty *v.* Hart (1863), 2 Moore P. C. N. S. 313 72
Dyke *v.* Gower (1892), 2 Q. B. 220 . . . . . 126, 486, 488
Dyson *v.* L. and N. W. Rail. Co. (1881), 7 Q. B. D. 32 . . . 309
—— *v.* Mason (1889), 22 Q. B. D. 351 557

EADE, *Re* (1890), 25 Q. B. D. 228 ; 59 L. J. Q. B. 376 ; 38 W. R. 683 . 546
East and West India Dock Co. (1890), 44 Ch. D. 38 ; 62 L. T. 239 . 546
—— London Rail. Co. *v.* Whitechurch (1874), 7 H. L. 81 ; 43 L. J. M. C. 159 . . . . . 123, 517
Eastern Counties Rail. Co. *v.* Marriage (1861), 9 H. L. C. 32 . 227, 594
Eastwood *v.* Miller (1874), 9 Q. B. 440 ; 43 L. J. M. C. 139 . . 580
Ebbs *v.* Boulnois (1875), 10 Ch. App. 479 ; 44 L. J. Ch. 691 . . 239
Ecclesiastical Persons' case (1601), 5 Rep. 14 414
Edinburgh, and Glasgow Rail. Co. *v.* Linlithgow (1860), 3 Macq. H. L. (Sc.) 704. 464
—— &c., Rail. Co. *v.* Wauchope (1842), 8 Cl. & F. 723 ; 3 Rail. Cas. 233 521
—— Perth, &c., Rail. Co. *v.* Philip (1857), 2 Macq. H. L. (Sc.) 526 ; 3 Jur. N. S. 249 318
—— Street Tramways Co. *v.* Torbain (1877), 3 App. Cas. 58 . 188
—— Water Co. *v.* Hay (1854), 1 Macq. H. L. (Sc.) 687 . . 194
Edmonds *v.* Waterman's Co. (1855), 24 L. J. M. C. 128 . . . 307
Edwards *v.* Dick (1821), 4 B. & Ald. 212 118

PAGE
Edwards *v.* Edwards (1876), 2 Ch. D. 291 ; 45 L. J. Ch. 391 . . 88
—— *v.* Hall (1856), 25 L. J. Ch. 84 88
—— *v.* R. (1854), 9 Ex. 631 ; 23 L. J. Ex. 165 597
—— *v.* Roberts (1891), 1 Q. B. 302 ; 60 L. J. M. C. 6 . . . 281
—— *v.* Sherren (1843), 11 M. & W. 595 373
Elliott *v.* Richardson (1870), 5 C. P. 744 ; 39 L. J. C. P. 340 . . 267
—— *v.* Swartout (1836), 10 Peters (U. S.) 151 181
Elve *v.* Boyton (1891), 1 Ch. 51 ; 60 L. J. Ch. 383 ; 64 L. T. 482 . . 541
Ely (Dean of) *v.* Bliss (1852), 2 D. M. & G. 471 ; 5 Beav. 374 . 233, 353
Emma Silver Mining Co. *v.* Grant (1879), 11 Ch. D. 918 ; 40 L. T. 804 288
Emmerton *v.* Matthews (1862), 31 L. J. Ex. 142 487
England (Bank of) *v.* Vagliano (1891), A. C. 107 . . . . 167, 344
Eno *v.* Dunn (1890), 15 App. Cas. 252 ; 63 L. T. 6 ; 37 W. R. 161 . 537
Entick *v.* Carrington (1765), 19 St. Tr. 1060 1
Entwistle *v.* Dent (1848), 1 Ex. 823 73
Erichsen *v.* Last (1881), 8 Q. B. D. 414 579
Escott *v.* Mastin (1842), 4 Moore P. C. 104 145
Esdaile *v.* Maclean (1846), 15 M. & W. 277 61
Evans *Re* (1891), 1 Q. B. 144 ; 60 L. J. Q. B. 143 ; 64 L. T. 242 . 543
—— and Finch's case (1637), Cro. Car. 473 597
Evanturel *v.* Evanturel (1869), 2 P. C. 462 166
Everett *v.* Wells (1841), 2 M. & G. 269 468
Evershed *v.* L. and N. W. Rail. Co. (1878), 3 Q. B. D. 141 ; 36 L. T. 12 . 598
Everton (Overseers of), *Ex parte* (1871), 6 Q. P. 245 ; 40 L. J. M. C. 104 564
Ewart *v.* Williams (1854), 3 Drew 21 145
Eyre and Corporation of Leicester, *Re* (1892), 1 Q. B. 136 . . 317, 569
Eyston *v.* Studd (1574), Plowden 465 118

FALCK *v.* Axthelm (1890), 24 Q. B. D. 174 ; 59 L. J. Q. B. 161 ; 38 W. R. 196 578
Fanny M. Carvill (The) (1888), 13 App. Cas. 455, *n.* 101
Farley *v.* Bonham (1861), 30 L. J. Ch. 239 144
Fauntleroy's case. *See* Amicable *v.* Bolland.
Feather *v.* R. (1865), 6 B. & S. 257 ; 35 L. J. Q. B. 200, 266 . . 412
Fellows *v.* Clay (1843), 4 Q. B. 356 145
Ferguson, *Ex parte* (1871), 6 Q. B. 280 ; 40 L. J. Q. B. 105 ; 24 L. T. 96 234
Ferman, *Re.* *See* Tivnan, *Re.*
Fermoy's (Lord) case (1856), 5 H. L. C. 716 578
Fillingham *v.* Wood (1891), 1 Ch. 51 532
Finney *v.* Godfrey (1870), 9 Eq. 356 86
Fishburn *v.* Hollingshead (1891), 2 Ch. 371 ; 60 L. J. Ch. 768 ; 64 L. T. 647 12
Fisher *v.* Val de Travers Asphalte Co. (1875), 1 C. P. D. 259 . . 124
Fitzgerald *v.* Champneys (1861), 2 J. & H. 31 ; 30 L. J. Ch. 777 ; 7 Jur. N. S. 1006 ; 9 W. R. 850 . . . . . 360, 522
Fitzgerald's case (1869), 5 Q. B. 1 532
Fitzhardinge (Lord) *v.* Pritchett (1867), 2 Q. B. 135 589
Fitzpatrick *v.* Kelly (1873), 8 Q. B. 337 ; 42 L. J. M. C. 132 ; 28 L. T. 558 486

PAGE
Fletcher *v.* Fields (1891), 1 Q. B. 790 ; 60 L. J. M. C. 102 ; 64 L. T. 472 540
—— *v.* Hudson (1880), 5 Ex. D. 287 4
—— *v.* Sondes (Lord) (1826), 3 Bing. 501 (H. L.) . . . 200, *n.*
Flint *v.* Barnard (1888), 22 Q. B. D. 90 548
Florence Land Co., *Re* (1878), 10 Ch. D. 530 . . . . . 121, *n.*
Flower *v.* London and Brighton Rail. Co. (1865), 2 Dr. & Sm. 330 . 298
—— *v.* Low Leyton L. B. (1877), 5 Ch. D. 347 120
Foley *v.* Fletcher (1858), 27 L. J. Ex. 106 479
Folkard *v.* Metrop. Rail. Co. (1873), 8 C. P. 470 600
Foot *v.* Hodgson (1890), 25 Q. B. D. 160 ; 59 L. J. Q. B. 343 . . 593
Forbes *v.* Eccles. Commissioners (1872), 15 Eq. 51 135
Ford and Hill, *Re* (1879), 12 Ch. D. 365 ; 48 L. J. Ch. 327 ; 27 W. R. 371 . . . . . 165, *n.*
—— *v.* Kettle (1882), 9 Q. B. D. 139 535
—— *v.* Wiley (1889), 23 Q. B. D. 203 ; 58 L. J. M. C. 145 . . 15, 16
Fordham *v.* Clagett (1882), 20 Ch. D. 637 578
Fordyce *v.* Bridges (1847), 1 H. L. C. 1 ; 11 Jur. 157 444
Forsdyke *v.* Colquhoun (1883), 11 Q. B. D. 171 595
Fortescue *v.* Bethnal Green (1891), 2 Q. B. 170 ; 60 L. J. M. C. 172 169, 351
Foster, *Re* (1881), 8 Q. B. D. 515 148
—— *v.* Pritchard (1857), 26 L. J. Ex. 215 ; 2 H. & N. 151 . . 396
—— *v.* Usherwood (1877), 3 Ex. D. 1 . . . . . 147, *n.*
Foster's (Dr.) case (1615), 11 Rep. 61 . . . . . 325, 347
Fowler *v.* Paget (1795), 7 T. R. 514 575
Fox *v.* Chester (Bishop of) (1824), 2 B. & C. 635 90
—— (1829), 1 Dow & Cl. 429 91
Franconia (The) (1877), 2 P. D. 163 ; 35 L. T. 721 ; 25 W. R. 197 195, *n.*
—— case (The). *See* R. *v.* Keyn.
Freeman *v.* Moyes (1834), 1 A. & E. 338 366
—— *v.* Read (1863), 4 B. & S. 184 571
Freke *v.* Carbery (Lord) (1873), 16 Eq. 461 . . . . . 426, 427
Freme *v.* Clement (1881), 18 Ch. D. 499 ; 44 L. T. 399 ; 30 W. R. 3 . 111, 550
Fryer *v.* Morland (1876), 3 Ch. D. 685 122
Fuller *v.* Alford (1883), 10 Q. B. D. 418 553
Fusilier, The (1864), 34 L. J. P. & M. 25 ; 3 Moore P. C. N. S. 51 180, *n.*, 579

Gallini *v.* Laborie (1793), 5 T. R. 242 264
Gallaway *v.* Maries (1881), 8 Q. B. D. 275 579
Galloway *v.* Mayor of London (1866), 1 H. L. 35 ; 35 L. J. Ch. 477 ; 12 L. T. 319 ; 13 W. R. 701 ; 11 Jur. N. S. 474 296
Gallsworthy *v.* Selby Dam Drainage Commissioners (1892), 1 Q. B. 348 287
Gard *v.* London (Commissioners of Sewers for) (1885), 28 Ch. D. 486 ; 54 L. J. Ch. 698 ; 52 L. T. 827 182
Gardner *v.* Collector (1867), 6 Wall. (U. S.) 499 44
—— *v.* Jay (1885), 29 Ch. D. 50 ; 54 L. J. Ch. 529, 762 ; 52 L. T. 181, 395 ; 33 W. R. 470 288
—— *v.* Lucas (1878), 3 App. Cas. 601 . . . . 4, 371, 375, 377
Garnett *v.* Bradley (1878), 3 App. Cas. 944 . 2, 305, 333, *n.*, 347, 352, 357, 523

PAGE
Garrett *v.* Messenger (1867), 2 C. P. 583 492
Garston Sailing Ship Co. *v.* Hickie (1885), 15 Q. B. D. 580 . . 581
Gaslight, &c., Co. *v.* Hardy (1886), 17 Q. B. D. 619 . . 246, 340, *n.*
Gathercole *v.* Hawkins (1855), 6 D. M. & G. 1; 24 L. J. Ch. 338 . 202, 208, 357
Gauntlet (The) (1871), 3 Adm. & Eccl. 381; 4 P. C. 184 . 235, *n.*, 479
Geddis *v.* Bann (Proprietors of) (1878), 3 App. Cas. 430 . . . 294
General Iron, &c., Co. *v.* Moss (1861), 15 Moore P. C. 131 . . . 78
Gibbs *v.* Great Western Rail. Co. (1883), 11 Q. B. D. 22; 48 L. T. 640; 31 W. R. 722 539
—— *v.* Guild (1882), 9 Q. B. D. 59; 51 L. J. Q. B. 313; 46 L. T. 248; 30 W. R. 591 87
—— *v.* Pike (1841), 8 M. & W. 228; 9 Dowl. P. C. 731 . . . 59
Gilbert *v.* Trinity House (1886), 17 Q. B. D. 795; 56 L. J. Q. B. 85; 35 W. R. 30 402
Gildart *v.* Gladstone (1809), 11 East 674 . . . . . 132, 511
Gilmore *v.* Shuter (1679), 2 Mod. 310 372
Girdlestone *v.* Brighton Aquarium Co. (1878), 3 Ex. D. 137; 4 Ex. D. 107 475
Glasgow (Provost, &c., of) *v.* Farie (1888), 13 App. Cas. 657; 60 L. T. 174 274, 571
—— *v.* Hillhead (1885), 12 Rettie (Sc.) 872; 13 App. Cas. 699 . . . . . 197, *n.*
Glossop *v.* Heston L. B. (1879), 12 Ch. D. 102 . . . . 251, 252
Goodman's Trusts, *Re* (1880), 14 Ch. D. 619; 17 Ch. D. 266 192, 427, 539
Gordon *v.* Jennings (1882), 9 Q. B. D. 45 . . . . 181, 590, 601
—— *v.* Howden (1845), 12 Cl. & F. 243 264
Gorely, *Ex parte* (1864), 34 L. J. Bank. 1 508
Gormley *v.* Bunyan (1890), 139 U. S. 623 43
Gorris *v.* Scott (1874), 9 Ex. 125; 43 L. J. Ex. 92; 30 L. T. 431; 22 W. R. 575 255
Gough *v.* Jones (1863), 9 Jur. N. S. 82 143
Gould *v.* Gapper (1804), 5 East 345 19
Gover's case (1875), 1 Ch. D. 182; 45 L. J. Ch. 83; 33 L. T. 619 . 102
Grace *v.* Clinch (1843), 4 Q. B. 609 561
Graff *v.* Evans (1882), 8 Q. B. D. 377; 51 L. J. M. C. 25; 46 L. T. 347; 30 W. R. 381 588
Graham *v.* Lewis (1888), 22 Q. B. D. 1 537
Grant *v.* Grant (1870), 5 C. P. 727; 39 L. J. C. P. 272; 18 W. R. 95 . 9
Graves *v.* Ashford (1867), 2 C. P. 410; 36 L. J. C. P. 139; 15 L. T. 98; 15 W. R. 495 480
Gray *v.* R. (1844), 11 Cl. & F. 427 . . . . . 136, 329
Great Central Gas Co. *v.* Clarke (1863), 13 C. B. N. S. 840 . . 361
—— Northern Fishing Co. *v.* Edgehill (1883), 11 Q. B. D. 225 . . 325
—— Northern Railway *v.* East Central Rail. Co. (1851), 9 Hare 310 299
—— —— *v.* Tahourdin (1883), 13 Q. B. D. 370 . . 541
Great Western Rail. Co. *v.* Baillie (1864), 5 B. & S. 929 . . . 486
—— *v.* May (1875), 7 H. L. 283 595
—— *v.* Swindon Rail. Co. (1884), 9 App. Cas. 787, 808; 53 L. J. Ch. 445; 50 L. T. 87; 32 W. R. 519 199, 200, 353, 559
Greaves *v.* Tofield (1880), 14 Ch. D. 563; 50 L. J. Ch. 119; 43 L. T. 100; 28 W. R. 840 . . . . . 118, *n.*

PAGE

Green *v.* Mortimer (1860), 3 L. T. 642 529
—— *v.* Penzance (Lord) (1881), 6 App. Cas. 675; 51 L. J. Q. B. 25; 45 L. T. 353; 30 W. R. 218 . . . . . 538, 559
—— *v.* R. (1876), 1 App. Cas. 513; 35 L. T. 493 . . 123, 143, *n.*
—— *v.* Smith (1883), 24 Ch. D. 672; 52 L. J. Ch. 921; 49 L. T. 297 . 186
—— *v.* Wood (1845), 7 Q. B. 178 . . . . . 83, 468
Greene *v.* West Cheshire Rail. Co. (1871), 13 Eq. 49 251
Greenham *v.* Child (1889), 24 Q. B. D. 29; 61 L. T. 563; 38 W. R. 94 587
Greig *v.* Edinburgh (University of) (1868), 1 H. L. (Sc.) 348 . . 410
Grenfell *v.* Inland Revenue (Commissioners of) (1876), 1 Ex. D. 242; 45 L. J. Ex. 465; 34 L. T. 426; 24 W. R. 582 . . . 180, 591
Grey *v.* Pearson (1857), 6 H. L. C. 61 100
Guaranty Trust Co. *v.* Green Cove Railroad (1890), 139 U. S. 145 . 177
Gunnestad *v.* Price (1874), 10 Ex. 69; 44 L. J. Ex. 44; 32 L. T. 499 200
Gurnee *v.* Patrick (1890), 137 U. S. 141 392
Guthrie *v.* Fisk (1824), 3 B. & C. 178 532
Gwynne *v.* Burnell (1840), 7 Cl. & F. 696 83

HACK *v.* London Provident Building Society (1883), 23 Ch. D. 103, 52 L. J. Ch. 225, 441; 48 L. T. 247; 31 W. R. 378 . . . 160
Hadley *v.* Perks (1866), 1 Q. B. 444 . . . . . 155, 158
Haigh *v.* Sheffield (Town Council of), (1874), 10 Q. B. 102 . . 495
Hall *v.* Metcalf (1892), 1 Q. B. 208 597
—— *v.* Nixon (1875), 10 Q. B. 152; 44 L. J. M. C. 51; 32 L. T. 87 307, 309
Halley (The) (1868), 2 P. C. 193 257
Hamilton (Duchess of) *v.* Fleetwood (1714), 10 Mod. 687 . . 81
—— *v.* Baker (1889), 14 App. Cas. 209; 61 L. T. 26 . . 96, 273
Hammersmith Rail. Co. *v.* Brand (1869), 4 H. L. 171; 21 L. T. 238 . 227
Hammond *v.* Hocking (1884), 12 Q. B. D. 291; 53 L. J. Q. B. 205; 50 L. T. 267 268
—— *v.* St. Pancras (1874), 9 C. P. 316; 43 L. J. C. P. 157 . 257
Hampstead (Vestry of St. John) *v.* Cotton (1886), 12 App. Cas. 1 . 80
Handley *v.* Handley (1891), P. 124; 63 L. T. 535; 39 W. R. 97 . . 321
Harbottle *v.* Terry (1882), 10 Q. B. D. 131 599
Harcourt *v.* Fox (1693), 1 Show. 532 . . . . . 123, 353
Harding *v.* Howell (1889), 14 App. Cas. 307; 58 L. J. C. P. 76 . . 167
Hardy *v.* Fothergill (1888), 13 App. Cas. 351; 58 L. J. Q. B. 44; 59 L. T. 273; 37 W. R. 177 . . . . . 197, 566
Harris *v.* Davies (1885), 10 App. Cas. 279; 54 L. J. P. C. 15 . . 448
—— *v.* May (1883), 12 Q. B. D. 97; 53 L. J. M. C. 39 . . . 602
Harrison *v.* Carter (1876), 2 C. P. D. 26; 35 L. T. 511 . . . 565
Hart *v.* Colley (1890), 44 Ch. D. 193; 62 L. T. 623; 38 W. R. 440 . 586
Hartley *v.* Hooker (1777), 2 Cowp. 532 140
Hartmont *v.* Foster (1881), 8 Q. B. D. 82 305
Hartridge, *Ex parte* (1870), 5 Ch. App. 671 500
Harvey *v.* Farquhar (1872), 2 H. L. (Sc.) 192 385
Hasker *v.* Wood (1885), 54 L. J. Q. B. 419; 33 W. R. 697 . . 358, 544
Hasluck *v.* Pedley (1875), 19 Eq. 271 384
Hawkins *v.* Gathercole (1855), 24 L. J. Ch. 322; 6 D. M. & G. 191 . 202, 208, 357, 597

PAGE

Hay *v.* Perth (Lord Provost of) (1863), 3 Macq. H. L. (Sc.) 544 . 118
— *v.* Tower Justices (1890), 24 Q. B. D. 561; 59 L. J. M. C. 79 544, 576
Haydon *v.* Carroll (1796), 3 Ridg. Parl. Cas. 545 347
Heap *v.* Burnley Union (1884), 12 Q. B. D. 617; 53 L. J. M. C. 76; 32 W. R. 661 309
Hearne *v.* Gorton (1859), 2 E. & E. 66 475
Heath *v.* Burder (1862), 15 Moore P. C. 147 533
—— *v.* Hubbard (1803), 4 East 110 282
Heawood *v.* Bone (1884), 13 Q. B. D. 179 567
Hebbert *v.* Purchas (1870), 3 P. C. 605 . . . . 241, *n.*, 385
Hebblethwaite *v.* Hebblethwaite (1869), 2 P. & M. 29 . . . 286
Hecla Foundry Co. *v.* Walker (1889), 14 App. Cas. 550 . . . 550
Hecquard, *Re* (1890), 24 Q. B. D. 74 552
Heelis *v.* Blain (1864), 18 C. B. N. S. 108 . . . . 162, *n.*, 581
Henderson *v.* Maxwell (1877), 4 Ch. D. 163 536
—— *v.* Sherborne (1837), 2 M. & W. 239 350
Henty *v.* Wrey (1882), 21 Ch. D. 332; 53 L. J. Ch. 667; 47 L. T. 231; 30 W. R. 850 163
Heriot's Hospital case (1844), 2 Dow P. C. 301 515
Heseltine, *Re* (1891), 1 Ch. 464 . . . . . 531, 532
Heske *v.* Samuelson (1883), 12 Q. B. D. 30 549
Hesse *v.* Stevenson (1803), 3 B. & P. 565 505
Heydon's case (1584), 3 Rep. 8 . . . . . 112, 143, 476
Hickman *v.* Birch (1890), 24 Q. B. D. 172 558
Higginbotham, *Ex parte* (1840), 4 Jur. 1035 390
Hill *v.* East and West India Dock Co. (1884), 9 App. Cas. 448; 22 Ch. D. 14; 53 L. J. Ch. 842; 51 L. T. 163; 32 W. R. 925 111, 459
— *v.* Hall (1876), 1 Ex. D. 411 352
— *v.* Metropolitan Asylum Managers (1879), 4 Q. B. D. 433 . . 14
Hillman, *Ex parte* (1879), 10 Ch. D. 622 584
Hindmarch *v.* Charlton (1860), 8 H. L. C. 166 78
Hine *v.* Reynolds (1840), 2 Scott N. R. 419 196
Hitchcock *v.* Way (1837), 6 A. & E. 943 394
Hobbs *v.* Hudson (1890), 25 Q. B. D. 232; 63 L. T. 215; 38 W. R. 682 71, 476
Hodge *v.* R. (1883), 9 App. Cas. 117; 53 L. J. P. C. 1; 50 L. T. 301 . 448
Hodgson *v.* Bell (1890), 24 Q. B. D. 525; 59 L. J. Q. B. 231 . 147, *n.*
Hogg *v.* Auchtermuchty (Parochial Board of) (1880), 7 Rettie (Sc.) 986 132
Hoggan *v.* Wood (1890), 17 Rettie (Justiciary) 96 . . . . 385, *n.*
Holdsworth *v.* McCrea (1867), 2 H. L. 380 550
Holland *v.* Worley (1884), 26 Ch. D. 578; 50 L. T. 526; 32 W. R. 749 288
Hollins *v.* Verney (1884), 13 Q. B. D. 304 563
Holme *v.* Guy (1877), 5 Ch. D. 905; 46 L. J. Ch. 648; 25 W. R. 547 144
Holt *v.* Collyer (1880), 16 Ch. D. 718 536
Home *v.* Camden (Lord) (1795), 5 H. Bl. 476; 2 ib. 533; 6 Br. P. C. 201 . . . . . 16, 17
Hornby *v.* Houlditch, cited 1 T. R. 93 509
Hornsby *v.* Raggett (1892), 1 Q. B. 20 579
Hornsey Local Board *v.* Brewis (1891), 60 L. J. M. C. 48 . . . 576
—— *v.* Monarch Investment Building Society (1889), 24 Q. B. D. 1; 59 L. J. Q. B. 105; 61 L. T. 867; 38 W. R. 85; 54 J. P. 391 77

PAGE

Horsnail *v.* Bruce (1873), 8 C. P. 378 239
Horton, *Re* (1881), 8 Q. B. D. 434 532
Hough *v.* Windus (1884), 12 Q. B. D. 224; 53 L. J. Q. B. 165; 50 L. T. 312; 32 W. R. 452 . . 122, 124, 335, 374, 376, 392, 393, 395, 396
Howard *v.* Bodington (1877), 2 P. D. 203 276
Howell *v.* Coupland (1874), 9 Q. B. 462 382
Howden (Lord) *v.* Simpson (1839), 10 A. & E. 817 527
Howes *v.* Inland Revenue (1876), 1 Ex. D. 394 554
—— *v.* Rocheid (1869), 1 H. L. (Sc.) 550 150
Hubbard *v.* Goodley (1890), 25 Q. B. D. 156 533
Hudson *v.* M'Rae (1864), 33 L. J. M. C. 65 489
Huggins, *Ex parte* (1882), 21 Ch. D. 85; 51 L. J. Ch. 935; 47 L. T. 539; 30 W. R. 878 . . . . . 198, *n.*
Hughes *v.* Chatham (Overseers of) (1843), 5 M. & G. 75 . . . 191
—— *v.* Chester Rail. Co. (1862), 1 Dr. & S. 524; 31 L. J. Ch. 100; 9 W. R. 760 221
—— *v.* Lloyd (1888), 23 Q. B. D. 157 558
Hume *v.* Somerton (1890), 25 Q. B. D. 239 305
Hunt *v.* Hunt (1864), 31 L. J. Ch. 175 285
—— (1878), 47 L. J. P. D. 22 540
Hunter *v.* Nockolds (1849), 1 Macn. & G. 640; 1 H. & T. 644; 19 L. J. Ch. 177; 14 Jur. 256 212
—— *v.* Northern Marine Insurance Co. (1888), 13 App. Cas. 717 . 581
Huntington *v.* Attrill (1892), 8 Times L. R. 341 . 472, 473, 474, 476
Hutton, *Re*, *Ex parte* Benwell (1884), 14 Q. B. D. 301 . . 201, 561
Huxley *v.* West London Rail. Co. (1889), 14 App. Cas. 26 . . . 557
Hyatt's Trusts, *Re* (1882), 21 Ch. D. 846 592
Hyde *v.* Hyde (1866), 1 P. & M. 130 93

Income Tax (Commissioners for) *v.* Pemsel (1891), App. Cas. 532 . 15, 24, 121, 146, 184, 185, 223, *n.*, 442, 443, 465, 525, 538
India (Bank of) *v.* Wilson (1878), 3 Ex. D. 113 598
—— (The) (1864), 33 L. J. Adm. 193 . . . . . 352, 385
Indian Chief (The) (1801), 1 Rob. Adm. 23 434
Ingle *v.* McCutchan (1884), 12 Q. B. D. 518; 53 L. J. Q. B. 311 . 534
Ingram *v.* Foote (1701), Lord Raym. 709; 2 Mod. 613 . . 503, 507
—— *v.* Little (1883), 11 Q. B. D. 251 577
Inland Revenue (Commissioners of), *v.* Angus (1889), 23 Q. B. D. 579 332
—— *v.* Forrest (1890), 15 App. Cas. 334 . . . 146, *n.*, 589
—— *v.* Harrison (1874), 7 H. L. 1; 43 L. J. Ex. 138; 30 L. T. 274; 22 W. R. 559 165
Ireland (Bank of) *v.* Evans's Charity (1855), 5 H. L. C. 405 . . 170
Ironsides (The) (1864), 31 L. J. Adm. 131 370
Irving *v.* Askew (1869), 5 Q. B. 211 312
Islington Market Bill (The) (1835), 3 Cl. & F. 518 62

Jacobs *v.* Brett (1875), 20 Eq. 1 140
Jacques *v.* Withey (1788), 1 H. Bl. 65 394
James *v.* Smith (1891), 1 Ch. 384 59
Jamieson *v.* Att.-Gen. (1833), Alc. & Nap. 375 366

PAGE
Janvrin *v.* De la Mare (1861), 14 Moore P. C. 334 165
Jefferies *v.* Alexander (1860), 8 H. L. C. 637 88
Jefferys *v.* Boosey (1854), 4 H. L. C. 955 ; 24 L. J. Ex. 81 206, 431, 433, 435
Jenkins *v.* Jones (1882), 9 Q. B. D. 128 346
Jenkinson *v.* Thomas (1790), 4 T. R. 666 479
Jephson *v.* Riera (1835), 3 St. Tr. N. S. 591 451
Jersey (States of), *Re* (1853), 9 Moore P. C. 185 . . . . 36, 466
Jex *v.* M'Kinney (1889), 14 App. Cas. 79 . . . . . 451, 454
Johannesberg Co. (1891), 1 Ch. 119 538
Johnson *v.* Gaskain (1891), 8 Times L. R. 70 554
Johnson's Patent, *Re* (1880), 13 Ch. D. 398, *n.* 538
Johnstone *v.* Stott (1802), 4 Paton (Sc. App.) 274 . . . . 6, 385
Jones, *Ex parte* (1881), 18 Ch. D. 109 533
—— *Re, Ex parte* Lloyd (1891), 2 Q. B. 231 200
—— *Re* (1890), 24 Q. B. D. 589 541
—— *v.* Axen (1696), 1 Ld. Raym. 119 503
—— *v.* Bubb (1869), 4 C. P. 468 585
—— *v.* Cwmorthen Slate Co. (1880), 5 Ex. D. 93 584
—— *v.* Harris (1872), 7 Q. B. 157 549
—— *v.* Ogle (1873), 8 Ch. App. 192 384
—— *v.* Smart (1785), 1 T. R. 44 . . . . . 83, 119
Jubb *v.* Hull Dock Co. (1846), 9 Q. B. 455 ; 15 L. J. Q. B. 403 . . 128
Julius *v.* Oxford (Bishop of) (1880), 5 App. Cas. 214 ; 49 L. J. Q. B. 578 19, 143, *n.*, 179, 290, 315, 316

KANNREUTHER *v.* Geiselbrecht (1885), 28 Ch. D. 175 ; 54 L. J. Ch. 297 ; 52 L. T. 19 ; 33 W. R. 391 429
Keen *v.* Millwall Dock Co. (1882), 8 Q. B. D. 482 573
Keighley's case (1610), 10 Rep. 140 a 289
Kellock's case (1868), 3 Ch. App. 769 465
Kemp, *Ex parte* (1874), 9 Ch. App. 387 548
Kenrick *v.* Lawrence (1890), 25 Q. B. D. 99 216
Kent (County Council of), *v.* Dover (1891), 1 Q. B. 389 . . 186, 236
Kenyon *v.* Hart (1865), 6 B. & S. 255 557
Kerrison *v.* Cole (1807), 8 East 231 . . . . . 268, *n.*
Kimbray *v.* Draper (1868), 3 Q. B. 160 377
Kinaston *v.* Clarke (1741), 2 Atk. 205 223
Kindersley *v.* Jarvis (1856), 25 L. J. Ch. 541 78
King *v.* Burrell (1840), 12 A. & E. 460 127
— *v.* Charing Cross Bank (1890), 24 Q. B. D. 27 306
Kinloch *v.* Sec. of State for India (1882), 7 App. Cas. 619 . . . 421
Kirk *v.* Nowell (1786), 1 T. R. 124 ; 1 Rev. Rep. 160 . . . 503
Knight, *Re* (1884), 25 Ch. D. 300 599
Knill *v.* Towse (1889), 24 Q. B. D. 186, 697 . . . . . 22, 29
Knowles *v.* L. and Y. Rail. Co. (1889), 14 App. Cas. 248 . 146, 162, *n.*

LACON *v.* Hooper (1795), 6 T. R. 226 177
Laird *v.* Briggs (1881), 19 Ch. D. 22 ; 45 L. T. 238 . . 184, *n.*, 468
—— *v.* Clyde Trustees (1879), 6 Rettie (Sc.) 785 . . . 134, 237
Lake *v.* Butler (1855), 5 E. & B. 99 ; 24 L. J. Q. B. 273 ; 1 Jur. N. S. 499 570

PAGE
Lamb, *Ex parte* (1832), 19 Ch. D. 173 556
—— *v.* North London Rail. Co. (1869), 4 Ch. App. 522 ; 21 L. T. 98 ; 17 W. R. 746 511
Lambe *v.* Smythe (1846), 15 M. & W. 433 ; 15 L. J. Ex. 287 ; 10 Jur. 394 587
Lamirande's case (1866), 10 Lower Canada Jur. 230 542
Lancashire and Yorkshire Rail. Co. *v.* Bury (Mayor, &c., of) (1889), 14 App. Cas. 417 ; 59 L. J. Q. B. 85 ; 61 L. T. 417 . 166, 295, 536
—— *v.* Greenwood (1888), 21 Q. B. D. 215 ; 58 L. J. Q. B. 16 ; 59 L. T. 930. 582
—— (Justices of) *v.* Rochdale (Mayor, &c., of) (1883), 8 App. Cas. 494 ; 53 L. J. M. C. 5 ; 49 L. T. 368 ; 32 W. R. 65 . 143, *n.*
Lane *v.* Bennett (1836), 1 M. & W. 70 . . . . . 84, 153, 446
Lang *v.* Kerr (1878), 3 App. Cas. 529 230
Langdon *v.* Broadbent (1878), 37 L. T. 436 541
Langlois and Biden, *Re* (1891), 1 Q. B. 349 ; 60 L. J. Q. B. 123 ; 63 L. T. 816 ; 39 W. R. 181 306
Langrish *v.* Archer (1882), 10 Q. B. D. 44 ; 52 L. J. M. C. 47 ; 47 L. T. 548 ; 31 W. R. 183 575
Langston *v.* Langston (1834), 2 Cl. & F. 240 469
Langton *v.* Hughes (1813), 1 M. & S. 593 264
L'Apostre *v.* Le Plaistrier (1708), 1 P. Wms. 318 223
Latham *v.* Lafone (1867), 2 Ex. 115 ; 36 L. J. Ex. 17 ; 15 L. T. 627 ; 15 W. R. 453 . . . . . 107, 230
Latless *v.* Holmes (1792), 4 T. R. 660 367
Law, *Re* (1891), 1 Q. B. 47 105
Lawless *v.* Sullivan (1881), 6 App. Cas. 373 ; 50 L. J. P. C. 33 ; 44 L. T. 897 ; 29 W. R. 917 . . . . . 156, 561
Laws *v.* Eltringham (1881), 8 Q. B. D. 283 ; 51 L. J. M. C. 13 ; 46 L. T. 64 ; 30 W. R. 245 583
Leader *v.* Duffey (1888), 13 App. Cas. 294 ; 58 L. J. P. C. 13 ; 59 L. T. 9 . . . . . .
Lee *v.* Bude, &c., Rail. Co. (1871), 6 C. P. 576 ; 40 L. J. C. P. 285 ; 24 L. T. 827 ; 19 W. R. 954 . . . . . 81, 288, 526
— *v.* Milner (1837), 2 Y. & C. 611, 618 ; 2 M. & W. 824 . . . 514
Leeds and County Bank *v.* Walker (1883), 11 Q. B. D. 84 ; 52 L. J. Q. B. 590 . . . . . 375, 573
—— and Liverpool Canal Co. *v.* Hustler (1823), 1 B. & C. 424 ; 2 D. & R. 556 133
Lees *v.* Newton (1866), 1 C. P. 658 ; 35 L. J. C. P. 285 ; 14 W. R. 938 548
Leicester *v.* Haydon (1572), Plowd. 398 514
Leigh *v.* Hind (1829), 9 B. & C. 779 ; 4 M. & R. 579 570
—— *v.* Kent (1789), 3 T. R. 362 386
Lester *v.* Garland (1808), 15 Ves. 248 547
Levinger *v.* R. (1870), 3 P. C. 289 ; 39 L. J. P. C. 49 ; 23 L. T. 362 ; 18 W. R. 1107 . . . . . 136, 329
Lichfield (Mayor of) *v.* Simpson (1845), 8 Q. B. 65 ; 15 L. J. Q. B. 78 325
Lightbound *v.* Higher Bebington L. B. (1885), 14 Q. B. D. 849 ; 16 Q. B. D. 577 ; 55 L. J. M. C. 94 ; 53 L. T. 812 ; 34 W. R. 219 . 576
Lincoln (Bishop of), *Re* (1888-9), 13 P. D. 221 ; 14 P. D. 123 . . 19

PAGE
Lincoln College case (1595), 3 Rep. 59 b 115
Lindsay *v.* Cundy (1876), 1 Q. B. D. 348 ; 3 App. Cas. 459 ; 47 L. J. Q. B. 481 ; 38 L. T. 573 ; 26 W. R. 406 . . . 233
—— *v.* Lynch (1804), 2 Sch. & L. 5 86
Lion (The) (1869), 2 P. C. 525; 38 L. J. Adm. 51 ; 6 Moore P. C. N. S. 163 188
Liskeard *v.* Liskeard (1881), 7 Q. B. D. 509 555
Liverpool Bank *v.* Turner (1861), 30 L. J. Ch. 380 . . . 275, 276
—— (Mayor of) *v.* Chorley Water Works Co. (1849), 2 D. M. & G. 852 295
Lloyd, *Ex parte* (1851), 1 Sim. N. S. 250 460
Logan *v.* Burslem (1842), 4 Moore P. C. 497 81
London and Blackwall Rail. Co. *v.* Limehouse Board of Works (1857), 3 K. & J. 128 ; 26 L. J. Ch. 164 . . . . . 298, 359
—— and Brighton Rail. Co. *v.* L. and S. W. Rail. Co. (1859), 4 De G. & J. 388 ; 28 L. J. Ch. 321 ; 5 Jur. N. S. 801 . . 300
—— and N. W. Rail. Co. *v.* Skerton (1864), 5 B. & S. 559 ; 33 L. J. M. C. 128 ; 10 L. T. 648 ; 12 W. R. 1102 561
—— and S. W. Rail. Co. *v.* Blackmore (1870), 4 H. L. 610 ; 39 L. J. Ch. 713 ; 23 L. T. 504 ; 19 W. R. 305 . . . 598
—— and S. W. Rail. Co. *v.* Flower (1876), 1 C. P. D. 77 ; 45 L. J. C. P. 54 ; 33 L. T. 687 510
—— (Bank of), *Re* (1871), 6 Ch. App. 421 ; 40 L. J. Ch. 562 ; 19 W. R. 484 122
—— Bank of Mexico *v.* Apthorpe (1891), 1 Q. B. 383 . . . 556
—— Brighton and S. C. Rail. Co. *v.* Truman (1885), 11 App. Cas. 45 ; 55 L. J. Ch. 354 ; 54 L. T. 250 ; 34 W. R. 657 293, 294, 324
—— Chatham and Dover Rail. Co. *v.* Wandsworth Board of Works (1873), 8 C. P. 185 ; 42 L. J. M. C. 70 245
—— (City of) *v.* Wood (1700), 12 Mod. 687 81
—— (Corporation of) *v.* Att.-Gen. (1848), 1 H. L. C. 440 . . 414
—— County Council *v.* Cross (1892), 8 Times L. R. 537 . . 537
—— Financial Association *v.* Kelk (1884), 26 Ch. D. 107 ; 53 L. J. Ch. 1025 ; 50 L. T. 492 2
—— Life Insurance Co. *v.* Wright (1873), 5 Canada 466 . . 266
—— (Mayor of) *v.* Gatford (1677), 2 Mod. 39 . . . . 324, *n.*
—— (Mayor of) *v.* R. (1848), 13 Q. B. 33 ; 17 L. J. Q. B. 330 ; 13 Jur. 33 . . . . . 277, *n.*, 324, *n.*
—— (School Board for) *v.* Jackson (1881), 7 Q. B. D. 502 ; 50 L. J. M. C. 134 ; 30 W. R. 47 234
—— Tilbury and Southend Rail. Co., *Re* (1889), 24 Q. B. D. 40, 326 ; 59 L. J. Q. B. 549 ; 62 L. T. 784 ; 38 W. R. 343 562
Longmead's case (1795), Leach C. C. 694 20
Looker *v.* Halcomb (1827), 4 Bing. 188 130
Lopez *v.* Burslem (1843), 4 Moore P. C. 300 435
Lord *v.* Sydney Commissioners (1858), 12 Moore P. C. 473 ; 7 W. R. 267 7
Louis, *Re* (1891), 1 Q. B. 649 ; 60 L. J. Q. B. 500 ; 64 L. T. 565 ; 39 W. R. 511 592
—— (Le) (1826), 2 Dods. (Adm.) 210 20
Lucas *v.* Dixon (1888), 22 Q. B. D. 357 ; 58 L. J. Q. B. 161 ; 37 W. R. 370 . . . . . 12, 96, 97

PAGE
Lucy *v.* Levington (1671), 1 Ventr. 176 519
Ludmore (or Ludford), *Re* (1884), 13 Q. B. D. 415; 53 L. J. Q. B. 418; 49 L. T. 706; 32 W. R. 272 323
Lyde *v.* Barnard (1836), 1 M. & W. 101; 1 Gale 388 468
Lyon *v.* Fishmongers' Co. (1876), 1 App. Cas. 662; 46 L. J. Ch. 68; 35 L. T. 569; 25 W. R. 165 296
Lyon's case (1858), Bell Cr. C. 45 477
Lyons (Mayor of) *v.* East India Co. (1836), 1 Moore P. C. 176 . . 456
—— *v.* Tucker (1880), 6 Q. B. D. 660; 7 Q. B. D. 523; 50 L. J. Q. B. 326; 45 L. T. 402; 29 W. R. 529 98

Macbeth *v.* Ashley (1874), 2 H. L. (Sc.) 352 92
M'Connel *v.* Murphy (1873), 5 P. C. 203; 28 L. T. 713; 21 W. R. 609 7
MacDonald (Lord) *v.* Finlayson (1885), 12 Rettie (Sc.) 231 . . 375
MacDougal *v.* Paterson (1851), 6 Ex. 337, *n.*; 11 C. B. 755; 21 L. J. C. P. 27 316
McGiffen *v.* Palmer's Ship Building Co. (1882), 10 Q. B. D. 1; 52 L. J. Q. B. 25; 47 L. T. 346; 31 W. R. 118 602
M'Intyre *v.* Connell (1851), 20 L. J. Ch. 284; 1 Sim. N. S. 225; 15 Jur. 529 584
M'Kean *v.* Delaney (1809), 5 Cranch (U. S.) 22 . . . . . 165, *n.*
M'Kensie *v.* Stuart (1754), Cruise Dig. vol. 5, p. 28 526
Macleod *v.* Att.-Gen. for New South Wales (1891), A. C. 455; 60 L. J. P. C. 55; 65 L. T. 321 . . . . . 199, 424, 432, 457
Macnee *v.* Persian Investment Co. (1890), 44 Ch. D. 306; 59 L. J. Ch. 695; 62 L. T. 894; 38 W. R. 596 433
MacWilliam *v.* Adams (1851), 1 Macq. H. L. (Sc.) 120 95
Magdalen College case (1616), 11 Rep. 68 b . 404, 406, 414, 418, 419
—— Hospital *v.* Knotts (1878), 8 Ch. D. 724 558
Main *v.* Stark (1890), 15 App. Cas. 384; 59 L. J. P. C. 68; 63 L. T. 10 374
Makin *v.* Watkinson (1870), 6 Ex. 25; 40 L. J. Ex. 33; 23 L. T. 592; 19 W. R. 286 510
Malton Local Board *v.* Malton Manure Co. (1879), 4 Ex. D. 302; 49 L. J. M. C. 90 553
Mander *v.* Harris. *See* March, *Re*.
Mansell *v.* R. (1857), 8 E. & B. 73; D. & B. C. C. 375; 27 L. J. M. C. 4 . . . . . 156, 180
March, *Re* (1885), 27 Ch. D. 166; 52 L. J. Ch. 680; 51 L. T. 61, 380; 32 W. R. 941 385
Margaret (The) (1885), 9 P. D. 47; 9 App. Cas. 873 580
Marlborough (Duke of) *v.* Osborn (1864), 5 B. & S. 67; 33 L. J. Q. B. 148; 10 L. T. 28; 12 W. R. 418 596
Marlborough's (Duke of) Parliamentary Estates, *In re* (1891), 8 Times L. R. 179 361
Martin *v.* Hemming (1854), 18 Jur. 1002 145
Mather *v.* Brown (1876), 1 C. P. D. 596; 45 L. J. C. P. 547; 34 L. T. 869; 24 W. R. 736 . . . . . 152, 154
Maund *v.* Mason (1874), 9 Q. B. 254; 43 L. J. M. C. 62; 29 L. T. 837; 22 W. R. 265 539

PAGE

Maxwell *v.* Hogg (1867), 2 Ch. App. 307 ; 36 L. J. Ch. 433 ; 16 L. T. 130 ; 15 W. R. 467 577
Maybury *v.* Mudie (1847), 5 C. B. 283 ; 17 L. J. C. P. 95 ; 12 Jur. 80 . 587
Meade, *Re* (1876), 3 Ch. D. 119 ; 45 L. J. Bank. 121 ; 34 L. T. 649 ; 24 W. R. 903 89
Meadows *v.* Taylor (1890), 24 Q. B. D. 717 ; 59 L. J. M. C. 99 ; 62 L. T. 658 573
Meath (Bishop of) *v.* Winchester (Lord) (1835), 4 Cl. & F. 445 . 402, *n.*
Medway *v.* Romney (Earl of) (1861), 30 L. J. C. P. 236 ; 9 C. B. N. S. 575 ; 9 W. R. 482 72
Meeus, *Re* (1891), 1 Ch. 41 ; 60 L. J. Ch. 96 ; 63 L. T. 610 ; 39 W. R. 216 574
Melliss *v.* Shirley Local Board (1885), 16 Q. B. D. 446 ; 55 L. J. Q. B. 143 ; 53 L. T. 810 ; 34 W. R. 187 . . . . . 264, 265, 496
Mellor *v.* Denham (1880), 5 Q. B. D. 467 ; 48 L. J. M. C. 113 ; 40 L. T. 395 ; 27 W. R. 496 475
Menzies, *Ex parte* (1890), 43 Ch. D. 118 ; 59 L. J. Ch. 73 ; 62 L. T. 301 ; 38 W. R. 397 552
Merchant Banking Co., *Ex parte* (1881), 16 Ch. D. 623 ; 50 L. J. Ch. 606 ; 44 L. T. 358 ; 29 W. R. 363 . . . . . 288, *n.*
Merrit *v.* Cameron (1890), 137 U. S. 542 97
Mersey Docks, &c., Board *v.* Cameron (1865), 11 H. L. C. 443 ; 35 L. J. M. C. 1 . . . 406, 409, 466, 524
—— *v.* Henderson (1888), 13 App. Cas. 595 ; 58 L. J. Q. B. 159 ; 59 L. T. 697 ; 37 W. R. 449 . . 82, 117, 517, 575, 599
—— *v.* Jones (1865), 11 H. L. C. 518 . 254, *n.*
—— *v.* Lucas (1883), 8 App. Cas. 891 ; 53 L. J. Q. B. 4 ; 32 W. R. 34 . . . . . 131, 524, 582
Merthyr Tydfil Local Board *v.* Merthyr Union (1891), 1 Q. B. 186 ; 60 L. J. M. C. 42 ; 63 L. T. 647 ; 39 W. R. 255 582
Metcalfe *v.* Hanson (1866), 1 H. L. 250 ; 35 L. J. Q. B. 225 . . 466
Metropolitan Asylum Managers *v.* Hill (1881), 6 App. Cas. 193 ; 50 L. J. Q. B. 353 ; 44 L. T. 653 ; 29 W. R. 617 . 295, 323
—— Board of Works *v.* Steed (1882), 8 Q. B. D. 445 ; 51 L. J. M. C. 24 ; 45 L. T. 612 ; 30 W. R. 891 . . . 575
—— District Rail. Co. and Cosh, *Re* (1880), 13 Ch. D. 617 ; 49 L. J. Ch. 277 ; 42 L. T. 73 ; 28 W. R. 685 . . 595
—— Rail. Co. *v.* Fowler (1892), 1 Q. B. 165 559
Meux *v.* Jacobs (1875), 7 H. L. 493 ; 44 L. J. Ch. 481 ; 32 L. T. 171 ; 23 W. R. 526 236
Mews *v.* R. (1882), 8 App. Cas. 339 ; 52 L. J. M. C. 57 ; 48 L. T. 1 ; 31 W. R. 385 . . . . . 351, 568
Meyerstein's Trade Mark, *Re* (1890), 43 Ch. D. 604 ; 59 L. J. Ch. 401 ; 62 L. T. 526 ; 38 W. R. 440 563
Middlesex Justices *v.* R. (1884), 9 App. Cas. 757 ; 53 L. J. Q. B. 505 ; 51 L. T. 513 ; 33 W. R. 49 . . . . . 213, 261
Middleton *v.* Crofts (1736), 2 Atk. 650 . . . . . 326, 350
Midland Rail. Co. *v.* Ambergate Rail. Co. (1853), 10 Hare 359 . . 233
—— *v.* Haunchwood Brick and Tile Co. (1882), 20 Ch. D. 552 ; 51 L. J. Ch. 778 ; 47 L. T. 151 ; 30 W. R. 628 . . . 570

PAGE

Midland Rail. Co. *v.* Robinson (1889), 15 App. Cas. 19; 59 L. J. Ch. 442; 62 L. T. 194; 38 W. R. 577 . . . . . 9, 173, 571
Migneault *v.* Malo (1872), 4 P. C. 123; 41 L. J. P. C. 11; 26 L. T. 329; 20 W. R. 527 165
Migotti *v.* Colvill (1879), 4 C. P. D. 233; 48 L. J. C. P. 695; 40 L. T. 747; 27 W. R. 744 . . . . . 571, 597
Miller *v.* Salomons (1852), 7 Ex. 475 . . . . . 1, 78, 104, 112
Miller's case (1764), 1 W. Bl. 451 393
Mills *v.* Colchester (Mayor of) (1867), 2 C. P. 476; 30 L. J. C. P. 214; 16 L. T. 626; 15 W. R. 955 464
—— *v.* Milward (1889), 15 P. D. 20; 59 L. J. P. 23; 61 L. T. 651 . 588
—— *v.* Wilkins (1704), 6 Mod. 62 . . . . . 212, 220
Mills' Estate, *Re* (1886), 34 Ch. D. 24; 56 L. J. Ch. 60; 55 L. T. 465; 35 W. R. 65 244
Milne, *Ex parte*, *Re* Batten (1889), 22 Q. B. D. 685; 58 L. J. Q. B. 333; 37 W. R. 499 13
Milnes *v.* Huddersfield (Mayor &c., of) (1882), 11 App. Cas. 511; 12 Q. B. D. 443; 10 Q. B. D. 124 584
Milton Commissioners *v.* Faversham Local Board (1869), 10 B. & S. 548 598
Minen *v.* Leman (1855), 20 Beav. 278; 7 D. M. & G. 340; 24 L. J. Ch. 545; 1 Jur. N. S. 410, 692 208
Mirams, *Re* (1891), 1 Q. B. 594; 60 L. J. Q. B. 397; 64 L. T. 117; 39 W. R. 464 198
Mirfin *v.* Attwood (1869), 4 Q. B. 330; 38 L. J. Q. B. 181; 20 L. T. 778; 17 W. R. 820 . . . . . 356, 400
Mitchell, *Re*, *Ex parte* Cunningham (1884), 13 Q. B. D. 418; 53 L. J. Ch. 1067; 51 L. T. 447; 33 W. R. 22 552
—— *v.* Brown (1859), 1 E. & E. 267; 28 L. J. M. C. 55; 5 Jur. N. S. 707 350
—— *v.* Simpson (1890), 25 Q. B. D. 183; 23 Q. B. D. 373; 59 L. J. Q. B. 355; 63 L. T. 405; 38 W. R. 565 . . 147, 193, 535, 548
Moçambique Co. *v.* British South Africa Co. (1892), 8 Times L. R. 396, 542 427
Mogul Steamship Co. *v.* McGregor (1892), A. C. 25 . . . 197, *n.*
Moir *v.* Williams (1892), 1 Q. B. 264; 40 W. R. 69 590
Mollwo *v.* Court of Wards (1872), 4 P. C. 419 466
Monk *v.* Whittenbury (1831), 2 B. & Ald. 484; 1 M. & R. 81 . . 193
Monteith *v.* M'Gavin (1838), 5 Cl. & F. 473 159
Montrose Peerage (1853), 1 Macq. H. L. (Sc.) 401 . . . 72, 94
Moody and Yates' Contract, *In re* (1885), 30 Ch. D. 344; 54 L. J. Ch. 886; 53 L. T. 845; 33 W. R. 785 186
Moon *v.* Durden (1848), 2 Ex. 42; 12 Jur. 138 . . . 372, 375, 378
Moore *v.* Shepherd (1854), 10 Ex. 424; 24 L. J. Ex. 29 . . . 507
—— *v.* Smith (1859), 28 L. J. M. C. 126; 5 Jur. N. S. 892 . . 410
Moore's case (1704), 2 Ld. Raym. 1028 150
Morant *v.* Taylor (1876), 1 Ex. D. 188; 45 L. J. M. C. 78; 34 L. T. 139; 23 W. R. 164 205
Morgan *v.* Brown (1836), 4 A. & E. 515; 6 N. & M. 57; 1 H. & W. 717 491
—— *v.* London General Omnibus Co. (1883), 13 Q. B. D. 832; 53 L. J. Q. B. 352; 12 Q. B. D. 201; 50 L. T. 687; 51 L. T. 213; 32 W. R. 416, 759 . . . . . 155, 161, *n.*, 565, 568

PAGE

Morgan *v.* Morgan (1869), 1 P. & M. 644 289
—— *v.* Swansea (1878), 9 Ch. D. 582 ; 27 W. R. 283 . . . 536
—— *v.* Thomas (1882), 9 Q. B. D. 643 575
Morris *v.* Hunt (1819), 1 Chitty K. B. 453 504
—— *v.* Mellin (1827), 6 B. & C. 446 141
Morrison's case (1859), Bell C. C. 189 602
Morrisse *v.* Royal British Bank (1856), 1 C. B. N. S. 67 ; 26 L. J. C. P. 62 ; 3 Jur. N. S. 137 317
Mounsey *v.* Ismay (1865), 34 L. J. Ex. 55 ; 1 H. & C. 729 ; 7 L. T. 717 ; 11 W. R. 270 . . . . . 143, *n.*
Mount *v.* Taylor (1868), 3 C. P. 645 ; 37 L. J. C. P. 325 ; 18 L. T. 476 ; 16 W. R. 866 . . . . . 64, 354, 355
Mountcashell (Earl) *v.* O'Neill (Viscount) (1854), 5 H. L. C. 937 ; 2 Jur. N. S. 1030 . . . . . 292, *n.*
Mouys *v.* Leake (1799), 8 T. R. 411 268
Moxon *v.* Sheppard (1890), 24 Q. B. D. 627 586
Moyle *v.* Jenkins (1881), 8 Q. B. D. 116 ; 51 L. J. Q. B. 112 ; 46 L. T. 472 ; 30 W. R. 324 573
Muat *v.* Shaw Stewart (1890), 17 Rettie (Sc.) 377 537
Muir *v.* Keay (1875), 10 Q. B. 594 ; 44 L. J. M. C. 143 ; 23 W. R. 700 . 554
Mulcahy *v.* R. (1868), 3 H. L. 306 465
Mullins *v.* Collins (1874), 9 Q. B. 292 ; 43 L. J. M. C. 67 ; 29 L. T. 838 ; 22 W. R. 297 126
—— *v.* Surrey (Treasurer of) (1881), 7 App. Cas. 1 ; 51 L. J. Q. B. 145 ; 45 L. T. 625 ; 30 W. R. 157 . . . . . 240, 541
Mundy's Estates, *Re* (1891), 1 Ch. 399 ; 60 L. J. Ch. 273 ; 64 L. T. 29 ; 39 W. R. 209 561
Municipal Permanent Investment Co. *v.* Kent (1884), 9 App. Cas. 260 ; 53 L. J. Q. B. 291 ; 51 L. T. 6 ; 32 W. R. 681 . . . . 280, *n.*
Murtagh *v.* Barry (1890), 44 Ch. D. 632 ; 59 L. J. Q. B. 388 ; 38 W. R. 526 564
Musgrove *v.* Chung Teeong Toy (1891), A. C. 272 ; 60 L. J. P. C. 28 ; 64 L. T. 378 . . . . . 265, 431, 448, 475, 496
Myers *v.* Perigal (1852), 2 D. M. & G. 619 ; 22 L. J. Ch. 431 ; 17 Jur. 145 77

NARES *v.* Rowles (1810), 14 East 510 531
Natal (Bishop of), *Re* (1864), 3 Moore P. C. N. S. 148 72
Nathan, *In re* (1884), 12 Q. B. D. 461 ; 53 L. J. Q. B. 229 ; 51 L. T. 46 ; 32 W. R. 543 251
National Bank *v.* Silke (1891), 1 Q. B. 435 ; 60 L. J. Q. B. 199 ; 63 L. T. 787 ; 39 W. R. 361 573
—— Mercantile Bank, *Ex parte* (1880), 15 Ch. D. 42 ; 49 L. J. Bank. 62 ; 43 L. T. 36 ; 28 W. R. 848 574
—— Savings Bank, *Re* (1866), 1 Ch. App. 547 186
Neath and Brecon Rail. Co., *Re* (1874), 9 Ch. App. 263 ; 43 L. J. Ch. 277 ; 30 L. T. 3 ; 22 W. R. 242 316
Nelson *v.* McShee (1889), 17 Rettie (Just.) 1 231
Netherseal Co. *v.* Bourne (1889), 14 App. Cas. 228 . . 90, 266, 268, 570
Newcastle (Duke of) *v.* Morris (1870), 4 H. L. 661 ; 40 L. J. Bank. 4 ; 23 L. T. 569 ; 19 W. R. 26 127

PAGE
Newcastle (Mayor, &c., of) *v.* Att.-Gen. (1845), 12 Cl. & F. 408 . . 163
—— Turnpike Trustees *v.* North Staffordshire Rail. Co. (1860), 5 H. & N. 160; 29 L. J. M. C. 150; 8 W. R. 216 167
Newington L. B. *v.* Cottenham L. B. (1879), 12 Ch. D. 725; 48 L. J. Ch. 226; 40 L. T. 58 . . . . . 383, *n.*
Newmarch *v.* Storr (1878), 9 Ch. D. 12 548
Newport Bridge, *Re* (1859), 2 E. & E. 377; 29 L. J. M. C. 52; 1 L. T. 131; 6 Jur. N. S. 97 315
New University Club, *In re* (1887), 18 Q. B. D. 720 . . . . 3, 601
Niboyet *v.* Niboyet (1878), 3 P. D. 52; (1879) 4 P. D. 1; 48 L. J. P. 1; 39 L. T. 486; 27 W. R. 203 . . . . . 205, 207, 437
Nicholls *v.* Hall (1873), 8 C. P. 322; 42 L. J. M. C. 105; 28 L. T. 473; 24 W. R. 579 . . . . . 485, 487
Nichols *v.* Baker (1890), 44 Ch. D. 262; 59 L. J. Ch. 661; 62 L. T. 817; 38 W. R. 417 569
Nicholson *v.* Fields (1862), 1 H. & N. 210; 31 L. J. Ex. 235; 10 W. R. 304 478
—— *v.* Williams (1871), 6 Q. B. 632; 40 L. J. M. C. 159; 19 W. R. 973 580
Nicoll *v.* Fenning (1881), 19 Ch. D. 258; 51 L. J. Ch. 166; 45 L. T. 738; 30 W. R. 95 536
Nillins, *Ex parte* (1884), 53 L. J. M. C. 157 424
Noble *v.* Durell (1789), 3 T. R. 271 324
Norris *v.* Barnes (1872), 7 Q. B. 537; 41 L. J. M. C. 151; 26 L. T. 622; 20 W. R. 703 . . . . . 154, *n.*
North American Insurance Co. *v.* Craigen (1886), 12 Canada 292 . 446
—— British Rail. Co. *v.* Tod (1846), 12 Cl. & F. 722 . . . 515
—— Eastern Rail. Co. *v.* Leadgate L. B. (1870), 5 Q. B. 157; 39 L. J. M. C. 65; 22 L. T. 62; 18 W. R. 691 84
—— Staffordshire Rail. Co. *v.* Dale (1857), 8 E. & B. 835; 27 L. J. M. C. 147 . . . . . 166, *n.*
Northam Bridge Co. *v.* R. (1886), 55 L. T. 759 . . . . 169, 408
Northampton Coal, Iron, &c., Co. *v.* Midland Waggon Co. (1878), 7 Ch. D. 500; 38 L. T. 82; 26 W. R. 485 569
Norton *v.* Spooner (1854), 9 Moore P. C. 103 467
Noseworthy *v.* Buckland Overseers (1873), 9 C. P. 233; 43 L. J. C. P. 27; 29 L. T. 675; 22 W. R. 155 263
Nottage *v.* Jackson (1882), 11 Q. B. D. 627; 52 L. J. Q. B. 760; 49 L. T. 339; 32 W. R. 106 . . . . . 159, 535
Nuth *v.* Tamplin (1881), 8 Q. B. D. 247; 51 L. J. Q. B. 180; 30 W. R. 346 103
Nutter *v.* Accrington L. B. (1879), 4 Q. B. D. 375; 48 L. J. Q. B. 487; 40 L. T. 802 . . . . . 234, 340
Nutton *v.* Wilson (1889), 22 Q. B. D. 744; 58 L. J. Q. B. 443; 37 W. R. 522 541

O'Flaherty *v.* M'Dowell (1857), 6 H. L. C. 142 . . 24, 326, 347
Oliver *v.* N. E. Rail. (1874), 9 Q. B. 406; 43 L. J. Q. B. 198 . . 295
O'Loghlen, *Re* (1871), 6 Ch. App. 406; 40 L. J. Bank. 28; 23 L. T. 878; 19 W. R. 459 444

PAGE

Onslow *v.* Inland Revenue Commissioners (1891), 1 Q. B. 239 ; 60 L. J. Q. B. 138 ; 64 L. T. 211 ; 39 W. R. 373 . . . . . 549, 590
Oram *v.* Brearey (1877), 2 Ex. D. 346 ; 46 L. J. Ex. 481 ; 36 L. T. 475 ; 25 W. R. 695 140
Orfila *v.* Gibraltar (Sanitary Commissioners of) (1890), 15 App. Cas. 400; 59 L. J. P. C. 95 ; 63 L. T. 58 254
Oriental Bank *v.* Wright (1880), 5 App. Cas. 842 ; 50 L. J. P. C. 1 ; 43 L. T. 177 131
—— Corporation, *Re* (1885), 8 Ch. D. 634 ; 54 L. J. Ch. 327 ; 52 L. T. 170 . . . . . 402, 410, 411
O'Shanassy *v.* Joachim (1876), 1 App. Cas. 82 ; 45 L. J. P. C. 19 ; 34 L. T. 265 ; 24 W. R. 792 . . . . . 204. 579
Owen *v.* Saunders (1696), 1 Ld. Raym. 159 354
Oxford (Chancellor of) *v.* Coventry (Bishop of) (1615), 1 Rep. 576 . 469

PADDINGTON Burial Board *v.* Inland Revenue (Commissioners of) (1884), 13 Q. B. D. 9 ; 53 L. J. Q. B. 224 ; 50 L. T. 211 ; 32 W. R. 551 583
Padstow Total Loss Association (1881), 20 Ch. D. 137 ; 51 L. J. Ch. 344 ; 45 L. T. 774 ; 30 W. R. 326 531
Paine *v.* Slater (1883), 11 Q. B. D. 120 ; 52 L. J. Q. B. 282 ; 48 L. T. 623 ; 31 W. R. 941 345
Palgrave *v.* Windham (1718). 1 Str. 214 60
Palmer *v.* Caledonian Rail. Co. (1892), 1 Q. B. 607 538
Palmer's case (1784), 1 Leach C. C. 355 (4th ed.) . . . 115, 147
Pardo *v.* Bingham (1870), 4 Ch. App. 735 374
Park Gate Iron Company *v.* Coates (1870), 5 C. P. 634 . . . 285
Parker *v.* Great Western Ry. (1844), 7 Scott N. R. 870 . . . 511
Parsons *v.* Brand (1890), 25 Q. B. D. 110 ; 59 L. J. Q. B. 189 ; 62 L. T. 479 ; 38 W. R. 388 . . . . . 198, *n.*
Partington, *Ex parte* (1844), 6 Q. B. 653 239
Paul, *Re* (1890), 24 Q. B. D. 247 ; 59 L. J. Q. B. 30 ; 61 L. T. 835 . 550
Payne *v.* Esdaile (1888), 13 App. Cas. 613 ; 58 L. J. Ch. 299 . . 539
—— *v.* Wright (1892), 1 Q. B. 104 ; 8 Times L. R. 288 . . . 546, 561
Paynter *v.* James (1867), 2 C. P. 354 600
Peacock *v.* R. (1858), 27 L. J. Q. B. 224 ; 4 C. B. N. S. 266 . 281, 595
Pearse *v.* Morrice (1834), 2 A. & E. 84 . . . . . 281, 601
Peat *v.* Jones (1881), 8 Q. B. D. 147 572
Pellas *v.* Neptune Insurance Co. (1880), 5 C. P. D. 34 . . . 360
Penny *v.* Hanson (1887), 18 Q. B. D. 478 3
People *v.* Chenango (Supervisors of) (1853), 8 N. Y. (4 Selden) 317 45, *n.*
Perring *v.* Trail (1874), 18 Eq. 88 ; 43 L. J. Ch. 775 ; 30 L. T. 248 ; 22 W. R. 572 523
Perry *v.* Eames (1891), 1 Ch. 658 ; 60 L. J. Ch. 345 ; 64 L. T. 438 ; 39 W. R. 602 . . . . . 405, 410
Perth Water Commissioners *v.* McDonald (1879), 6 Rettie (Sc.) 1055 . 441
Peterborough *v.* Wilsthorpe Overseers (1883), 12 Q. B. D. 1 ; 53 L. J. M. C. 33 ; 50 L. T. 189 ; 32 W. R. 458 575
Pharmaceutical Society *v.* London and Provincial Supply Association (1880), 5 App. Cas. 857 ; 49 L. J. Q. B. 736 ; 43 L. T. 389 ; 28 W.R. 957 . . . . . 176, 494, 590

PAGE

Pharmaceutical Society *v.* Wheeldon (1890), 24 Q. B. D. 683; 59 L. J. Q. B. 400; 62 L. T. 727 590
Philipps *v.* Rees (1889), 24 Q. B. D. 17; 59 L. J. Q. B. 1; 38 W. R. 53 166
Phillips *v.* Eyre (1871), 6 Q. B. 1; 4 Q. B. 225 . . . . . 370, 422
—— *v.* Goff (1886), 17 Q. B. D. 805; 55 L. J. Q. B. 512; 35 W. R. 197 284
—— *v.* Halliday (1891), A. C. 228; (1889) 23 Q. B. D. 48 . . 49
—— *v.* Innes (1837), 4 Cl. & F. 241 263
—— *v.* Phillips (1866), 1 P. & M. 169 . . . . . 111, 531
Philpot *v.* St. George's Hospital (1857), 6 H. L. C. 348; 3 Jur. N. S. 269 91
Phisitians (College of) *v.* Cooper (1675), 3 Keb. 587 . 41, 43, 45, 56, 50
Pickering Highway Board *v.* Barry (1881), 8 Q. B. D. 466 . . . 554
Pickup *v.* Wharton (1834), 2 Cr. & M. 401 376
Piercy *v.* Maclean (1870), 5 C. P. 252; 39 L. J. C. P. 115; 21 L. T. 213; 18 W. R. 732 191
Pierpoint *v.* Cartwright (1880), 5 C. P. D. 139; 42 L. T. 259; 28 W. R. 583 535
Pigeon *v.* Recorder's Court (1890), 17 Canada 495 94
Pilkington *v.* Cooke (1847), 16 M. & W. 615; 4 D. & L. 347 . . 355
Pinkerton *v.* Easton (1873), 16 Eq. 490; 42 L. J. Ch. 878; 29 L. T. 360; 21 W. R. 943 . . . . . 83, 586
Pinkhorn *v.* Sonster (1861), 30 L. J. Ex. 336 376
Pirie *v.* Goodall (1892), 1 Ch. 35; 40 W. R. 81 536
Plomesgate Union *v.* West Ham Union (1880), 6 Q. B. D. 576; 50 L. J. M. C. 51; 44 L. T. 610; 29 W. R. 630 577
Plumstead L. B. *v.* British Land Co. (1875), 10 Q. B. 16, 203; 44 L. J. Q. B. 38; 32 L. T. 94; 23 W. R. 634 576
Plunket *v.* Molloy (1856), 8 Ir. Jur. N. S. 83 74
Pointon *v.* Hill (1884), 12 Q. B. D. 306; 53 L. J. M. C. 62; 50 L. T. 268; 32 W. R. 478 602
Poland, *Re* (1866), 1 Ch. App. 357 545
Pollock *v.* Lands Improvement Co. (1887), 37 Ch. D. 661; 57 L. J. Ch. 858; 58 L. T. 374; 36 W. R. 617 358
Pope *v.* Whalley (1865), 6 B. & S. 303; 34 L. J. M. C. 78; 11 Jur. N. S. 444; 11 L. T. 769; 13 W. R. 402 591
Portsmouth (Mayor, &c., of) *v.* Smith (1885), 10 App. Cas. 364; 54 L. J. Q. B. 473; 53 L. T. 394 160
Postmaster-General, *Ex parte* (1879), 10 Ch. D. 595; 48 L. J. Bank. 84; 40 L. T. 16; 27 W. R. 325 . . . . . 403, 410, 419
Powell *v.* Apollo Candle Co. (1885), 10 App. Cas. 282; 54 L. J. P. C. 7; 53 L. T. 638 448
—— Duffryn, &c., Co. *v.* Taff Vale Rail. Co. (1874), 9 Ch. App. 331 . 251
Powlter's case (1611), 11 Rep. 33 212
Pratt, *Ex parte* (1884), 12 Q. B. D. 334; 53 L. J. Ch. 613; 50 L. T. 294; 32 W. R. 420 . . . . . 33, 377
Prestney *v.* Colchester (Mayor, &c., of) (1882), 21 Ch. D. 111; 24 Ch. D. 476; 51 L. J. Ch. 805 547
Preston *v.* Buckley (1870), 5 Q. B. 391; 39 L. J. M. C. 105; 22 L. T. 653; 18 W. R. 1104 78
Pretty *v.* Solly (1859), 26 Beav. 606 . . . . . 243, 592

PAGE

Price *v.* Bradley (1885), 16 Q. B. D. 148 ; 55 L. J. M. C. 53 ; 53 L. T. 816 ; 34 W. R. 165 . . . . . 69, 207
Prideaux, *Ex parte* (1837), 3 My. & Cr. 332 . . . . . 188, *n.*
Prince's case (The) (1605), 8 Rep. 20 b 41, 45, 62, 72
Proctor, *Re* (1891), 2 Q. B. 433 ; 65 L. T. 348 ; 39 W. R. 655 . . 582
Procureur (H.M.'s) *v.* Bruneau (1866), 1 P. C. 169 ; 35 L. J. P. C. 56 ; 12 Jur. N. S. 551 ; 14 W. R. 951 6
Prohibitions del Roy (1607), 12 Rep. 63 16
Protheroe *v.* Tottenham Rail. Co. (1891), 3 Ch. 278 ; 65 L. T. 323 . 549
Pryce *v.* Monmouthshire Canal, &c., Cos. (1879), 4 App. Cas. 197 ; 49 L. J. Ex. 130 ; 40 L. T. 630 ; 27 W. R. 666 . . . . . 132, 578
Pure Spirit Co. *v.* Fowler (1890), 25 Q. B. D. 235 ; 59 L. J. Q. B. 537 ; 63 L. T. 559 ; 38 W. R. 686 569
Putney Overseers *v.* L. and S. W. Rail. Co. (1891), 1 Q. B. 182, 440 ; 60 L. J. Q. B. 438 ; 64 L. T. 280 ; 39 W. R. 291 596
Pylkington's case (1450), Y. B. 33 Hen. 6 . . . . . 41, *n.*

QUEBRADA Land Co., *Re* (1889), 40 Ch. D. 363 ; 58 L. J. Ch. 332 ; 60 L. T. 482 586
Queensberry Leases (1819), 1 Dow H. L. 491 79
Queensbury Industrial Society *v.* Pickles (1865), 1 Ex. 1 ; 35 L. J. Ex. 1 ; 11 Jur. N. S. 877 ; 13 L. T. 295 ; 14 W. R. 30 . . 583
Queensland Mercantile Agency, *Re* (1892), 1 Ch. 219 434
Quilter *v.* Mapleson (1882), 9 Q. B. D. 672 ; 52 L. J. Q. B. 44 ; 47 L. T. 561 ; 31 W. R. 75 377
Quin *v.* O'Keefe (1859), 10 Ir. C. L. Rep. 407 . . . 128, 130, *n.*

RADCLIFFE *v.* Bartholomew (1892), 1 Q. B. 161 . . . . 537, 572
Railton *v.* Wood (1890), 15 App. Cas. 363 ; 59 L. J. P. C. 84 ; 63 L. T. 13 . . . . . 459, 460
Ram Coomar *v.* Chunder Canto (1876), 2 App. Cas. 186 . . 198 456
Ramsden *v.* Lupton (1873), 9 Q. B. 17 ; 43 L. J. Q. B. 17 ; 29 L. T. 510 ; 22 W. R. 129 . . . . . 89, 91
Randolph *v.* Milman (1868), 4 C. P. 107 ; 38 L. J. C. P. 81 ; 17 W. R. 262 138
Rankin *v.* Lamont (1880), 5 App. Cas. 44 144
Rann *v.* Green (1776), Cowp. 474 59
Ravensthorpe Local Board *v.* Hinchcliffe (1890), 24 Q. B. D. 168 ; 59 L. J. M. C. 19 ; 61 L. T. 780 537
Rawley *v.* Rawley (1876), 1 Q. B. D. 460 ; 45 L. J. Q. B. 675 ; 35 L. T. 191 ; 24 W. R. 995 . . . . . 185, 548
Read *v.* Brown (1888), 22 Q. B. D. 128 ; 58 L. J. Q. B. 120 ; 60 L. T. 250 ; 37 W. R. 131 538
Redmond *v.* Smith (1844), 7 M. & G. 457 ; 2 D. & L. 457 . . . 263
Redpath *v.* Allan (The Hibernian) (1872), 4 P. C. 511 ; 42 L. J. Adm. 8 ; 27 L. T. 725 ; 21 W. R. 276 ; 9 Moore P. C. N. S. 340 . . . 150
Reed, *Re* (1887), 19 Q. B. D. 174 ; 56 L. J. Q. B. 447 ; 56 L. T. 576 ; 35 W. R. 660 . . . . . 533, 559
— *v.* Nutt (1890), 24 Q. B. D. 669 ; 59 L. J. Q. B. 311 ; 62 L. T. 635 ; 38 W. R. 621 157

PAGE

Reeve *v.* Gibson (1891), 1 Q. B. 652 ; 60 L. J. Q. B. 451 ; 64 L. T. 141 ; 39 W. R. 420 . . . . . 306, 358, 475
R. *v.* Adams (1888), 22 Q. B. D. 66 ; 58 L. J. M. C. 1 ; 59 L. T. 903 ; 16 Cox C. C. 544 4
— *v.* Allen (1872), 1 C. C. R. 367 ; 41 L. J. M. C. 97 ; 26 L. T. 664 ; 20 W. R. 756 . . . . . 186, 568
— *v.* Anderson (1868), 1 C. C. R. 161 ; 38 L. J. M. C. 12 ; 19 L. T. 400 ; 17 W. R. 208 437
— *v.* Armagh (Archbishop of) (1721), 1 Str. 516 414
— *v.* Arnold (1864), 5 B. & S. 322 82
— *v.* Ashwell (1885), 16 Q. B. D. 190 ; 55 L. J. M. C. 65 ; 53 L. T. 773 ; 34 W. R. 297 4
— *v.* Avery (1852), 18 Q. B. 576 ; 21 L. J. Q. B. 153 ; 17 Jur. 194 . 591
— *v.* Bailey (1800), Russ. & R. 1 367
— *v.* Baines (1840), 12 A. & E. 210 ; 4 P. & D. 362 ; 5 Jur. 337 . 237
— *v.* Bakewell (1857), 7 E. & B. 851 ; 26 L. J. M. C. 150 ; 3 Jur. N. S. 1003 208
— *v.* Banbury (1834), 1 A. & E. 136 100
— *v.* Barclay (1881), 8 Q. B. D. 306, 486 ; 51 L. J. M. C. 47 ; 46 L. T. 335 ; 30 W. R. 672 568
— *v.* Barlow (1693), 2 Salk. 609 316
— *v.* Beadle (1857), 26 L. J. M. C. 111 ; 7 E. & B. 492 ; 3 Jur. N. S. 863 410
— *v.* Berchet (1688), 1 Shower 108 122
— *v.* Bertrand (1867), 1 P. C. 520 ; 36 L. J. P. C. 53 ; 16 L. T. 752 ; 16 W. R. 9 287
— *v.* Bethnal Green (1875), 32 L. T. 553 208
— *v.* Birmingham (1828), 8 B. & C. 291 278
— *v.* Bishop (1880), 5 Q. B. D. 259 ; 49 L. J. M. C. 49 ; 42 L. T. 240 ; 28 W. R. 475 567
— *v.* Blane (1849), 13 Q. B. 769 ; 18 L. J. M. C. 216 ; 13 Jur. 854 . 207
— *v.* Bowerman (1891), 1 Q. B. 112 ; 60 L. J. M. C. 13 ; 63 L. T. 532 ; 39 W. R. 207 589
— *v.* Brackenridge (1868), 1 C. C. R. 133 ; 37 L. J. M. C. 86 ; 18 L. T. 369 ; 16 W. R. 816 444
— *v.* Bradford Navigation Co. (1865), 6 B. & S. 631 ; 34 L. J. Q. B. 191 ; 11 Jur. N. S. 769 295
— *v.* Brecon (1849), 15 Q. B. 813 ; 19 L. J. M. C. 203 398
— *v.* Bridge (1860), 24 Q. B. D. 607 555
— *v.* Bridgewater (1837), 6 A. & E. 339 189
— *v.* Brittleton (1884), 12 Q. B. D. 266 ; 53 L. J. M. C. 96 ; 50 L. T. 276 ; 32 W. R. 463 475
— *v.* Brown (1882), 10 Q. B. D. 381 ; 51 L. J. M. C. 49 ; 48 L. T. 270 ; 31 W. R. 460 24
— *v.* Buggs (1694), Skinner 429 504
— *v.* Bullock (1868), 11 Cox 125 ; 1 C. C. R. 117 ; 37 L. J. M. C. 47 ; 17 L. T. 516 ; 16 W. R. 405 . . . . . 157, 592
— *v.* Burah (1878), 3 App. Cas. 889 300
— *v.* Buttle (1870), 1 C. C. R. 248 ; 39 L. J. M. C. 115 ; 22 L. T. 728 ; 18 W. R. 956 . . . . . 136, 159
— *v.* Cambridgeshire (1838), 7 A. & E. 480, 491 236

PAGE

R. *v.* Canterbury (Archbishop of) (1848), 11 Q. B. 483, 665 . . 78
— *v.* Castro (1874), 9 Q. B. 350; 43 L. J. Q. B. 105; 30 L. T. 320; 22 W. R. 187 112
— *v.* Charlesworth (1851), 20 L. J. M. C. 181; 16 Q. B. 1012; 3 Cox C. C. 174 579
— *v.* Chart (1870), 1 C. C. R. 237; 39 L. J. M. C. 107; 22 L. T. 416; 18 W. R. 791 324
— *v.* Clarence (1888), 22 Q. B. D. 23; 58 L. J. M. C. 10; 59 L. T. 780; 37 W. R. 4, 166 4
— *v.* Clark (1777), 2 Cowp. 612 491
— *v.* Cleworth (or Silvester) (1864), 4 B. & S. 927; 33 L. J. M. C.; 79 9 L. T. 682; 12 W. R. 375 . . . . . 84, 564
— *v.* College of Physicians and Surgeons (1879), 44 Upp. Can. (Q. B.) 564 . . . . . 425, 448, 449
— *v.* Commissioners under Boiler Explosions Act, 1882 (1891), 1 Q. B. 703; 60 L. J. Q. B. 144; 64 L. T. 674; 39 W. R. 440 105, 181, 232
— *v.* Consistorial Court of London (1861), 2 B. & S. 361 . . . 587
— *v.* Cook (1789), 3 T. R. 519 . . . . . 407, 409
— *v.* Cornforth (1740), 2 Str. 1162 555
— *v.* Cousins (1864), 4 B. & S. 849; 33 L. J. M. C. 87 . . 274, *n.*
— *v.* Cowper (1889), 24 Q. B. D. 60, 533; 59 L. J. Q. B. 265; 62 L. T. 583; 38 W. R. 408 . . . . . 178, 562, 591
— *v.* Cramp (1880), 5 Q. B. D. 307; 49 L. J. M. C. 44; 42 L. T. 442; 28 W. R. 701 573
— *v.* Cumberland (Justices of) (1881), 8 Q. B. D. 369; 51 L. J. Q. B. 142; 30 W. R. 178 105
— *v.* Cutbush (1867), 2 Q. B. 379; 36 L. J. M. C. 70; 16 L. T. 282; 15 W. R. 742 164
— *v.* Dangar (1859), 1 D. & B. 303 . . . . . 554, 568
— *v.* Dean (1843), 12 M. & W. 39; 4 Jur. 364 490
— *v.* Dee (1884), 14 L. R. Ir. 468; 15 Cox C. C. 579 . . . 4
— *v.* Dixon (1814), 3 M. & S. 11 482
— *v.* Dudley (1884), 14 Q. B. D. 273; 54 L. J. M. C. 32; 52 L. T. 107; 33 W. R. 347 . . . . . 70, 430, 438
— *v.* Dursley (1832), 3 B. & Ad. 469 381
— *v.* Dyott (1882), 9 Q. B. D. 47; 51 L. J. M. C. 104; 30 W. R. 799 85, 99
— *v.* East Ardsley (1850), 14 Q. B. 801 124
— *v.* Eaton (1881), 8 Q. B. D. 158; 51 L. J. M. C. 31; 46 L. T. 663; 30 W. R. 335 31
— *v.* Edmundson (1859), 28 L. J. M. C. 215; 2 E. & E. 77; 5 Jur. N. S. 1351; 8 Cox C. C. 212 200
— *v.* Ellis (1882), 8 Q. B. D. 460 554
— *v.* Essex (1792), 4 T. R. 594 . . . . . 164, *n.*
— *v.* Essex County Court (Judge of) (1887), 18 Q. B. D. 704 259, 349, 564
— *v.* Everdon (1807), 9 East 101 103
— *v.* Excise Commissioners (1788), 2 T. R. 387 . . . . 152, *n.*
— *v.* Foote (1882), 10 Q. B. D. 378; 52 L. J. Q. B. 528; 48 L. T. 394; 31 W. R. 490 564
— *v.* French (1878), 3 Q. B. D. 187 319
— *v.* Glamorganshire Justices (1890), 24 Q. B. D. 675; 59 L. J. M. C. 150; 62 L. T. 730; 38 W. R. 640 586

PAGE
R. *v.* Glamorganshire Justices (1892), 1 Q. B. 162 595
— *v.* Glover (1864), 9 Cox C. C. 501 ; 33 L. J. M. C. 169 . . . 584
— *v.* Gordon (1889), 23 Q. B. D. 354 ; 58 L. J. M. C. 117 ; 60 L. T. 872 ; 16 Cox C. C. 622 . . . . . 554, 568
— *v.* Graham (1875), 13 Cox C. C. 57 584
— *v.* Hall (1822), 1 B. & C. 123, 136 . . . . . 187, 188, 562
— *v.* Hall (No. 2) (1891), 1 Q. B. 747 ; 60 L. J. M. C. 124 ; 64 L. T. 394 ; 17 Cox C. C. 278 . . . . . 74, 248, 250, 472
— *v.* Harrald (1872), 7 Q. B. 361 ; 8 Q. B. 418 ; 41 L. J. Q. B. 173 ; 26 L. T. 616 ; 20 W. R. 328 . . . . . 134, 209
— *v.* Harris (1791), 4 T. R. 202 ; 2 Rev. Rep. 358 326
— *v.* Harris (1836), 7 C. & P. 446 592
— *v.* Haslingfield (1874), 9 Q. B. 203 ; 43 L. J. M. C. 64 ; 29 L. T. 801 . 463
— *v.* Haughton (1852), 22 L. J. M. C. 89 . . . . . 464, 466
— *v.* Hayne (1864), 4 B. & S. 715 ; 33 L. J. M. C. 81 ; 9 Cox C. C. 412 579
— *v.* Hereford (Dean of) (1870), 5 Q. B. 196 . . . . . 143, *n.*
— *v.* Hermann (1879), 4 Q. B. D. 284 ; 48 L. J. M. C. 106 ; 40 L. T. 263 ; 27 W. R. 475 561
— *v.* Hertford College (1878), 3 Q. B. D. 693 ; 47 L. J. Q. B. 649 ; 39 L. T. 818 ; 27 W. R. 347 144
— *v.* Hicklin (1868), 3 Q. B. 360 ; 37 L. J. M. C. 89 ; 18 L. T. 395 ; 16 W. R. 801 ; 11 Cox C. C. 19 482
— *v.* Hipswell (1828), 8 B. & C. 466, 471 196
— *v.* Hogg (1787), 1 T. R. 728 ; 1 Rev. Rep. 375 . . . . 169, 170
— *v.* Income Tax Commissioners (1888), 21 Q. B. D. 313 ; 57 L. J. Q. B. 513 ; 59 L. T. 455 ; 36 W. R. 776 250
— *v.* Ingham (1864), 5 B. & S. 272 ; 9 Cox C. C. 508 ; 33 L. J. Q. B. 183 ; 10 Jur. N. S. 968 ; 10 L. T. 456 ; 12 W. R. 793 . . . 233, 562
— *v.* Ipswich Union (1877), 2 Q. B. D. 269 ; 46 L. J. M. C. 207 ; 36 L. T. 317 ; 25 W. R. 511 371
— *v.* Jenkins (1891), 8 Times L. R. 163 ; 55 J. P. 824 602
— *v.* Jennings (or Jenning's case) (1838), 2 Lewin C. C. 130 . . 157
— *v.* Johnson (1845), 8 Q. B. 102 152
— *v.* Joint Stock Companies (Registrar of) (1888), 21 Q. B. D. 131 ; 57 L. J. Q. B. 433 ; 59 L. T. 67 ; 36 W. R. 695 251
— *v.* Judge of City of London Court (1883), 12 Q. B. D. 115 . . 558
— *v.* Judge of Halifax County Court (1891), 1 Q. B. 793 ; 2 Q. B. 263 556
— *v.* Kent Justices (1890), 24 Q. B. D. 181 ; 59 L. J. M. C. 51 ; 62 L. T. 114 ; 38 W. R. 253 . . . . . 407, 488
— *v.* Kerrison (1815), 3 M. & S. 526 294
— *v.* Keyn (1878), 2 Ex. D. 63 ; 13 Cox C. C. 403 ; 46 L. J. M. C. 17 . 429, 430, 437
— *v.* Kinglake (1870), 22 L. T. 335 ; 18 W. R. 185 286
— *v.* Knapp (1853), 2 E. & B. 447 ; 22 L. J. M. C. 139 ; 17 Jur. 530 . 533
— *v.* Lambourne Valley Rail. Co. (1888), 22 Q. B. D. 463 ; 58 L. J. Q. B. 136 ; 60 L. T. 54 251
— *v.* Land Registry (Vice-Registrar of) (1890), 24 Q. B. D. 178 ; 59 L. J. Q. B. 113 ; 62 L. T. 117 ; 38 W. R. 236 465
— *v.* Lee (1879), 4 Q. B. D. 75 576
— *v.* Leeds and Bradford Rail. Co. (1852), 18 Q. B. 343 ; 21 L. J. M. C. 193 . . . . . 378, 379

PAGE
R. *v.* Leicester (1827), 7 B. & C. 6 277
— *v.* Leicestershire (1850), 15 Q. B. 92 257
— *v.* Lightfoot (1856), 6 E. & B. 822; 25 L. J. M. C. 115; 2 Jur. N. S. 786; 4 W. R. 655 445
— *v.* Littlechild (1870), 6 Q. B. 293; 40 L. J. M. C. 137; 24 L. T. 233; 19 W. R. 748 491
— *v.* Liverpool (1838), 8 A. & E. 181 571
— *v.* Liverpool Justices (1883), 21 Q. B. D. 638; 52 L. J. M. C. 114; 49 L. T. 244; 32 W. R. 20 198
— *v.* Local Government Board (1874), 9 Q. B. 148; 43 L. J. Q. B. 49; 29 L. T. 769; 22 W. R. 490 . . . . . 189, 580
— *v.* Local Government Board (No. 2) (1882), 10 Q. B. D. 309; 52 L. J. M. C. 4; 49 L. T. 244; 31 W. R. 72 231
— *v.* Lofthouse (1866), 1 Q. B. 433; 35 L. J. Ch. 141; 12 Jur. N. S. 618; 14 W. R. 649 275
— *v.* London (Bishop of) (1891), A. C. 666; 24 Q. B. D. 213; 59 L. J. Q. B. 169; 62 L. T. 167; 38 W. R. 214; 54 J. P. 340 . 19
— *v.* London County Council (1892), 1 Q. B. 190; 40 W. R. 282 . 595
— *v.* London Justices (1812), 15 East 633 557
— *v.* Loxdale (1758), 1 Burr. 445 . . . . . 147, 274
— *v.* McCann (1868), 3 Q. B. 141, 677; 37 L. J. M. C. 25, 123; 17 L. T. 643; 19 L. T. 115; 16 W. R. 397, 985 407
— *v.* Macfarlane (1882), 7 Canada 216 420
— *v.* M'Kenzie (1820), R. & R. 429 393
— *v.* Macleod (1883), 8 Canada 1 420
— *v.* Maidstone Union (1880), 5 Q. B. D. 3; 49 L. J. M. C. 25; 41 L. T. 586; 28 W. R. 183 549
— *v.* Mallow (1859), 12 Ir. C. L. Rep. 35 445
— *v.* Mansel Jones (1889), 23 Q. B. D. 29; 60 L. T. 260; 37 W. R. 508; 53 J. P. 739 107
— *v.* Mason (1788), 2 T. R. 586; 1 Rev. Rep. 545 148
— *v.* Mawgan (1838), 8 A. & E. 496; 3 N. & P. 502 392
— *v.* Merionethshire (1844), 6 Q. B. 343 397
— *v.* Middlesex (1831), 2 B. & Ad. 818 . . . . . 365, 367
— *v.* Miles (1890), 24 Q. B. D. 423; 59 L. J. M. C. 56; 62 L. T. 845; 38 W. R. 704 326
— *v.* Milton (1843), 1 C. & K. 59 500
— *v.* Milverton (1836), 5 A. & E. 854 216
— *v.* Morgan (1736), 2 Str. 1066 388
— *v.* Morris (1867), 1 C. C. R. 90; 36 L. J. M. C. 84; 16 L. T. 636; 15 W. R. 990 322
— *v.* Morton (1873), 2 C. C. R. 22; 42 L. J. M. C. 58; 28 L. T. 452; 21 W. R. 629 548
— *v.* Munoz (1739), 2 Str. 1127 149
— *v.* Myott (1863), 32 L. J. M. C. 138; 7 L. T. 785; 11 W. R. 424 . 587
— *v.* Newark-upon-Trent (1824), 2 B. & C. 71 238
— *v.* Newman (1882), 8 Q. B. D. 706; 51 L. J. M. C. 87; 46 L. T. 394; 30 W. R. 550 588
— *v.* Nicholson (1810), 12 East 342 562
— *v.* Oxford (Bishop of) (1879), 4 Q. B. D. 245, 525; 48 L. J. Q. B. 609; 41 L. T. 122 316

PAGE

R. *v.* Paget (1881), 8 Q. B. D. 151; 51 L. J. M. C. 9; 45 L. T. 794; 30 W. R. 336 . . . . . 475, 563
— *v.* Parsons (1888), 16 Cox C. C. 489 584
— *v.* Pawlett (1873), 8 Q. B. 491; 29 L. T. 390 . . . . 313, 314
— *v.* Payne (1866), 1 C. C. R. 27 200
— *v.* Payne (1872), 1 C. C. R. 349 135
— *v.* Pearce (1880), 5 Q. B. D. 386; 49 L. J. M. C. 81; 28 W. R. 558 . 234, 544
— *v.* Pease (1832), 4 B. & Ad. 30 323
— *v.* Pemberton (1879), 5 Q. B. D. 95; 49 L. J. M. C. 29; 41 L. T. 664; 28 W. R. 362 574
— *v.* Pembliton (1874), 2 C. C. R. 119; 43 L. J. M. C. 91; 30 L. T. 405; 22 W. R. 553 568
— *v.* Pembridge (1842), 3 Q. B. 906 581
— *v.* Peters (1886), 16 Q. B. D. 636; 55 L. J. M. C. 173; 54 L. T. 545; 34 W. R. 399 174
— *v.* Phipoe (1795), 2 Leach C. C. 675 388
— *v.* Pilkington (1853), 2 E. & B. 546 592
— *v.* Poor Law Commissioners (1837), 6 A. & E. 1 359
— *v.* Postmaster-General (1878), 3 Q. B. D. 428; 1 Q. B. D. 658; 45 L. J. Q. B. 609; 35 L. T. 241 . . . . . 553, 586
— *v.* Price (1853), 8 Moore P. C. 213 556
— *v.* Price (1871), 6 Q. B. 411; 24 L. T. 357 157
— *v.* Prince (1875), 2 C. C. R. 154; 32 L. T. 700 . . . . 483, 485, 486
— *v.* Pugh (1779), 1 Dougl. 188 324
— *v.* Ramsgate (1827), 6 B. & C. 712 117
— *v.* Ridge (1817), 4 Price 50 418
— *v.* Ritson (1869), 1 C. C. R. 200; 21 L. T. 437 163
— *v.* Robinson (1759), 2 Burr. 800 327
— *v.* Robinson (1859), 1 Bell C. C. 34 557
— *v.* Robson (1886), 16 Q. B. D. 137; 55 L. J. M. C. 55; 53 L. T. 823; 34 W. R. 276 544
— *v.* Rochester (Mayor, &c., of) (1858), 27 L. J. Q. B. 47 . . . 262
— *v.* Rogers (1809), 10 East 573 . . . . . 400, 587
— *v.* Saffron Walden (1846), 9 Q. B. 79 570
— *v.* St. Gregory (1834), 2 A. & E. 99 196
— *v.* St. John Westgate (1862), 2 B. & S. 706 122
— *v.* St. Leonard (1865), 6 B. & S. 788 587
— *v.* Scott (1856), 25 L. J. M. C. 133; 4 W. R. 777 322
— *v.* Secretary of State for War (1891), 2 Q. B. 326; 60 L. J. Q. B. 457; 64 L. T. 764; 40 W. R. 5 421
— *v.* Sedgley (1831), 2 B. & Ad. 65 133
— *v.* Skeen (1859), 28 L. J. M. C. 91; 4 Bell C. C. 97; 8 Cox C. C. 143 182
— *v.* Slade (1888), 16 Cox C. C. 496 557
— *v.* Slator (1881), 8 Q. B. D. 267; 51 L. J. Q. B. 246; 30 W. R. 410 . 184, 441, 562
— *v.* Sleep (1861), L. & C. 52 486
— *v.* Smith (1862), L. & C. 131; 9 Cox C. C. 110; 31 L. J. M. C. 105; 5 L. T. 761; 10 W. R. 273 578

PAGE
R. *v.* Smith (1870), 1 C. C. R. 266 ; 39 L. J. M. C. 112 ; 18 W. R. 932 . 480
— *v.* Smith (1873), 8 Q. B. 146 ; 42 L. J. M. C. 46 ; 28 L. T. 129 ; 21 W. R. 382 . . . . . 397, 398
— *v.* Southampton (1886), 17 Q. B. D. 424 ; 55 L. J. M. C. 158 ; 55 L. T. 322 ; 34 W. R. 242 536
— *v.* S. E. Ry. (1853), 4 H. L. C. 471 ; 1 C. L. R. 932 ; 17 Jur. 901 . 298
— *v.* Stephenson (1862), L. & C. 165 ; 9 Cox C. C. 156 ; 31 L. J. M. C. 147 561
— *v.* Stepney Union (1874), 9 Q. B. 333 ; 43 L. J. M. C. 145 ; 30 L. T. 808 398
— *v.* Stimpson (1863), 32 L. J. M. C. 210 488
— *v.* Strachan (1872), 7 Q. B. 463 ; 41 L. J. Q. B. 210 . . 135, 470
— *v.* Strugnell (1866), 1 Q. B. 93 564
— *v.* Surrey (1788), 2 T. R. 504 151
— *v.* Surrey (1871), 5 Q. B. 87 ; 39 L. J. M. C. 145 12
— *v.* Sussex (1864), 4 B. & S. 977 573
— *v.* Sutton (1816), 4 M. & S. 532 . . . . . 34, 35, 47, 48, 463
— *v.* Swiny (1832), Alc. & N. 132 388
— *v.* Tatlock (1877), 2 Q. B. D. 157 ; 46 L. J. M. C. 7 ; 35 L. T. 520 . 539, 600
— *v.* Tolson (1889), 23 Q. B. D. 168 ; 58 L. J. M. C. 97 ; 60 L. T. 899 ; 37 W. R. 716 . . . . . 482, 483, 484, 486
— *v.* Tonbridge Overseers (1883), 11 Q. B. D. 134 ; 52 L. J. Q. B. 595 ; 53 L. J. Q. B. 488 ; 49 L. T. 170 ; 50 L. T. 187 ; 31 W. R. 922 ; 33 W. R. 24 . . . . . 102, 146, *n.*, 187
— *v.* Treasury (1851), 20 L. J. Q. B. 312 . . . . . 402, 467
— *v.* Treasury (1872), 7 Q. B. 387 ; 41 L. J. Q. B. 178 ; 26 L. T. 64 ; 20 W. R. 336 420
— *v.* Tuckin (1704), 2 Ld. Raym. 1066 417
— *v.* Tunstead (1790), 3 T. R. 523 562
— *v.* Twiss (1869), 4 Q. B. 407 ; 38 L. J. Q. B. 228 ; 20 L. T. 522 ; 17 W. R. 765 72
— *v.* Tyler (1891), 2 Q. B. 592 . . . . . 474, 475, 493, 546
— *v.* Vine (1875), 10 Q. B. 195 ; 44 L. J. M. C. 60 381
— *v.* Watford (1846), 9 Q. B. 626 ; 16 L. J. M. C. 1 465
— *v.* Wellings (1878), 3 Q. B. D. 426 ; 47 L. J. M. C. 100 ; 38 L. T. 652 ; 26 W. R. 592 561
— *v.* Westley (1860), Bell Cr. Cas. 193 61
— *v.* Whitchurch (1881), 7 Q. B. D. 534 475
— *v.* White (1867), 2 Q. B. 557 205
— *v.* White (1885), 14 Q. B. D. 358 ; 54 L. J. M. C. 23 ; 52 L. T. 116 ; 33 W. R. 248 291
— *v.* Whitechapel (1848), 12 Q. B. 127 369
— *v.* Whitfield (1885), 15 Q. B. D. 122 ; 54 L. J. M. C. 113 ; 52 L. T. 435 ; 33 W. R. 547 24
— *v.* Wigan (Churchwardens of All Saints') (1876), 1 App. Cas. 611 ; 35 L. T. 381 ; 25 W. R. 128 . . . . . 278, 287
— *v.* Wilcock (1845), 7 Q. B. 317 469
— *v.* Wilde (1671), Lev. 296 60
— *v.* Wilkes (1770), 4 Burr. 2539 288
— *v.* Williams (1791), 1 W. Bl. 95 212

PAGE

R *v.* Wimbledon L. B. (1882), 8 Q. B. D. 459; 51 L. J. Q. B. 219; 46 L. T. 47; 30 W. R. 400 208
— *v.* Winstanley (1831), 1 C. & J. 444 554
— *v.* Wood (1830), 4 C. & P. 381 592
— *v.* Woodfall (1770), 5 Burr. 2666 481
— *v.* Woods and Forests (Commissioners of) (1850), 15 Q. B. 761 . 250
— *v.* Worcester (Justices of) (1816), 5 M. &. S. 457 354
— *v.* Worcestershire (1846), 10 Jur. 595 556
— *v.* Worminghall (1817), 6 M. & S. 351 603
— *v.* Wright (1834), 1 A. & E. 436 417
— *v.* Yates (1882), 11 Q. B. D. 750; 52 L. J. Q. B. 778 . . 183, *n.*
— *v.* York (Archbishop of) (1888), 20 Q. B. D. 740; 57 L. J. Q. B. 396; 36 W. R. 718 19
— *v.* York and North Midland Ry. (1853), 1 E. & B. 858; 22 L. J. Q. B. 225 . . . . . 318, 513, 514
— *v.* Yorkshire (1779), 1 Doug. 192 573
Reid *v.* Reid (1886), 31 Ch. D. 402; 55 L. J. Ch. 294; 54 L. T. 100; 34 W. R. 333 . . . . . 8, 13, 104, 168, 371
Rein *v.* Lane (1867), 2 Q. B. 144; 36 L. J. Q. B. 81; 15 W. R. 345; 15 L. T. 466; 8 B. & S. 83 117
Rendall *v.* Blair (1890), 45 Ch. D. 139; 59 L. J. Ch. 641; 63 L. T. 265; 38 W. R. 689 . . . . . 252, *n.*, 595
Reniger *v.* Fogossa (1549), Plowd. 10 402
Renton *v.* Wilson (1888), 15; Rettie (Just.) 84 16
Reuss (Princess of) *v.* Bos (1871), 5 H. L. 176; 40 L. J. Ch. 665; 24 L. T. 641 432
Rhodes *v.* Airedale Commissioners (1876), 1 C. P. D. 402; 45 L. J. C. P. 861; 35 L. T. 46; 24 W. R. 1053 193
Ribbans *v.* Crickett (1798), 1 B. & P. 264 264
Rice *v.* Slee (1872), 7 C. P. 378 579
Richards *v.* Easto (1846), 15 M. & W. 244; 15 L. J. Ex. 163; 10 Jur. 695 . . . . . 506, 507
—— *v.* Jamaica (Attorney-General for) (1848), 6 Moore P. C. 381 312
—— *v.* McBride (1881), 8 Q. B. D. 119; 51 L. J. M. C. 15; 45 L. T. 677; 30 W. R. 121 . . . . . 101, 373, 462, 573
—— *v.* Scarborough Market Co. (1854), 23 L. J. Ch. 110 . . 221
Riche *v.* Ashbury Carriage Co. (1874), 9 Ex. 224; 43 L. J. Ex. 177; 31 L. T. 339; 23 W. R. 7 . . . . . 292, 329
Richmond *v.* N. London Rail. Co. (1868), 3 Ch. App. 679; 37 L. J. Ch. 273, 886; 18 L. T. 8; 16 W. R. 449 . 291, 298
—— W. W. Co. *v.* Richmond Vestry (1876), 3 Ch. D. 82; 45 L. J. Ch. 441; 34 L. T. 480 300
Riddle *v.* White (1793), 1 Anstr. 294 . . . . . 241, *n.* 504
Rider *v.* Wood (1859), 2 E. & E. 294 488
Riga (The) (1872), 3 Adm. & Eccl. 516; 41 L. J. Adm. 39 . . . 573
Riley *v.* Read (1879), 4 Ex. D. 100; 48 L. J. Ex. 437; 27 W. R. 414 552, 562
Rippin *v.* Bastin (1869), 2 Adm. & Eccl. 386; 38 L. J. Eccl. 33; 20 L. T. 622 540
Ritchie *v.* Smith (1848), 6 C. B. 462; 18 L. J. C. P. 9; 13 Jur. 63 . 89
Rivett-Carnac's Will, *Re* (1885), 30 Ch. D. 136; 54 L. J. Ch. 1074; 53 L. T. 81; 33 W. R. 837 64

PAGE

Robertson *v.* Day (1881), 5 App. Cas. 63 ; 49 L. J. P. C. 9 . . 182
—— *v.* Robertson (1883), 8 P. D. 94 ; 48 L. T. 591 ; 31 W. R. 652 575
Robinson *v.* Barton-Eccles L. B. (1883), 8 App. Cas. 798 ; 52 L. J. Ch. 5 ; 47 L. T. 286 ; 32 W. R. 249 . . 233, 593, 600
—— *v.* Dhuleep Singh (1878), 11 Ch. D. 798 ; 48 L. J. Ch. 758 ; 39 L. T. 313 ; 27 W. R. 21 64
Rochdale (Mayor, &c., of) *v.* Lancashire Justices (1883), 8 App. Cas. 494 ; 53 L. J. M. C. 5 ; 49 L. T. 368 ; 32 W. R. 65 . . . 588
Rockett *v.* Clippingdale (1891), Q. B. 293 ; 60 L. J. Q. B. 782 ; 64 L. T. 641 346
Rogers, *Ex parte* (1881), 16 Ch. D. 665 450
Rolfe *v.* Flower (1866), 1 P. C. 27 ; 3 Moore P. C. N. S. 365 ; 35 L. J. P. C. 13 ; 14 W. R. 467 ; 12 Jur. N. S. 345 139
Rooke's case (1598), 5 Rep. 100 a 289
Ross, *Re* (1890), 140 U. S. 453 438
Rosseter *v.* Cahlmann (1853), 8 Ex. 361 ; 22 L. J. Ex. 128 . . . 424
Rothes (Countess) *v.* Kirkcaldy Water Commissioners (1882), 7 App. Cas. 694 514
Routledge *v.* Low (1868), 3 H. L. 100 ; 37 L. J. Ch. 454 ; 18 L. T. 874 ; 16 W. R. 1081 . . . . . 207, 433, 436, 447
Rowberry *v.* Morgan (1854), 9 Ex. 730 ; 23 L. J. Ex. 191 ; 18 Jur. 452 313
Rowbotham *v.* Wilson (1860), 8 H. L. C. 348 ; 30 L. J. Q. B. 49 ; 6 Jur. N. S. 965 509
Royal Aquarium Co. *v.* Parkinson (1892), 1 Q. B. 431 ; 40 W. R. 450 . 595
Royse *v.* Birley (1869), 4 C. P. 315 ; 38 L. J. C. P. 203 ; 20 L. T. 786 ; 17 W. R. 827 581
Ruckmaboye *v.* Lulloobhoy (1850), 8 Moore P. C. 4 . . . 456, 536
Rumball *v.* Schmidt (1882), 8 Q. B. D. 603 99
Russell *v.* Ledsam (1845), 14 M. & W. 574 ; 14 L. J. Ex. 353 ; 9 Jur. 557 16
—— *v.* Town and County Bank (1888), 13 App. Cas. 418 ; 58 L. J. P. C. 8 ; 59 L. T. 481 . . . . . 552, 582
Ruther *v.* Harris (1875), 1 Ex. D. 97 ; 33 L. T. 825 99
Ryall *v.* Rolle (or Rowles) (1736), 1 Atk. 174 ; 1 Ves. Sen. 365 ; 2 White & Tudor L. C. sect. 6 224
Ryhope Colliery Co. *v.* Foyer (1880), 7 Q. B. D. 485 348

SACKER, *Re* (1889), 22 Q. B. D. 179 545
St. Catherine's Milling, &c., Co. *v.* R. (1888), 14 App. Cas. 46 ; 58 L. J. P. C. 54 ; 60 L. T. 197 413
St. Cloud (The) (1863), Bro. & Lush. 4 77
St. Martin's (Vestry of) *v.* Gordon (1891), 1 Q. B. 61 ; 60 L. J. M. C. 37 ; 64 L. T. 243 ; 39 W. R. 295 586
St. Pancras *v.* Clapham (1860), 2 E. & E. 742 188
St. Paul, Minneapolis, &c., Co., *v.* Phelps (1890), 138 U. S. 528 . . 98
St. Paul's (Warden of) *v.* St. Paul's (Dean of) (1817), 4 Price 65 . 322
St. Sepulchre's, *Ex parte* (1864), 4 D. & S. 232 ; 32 L. J. Ch. 373 . 102, 116, 245

PAGE
Salkeld *v.* Johnson (1846), 2 C. B. 757 144
—— *v.* Johnson (1848), 2 Ex. 272 . . . . . 113, 144, 212, 220
Salmon *v.* Duncombe (1886), 11 App. Cas. 627; 55 L. J. P. C. 69; 55 L. T. 446 . . . . . 28, 124
Salt *v.* Northampton (Marquis of) (1892), A. C. 1; 8 Times L. R. 104 . . . . . 118, *n.*
Saltoun (Lord) *v.* Lord Advocate (1860), 3 Macq. H. L. (Sc.) 659 442, 443
Sampson and Wall, *Re* (1884), 25 Ch. D. 482; 53 L. J. Ch. 457; 50 L. T. 435; 32 W. R. 617 600
Samuel *v.* Evans (1788), 2 T. R. 573 504
Sandeman *v.* Breach (1827), 2 B. & C. 96 161
Santos *v.* Illidge (1860), 8 C. B. N. S. 861; 29 L. J. C. P. 348; 6 Jur. N. S. 1348; 8 W. R. 705 431
Saunders *v.* Baldy (1865), 6 B. & S. 791; 12 Jur. N. S. 334; 13 L. T. 322, 14 W. R. 177 492
—— *v.* S. E. Rail. Co. (1880), 5 Q. B. D. 456; 49 L. J. Q. B. 761; 43 L. T. 281; 29 W. R. 56 309
Savin *v.* Hoylake Rail. Co. (1865), 1 Ex. 9; 35 L. J. Ex. 52; 13 L. T. 374; 14 W. R. 109 510
Savings Institution *v.* Makins (1845), 23 Maine (U. S.) 360 . . 241
Saxby *v.* Kirkus (1754), Buller N. P. 224; Sayer 116 504
Scales *v.* Pickering (1828), 4 Bing. 448; 1 M. & P. 195 . . 191, 511
Schell's Exors. *v.* Fauché (1890), 138 U. S. 562 97
Schinotti *v.* Bumsted (1796), 6 T. R. 646 254
Schmitz, *Ex parte* (1884), 12 Q. B. D. 509 555
Schofield, *Ex parte* (1891), 2 Q. B. 428; 60 L. J. M. C. 157; 64 L. T. 780; 39 W. R. 580 . . . . . 475, 546
Scott *v.* Alexander (1890), 17 Rettie (Just.) 35 231
—— *v.* Legg (1876), 2 Ex. D. 39; 10 Q. B. D. 236; 46 L. J. M. C. 267; 36 L. T. 456; 25 W. R. 594 . . . . . 11, 83
Scottish American Investment Co. *v.* Elora (1881), 6 Upp. Can. App. 637 333
—— Drainage, &c., Co. *v.* Campbell (1889), 14 App. Cas. 139 511, 513
Sea Insurance Co. *v.* Gavin (1830), 4 W. & S. (H. L. Sc.) 17 . . 581
Seward *v.* Vera Cruz (Owners of the) (1885), 10 App. Cas. 59; 54 L. J. P. C. 9; 52 L. T. 474; 33 W. R. 477 . . . 139, *n.*, 145, *n.*, 357
Sewell *v.* Burdick (1885), 10 App. Cas. 74; 54 L. J. Q. B. 156; 52 L. T. 445; 33 W. R. 461 460
Shackell *v.* Rosier (1836), 2 Bing. N. C. 634 269
Sharp *v.* Dawes (1876), 2 Q. B. D. 26; 46 L. J. Q. B. 104; 36 L. T. 188; 25 W. R. 66 569
—— *v.* St. Sauveur (1872), 7 Ch. App. 343 406
—— *v.* Wakefield (1888), 22 Q. B. D. 239; 58 L. J. M. C. 57; 60 L. T. 130; 37 W. R. 187; (1891) A. C. 173; 60 L. J. M. C. 73; 64 L. T. 180; 39 W. R. 561 94
Sharpe *v.* Birch (1881), 8 Q. B. D. 111; 51 L. J. Q. B. 558; 46 L. T. 666; 30 W. R. 741 535
Shaw *v.* Benson (1883), 11 Q. B. D. 563; 52 L. J. Q. B. 575 . . 531
—— *v.* Ruddin (1859), 9 Ir. C. L. R. 214 . . . . . 190, 214
—— *v.* Simmons (1883), 12 Q. B. D. 117 556
Sheffield *v.* Ratcliffe (1616), Hob. 346 . . . . . 14, 17

PAGE

Sheffield W. W. Co. *v.* Bennett (1872), 7 Ex. 409; 8 Ex. 196; 42 L. J. Ex. 121; 28 L. T. 509; 21 W. R. 686 . . . . . 216, 587
Shelley *v.* Bethell (1884), 12 Q. B. D. 11; 53 L. J. M. C. 16; 49 L. T. 779; 32 W. R. 276 564
Shepherd *v.* Sharp (1856), 1 H. & N. 115; 25 L. J. Ex. 254; 2 Jur. N. S. 617 506
Sheppard *v.* Gosnold (1672), Vaughan 169 96
Sherborne *v.* Wells (1862), 3 B. & S. 784; 32 L. J. M. C. 179; 11 W. R. 594 567
Sherwood *v.* Ray (1837), 1 Moore P. C. 353 . . . . . 180, 595
Shine, *Ex parte* (1892), 1 Q. B. 522 561
Shipman *v.* Henbest (1790), 4 T. R. 114 387
Shoppee *v.* Nathan (1892), 1 Q. B. 245 256
Shoreditch (Guardians of) *v.* Franklin (1878), 3 C. P. D. 377; 47 L. J. C. P. 727; 39 L. T. 122; 26 W. R. 882 579
Shrewsbury (Earl of) *v.* Scott (1859), 6 C. B. N. S. 1, 221; 29 L. J. C. P. 53, 190; 6 Jur. N. S. 472 . . . 362, 466, 520
—— Peerage case (1857), 7 H. L. C. 13 465
—— Rail. Co. *v.* L. and N. W. Rail. Co. (1849), 2 Macn. & G. 324 528
Sill *v.* Worswick (1791), 1 H. Bl. 665; 2 Rev. Rep. 816 426
Simcox *v.* Handsworth L. B. (1881), 8 Q. B. D. 39; 51 L. J. Q. B. 168; 30 W. R. 273 548
Simkin, *Ex parte* (1859), 2 E. & E. 392; 29 L. J. M. C. 23; 6 Jur. N. S. 144 . . . . . 572, 595
Slattery *v.* Naylor (1888), 13 App. Cas. 446; 57 L. J. P. C. 73; 59 L. T. 41; 36 W. R. 897 . . . . . 302, 308, 310, 311
Smale *v.* Burr (1872), 8 C. P. 64; 42 L. J. C. P. 20; 27 L. T. 555; 21 W. R. 193 89
Smallwood *v.* Tredger (1815), 2 Phillimore 287 278
Smith *v.* Baker (1891), A. C. 325; 60 L. J. Q. B. 683; 65 L. T. 467 . 3, 147, 343
—— *v.* Barnett (1870), 6 Q. B. 35; 40 L. J. Q. B. 15; 23 L. T. 746 600
—— *v.* Barnham (1876), 1 Ex. D. 422 552
—— *v.* Brown (1871), 6 Q. B. 729; 40 L. J. Q. B. 214; 24 L. T. 808; 19 W. R. 1165 . . . . . 139, 195
—— *v.* Butler (1886), 16 Q. B. D. 349; 34 W. R. 416 307
—— *v.* Cooke (1891), A. C. 297; 45 Ch. D. 38; 60 L. J. Ch. 573; 64 L. T. 484; 39 W. R. 273. 564
—— *v.* Lindo (1858), 27 L. J. C. P. 200 95
—— *v.* Mawhood (1845), 14 M. & W. 452 496
—— *v.* Wood (1889), 24 Q. B. D. 23; 59 L. J. Q. B. 5; 38 W. R. 138 479
Smith's case (1869), 4 Ch. App. 611 . . . . . 115, 116
Sneezum, *Re* (1876), 3 Ch. D. 463; 45 L. J. Bank. 137; 35 L. T. 389; 25 W. R. 49 127
Solicitor (A), *Re* (1890), 25 Q. B. D. 17; 59 L. J. Q. B. 238; 38 W. R. 533 . . . . . 305, 547
Southampton Bridge Co. *v.* Southampton L. B. (1858), 8 E. & B. 801; 28 L. J. Q. B. 41; 4 Jur. N. S. 1298 140
South-Eastern Ry. Co. *v.* Ry. Commissioners (1880), 5 Q. B. D. 217; 50 L. J. Q. B. 203 . . . . . 143, *n.*

PAGE

Southwell *v.* Bowditch (1876), 1 C. P. D. 374; 45 L. J. C. P. 630; 35 L. T. 196; 24 W. R. 838 7
Spackman, *Re* (1890), 24 Q. B. D. 728; 59 L. J. Q. B. 306; 62 L. T. 849; 38 W. R. 497 . . . . . 544, 583
Spencer *v.* Met. Board of Works (1882), 22 Ch. D. 142; 52 L. J. Ch. 249; 47 L. T. 459; 31 W. R. 347 173
Spread *v.* Morgan (1864), 11 H. L. C. 588; 13 L. T. 164 . . . 5
Stamper *v.* Sunderland Overseers (1868), 3 C. P. 388; 37 L. J. M. C. 137 567
Stanley *v.* Western Assurance (1867); 3 Ex. 71; 17 L. T. 513; 16 W. R. 369 . . . . . 181, *n*
—— *v.* Wharton (1821), 9 Price 301 . . . . . 71, 476
Starey *v.* Chilworth Gunpowder Co. (1890), 24 Q. B. D. 90; 59 L. J. M. C. 13; 62 L. T. 73; 38 W. R. 204 549
Stead *v.* Carey (1845), 14 L. J. C. P. 182; 1 C. B. 496; 9 Jur. 511, 463, 526
Steavenson, *Ex parte* (1823), 2 B. & C. 34 215
—— *v.* Oliver (1841), 8 M. & W. 234 389
Steele, In the Goods of (1868), 1 P. & M. 575 123
—— *v.* Brannan (1872), 7 C. P. 261; 41 L. J. M. C. 85; 26 L. T. 509; 20 W. R. 607 482
—— *v.* M'Kinlay (1880), 5 App. Cas. 754 381
—— *v.* Midland Rail. Co. (1865), 1 Ch. App. 275 515
Stephens, *Ex parte* (1876), 3 Ch. D. 659 280
Stephenson *v.* Higginson (1852), 3 H. L. C. 638 . . . 185, 186, 478
—— *v.* Taylor (1861), 1 B. & S. 101; 30 L. J. M. C. 145; 4 L. T. 243; 9 W. R. 600 218
Stevens *v.* Evans (1761), 2 Burr. 1152 259
—— *v.* Jeacocke (1848), 11 Q. B. 731; 17 L. J. Q. B. 163; 12 Jur. 477 259
Steward *v.* Greaves (1842), 10 M. & W. 711; 12 L. J. Ex. 109; 6 Jur. 116 326
Stockdale *v.* Hansard (1837), 3 St. Tr. N. S. 723; 9 A. & E. 1 . 17, 42
Stockton, &c., Rail. Co. *v.* Brown (1860), 9 H. L. C. 246; 7 W. R. 708; 6 Jur. N. S. 1168 298
Stone *v.* Godfrey (1854), 5 D. M. & G. 76 5
—— *v.* Hyde (1882), 9 Q. B. D. 76 575
—— *v.* Yeovil (Mayor, &c., of) (1876), 2 C. P. D. 99; 46 L. J. C. P. 137; 36 L. T. 279; 24 W. R. 1073 594
Stonor *v.* Fowle (1887), 13 App. Cas. 20 548
Storer *v.* Taff Vale Ry. Co. (1842), 2 Y. & Coll. (Ch.) 50 . . . 251
Stourbridge Canal Co. *v.* Dudley (Earl) (1860), 3 E. & E. 427 . . 329
—— *v.* Wheeley (1831), 2 B. & Ad. 792 . . . 511
Strachan *v.* Thompson (1850), 13 Dunlop (Sc.) 279 149
Stradling *v.* Morgan (1560), Plowd. 204 . . . . . 202, 279, 347
Strother *v.* Hutchinson (1837), 4 B. N. C. 89 163
Stubbs *v.* Director of Public Prosecutions (1890), 24 Q. B. D. 577; 59 L. J. Q. B. 201; 62 L. T. 399; 38 W. R. 607 566
Suche (Joseph) & Co., Ld., *Re* (1875), 1 Ch. D. 48; 45 L. J. Ch. 12; 33 L. T. 774; 24 W. R. 184 375
Surtees *v.* Ellison (1829), 9 B. & C. 752 392
Sussex Peerage case (1844), 12 Cl. & F. 143 . . . . 223, 282, 423
Sutton, *Re* (1885), 28 Ch. D. 464; 54 L. J. Ch. 613; 33 W. R. 519 . 534

PAGE

Sutton *v.* Sutton (1883), 22 Ch. D. 511; 52 L. J. Ch. 333; 48 L. T. 95; 31 W. R. 369 . . . . . 212, 217
Swaine *v.* Wilson (1889), 24 Q. B. D. 252; 59 L. J. Q. B. 76; 62 L. T. 309; 38 W. R. 261 561
Swift *v.* Jewsbury (1874), 9 Q. B. 301; 43 L. J. Ex. 56; 30 L. T. 31; 22 W. R. 319 . . . . . 161, 238, 540
Swinton *v.* Bailey (1878), 6 App. Cas. 70; 48 L. J. Ex. 57; 39 L. T. 581; 27 W. R. 293 550
Symons *v.* Leaker (1885), 15 Q. B. D. 629; 54 L. J. Q. B. 480; 53 L. T. 227; 33 W. R. 875 588

TANCRED, Arrol & Co. *v.* Steel Co. of Scotland (1889), 15 App. Cas. 125; 62 L. T. 738 96
Taurine Co. (1884), 25 Ch. D. 118; 52 L. J. Ch. 688; 53 L. J. Ch. 271; 49 L. T. 514; 32 W. R. 129 541
Taylor *v.* Caldwell (1863), 32 L. J. Q. B. 164; 3 B. & S. 826; 11 W. R. 726; 8 L. T. 356 382
—— *v.* Chichester, &c., Rail. Co. (1867), 2 Ex. 356; 4 H. L. 628; 39 L. J. Ex. 217; 23 L. T. 617 286
—— *v.* Crowland Gas Co. (1854), 10 Ex. 293 495
—— *v.* Goodwin (1879), 4 Q. B. D. 228; 48 L. J. M. C. 104; 40 L. T. 458; 27 W. R. 489 . . . . . 188, *n.*
—— *v.* Oldham (1876), 4 Ch. D. 395; 25 W. R. 178; 46 L. J. Ch. 105; 35 L. T. 696 359
—— *v.* Smetten (1883), 11 Q. B. D. 207; 52 L. J. M. C. 101 . . 567
—— *v.* Taylor (1876), 1 Ch. D. 426 318
Teale *v.* Younge (1825), 1 M'Cl. & Younge 497 562
Tearle *v.* Edols (1888), 13 App. Cas. 183; 57 L. J. P. C. 58; 58 L. T. 360 25
Templeman *v.* Trafford (1881), 8 Q. B. D. 397 590
Tennant *v.* Smith (1891), A. C. 150 . . . . . 552, 561
Tennyson, Doe d., *v.* Yarborough (Lord) (1822), 1 Bing. 24 . . 150
Thames (Conservators of) *v.* Hall (1868), 3 C. P. 415 346
Thibault *v.* Gibson (1843), 12 M. & W. 94; 3 Dowl. N. S. 253 . . 241
Thomas *v.* Kelly (1888), 13 App. Cas. 506; 58 L. J. Q. B. 66; 60 L. T. 114; 37 W. R. 353 531
—— *v.* Wilson (1863), 4 B. & S. 453 561
Thompson, *Re* (1890), 45 Ch. D. 161; 59 L. J. Ch. 689; 63 L. T. 471; 39 W. R. 50 563
Thomson *v.* Att.-Gen. (1845), 12 Cl. & F. 1 . . . . . 206, 428
Thorpe *v.* Adams (1871), 6 C. P. 125; 40 L. J. M. C. 52; 23 L. T. 810; 19 W. R. 352 359
Thwaites *v.* Wilding (1883), 12 Q. B. D. 4; 53 L. J. Q. B. 1; 49 L. T. 396; 32 W. R. 80 274
Tinkler *v.* Wandsworth L. B. (1858), 2 De G. & J. 261 291
Titterton *v.* Cooper (1882), 9 Q. B. D. 473 155
Tiverton, &c., Rail. Co. *v.* Loosemore (1884), 9 App. Cas. 480; 53 L. J. Ch. 812 299
Tivnan, *Re* (1864), 5 B. & S. 645; 33 L. J. M. C. 201 . . . 579, 599
Tobin *v.* R. (1803), 32 L. J. C. P. 216; 14 C. B. N. S. 505 . . . 410

PAGE

Todd, *Ex parte* (1878), 3 Q. B. D. 407 198
Tomkins *v.* Ashby (1827), 6 B. & C. 541 133
—— *v.* Jones (1889), 22 Q. B. D. 599 559
Tomlinson *v.* Bullock (1878), 4 Q. B. D. 230; 48 L. J. M. C. 95; 40 L. T. 459; 27 W. R. 552 . . . . . 365, 547
Toronto (Bank of) *v.* Lambe (1887), 12 App. Cas. 575; 56 L. J. P. C. 87; 57 L. T. 377 175
Tosh *v.* North British Building Society (1886), 11 App. Cas. 489; 35 W. R. 413 . . . . . .
Towler *v.* Chatterton (1829), 6 Bing. 258 . . . . . 378, 37
Townley *v.* Gibson (1789), 2 T. R. 705 509
Towns *v.* Wentworth (1858), 11 Moore P. C. 526 9
Townsend *v.* Read (1861), 10 C. B. N. S. 317 534
Townsend's (Amy) case (1554), Plowd. 110 a 279
Toy *v.* Musgrove (1888), 14 Victoria L. R. 349 458
Tozer *v.* Child (1857), 26 L. J. Q. B. 151; 7 E. & B. 377 . . . 254
Trimble *v.* Hill (1880), 5 App. Cas. 342 . . . . . 6, 449, 459
Trott *v.* Hughes (1850), 16 L. T. O. S. 260 280
Truscott *v.* Merchant Taylors' Co. (1856), 11 Ex. 855 324
Tunnicliffe *v.* Tedd (1848), 5 C. B. 553 559
Two Hundred Chests of Tea (1824), 9 Wheaton (U. S.) 435 . 181, *n.*
Twynam *v.* Porter (1870), 11 Eq. 181; 40 L. J. Ch. 30; 23 L. T. 551; 19 W. R. 151 586
Tyne Commissioners *v.* Chirton (1859), 2 E. & E. 516 524

UNDERHILL *v.* Longridge (1859), 29 L. J. M. C. 65; 6 Jur. N. S. 221 129
Union Bank of London *v.* Ingram (1882), 20 Ch. D. 463 125
—— Plate Glass Co., *Re* (1889), 42 Ch. D. 513; 58 L. J. Ch. 767; 61 L. T. 327; 37 W. R. 792 586
—— Steamship Co. of N.Z. *v.* Melbourne Harbour Trust Commissioners (1884), 9 App. Cas. 365; 53 L. J. P. C. 59; 50 L. T. 337 . . . . . 226, 229
United Society *v.* Eagle Bank (1829), 7 Connecticut 457 151
United States *v.* Breed (1832), 1 Sumner (U. S.) 159 . . . 181, *n.*
—— *v.* McRae (1867), 3 Ch. App. 79 11
—— *v.* Stern (1867), 1 Blatchford (U.S. Circ. Ct.) 512 . 119
—— *v.* Wiltberger (1820), 5 Wheaton (U. S.) 95 477
Urquhart *v.* Urquhart (1853), 1 Macq. H. L. (Sc.) 662 371

VAGLIANO'S case. *See* Bank of England *v.* Vagliano.
Valentini *v.* Canali (1889), 24 Q. B. D. 166; 59 L. J. Q. B. 74; 61 L. T. 731; 38 W. R. 331 . . . . . 107, 269
Valin *v.* Langlois (1880), 5 App. Cas. 115 459
Vallance *v.* Falle (1884), 13 Q. B. D. 109; 53 L. J. Q. B. 459; 51 L. T. 158; 32 W. R. 770 259
Vaughan *v.* Taff Vale Ry. Co. (1860), 29 L. J. Ex. 247 323
Vaughton *v.* Bradshaw (1860), 9 C. B. N. S. 103 559
Vauxhall Bridge Co. *v.* Spencer (Earl) (1817), 2 Madd. 365 . 526 527
—— —— (1821), Jac. 64 527

PAGE
Venour *v.* Sellon (1876), 2 Ch. D. 522 ; 45 L. J. Ch. 409 ; 24 W. R. 752 216
Vincent, *Ex parte* (1856), 26 Alabama 145 . . . . . 193, *n.*
Vinter *v.* Hind (1882), 10 Q. B. D. 63 ; 52 L. J. M. C. 93 ; 48 L. T. 359 ; 31 W. R. 198 25

Wadmore *v.* Dear (1871), 7 C. P. 212 596
Wainewright, *Ex parte* (1843), 1 Ph. 261 . . . . . 128, 129
Wake *v.* Sheffield (Recorder of) (1884), 12 Q. B. D. 142 ; 53 L. J. M. C. 1 ; 50 L. T. 76 ; 32 W. R. 82 259
Wakefield L. B. *v.* Lee (1876), 1 Ex. D. 336 187
—— *v.* West Riding Rail. Co. (1865), 1 Q. B. 84 ; 6 B. & S. 801 . . . . . 233, 235
Wala Co., *Re* (1883), 21 Ch. D. 857 559
Walker *v.* Falkirk Iron Co. (1887), 14 Rettie (Sc.) 1081 . . . 550
—— *v.* Hobbs (1889), 23 Q. B. D. 458 ; 38 W. R. 63 . . . 561
Wallace *v.* Att.-Gen. (1865), 1 Ch. App. 1 . . . . . 206, 428
Wallis *v.* L. and S. W. Ry. Co. (1870), 5 Ex. 62 598
Walsh *v.* Secretary of State for India (1863), 10 H. L. C. 367 . . 137
Walter *v.* Howe (1881), 17 Ch. D. 708 578
Walton, *Ex parte* (1881), 17 Ch. D. 746 ; 50 L. J. Ch. 662 ; 45 L. T. 1 ; 30 W. R. 395 102
Wandsworth L. B. *v.* United Telephone Co. (1884), 13 Q. B. D. 904 ; 53 L. J. Q. B. 449 ; 51 L. T. 148 ; 32 W. R. 776 . . . 181, 593
Wanzer, Ld., *Re* (1891), 1 Ch. 305 ; 60 L. J. Ch. 492 ; 39 W. R. 343 441, 590
Warburton *v.* Huddersfield (1891), 8 Times L. R. 26 465
—— *v.* Loveland (1831), 2 Dow & Cl. 489 ; 1 Hud. & Bro. 632 . 76, 99, 115
Ward *v.* Folkestone Water Works Co. (1890), 24 Q. B. D. 334 ; 59 L. J. M. C. 65 ; 62 L. T. 325 ; 38 W. R. 426 162
Warden *v.* Tye (1877), 2 C. P. D. 74 578
Warner's Settled Estates, *In re* (1881), 17 Ch. D. 711 163
Warren *v.* Windle (1803), 3 East 205 . . . . . 338, *n.*, 400
Warrington, *Ex parte* (1853), 22 L. J. Bank. 39 348
Washer *v.* Elliot (1876), 1 C. P. D. 169 ; 45 L. J. C. P. 144; 34 L. T. 56 ; 24 W. R. 432 . . . . . 200, 541
Waterford Rail. Co. *v.* Logan (1850), 14 Q. B. 672 526
Waterford's (Lord) Peerage Claim (1832), 6 Cl. & F. 172 . . . 170
Waterhouse *v.* Keen (1825), 4 B. & C. 200 533
Waterlow *v.* Dobson (1857), 27 L. J. Q. B. 55 148
Watkins *v.* Major (1875), 10 C. P. 662 ; 44 L. J. M. C. 164 ; 33 L. T. 352 ; 24 W. R. 164 487
Watson, *In re* (1890), 25 Q. B. D. 27 ; 59 L. J. Q. B. 394 ; 63 L. T. 209 ; 38 W. R. 567 . . . . . 89, 90
Watton *v.* Watton (1866), 1 P. & M. 227 258
Waugh *v.* Middleton (1853), 8 Ex. 356 369
Weal *v.* West Middlesex Waterworks (1820), 1 Jac. & Walk. 358 . 327
Wear River Commissioners *v.* Adamson (1876), 1 Q. B. D. 546 ; 2 App. Cas. 743 ; 47 L. J. Q. B. 193 ; 35 L. T. 118 ; 37 L. T. 543 ; 24 W. R. 872 ; 26 W. R. 217 . . . . . 5, 26, 102, 258, 519
Webb *v.* Manchester and Leeds Ry. (1839), 1 Ry. Cas. 599 . . 297, 511

PAGE
Welchman, *Ex parte* (1879), 11 Ch. D. 48 82
Weldon *v.* Dicks (1879), 10 Ch. D. 247 577
Wells *v.* London, Tilbury, &c., Rail. Co. (1877), 5 Ch. D. 126 . . 137
—— *v.* Porter (1836), 3 Scott 141 207
—— *v.* Wilkins (1704), 6 Mod. 62 . . . . . 212, *n.* 220
Wenman *v.* Lyon (1891), 1 Q. B. 634; 60 L. J. Q. B. 663; 65 L. T. 136; 39 W. R. 519 568
West Devon Consols Mining Co., *Re* (1888), 38 Ch. D. 51; 57 L. J. Ch. 850; 58 L. T. 61; 36 W. R. 342 346
Western Building Soc. *v.* Martin (1885), 17 Q. B. D. 609 110
—— Canada Oil, &c., Co. *v.* Walker (1875), 10 Ch. App. 628 . 569
—— Counties Rail. Co. *v.* Windsor, &c., Rail. Co. (1882), 7 App. Cas. 178; 51 L. J. P. C. 43; 46 L. T. 351 135
West Ham Assessment Committee *v.* Iles (1883), 8 App. Cas. 386; 52 L. J. Q. B. 650; 49 L. T. 205; 31 W. R. 928 . . 221
—— Union *v.* Ovens (1872), 8 Ex. 37 600
West London Commercial Bank, *Re* (1888), 38 Ch. D. 364 . . 402, 410
Westmeath *v.* Westmeath (1830), 1 Dow & Cl. 544 72
Westminster Fire Office *v.* Glasgow Provident, &c., Society (1888), 13 App. Cas. 699; 54 L. T. 641 . . . . . 440, 508
West Riding Justices *v.* R. (1883), 8 App. Cas. 781; 53 L. J. M. C. 41; 49 L. T. 786; 32 W. R. 253 . . . 236, *n.*
—— Permanent Benefit Building Society, *In re* (1890), 43 Ch. D. 407; 59 L. J. Ch. 197; 63 L. T. 483; 38 W. R. 376 . . 301
Wetherall *v.* Jones (1832), 3 B. & Ad. 221 495
Weymouth (Mayor of) *v.* Nugent (1865), 6 B. & S. 22 408
Wharton Peerage case (1844), 12 Cl. & F. 295 464
Wheat *v.* Brown (1892), 8 Times L. R. 294 554
Whicker *v.* Hume (1858), 7 H. L. C. 124 454
Whiteley *v.* Chappell (1868), 4 Q. B. 149; 38 L. J. M. C. 51; 19 L. T. 355; 17 W. R. 175 83
Wier, *Ex parte* (1871), 6 Ch. App. 875 171
Wigram *v.* Fryer (1887), 36 Ch. D. 87; 56 L. J. Ch. 1098; 57 L. T. 255; 36 W. R. 100 335
Wilcock's Settlement (1875), 1 Ch. D. 229; 45 L. J. Ch. 163; 33 L. T. 719; 24 W. R. 290 267
Williams, *Re*, Jones *v.* Williams (1887), 36 Ch. D. 573; 36 W. R. 34; 57 L. J. Ch. 264; 57 L. T. 756 . . . . 86, 331, 355
—— *v.* Davies (1891), A. C. 460 . . . . . 425, 449
—— *v.* Ellis (1880), 5 Q. B. D. 175 . . . . . 188, *n.*
—— *v.* Evans (1876), 1 Ex. D. 284 102
—— *v.* Lear (1872), 7 Q. B. 285; 41 L. J. M. C. 76; 25 L. T. 906 . 596
—— *v.* Pritchard (1790), 4 T. R. 2 356
—— *v.* Rougheedge (1759), 2 Burr. 747 391
—— *v.* Salisbury (Bishop of) (1863), 2 Moore P. C. N. S. 376 . 4
—— *v.* Wandsworth L. B. (1884), 13 Q. B. D. 211; 53 L. J. M. C. 187; 49 L. T. 475; 32 W. 187 576
Willion *v.* Barkley (1560), Plowd. 240 b 405, 415, 504
Willis *v.* Thorp (1875), 10 Q. B. 383; 44 L. J. Q. B. 137; 33 L. T. 11; 23 W. R. 730 476
Wilson *v.* Knubley (1806), 7 East 128 . . . . . 21 95, 222

PAGE
Wilson *v.* Merry (1868), 1 H. L. (Sc.) 326 260
Wiltes Peerage Claim (1869), 4 H. L. 126 63
Wing *v.* Earle (1597), Cro. Eliz. 212, 267 570
—— *v.* Taylor (1861), 30 L. J. P. & M. 263; 2 Sw. & Tr. 278; 4 L. T. 583; 7 Jur. N. S. 737 278
Winn *v.* Mossman (1869), 4 Ex. 299; 38 L. J. Ex. 200; 20 L. T. 672; 17 W. R. 924. 225
Winyard *v.* Toogood (1882), 10 Q. B. D. 218; 52 L. J. M. C. 25; 48 L. T. 229; 31 W. R. 271 25
Wisconsin (State of) *v.* Pelican Insurance Soc. (1887), 127 U. S. 265 . 473
Wood, *Re* (1872), 7 Ch. App. 306 160
—— *v.* De Mattos (1876), 1 Ex. 91 545
—— *v.* Riley (1867), 3 C. P. 27. . . . . 239, 365
Wood's Estate, *Re* (1886), 31 Ch. D. 607; 55 L. J. Ch. 488; 54 L. T. 145; 34 W. R. 375 . . . . . 244, 245, 401
Woodard *v.* Billericay (1878), 11 Ch. D. 214 576
Woodgate *v.* Godfrey (1879), 5 Ex. D. 24 534
Woodhall (Alice), *Re* (1889), 20 Q. B. D. 832 546
Woodward *v.* Cotton (1834), 1 C. M. & R. 44 500
—— *v.* London and N. W. Rail. Co. (1878), 3 Ex. D. 121 . 576
—— *v.* Sarsons (1875), 10 C. P. 733 . . . . . 273, 283
Woolwich Overseers *v.* Robertson (1881), 6 Q. B. D. 654 . . . 589
Wright, *Re* (1876), 3 Ch. D. 70 158
—— *v.* Davies (1876), 1 C. P. D. 638 90
—— *v.* Hale (1860), 30 L. J. Ex. 40 . . . . . 376, 378, 379
—— *v.* Ingle (1885), 16 Q. B. D. 379; 55 L. J. M. C. 17; 54 L. T. 511; 34 W. R. 20 561
—— *v.* Pearson (1869), 4 Q. B. 582 538
Wynne *v.* Griffith (1825), 3 Bing. 196 188

YARMOUTH (Mayor, &c., of) *v.* Simmons (1878), 10 Ch. D. 518 . 135, 272
Yarrow, *Ex parte* (1889), 59 L. J. Q. B. 20 22
Yates *v.* R. (1885), 14 Q. B. D. 648; 54 L. J. Q. B. 258; 52 L. T. 305; 33 W. R. 482 79
Yeap *v.* Ong (1875), 6 P. C. 381 454
York (Dean of) *v.* Middleburgh (1827), 2 Y. & J. Ex. 196 . . 222, 225
Yorkshire Insurance Co. *v.* Clayton (1881), 8 Q. B. D. 421; 58 L. J. Q. B. 594; 61 L. T. 1; 53 J. P. 756 . . 114, 121, 597
—— Rail., &c., Co. *v.* McClure (1882), 21 Ch. D. 309 . . . 88
Young *v.* Cook (1877), 3 Ex. D. 105 557
—— *v.* Giffen (1858), 21 Dunlop (Sc.) 87 557
—— *v.* Higgon (1840), 6 M. & W. 54 572
—— *v.* Leamington (Mayor, &c., of) (1883), 8 App. Cas. 517; 52 L. J. Q. B. 713; 49 L. T. 1; 32 W. R. 925 . . 73, 106, 113, 465

ZETLAND (Earl of) *v.* Lord Advocate (1878), 3 App. Cas. 505 . . 183

TABLE OF STATUTES.

A.D.		PAGE
	De Pistoribus	35, *n.*
	De Judaismo	57
1235	20 Hen. 3	57, 62, *n.*
	—— c. 5	416
	—— c. 9	427
	—— c. 10	64
1255	40 Hen. 3 (21 Hen. 3, Ruffhead)	603
1267	52 Hen. 3	64
	—— c. 22	417
1275	3 Edw. 1, c. 5	417
1278	6 Edw. 1, c. 1	64, 355
1285	13 Edw. 1, c. 1	57, 64, 415, 419
	—— c. 5	415
	—— c. 9	325
	—— c. 18	335, 393, 396
	—— c. 31	163
	—— c. 36	404
	—— c. 41	202
	—— c. 50	252
	—— stat. 4	1, *n.*
1290	18 Edw. 1	57
1297	25 Edw. 1	71, *n.*
1304	33 Edw. 1	35
1313	7 Edw. 2	35, *n.*
1315	9 Edw. 2	15, 18, 57
1317	17 Edw. 2, stat. 2	419
1330	4 Edw. 3, c. 7	21, 95
1340	14 Edw. 3, stat. 1, c. 6	417
1351	25 Edw. 3, stat. 5, c. 2	1, *n.*
1414	2 Hen. 5, stat. 1, c. 8	36, *n.*
1429	8 Hen. 6, c. 7	596
1436	15 Hen. 6, c. 6	310
1444	23 Hen. 6, c. 9	503
1494	10 Hen. 7 (I.)	445
1503	19 Hen. 7, c. 7	310
1530	22 Hen. 8, c. 5	536
1531	23 Hen. 8, c. 23	223
1534	26 Hen. 8, c. 14	385, *n.*
1535	27 Hen. 8, c. 10	279, 581
1536	28 Hen. 8, c. 3 (I.)	170, *n.*
	—— c. 15	437, *n.*
1539	31 Hen. 8, c. 43	201
1540	32 Hen. 8, c. 1	204
	—— c. 9, s. 2	346
	—— c. 28	415
1541	33 Hen. 8, c. 1	149
	—— c. 23	352
1542	34 Hen. 8, c. 6	204
	34 & 35 Hen. 8, c. 26	279
1543	35 Hen. 8, c. 2	352
1545	37 Hen. 8, c. 1, s. 3	354
	—— c. 12	322, 539
1554	1 & 2 Ph. & Mar. c. 10	352
	—— c. 12	
1555	2 & 3 Ph. & Mar. c. 11	504
1557	4 & 5 Ph. & Mar.	59
	—— c. 8, s. 3	555
1563	5 Eliz. c. 11	71
1571	13 Eliz. c. 5	224
	—— c. 10	71, 414
	s. 2	558
	—— c. 12	19, *n.*, 533
	—— c. 20, s. 1	71
1580	23 Eliz. c. 1, ss. 5, 11	347
1584	27 Eliz. c. 4	416
1586	29 Eliz. c. 4	347
1588	31 Eliz. c. 6, s. 4	416
1592	35 Eliz. c. 1	347
1597	39 Eliz. c. 3	163
1601	43 Eliz. c. 2	133, 170, 184, 194, 274, 327, 354, 408, 539, 589
1603	1 Jas. 1, c. 4	539

A.D.		PAGE
1603	1 Jas. 1, c. 15 . .	575
	—— c. 22 . .	388
1623	21 Jas. 1, c. 3, s. 6 . .	412
	—— c. 4 . .	386, 388
	—— c. 16 . .	456
	s. 7 . .	536
	—— c. 19, ss. 10, 11	223
1635	10 & 11 Chas. 1 (I.) .	414
1660	12 Chas. 2, c. 24 . .	151
1661	13 Chas. 2, c. 5 . .	386
1662	14 Chas. 2, c. 4 .	19, *n.*
	—— c. 26 .	141, 324
1670	22 Chas. 2, c. 11 . .	417
1671	22 & 23 Chas. 2, c. 10, s. 7	110, 192
	—— c. 20 .	503
	—— c. 25 .	83
1677	29 Chas. 2, c. 3 87, 110,	372
	s. 6 540,	550
	—— c. 7, s. 1 493,	564
1688	1 Will. & Mar. sess. 1, c. 18	502
	c. 21, s. 6 .	354
	c. 30 . 342,	413
	—— sess. 2, c. 2 .	401
1691	3 & 4 Will. & Mar. c. 11 .	600
	—— c. 14, s. 2 222,	342
1694	5 & 6 Will. & Mar. c. 6 413,	575
1695	7 & 8 Will. 3, c. 4 . .	264
1698	10 Will. 3, c. 22 (10 & 11 Will. 3, c. 16, Ruffhead)	97
1699	11 & 12 Will. 3, c. 2 .	401, *n.*
1703	2 & 3 Anne, c. 4 . .	543
1705	4 & 5 Anne, c. 3 (4 Anne, c. 16, Ruffhead), s. 19	84, 445
1706	6 Anne (5 Anne, Ruffhead), c. 3 . . .	361
	—— c. 16 . . .	95
	—— c. 14 . . .	
1709	8 Anne, c. 7, s. 17 . .	593
	—— c. 19 . . .	207, 431, 435, 436
1712	12 Anne, stat. 2, c. 16 .	348
1719	6 Geo. 1, c. 5 .	362, 445
	—— c. 29 . .	520
1721	8 Geo. 1, c. 14 (I.) . .	194
1722	9 Geo. 1, c. 19 . .	433
1724	11 Geo. 1, c. 19, s. 3	71, *n.* 476
1725	12 Geo. 1, c. 29, s. 4 .	386
1725	12 Geo. 1, c. 38, s. 2 .	219

A.D.		PAGE
1728	2 Geo. 2, c. 22 . . .	391
	—— c. 25, s. 3 . .	388
1729	3 Geo. 2, c. 27 . .	391
1733	7 Geo. 2, c. 8 . . .	207
1734	8 Geo. 2, c. 24 . .	391
1735	9 Geo. 2, c. 18 . .	388
	—— c. 36 . . .	77, 91, 372, 427, 453, 563
1736	10 Geo. 2, c. 28 . .	264
1737	11 Geo. 2, c. 22, s. 4 .	350
1738	12 Geo. 2, c. 26 . .	563
	—— c. 36, s. 1 .	492
1739	13 Geo. 2, c. 28, s. 5	353, 354
1740	14 Geo. 2, c. 1 . .	200
	—— c. 34 . .	391
1743	17 Geo. 2, c. 3 . .	85
	—— c. 38, s. 4 .	354
1744	18 Geo. 2, c. 30, ss. 2, 3 .	350
1745	19 Geo. 2, c. 28 . .	539
	—— c. 32 . .	562
	—— c. 34, s. 2 .	572
	—— c. 35 . .	400
1746	20 Geo. 2, c. 42, s. 3 .	443
1747	21 Geo. 2, c. 33 . .	391
1750	24 Geo. 2, c. 44, s. 1 .	572
1751	25 Geo. 2, c. 6 .	213, 224
	—— c. 36, s. 11 .	55
1753	26 Geo. 2, c. 14, s. 1 .	273
	—— c. 33, s. 1 .	278
	—— c. 108 . .	400
1754	27 Geo. 2, c. 16, s. 2	. 66, *n.*
1755	29 Geo. 2, c. 28 . .	391
1757	31 Geo. 2, c. 22 . .	578
1758	32 Geo. 2, c. 33 . .	578
	—— c. 38 . .	193
1759	33 Geo. 2 (I.), c. 14 .	190, 194, 225
1766	6 Geo. 3, c. 12 . .	447
1767	7 Geo. 3, c. 37 . .	357
1770	11 Geo. 3, c. 29 . .	562
1772	12 Geo. 3, c. 11 282,	423, 497
1773	13 Geo. 3, c. 21, s. 3 .	218
	—— c. 54, s. 3 .	557
	—— c. 78, s. 24 . .	392, 397, 398
	s. 81 .	392
	sched. .	216
	—— c. 81, s. 3 .	555
	—— c. 84, s. 33 .	581
1774	14 Geo. 3, c. 78, s. 83	440, 508

A.D.		PAGE
1774	14 Geo. 3, c. 83, s. 11	453
	—— c. 96, s. 97	552
1777	17 Geo. 3, c. 38, s. 4	557
	—— c. 56	469
1778	18 Geo. 3, c. 12	447
1779	19 Geo. 3, c. 44, s. 4	502
1781	21 Geo. 3, c. 49, s. 1	554
1782	22 Geo. 3, c. 45, s. 9	581
	—— c. 47	394
	—— c. 53	445
1783	23 Geo. 3, c. 47	133
1785	25 Geo. 3, c. 51, s. 4	407
	—— c. 72	151
1786	26 Geo. 3, c. 11	188
	—— c. 41, s. 17	353
	—— c. 108	400
1787	27 Geo. 3, c. 5	357
	—— c. 28, s. 5	592
1788	28 Geo. 3, c. 31	170
	—— c. 48, s. 4	196
1790	30 Geo. 3, c. 7, s. 6	350
	—— c. 9, s. 3	350
1791	31 Geo. 3, c. lxviii.	146, *n.*
1793	33 Geo. 3, c. 13	60, 211, 332, 366, 367, 370
	—— c. 54, s. 10	562
1794	34 Geo. 3, c. 68, ss. 15, 16	282
1795	35 Geo. 3, c. 101, s. 2	103
1796	36 Geo. 3, c. 7	465
	—— c. 8	390
	—— c. 9, s. 6	350
	—— c. 52, ss. 6, 22	583
1797	37 Geo. 3, c. 70, s. 3	350
	—— c. 123, s. 7	350
1798	38 Geo. 3, c. 5, s. 4	559
	s. 25	204, 560
1799	39 Geo. 3, c. 79, s. 15	152, 390
1800	39 & 40 Geo. 3, c. 67, art. i.	314
	art. iv.	578
	—— c. 99, s. 23	264
1801	41 Geo. 3, c. 90, s. 9	36
	—— c. 105	220
1802	42 Geo. 3, c. 38	400
	—— c. 119	567
1803	43 Geo. 3, c. 59, s. 1	397
	—— c. 99	532
	—— c. 122	531
1805	45 Geo. 3, c. xcii.	592
1806	46 Geo. 3, c. 139	400, 587
1807	47 Geo. 3, c. xxxv.	507
1808	48 Geo. 3, c. 55	560, 596
	—— c. 106	368
1811	51 Geo. 3, c. 115, s. 2	135
	—— c. 126	537
1812	52 Geo. 3, c. 16	47
	—— c. 17	47, 463
	—— c. 104, s. 8	350
	—— c. 156, s. 4	350
	—— c. 141, s. 166	503, 506
1813	53 Geo. 3, c. 33	381
	—— c. 105	381
	—— c. 127	538
	—— c. 152	506
	—— c. 216	532
1814	54 Geo. 3, c. 68, s. 10	185
	—— c. 84	277
	—— c. 159	580
1815	55 Geo. 3, c. 91	399
	—— c. 184, s. 37, sch. pt. 3	206, 428
1817	57 Geo. 3, c. 6, s. 5	350
	—— c. 25, s. 1	598
1818	58 Geo. 3, c. 45, s. 70	587
	—— c. 51	469
1819	59 Geo. 3, c. 12	221
	—— c. xxxix.	358
	—— c. 69, s. 7	5, 109, 125, 577
1820	60 Geo. 3 & 1 Geo. 4, c. 1, s. 4	350
1822	3 Geo. 4, c. 39, s. 2	468
	—— c. 55, s. 21	587
	—— c. 126, s. 32	600
1823	4 Geo. 4, c. 34	488
	—— c. 75, ss. 16, 28	278
	—— c. 94, s. 131	495
	—— c. 96	429
1824	5 Geo. 4, c. 36, s. 1	540
	—— c. 83, s. 3	601
	—— c. 113, s. 35	153
1825	6 Geo. 4, c. 16, s. 98	554
	s. 136	243
	—— c. 50, s. 34	561
	—— c. 80, s. 115	496
	—— c. 81, ss. 25, 26	496
	—— c. 94, s. 2	193
	—— c. 133, s. 4	390
1826	7 Geo. 4, c. 64, s. 21	56
	—— ss. 22, 24	351

A.D.		PAGE
1826	7 Geo. 4, c. 140, s. 27	534
1827	7 & 8 Geo. 4, c. 28, s. 10	164
	s. 14	176, 494
	—— c. 29, s. 5.	602
	s. 53	568
	—— c. 46, s. 9.	326
1828	9 Geo. 4, c. 14, ss. 5, 10.	548
	s. 6 .	468
	—— c. 17, s. 2. .	600
	—— c. 31, s. 12 .	592
	s. 27 .	556
	—— c. 54, s. 35 .	568
	—— c. 61 . .	225, 314, 373, 398
	sched. C.	533
	—— c. 83, ss. 3, 4 .	287
1829	10 Geo. 4, c. 7, ss. 2, 8 .	362
	—— c. 44, s. 9	339, *n.*
1830	11 Geo. 4 & 1 Will. 4, c. 68, s. 1	576
	—— c. 70, s. 8	418
1831	1 & 2 Will. 4, c. 11 .	402
	—— c. 21, s. 1 .	564
	—— c. 22, s. 10.	578
	—— c. 32, s. 3 .	491
	s. 40.	557
	—— c. 37 . .	601
	—— c. lxxvi. s. 85	579
1832	2 & 3 Will. 4, c. 45, s. 26	581
	s. 27 .	534, 597
	s. 36 .	565
	—— c. lv. .	188, *n.*
	—— c. 71 .	404, 563
	s. 8 .	468, 588
	—— c. 100 .	113
1833	3 & 4 Will. 4, c. 27 .	143, *n.*, 186, 411
	s. 1 .	539
	—— c. 42, s. 30	366
	—— c. 73 . .	312
	—— c. 74, s. 33 .	128, 360
	s. 38 .	550
	—— c. 98, s. 7 .	348
1834	4 & 5 Will. 4, c. 10 .	391
	—— c. 22 . .	444
	—— c. 76 . .	178

A.D.		PAGE
1834	4 & 5 Will. 4, c. 76, s. 38 .	358
	s. 39 .	544
1835	5 & 6 Will. 4, c. 50, s. 1 .	397
	s. 21 .	536
	ss. 35, 46	596
	s. 65 .	576
	s. 78	188, *n.*
	—— c. 54, s. 1 .	595
	—— c. 62 . .	178
	—— c. 76, s. 2 .	547
	s. 32 .	591
	s. 57 .	581
	s. 66 .	189
	s. 142	152, 153
	—— c. 113 .	154
1836	6 & 7 Will. 4, c. 37 . .	95
	—— c. 96 . .	534
	—— c. 103 .	444
1837	7 Will. 4 & 1 Vict. c. 26 .	550
	s. 9	535
	s. 20	588
	s. 21	591
	s. 24	103
	—— c. 33 .	169
	—— c. 45, s. 2	85
	—— c. 55	355
	—— c. 85, s. 4	157, 329
1838	1 Vict. c. ii. s. 5 . .	598
	1 & 2 Vict. c. 110 . .	202
	s. 13 .	208, 597
	s. 14 .	583
	s. 17 .	259
1839	2 & 3 Vict. c. 12 . .	152
	—— c. 23, ss. 1, 56	576
	—— c. xxxiii. .	72
	—— c. 37, s. 1 .	348
	—— c. 47, s. 54 .	567
	—— c. 71, s. 40 .	557
	—— No. 25 (India)	554
1840	3 & 4 Vict. c. xxvi. .	325
	—— c. 61, s. 15 .	579

A.D.		PAGE
1840	3 & 4 Vict. c. 65, s. 6	573
	—— c. 86 . 145,	179
	s. 20	575
	—— c. 113	138
1842	5 & 6 Vict. c. 35 442, 525, 539, 552, 556, 582,	584
	—— c. 39, s. 6 182,	193
	—— c. 45 . 436,	544
	ss. 2, 13	577
	s. 18	578
	s. 24	536
	s. 26	544
	—— c. 55	562
	—— c. 96, s. 18	360
	—— c. 97	506
	—— c. 122, s. 24	373
	5 Vict. No. 17 (Victoria), s. 39	139
1843	6 Vict. c. 18, s. 17	591
	s. 100	262
	6 & 7 Vict. c. 37, ss. 9, 15	553
	—— c. 68 264, *n.*,	564
	—— c. 73, s. 2	592
	—— s. 37	534
	—— c. 76, s. 1	579
	c. 79	399
1844	7 & 8 Vict. c. 12, s. 19 . 431,	584
	—— c. 32	535
	s. 11	563
	—— c. 101, s. 2	587
	s. 60	462
	s. 75	444
	—— c. 112, ss. 18, 62	260
	—— c. 113, s. 13	317
	—— No. 22 (British Guiana)	467
1845	8 & 9 Vict. c. 10	556
	—— c. 18	66
	s. 3	559
	s. 7	411
	s. 9	594
	ss. 22, 24	379
	ss. 49, 63 559,	590
	s. 68	562
	s. 92	560
	ss. 93, 94	227
	—— s. 127	595

A.D.		PAGE
1845	8 & 9 Vict. c. 18, s. 128	598
	s. 133	596
	—— c. 20 32, 46, *n.*,	245
	s. 1	245
	s. 3 . 232,	235
	ss. 6, 16 227,	562
	s. 7	411
	ss. 22, 24	379
	s. 34	174
	s. 46 . 165, 536,	561
	s. 68	255
	s. 77 . 570,	571
	s. 90	598
	s. 97	598
	s. 109 . 308,	309
	s. 112	218
	—— c. 25	506
	—— c. 83	194
	—— c. 100, s. 44	567
	—— c. 106	346
	—— c. 109, s. 18 . 375,	495
	—— c. 113, ss. 3, 5 65, *n.*,	502
	—— c. clxix. s. 104	578
1846	9 & 10 Vict. c. 66, s. 1	587
	s. 2	369
	—— c. 93	216
	—— c. 95, s. 60	538
	s. 128	552
	s. 139	253
1847	10 & 11 Vict. c. 14, s. 13	591
	—— c. 15	246
	—— c. 17	162
	s. 43	253
	—— c. 27, s. 74	258
	—— c. 89 . 552,	558
1848	11 & 12 Vict. c. 14	328
	—— c. 42	179
	s. 17	561
	—— c. 43, s. 1 205,	562
	s. 11	388
	s. 25 . 164,	444
	s. 35	592

A.D.		PAGE
1848	11 & 12 Vict. c. 63, s. 24	275
	—— c. 68, s. 19	551
1849	12 & 13 Vict. c. 10, s. 16	600
	—— c. 68	542
	—— c. 92, s. 2	16, 551
	—— c. 106	155, *n.*
	s. 66	137, *n.*
	s. 112	545
	s. 113	548
	s. 130	
	ss. 133–8	228
	s. 137	141
	s. 142	450
1850	13 & 14 Vict. c. 21, s. 1	
	s. 2	23, 57, 212, 238
	s. 3	57
	s. 4	176, 177
	s. 5	356, *n.*, 399
	s. 6	369
	s. 7	50, 66, 68, 501
	—— c. 35, s. 14	559
	—— c. 60, s. 23	592
	—— c. 61, s. 11	395
	s. 13	316
	s. 14	285
	—— c. xciv.	508
	—— c. 99, s. 14	65
	—— c. 100, s. 24	56, 60
	s. 30	184, 233, *n.*
1851	14 & 15 Vict. c. 28	541
	—— c. 36	560, 562
1852	15 & 16 Vict. c. 57, s. 4	332
	ss. 9, 10	157, 158
	—— c. 76, s. 223	313
	—— c. 83, s. 25	594
	—— c. 85	583
	—— c. 137, s. 17	595
	—— c. cliv. s. 27	596
	—— c. clvii. s. 46	534
	—— c. clx.	23
1853	16 & 17 Vict. c. xxii.	587
	—— c. 34	439, 556, 582

A.D.		PAGE
1853	16 & 17 Vict. c. 41	116, 541
	—— c. 51, s. 2	183, 184, 428, 442
	s. 17	122
	—— c. 81, s. 20	538
	—— c. 97, s. 87	574
	—— c. 112, s. 25	190, 214
	—— c. 113, s. 135	128, 129
	—— c. 119	341, 579
	—— c. 137, s. 66	539
1854	17 & 18 Vict. c. 31	590
	—— c. 34, ss. 1, 2	563
	—— c. 36, s. 7	534
		549
	—— c. 82, s. 8	564
	—— c. 102	123
	—— c. 104	229
	s. 2	234
	s. 7	37, *n.*
	s. 172	259
	s. 187	603
	s. 189	219
	s. 191	273
	s. 243	325
	s. 267	437
	s. 458	579
1855	18 & 19 Vict. c. 43, s. 1	600
	—— c. 55, s. 35	549
	—— c. 108, s. 9	129
	—— c. 119, s. 52	577
	—— c. 120, s. 72	257, 532
	s. 105	560
	s. 141	361
	s. 250	576
	s. 129	555
	—— c. 122, s. 19	561
	s. 27	590
	s. 72	576
	ss. 83, 85	593
1856	19 & 20 Vict. c. 16	137, *n.*
	—— c. 56, s. 24	410
	—— c. 60, s. 5	557
	—— c. lxx.	510
	—— c. 72, s. 102	450
	—— c. 104, s. 14	553
	—— c. 108, s. 2	396

A.D.		PAGE
1856	19 & 20 Vict. c. 120, s. 14.	216
	s. 16.	318
1857	20 & 21 Vict. c. 14, s. 27 .	122
	—— c. 27 . .	399
	—— c. 43, s. 2 .	281
	—— c. 60, s. 268	450
	—— c. 83, s. 1 .	482
	—— c. 85, s. 23 .	331
	—— s. 27 .	207
	s. 31 .	289
	s. 32 .	575
	—— c. clvii. s. 8 .	600
	—— c. xii. s. 230	599
1858	21 & 22 Vict. c. 98, s. 12 .	580
	s. 29 .	308
	s. 34 .	593
	s. 55 .	84
	—— c. 106 . .	137
1859	22 Vict. c. 35, s. 9 . .	579
	22 & 23 Vict. c. 21, s. 26 .	140
	—— c. 35, s. 32 .	374
	—— c. 61, s. 5 .	189
	s. 35 .	321
1860	23 & 24 Vict. c. 27, s. 6 .	554
	—— c. 34 . .	410
	—— c. 38, s. 12 .	374
	—— c. 125 . 246,	361
	—— c. 127, s. 28 .	586
	—— c. 144, s. 7 .	540
	—— c. 151 . .	488
1861	24 & 25 Vict. c. 10, s. 5 .	573
	s. 7 . 139,	195, 538
	—— c. 53, s. 1 .	587
	—— c. 55, s. 3 .	549
	—— c. 75, s. 4 .	225
	—— c. 96 . .	157
	s. 24 .	489
	s. 70 .	584
	s. 75 . 539,	589
	s. 76 .	588
	s. 90 . 554,	568
	s. 91 .	480
	—— c. 97, s. 51 .	568
	s. 52 .	583
	—— c. 98, ss. 13–16	27, 28, 110, *n.*
	s. 20	164, 548

A.D.		PAGE
1861	24 & 25 Vict. c. 98, s. 55 .	444
	—— c. 99, s. 1 .	561
	—— c. 100 . .	233
	s. 6 .	562
	s. 11 .	157
	ss. 14, 15	24
	s. 44 .	559
	s. 55 .	253
	s. 57 . 186,	483, 568
	s. 58 .	573
	—— c. 109, s. 21 .	99
	—— c. 134, s. 69 .	204
	s. 192	230, 545
	s. 230	578
	25 Vict. No. 1 (N.S. Wales) . s. 13 .	579
1862	25 & 26 Vict. c. 20, s. 1 .	555
	—— c. 35 . .	92
	—— c. 68, ss. 1, 4	535
	s. 6 .	492
	—— c. 87, s. 6 .	583
	—— c. 89 . .	229, 432, 434
	s. 4 .	331, 556
	s. 69 .	569
	ss. 80, 82	545
	s. 123 .	432, 441
	s. 163.	5
	s. 199 .	537
	—— c. 102, s. 77 .	576
	s. 9 .	575
	s. 106 .	582
1863	26 & 27 Vict. c. 29, s. 7 .	13, 6, 157, 158, 184, 562
	—— c. 51, s. 15 .	577
	—— c. 87, s. 14 .	354
	—— c. 92, s. 3 .	597
	—— c. 118, s. 14 .	581
1865	28 & 29 Vict. c. 48 . .	219
	—— c. li. s. 128	123
	—— c. 60 . .	538
	—— c. 63 .	306, *n.*, 339, *n.*
	s. 1 .	457
	s. 2	448, 458
	s. 3	80, *n.* 458

A.D.		PAGE
1865	28 & 29 Vict. c. 63, s. 4 .	485
	s. 6 .	37
	—— c. 84 . .	397
	—— c. 86, s. 1 .	466
	—— c. 121, s. 3.	599
	—— c. 126, s. 37	200
	—— c. cxlix. .	168
1866	29 & 30 Vict. c. 19 . .	159,
	—— 341, 532,	591
	—— c. 37, s. 5 .	554
	—— c. 39, s. 14.	420
	—— c. 114 .	341
1867	30 & 31 Vict. c. 3 . .	94,
	425, 447,	448
	—— s. 109.	588
	—— c. 69, s. 1 .	548
	—— c. 90, s. 1 .	557
	—— c. 102, s. 3 (4)	106,
	585	
	—— c. 118, s. 6 .	585
	ss. 12, 17	
	581	
	—— c. 127 . 541,	559
	—— c. 131, s. 25	251,
	538, 543,	
	552, 563	
	s. 40 .	559
	—— c. 134 .	540
	—— c. 142, s. 11	587
1868	31 & 32 Vict. c. 29 . 425,	448
	—— c. 37, ss. 2, 3	37, *n.*
	—— c. 41, s. 3 .	246
	—— c. 45 . .	542
	—— c. 50 . .	397
	—— c. 71, s. 3 .	203
	s. 9 .	346
	—— c. 72 . .	341
	—— c. 89, s. 1 .	211
	—— c. cvi. .	246
	—— c. 110, s. 8	553, 586
	—— c. 116 . 480,	544
	—— c. 119, s. 16	238
	s. 22	256
	—— c. 121, ss. 1,	
	15 . .	176
	s. 17	589,
	590	
	—— c. 122, s. 33	544
	—— c. 125, s. 26 .	581
	—— c. 125 .	537

A.D.		PAGE
1868	31 Vict. c. 36 (New Brunswick)	
	s. 4	561
1869	32 & 33 Vict. c. 19 . .	569
	—— c. 27, s. 8 .	399
	—— c. 30 . .	601
	—— c. 40, s. 1 .	288
	—— c. 42 . 80, 81,	*n.*
	—— c. 46 . .	223
	—— c. 51, s. 2 .	204
	—— c. 55, s. 9 .	134,
	209	
	—— c. 62, s. 5 .	535,
	542	
	s. 23	350
	—— c. 68, s. 3 .	286
	—— c. 70 . 255,	487
	—— c. 71, s. 6 (5)	
	155*n*,	
	186,	207
	s. 15 (5)	548
	s. 17 .	449
	s. 31 .	566
	s. 39 .	572
	s. 87 .	598
	s. 90 .	561
	s. 91 .	584
	s. 92 .	601
	—— c. 73 .	596
	—— c. 83, s. 15 .	578
	—— (Victoria Lands)	
	s. 98 . . .	110
1870	33 & 34 Vict. c. 14, s. 12 (5)	37,
	435	
	s. 17 .	543,
	550,	558
	—— c. 23 . .	351
	—— c. 29, s. 14 .	435,
	544	
	—— c. 30, s. 1 .	181,
	590	
	—— c. 33 . .	283
	—— c. 35, s. 2	384, 551
	—— c. 52, s. 3 .	580
	s. 5	302, *n.*
	313,	448
	s. 7 .	550
	s. 26.	558
	—— c. 75, ss. 83, 84	
	546	37, *n.*

A.D.		PAGE
1870	33 & 34 Vict. c. 78, s. 48	307, *n.*
	—— c. 79, s. 21	37, *n.*
	—— c. 90, s. 8	235
	—— c. 91	319
	—— c. 93	134
	—— c. 97	135, *n.*, 470
	s. 3	549, 590
	ss. 18, 19, 20	251
	s. 59	532
	sched.	548
1871	34 Vict. c. 4, s. 2	591
	—— c. 43, s. 29	262
	34 & 35 Vict. c. 28	448
	—— c. 31	584
	—— c. 70, s. 5	37, *n.*
	—— c. 79	274, 567
	—— c. 91, s. 1	92
1872	35 & 36 Vict. c. 15	311
	—— c. 33	136
	—— c. 74, s. 2	253
	—— c. 76	266, 570
	—— c. 91	440
	—— c. 94, s. 3	588, 595
	s. 13	578
	s. 16	105, 125, 398, 556, 594
	s. 45	581
1873	36 & 37 Vict. c. 38, s. 3	575
	—— c. 48, s. 28	148
	—— c. 60	448, 542, 550
	—— c. 66	28
	s. 19	575
	s. 25	534
	s. 25 (6)	331
	s. 47	546, 564
	s. 49	557
	s. 100	577
	—— c. 87, s. 48	536
	—— c. 88, s. 2	599, 600
1874	37 & 38 Vict. c. 15	341
	—— c 49, s. 10	573
	—— c. 62	22, 269
	s. 1	533, 601

A.D.		PAGE
1874	37 & 38 Vict. c. 78, s. 2	49
	—— c. 85, s. 9	558
1875	38 & 39 Vict. c. 22, s. 9	37, *n.*
	—— c. 38	448
	—— c. 40, s. 1	152, 154, 155
	—— c. 50, s. 6	139, 535
	—— c. 53	448, 458
	—— c. 55, s. 47	573
	s. 91	574
	s. 114	553
	s. 149	593, 600
	s. 157	233, 593, 602
	s. 174 (1)	73, 106, 114
	s. 188	300, *n.*
	s. 193	265
	s. 204	563
	s. 211	568
	s. 243	25
	s. 257	548
	s. 275	576
	s. 308	272
	s. 343	395
	—— c. 63, s. 25	602
	—— c. 66	246, 341
	—— c. 77	28
	s. 4	124
	s. 10	411
	—— c. 90	325, 565
	s. 4	551
	s. 10	568
	—— c. 91, s. 10	280
	(N.S. Wales Lands) s. 31	182
1876	39 & 40 Vict. c. 10	315
	—— c. 36	ss. 188, 189 110, *n.*
	ss. 268, 272	467, *n.*
	s. 289	446
	sched. II	541
	—— c. 45	565
	—— c. 61	22
	s. 34	22, 371, 577
	s. 36	577

A.D.		PAGE
1876	39 & 40 Vict. c. 79, s. 34 .	3
	—— c. 80, s. 13 .	542
1877	40 & 41 Vict. c. 21, s. 4 .	567
	s. 51	37, *n.*
	s. 57	541, 567
	—— c. 53, s. 58	37, *n.*
	s. 72	397, *n.*
	—— c. 54	208
	—— c. 56	545
	—— c. cxxxv.	130, 131
1878	41 Vict. c. 15, s. 13 . .	114, 537, 551, 596
	41 & 42 Vict. c. 26, s. 5	552
	—— c. 31, s. 4 .	568
	s. 6 .	535
	ss. 8, 9	532
	s. 10.	574, 587
	—— c. 32, s. 16	592
	—— c. 33	598
	—— c. 38, s. 11 .	69, 207
	—— c. 49	407, 602
	s. 70	584,
	—— c. 73 .	70, 424, 430
	—— c. 77, s. 13	567, 588
1879	42 & 43 Vict. c. 49, s. 45 .	56
	—— c. 64, s. 22 .	462
1880	43 & 44 Vict. c. 9 . .	597
	—— c. 42 . .	3
	s. 1 .	538, 585, 599, 602
	s. 4 .	575
	s. 7 .	548, 573
1881	44 Vict. c. 22, s. 3 .	181, 232
	—— c. 25 . . .	420
	—— c. 69, s. 21 .	600
	44 & 45 Vict. c. 41 .	32, 377, 565
	—— c. 58, ss. 94, 104	543
	—— c. 59, s. 6 .	410
	—— c. 61 . .	373, 573, 595

A.D.		PAGE
1882	45 Vict. c. 9, s. 4 .	37, 53, 65
	—— c. 25, s. 15 . .	391
	45 & 46 Vict. c. 38, s. 58 .	362, 565
	—— c. 40 .	216
	—— c. 43 .	22, 266, *n.*, 267, 586
	—— c. 61 . .	344, 345, 442, 555, 573
	—— c. 75 .	8, 22, 568
	—— c. ccxxii. .	131
1883	46 Vict. c. 3 . . .	424
	46 & 47 Vict. c. 49, s. 3	399
	—— c. 52, s. 4 .	543, 553, 555, 583
	s. 6 .	545, 552
	s. 9 .	589
	s. 17 .	547
	s. 18 .	548
	s. 28 (2), (3),	541
	s. 37 .	566
	s. 40 .	354
	s. 44 .	597
	s. 46 .	322
	s. 53 .	200
	s. 55 .	582
	s. 59 (1 *b*)	137, *n.*, 158, *n.*
	s. 125 (10)	105
	s. 140	37, *n.*
	ss. 146, 149 .	335, 336, 393 396
	s. 168	450 589, 591
	s. 169	336, 588
	—— c. 57, s. 5 .	537
	s. 32 .	583
	s. 60 .	550
	s. 64 .	536
	s. 65 .	586

A.D.		PAGE
1883	46 & 47 Vict. c. 61, s. 7	550
	46 Vict. No. 17 (N.S. Wales) s. 54	456
1884	47 & 48 Vict. c. 41	110
	—— c. 76, s. 15, 37, *n.*	
1885	48 & 49 Vict. c. 3, s. 5	597
	—— c. 51	589, 601
	—— c. 62, s. 12	561
	—— c. 69, ss. 5, 6, 7	485, *n.*
	—— c. clxv.	530
	c. cxcvi. s. 111	573
1886	49 Vict. c. 1 (Canada)	6, *n.*
	—— c. 2 (do.)	37
	49 & 50 Vict. c. 2	69, 207
	—— c. 5	558
	—— c. 9	582
	—— c. 11	332, *n.*
	—— c. 15, s. 3	534
	—— c. 22	569, 580
	—— c. 25, s. 17	560, 561, 566
	—— c. 29, s. 34	546
	—— c. 33, s. 11	536, 566, 578, 582
	—— c. 38, s. 9	580
	—— c. 48, s. 26	598
	—— c. 52, s. 1	217
	—— c. xcix.	526
1887	50 & 51 Vict. c. 28	549, 598
	—— c. 29, s. 6	554
	—— c. 35	385, *n.*
	—— c. 48	58
	—— c. 55	193
	s. 8.	343
	s. 14 (1)	535
	s. 18	544
	s. 38	603
	—— c. 62, s. 1 (2)	58
1888	51 & 52 Vict. c. 8, s. 4	558
	—— s. 8	534
	—— c. 25, s. 53	37, *n.*
	—— c. xxv.	162
	—— c. 41, s. 11 (1)	588
	s. 35	236
	s. 75	29, 187

A.D.		PAGE
1888	51 & 52 Vict. c. 43	22
	s. 27	533
	s. 56	556, 559
	s. 65	112, 147, *n.*
	s. 93	564
	ss. 118, 119	306
	s. 120	148
	s. 127	306, *n.*
	s. 164	306
	—— c. 45, s. 28 (1)	59, *n.*
	—— c. 47, s. 1 (2)	59, *n.*
	—— c. 51	565
	—— c. 52	537
1889	52 & 53 Vict. c. 4. s. 8	535, 542
	—— c. 5, s. 3	566
	—— c. 7	381
	s. 18	332
	—— c. 8, s. 8	534, 571
	—— c. 10	574
	—— c. 11	560
	—— c. 12, s. 7	545, 556
	—— c. 14	558, 574
	—— c. 21, s. 35	569, 600, 602
	—— c. 24, s. 2	65, 339, 389
	—— c. 26	448
	—— c. 29, s. 2	577
	—— c. 30, s. 12	533
	—— c. 32, s. 9	563, 592, 600
	—— c. 37, s. 11	148
	—— c. 40, s. 17	577, 589
	—— c. 42, s. 15	332
	—— c. 44, s. 15	350
	s. 17	580, 593
	—— c. 45, s. 1	551, 557, 580
	—— c. 48, s. 18	581
	—— c. 49	593
	—— c. 52, s. 7	533, 535

A.D.		PAGE
1889	52 & 53 Vict. c. 52 .	556, 589
	—— c. 57, s. 5	309, *n.*
	s. 8 .	541, 551, 571, 574 579, 592
	s. 9 .	350, 424 448 535
	—— c. 59, s. 8 .	321
	s. 17 (5)	437, *n.*
	—— c. 62, s. 4 .	534, 544
	—— c. 63 .	3, 56, 65, 66
	s. 1 .	176
	s. 2 (1)	176 494
	(2)	176, 493, *n.*
	s. 3 .	177 565
	s. 4 .	178 544
	s. 5 .	178,
	s. 6 .	544
	s. 7 .	37, *n.* 591
	s. 8 .	173, 238
	s. 9	50, 66, 67, 68, 501, 502
	s. 10 .	387
	s. 11 .	369, 399
	s. 12 (1)	538
	(2)	599
	(3)	589
	(4)	532
	(5)	582
	(6)	553
	(7)	553
	(8)	536
	(9)	567
	(10)	539
	(11)	581
	(12)	540, 603

A.D.		PAGE
1889	52 & 53 Vict. c. 63, s. 12	540,
	(13)	603
	(14)	539
	(15)	553
	(16)	585
	(17)	572
	(18)	535
	(19)	535
	(20)	542
	s. 13 .	32, 444
	(2)	545
	(4)	545
	(5)	534
	(6)	615
	(7)	615
	(8)	615
	(9)	615
	(10)	615
	(11)	595
	(12)	579
	(13)	58, 579
	(14)	545, 585
	s. 14 .	588
	s. 15	178, 572
	s. 16 (1)	558
	(2)	178
	(3)	558
	(4)	179, 444
	s. 18 (1)	537
	(2)	537
	(3)	540
	(4)	537
	(6)	558
	(7)	540
	s. 19	178
	s. 20 .	178
	s. 21 .	178
	s. 22 .	177
	s. 23 .	444
	s. 24 .	609
	s. 28 .	555, 571, 591
	s. 29 .	401
	s. 30	37, *n.*, 401

A.D.		PAGE
1889	52 & 53 Vict. c. 63, s. 31	171, *n.*, 232, *n.* 290, 303, 312
	s. 32	303, 315
	s. 33 .	232, 349, 250, 493
	s. 34 .	177, 181
	s. 35 (1)	56, 57 58, 65
	(2)	53
	(3)	333
	s. 36 (1)	177
	(2)	365
	s. 37 .	303, 366
	s. 38 .	147 242, 334, 335, 339, *n.*, 342, 343, 392
	s. 39 .	175, 303, 349
1889	52 & 53 Vict. c. 63, s. 40 .	175
	s. 41 .	57, 238, 369
	—— c. 66, s. 11 .	148, 566
	—— c. 69 .	535, 572
	s. 7 .	583, 584
	—— c. 72, s. 16 .	566, 574,
	—— c. 76, s. 4 .	566, 568
	s. 8 .	596
1890	53 & 54 Vict. c. 39	69, 442
	—— c. 45, s. 23 .	580
	—— c. 67, s. 29 .	58
	—— c. 70, ss. 38, 98	66, *n.*
	s. 53 .	565
1891	54 & 55 Vict. c. 3, s. 5 .	577
	—— c. 8, s. 12 (3)	58, 59, *n.*
	—— c. 21 . .	446
	—— c. 39, s. 119 .	407
	—— c. 42, s. 20 .	580
	—— c. 56 .	53, *n.*
	—— c. 69 . .	446
	—— (Victoria Interpretation)	175, *n.*

PRELIMINARY.

CHAPTER I.

INTRODUCTORY.

	PAGE
1. Objects of work	1
2. Distinction between rules of law and of construction	2
3. Do. between interpretation and casuistry	3
4. Method adopted to index rules and avoid theory	4
5. Importance of subject due (1) to necessity of knowing the rules	4
(2) to difference of rules for construction of British statutes from those relating to other instruments	5
(a) Scottish Acts	6
(b) Colonial Acts	6
(c) Contracts	7
(d) Wills	9
6. Text-books on the subject	10
7. Classification of cases upon statutes	11
8. Strict and liberal construction	13
9. Extent and effect of judicial authority to interpret statutes	14

1. THE object of this treatise is, in the first place, to set forth in a methodical way the legal rules now in force(*a*) for the interpretation of British statutes, and also, having ascertained how statutes are to be interpreted, to explain their effect and operation. The word "methodical" is used advisedly, because the two most common characteristics of treatises on legal subjects are (as it has been Objects of work.

(*a*) Rules for the construction of statutes formerly adopted, but now rejected or forgotten, are not fully dealt with. Such rules are alluded to up and down the reports; for instance, in *Miller* v. *Salomons* (1852), 7 Ex. 475, at p. 559, Pollock, C.B., says as to a comment of Lord Coke upon 13 Edw. 1, st. 4 (*Circumspecte agatis*), "I do not believe such a construction of a statute would be tolerated in modern times." See also *Entick* v. *Carrington* (1765), 19 St. Tr. 1060; Wilberforce, Construction of Statutes, 217.

frequently pointed out by critics) an absence of method, and a perfunctory citation of an undigested mass of references, with little or no regard to the principles enunciated in the cases referred to, with "an abundance of that index lore which turns no student pale."(*b*) The author of this treatise has endeavoured to bear in mind, while writing the following pages, that "the pressing need of our own time is to get the law consolidated and set in order, and that accuracy must come for the present before elegance, and even before popularity;"(*c*) and he has made it a rule (*d*) never to refer to a case without either quoting a *dictum* from it, or stating shortly the point decided. This treatise professes to be, not a digest of all the cases in the books in which *dicta* are to be found on the subject cited, but a selection from those which may be considered the leading cases on the points discussed, or which contain judicial *dicta* of the greatest weight and pertinence, and it has been deemed better to seek authority at its source in actual decisions in deference to judicial opinion, for, as was said by Lord Hatherley in *Garnett* v. *Bradley* (1878), 3 App. Cas. 950: "Instead of taking the law as stated by a text-writer as to repeal by implication," a judge prefers "taking the law as it is laid down in a well-known case, which gave rise to a considerable amount of discussion."

Distinction between rules of law and rules of construction.

2. Mr. Elphinstone has pointed out(*e*) with reference to deeds the distinction between rules of law and rules of construction. The former exist independently of the circumstances of the parties to a deed, and are inflexible and paramount to the intention expressed in the deed.

(*b*) Per Bacon, V.C., in *London Financial Association* v. *Kelk* (1884), 26 Ch. D. 107.

(*c*) Saturday Review, 26 May 1879, p. 645; and see per Sir H. Thring, "Simplification of the Law," Quarterly Review, Jan. 1874.

(*d*) This rule is not observed in the chapter on the Retrospective Effect of Statutes, Part II. ch. v. The decisions on this branch of the subject turn so much upon the wording of the particular statute under consideration, that it appeared desirable to append a list of cases, any of which might possibly be in point when the question arises upon some future occasion.

(*e*) On Interpretation of Deeds, Pref. p. 5; see Conveyancing (3rd ed.), p. 29, and see 1 Law Quarterly Review, 466.

They cannot be said to control the construction of a statute, inasmuch as a British statute is itself part of the supreme law of the land and overrides any pre-existing rules with which it is inconsistent. A rule of construction, whether of will, deed, or statute, is not inflexible, and with reference to a statute must always be cast in the following form :

"If a given proposition or phrase A may mean B, C, or D, it must be taken to mean B when occurring in an Act relating to a particular subject, unless the context (or the circumstances under which the Act was passed so far as they may be proved or judicially noticed) exclude that meaning."

In recent legislation this description of a rule of construction is substantially recognised both by the form in which interpretation clauses are usually drafted and by the Interpretation Act, 1889, which, though mainly intended as an aid to the draftsmen of future Acts and to the expurgation and revision of the statute book, has given statutory authority to a series of rules of construction, not as being inflexible rules of law, but as presumptively applicable "unless a contrary intention appears." 52 & 53 Vict. c. 63.

3. There is a distinction sometimes forgotten between the judicial construction of statutes and mere casuistry or metaphysics. In some recent decisions the Courts have been tempted to discuss the limits of free will in deciding what voluntary meant in a revenue Act,(*f*) and in construing the Roman maxim *volenti non fit injuria* as applied to the Employers' Liability Act, 1880.(*g*) Distinction between interpretation and casuistry.

Foreknowledge and the foundations of rational belief came in question in *Penny v. Hanson* (1887),(*h*) 18 Q. B. D. 478, where the Court had to decide whether an astrologer could sanely or honestly believe in his power to tell fortunes.

(*f*) *Re New University Club* (1887), 18 Q. B. D. 720.

(*g*) *Smith* v. *Baker* (1891), App. Cas. 325. The workman exposes himself to risk ἑκὼν δέκοντι γε θυμῷ.

(*h*) See 3 Law Quarterly Review, 359.

And in *Reg. v. Clarence*(*k*) and *Reg.* v. *Dee* (*l*) the grammar of assent on the part of married women to sexual intercourse has been somewhat casuistically discussed by the many judges before whom those cases were heard.

This treatise not theoretical, but mere index of rules.

4. "There are two very clear divisions into which law books may be divided—namely, into those which treat of the theory of a certain subject, and those which contain the actual positive rules in force," deduced from statutes and case law. The present treatise professes to come under the second category, being designed for the use of those readers, be they students or practitioners, who wish to know the rules by which statutes are interpreted, and the effect which statutes produce upon persons and things in general. "The proper mode of writing a law book of this kind," it has been also said, "is undoubtedly to place the subject-matter in a series of distinct propositions, then, if each of these propositions be clearly understood, they can be applied to various different sets of facts, and form a well-defined basis for legal arguments."(*m*) This is what has been aimed at in the following pages, and this work claims to be nothing more than an index, by means of which persons may be enabled readily to get at the information or *dictum* they require.

Importance of subject due (1) to necessity of knowing the rules.

5. The importance of collecting together and succinctly stating the "legal rules for the interpretation of British statutes,"(*n*) arises in the first place from the fact that as Sir William Scott said in *The Charlotta* (1814), 1 Dods. Adm. 392, "the subjects of this country are bound to

(*k*) (1888) 22 Q. B. D. 23. Casuistry has also been applied to the common law of larceny in *Reg.* v. *Ashwell* (1885), 16 Q. B. D. 190, and of libel in *Reg.* v. *Adams* (1888), 22 Q. B. D. 76.

(*l*) (1884) 14 L. R. Ir. 468, 15 Cox Cr. Cas. 579.

(*m*) Spectator, Sept. 23, 1876, p. 1191.

(*n*) "Our province," said Lord Westbury, in *Williams* v. *Bishop of Salisbury* (1863), 2 Moore P. C. N. S. 376, 424, "is to ascertain the true construction of those articles of religion according to the *legal rules for the interpretation of statutes*." A similar phrase was adopted by Lord Blackburn in *Gairdner* v. *Lucas* (1878), L. R. 3 App. Cas. 603: "we must construe the Act," said he, "according to the legal rules of construction." And *in Fletcher* v. *Hudson* (1880), 5 Ex. D. 293, Brett, L.J., said, "We must construe Acts of Parliament according to the well-recognised rules of construction."

construe rightly the statute law of the land; to aver in a court of justice that they have mistaken the law is a plea no Court is at liberty to receive."(*o*)

Another reason why it is of importance to know these rules is, that while all British statutes "must," as Bramwell, B., said in *Att.-Gen.* v. *Sillem* (1863), 2 H. & C. 537, "be construed on the same principles," whether the objects of the statute be (like the Foreign Enlistment Act, 59 Geo. 3, c. 69) of the utmost national importance, or whether the Act be merely an Act "regulating the merest points of practice or some such trifling matter," those principles are not wholly the same as those which govern the construction either of Scotch or colonial statutes, or of other written instruments, such as wills, deeds, or parol agreements.

It may be said that the rules for the construction of all written instruments, whether of a public or private character, are almost, if not entirely, the same. Sir George Jessel (*p*) and Lord Justice Bowen (*q*) have both expressed this view; but while it is valuable to correct any tendency to set up narrow distinctions, documents expressing the will of a Sovereign Legislature, and the result of political strife and compromises, can never be regarded in quite the same light as private documents, however solemnly prepared and authenticated.

(2) To difference of rules for construction of British statutes from

No doubt, there are certain general principles, "on which," as Lord Blackburn said in *River Wear Commissioners* v. *Adamson* (1877), L. R. 2 App. Cas. 763,(*r*) "the

(*o*) In *Cooper* v. *Phibbs* (1867), L. R. 2 H. L. 170, Lord Westbury said, "In the maxim, *Ignorantia juris haud excusat*, the word *jus* is used in the sense of denoting general law, the ordinary law of the country. But when the word *jus* is used in the sense of denoting a private right, that maxim has no application. Private right of owner may be the result of matter of law, but if parties contract under a mutual mistake as to their respective rights, that agreement is liable to be set aside as having proceeded upon a common mistake." Similarly, in *Spread* v. *Morgan* (1864), 11 H. L. C. 588, at p. 602, Lord Westbury observed that this maxim will not be carried so far as to expect every person to know the rules of equity on a subject, for instance, like that of election. "This Court has power," said Turner, L.J., in *Stone* v. *Godfrey* (1854), 5 De G. M. & G. 76, at p. 90, "to relieve against mistakes in law as well as against mistakes in fact." On this subject see Pollock on Contracts (5th ed.), p. 419.

(*p*) Parl. Rep. 1875, No. 208, p. 88.

(*q*) In *Curtis* v. *Stovin* (1889), 23 Q. B. D. 513.

(*r*) See also *Caledonian Ry.* v. *North British Ry.* (1881), L. R. 6 App. Cas. 26.

those relating to colonial or Scotch Acts or to contracts or wills.

courts of law act in construing instruments in writing, and a statute is an instrument in writing. In all cases the object is to see what is the intention expressed by the words used. But, from the imperfection of language, it is impossible to know what that intention is without inquiring further, and seeing what the circumstances were with reference to which the words were used, and what was the object appearing from those circumstances which the person using them had in view." But at the same time we find that with regard to each particular kind of written instrument there are certain special rules which govern their construction.

Scottish Acts.

The statute law of Scotland prior to the Union is not construed in precisely the same way as that of England. "The law of Scotland," said Lord Eldon, in *Johnstone* v. *Stott* (1802), 4 Paton (Sc. App.) 274, at p. 285, "admits of more departure from the letter of its statutes than we have any idea of in this country. We have seen that the Courts of that country superadded provisions to their statutes, and they also do not scruple to enforce their statutes at times as gently as the statutes admit of being interpreted. We see here, too, that a Scotch statute may be lost by desuetude."

Colonial Acts.

With regard to colonial Acts,(*s*) we find that in *H.M.'s Procureur* v. *Bruneau* (1866), L. R. 1 C. P. 181, 191, where the question to be decided was as to the meaning of a certain word in the Civil Code of the Mauritius, the Judicial Committee had in the first place "to ascertain the general principles by which the [French] Courts are governed in the construction of the Code;" and, having ascertained these principles, they then had to apply them in interpreting the particular word in dispute. But where the law of the Colony is based on the common or statute law of England, no reason exists for any exceptional rule.

(*s*) But in *Trimble* v. *Hill* (1880), L. R. 5 App. Cas. 344, the Judicial Committee held that in colonies where an enactment has been passed which is similar to an English enactment, if the English enactment has been judicially interpreted by an English court of law, the colonial courts should govern themselves by that English judicial interpretation, when called upon to construe the colonial enactment. With regard to the interpretation of Canadian Acts, see the Interpretation Act, 49 Vict. c. 1 (1 Revised Statutes of Canada, p. 1).

Contracts

Again, in the construction of a contract, there cannot be said to be any rules of law applicable, but "the governing principle is to ascertain the intention of the parties to the contract through the words they have used,"(*t*) which words "are to be taken in the sense which the common usage of mankind has applied to them in reference to the context in which they are found."(*u*) It is seldom, in construing "mercantile contracts, that any technical or artificial rule of law can be brought to bear on their construction; the question really is the meaning of the language,"(*x*) and "the grammatical meaning is, as in other cases, the meaning to be adopted, unless there be reason to the contrary."(*y*)

The main rules of construction applicable to contracts are well laid down by Mr. Elphinstone (Conveyancing, 3rd ed. p. 29; and 1 L. Q. R. 466) with reference to deeds:—

> *First.* "When the words used in an instrument are in their primary meanings unambiguous, and when such meanings are not excluded by the context, *and are sensible with respect to the circumstances of the parties to the instrument at the time of execution*, such primary meanings must be taken to be those in which the parties used the words." This, with the modifications already indicated, is applicable to statutes.
>
> *Second.* "Extrinsic evidence is admissible for the purpose of determining the primary meanings of the words employed, and for no other purpose whatever."
>
> *Third.* "Where the primary meaning of a word is excluded by the context, we must affix to that word such of the meanings as it may properly bear, as will enable us to collect uniform and consistent intentions from the whole instrument."

(*t*) In *M'Connel* v. *Murphy* (1873), L. R. 5 P. C. 203, 218.
(*u*) In *Lord* v. *Commissioners of Sydney* (1858), 12 Moore P. C. 497.
(*x*) *M'Connel* v. *Murphy* (1873), L. R. 5 P. C. at p. 219.
(*y*) Per Jessel, M.R., in *Southwell* v. *Bowditch* (1876), 1 C. P. D. 374, at p. 376.

"In these rules, by primary, sometimes called literal, meaning is intended, not necessarily the primary etymological (*i.e.*, literary or dictionary) meaning, but either—

"(1) The meaning usually affixed to the words at the time of execution by persons of the class to which the parties to the instrument belonged; or,

"(2) The meaning in which the words must have been used by the parties, having regard to the circumstances at the time of execution; or,

"(3) The meaning which it can be conclusively shown that the parties were in the habit of affixing to them.

"It follows that the primary meaning of a technical word in an instrument relating to the art or science to which it belongs is its technical meaning. Thus, in a legal document, wherever a word occurs which in law bears a technical meaning, that technical meaning, and not the popular meaning, if any, is the primary meaning for the purpose."

Decisions upon the construction of deeds and contracts are not further referred to this work, because they are rarely of any assistance in construing an Act, save so far as they evidence contemporary exposition or the practice of conveyancers as interpreting a statute long in force. The difficulty of applying such cases is, that the deeds may be drafted to evade the Act, or with intentions quite irrespective of the Act in question.

In *Reid* v. *Reid* (1886), 31 Ch. D. 405, the Court rejected as useless for the construction of the Married Women's Property Act, 1882, decisions as to the meaning of covenants (*z*) in marriage settlements, on the ground (p. 406) that such cases must be approached with the presumption that they were intended to exclude the husband from acquiring property if his wife should fall into possession during coverture; whereas, in dealing with the Act, no such presumption arose. And in *Midland Railway Co.*

(*z*) See per Fry, L.J., at p. 410.

v. *Robinson* (1889), 15 App. Cas., in construing with the word "mines" in the Lands Clauses Act, Lord Herschell said (p. 27):—"In dealing with this case, it must be remembered that all that your lordships have to do is to interpret the words of the enactment, and not to lay down, even if it were possible, any general rule as to the interpretation of the word 'mines.' I doubt whether much assistance is to be obtained from cases in which a construction has been put upon that word in instruments embodying merely agreements between the parties to them, unaffected by any statutory enactment. In such agreements, in the absence of a distinct indication of the contrary intention, it is always to be assumed that the reserved mines are only to be worked in such a manner as is consistent with the surface remaining undisturbed."

Wills. With regard to the construction of wills, although the rules as to the interpretation of statutes and of wills are, to a certain extent, analogous, and although some judges have stated that, in their opinion, "a will, especially one of personal property, ought to be construed according to the rules of construction applicable to all documents and not according to artificial rules,"(*a*) there are to be observed "many and striking discrepancies, such, for instance, as the rules which govern the evidence to be admitted in explaining ambiguities in wills, the arbitrary principles which have been adopted for their construction, and the vague discretion exercised by the Courts under the name of the doctrine of *cy-près*."(*b*)

Decisions on the construction of wills are of little or no value in interpreting statutes. They are far too numerous in the law reports, and the rules of construction laid down almost deserve the description of Lord

(*a*) Blackburn, J., in *Grant* v. *Grant* (1870), L. R. 5 C. P. 728, approved his statement in Blackburn's Contract of Sale, p. 49, "A will is the language of the testator, soliloquising, if one may use the phrase, and the Court, in construing his language, may properly take into account all he knew at the time, in order to see in what sense the words were used." And in *Biddulph* v. *Lees* (1858), E. B. & E. 289, at p. 317, Martin, B., cited with approval the rule for the construction of wills enunciated by Lord Kingsdown in *Towns* v. *Wentworth* (1858), 11 Moore P. C. 526, at p. 543; see also *Re Bedson's Trusts* (1835), L. R. 28 Ch. D. 525, Brett, M.R.

(*b*) Sedgwick's Statutory Law (2nd ed.), p. 223.

Halsbury,(c) "as a mode of arguing in a vicious circle." But "such *dicta* are uttered under the extreme provocation of having irrelevant cases cited, and must not be too curiously scanned. What they really mean is, that presumptions of meaning are not to be pressed too far. A rigid rule of construction is a contradiction in terms. If it does not yield to an evident contrary intention it is a rule of law and not of construction, as Mr. Vaughan Hawkins pointed out many years ago."(d)

Text-books on the subject.

6. Although it is a matter of every-day importance that the rules which regulate the interpretation of statutes should be as widely known as possible, it is not always so easy to ascertain what those rules are. It

(1) English.

seems strange that, considering the multiplicity of law books, until very recent years, little has been written on this particular subject. Sir John Comyns, Viner, and Matthew Bacon, in their well-known digests of the laws of England, have collected together (Com. Dig. tit. Parliament, R., and Bacon's Abr. tit. Statute) the principal rules on the subject which are to be found in Lord Coke's Institutes and, in the older reports, more especially Plowden's. But neither these collections of rules nor the treatise which is most generally recognised as the best authority on the subject, Dwarris on Statutes, can be said to have dealt completely with the subject, and this last-mentioned treatise has not been re-edited for more than thirty years.

Since this work was begun, two English law-books of high merit on the Interpretation of Statutes have been published by Sir P. B. Maxwell and Master Wilberforce, and while this edition was in progress, the valuable Judicial Dictionary of Mr. Stroud came out, which contains many judicial interpretations of statutory terms. It is not primarily concerned with statutes, but is a valuable epitome of decided cases.

Besides these special works it is now usual in the indices to the various series of law reports to include

(c) *Leader* v. *Duffy* (1888), 13 App. Cas. 301.
(d) Sir F. Pollock, 4 Law Quarterly, 488.

under the head WORDS all judicial definitions of legal terms. Thus, by the industry of many workers, are being laid the foundations of a lexicon to the statute law of this country.

(2) American.

The interpretation of statutes has been ably treated in America by the late Mr. Theodore Sedgwick. The object of his treatise(*e*) is, he tells us,(*f*) "to explain the technical terminology that belongs to constitutional and statute law, to give their classification, describe their incidents, and finally to define the mode of their application; to declare the rules of interpretation by which they are, in cases of doubt, to be expounded and to illustrate these rules by the light of adjudged cases." This treatise has been of the greatest assistance to the present writer, and he has not scrupled to quote from it freely; for, as Mr. Sedgwick points out,(*g*) "the rules governing the application of statutes may, as a general proposition, be considered the same in both countries."(*h*) But at the same time, as Mr. Sedgwick also reminds his readers, "the head of constitutional law is wholly peculiar to American jurisprudence" (as our Legislature is, as we shall presently see, unfettered by any conditions as to the laws it makes), consequently this subject may be discussed in England from a somewhat simpler point of view.(*i*)

Classification of cases upon statutes.

7. "It seldom happens," said the Court in the case of *Scott* v. *Legg* (1876), L. R. 2 Ex. D. 42, "that the framer of an Act of Parliament has in contemplation all the cases that are likely to arise under it, therefore the language used

(*e*) A Treatise on the Rules which Govern the Interpretation and Construction of Statutory and Constitutional Law (2nd ed.), by John Norton Pomeroy, LL.D. Baker, Voorhis & Co., Publishers, 66 Nassau Street, New York. 1874.

(*f*) Pp. 17, 19; and see p. 20.

(*g*) P. 19. See also pp. 173–186, where the power of the judges to construe and interpret laws is elaborately discussed.

(*h*) In *United States* v. *McRae* (1867), 3 Ch. App. 79, at p. 86, Lord Chelmsford said, as to an Act of Congress, the meaning of which was being discussed, "It is not suggested that there are any words in the Act of Congress which bear a peculiar meaning different from the ordinary one, or that the Acts of an American Legislature have a construction peculiar to themselves. I do not see that there is any impediment to an English judge with the Act of Congress before him construing it for himself, without further aid, just as he would an English Act of Parliament."

(*i*) See Dicey, Law of the Constitution (3rd ed.), p. 425.

seldom fits every possible case;" consequently the difficulties as to the construction of statutes "consist chiefly in the application to various and complicated circumstances of words which are of a wide and general meaning,"(*k*) and a very large proportion of the cases which turn upon the construction of Acts of Parliament arise from the fact that the particular point under consideration was not present to the mind of the draftsman when he drew the Act.(*l*) Such cases, therefore, are simply decisions upon the language used in the particular statute as applied to the particular case under consideration, and can be only to a very slight degree useful for the purpose of elucidating the general rules upon which statutes are to be construed.(*m*)

The cases upon statutes, which yearly occupy a larger portion of the reports, fall into three classes.

(1) Those which lay down general rules of construction.

(2) Those which decide on the applicability of the established rules to particular enactments; and

(3) Those which decide whether the accepted construction of an enactment includes or excludes a particular set of facts.

When the meaning of an act is settled, a merely illustrative decision may require record but its details are usually unimportant,(*n*) and those decisions alone are of general importance which accurately and succinctly state the general rules of construction and point out the proper methods of applying them to each enactment which calls

---

(*k*) Per Kelly, C.B., in *Att.-Gen.* v. *Cecil* (1870), L. R. 5 Ex. 263, at p. 270.
(*l*) Per Denman, J., in *Clementson* v. *Mason* (1875), L. R. 10 C. P. 209, at p. 221.
(*m*) See *Fishburn* v. *Hollingshead* (1891), 2 Ch. 371; 6 Law Quarterly Review, 301.
(*n*) It may be observed that Mr. Sedgwick, in his work on this subject (pp. 254, 311, 316), cites and comments upon many cases where the only point to be determined was how to apply a particular enactment to a particular set of circumstances, with a view to proving that the Courts still decide cases upon what is called the equity of the statute, but it will be found, if these cases are examined, that no reasons are given by the Courts for those decisions, and that in fact they merely decided the cases as they considered best under the particular circumstances; for, as Hannen, J., observed in *R.* v. *Surrey* (1871), L. R. 6 Q. B. 93, "the intention of the Legislature must depend to a great extent upon the particular object of the statute that has to be construed." See also per Lord Esher, M.R., in *Lucas* v. *Dixon* (1880), 22 Q. B. D. 359.

for judicial interpretation, and the limits of their applicability. It is necessary to keep in view the caution of Cotton, L.J., in *Reid* v. *Reid* (1886), 31 Ch. D. 405.

"The question for our consideration is, what is the true meaning of the language which the Legislature has employed? Cases on the construction of other Acts or instruments generally give very little help to the Court, but if there is any principle laid down we ought not to disregard them in considering a different act or instrument."

To attempt to collect all these decisions would be, if not absolutely useless, at any rate a work of great labour with very little result, for, in a large number of such cases the statutes in question have been repealed, and, where they are still in force, the particular points in dispute are extremely unlikely to occur again, and the decisions are easily found in treatises relating to the branch of law dealt with by the particular act. The author has therefore confined himself to the enunciation of general principles of construction, and has not attempted to collect all the decisions of the Courts upon mere words. But in the chapter on The Interpretation of Words, he has collected such judicial *dicta* as seem to explain on what principles the meaning of words used in statutes is to be arrived at, and he has also given in an Appendix a list (*o*) of such words as are often to be met with in statutes and have received judicial interpretation.

Strict and liberal construction.

8. It has been usual in treatises of this kind to have a chapter on strict and liberal construction, and to specify what kind of statutes are commonly construed strictly, and what kinds are construed liberally. It will be seen, however, that the rules on this head turn out to be extremely vague, if, indeed, it can be said that there are any rules at all; (*p*) the truth being that, as Mr. Sedgwick

(*o*) This list is not exhaustive. Its omissions can be supplemented from Stroud's Judicial Dictionary, and the various Digests, *sub tit.* Words.

(*p*) See *Ex parte Milne* (1889), 22 Q. B. D. 685, at p. 695, Esher, M.R.; and Dwarris, Statutes (2nd ed.), ch. ix.; Sedgwick, Statutory Law (2nd ed.), pp. 256–316. It is a "dangerous doctrine," said Pollock, B., in *Hill* v. *Managers* (1879), L. R. 4 Q. B. D. 442, "and one contrary to the true rules of construction, to require or allow a judge to give an effect to the same words wider or narrower in proportion as he might think the general scope of the Act in which they were found of great or small public importance."

says,(q) "the judges have perpetually taken refuge in the clouds and mist of strict and liberal interpretation, whenever they have been pressed by the hardship or injustice of a particular case"; and, as Lord Hobart said, in *Sheffield* v. *Ratcliffe* (1616), Hob. 346, "If you ask me by what rules the judges guided themselves in diverse expositions of the self-same word and sentence, I answer, it is by that liberty and authority which judges have over statute laws according to reason and best convenience to mould them to the truest and best use." In this treatise, therefore, a different plan has been adopted with regard to the enunciation of the rules which govern the construction of statutes—namely, in the first instance, to lay down as precisely as possible the rules which regulate the construction of all statutes, the language of which is clear and unequivocal, and then, in the next place, to state in what way the meaning of obscurely worded statutes may legitimately be arrived at. By dealing with the subject in this way, it is hoped that it will be found that all the various rules which exist with regard to the interpretation of statutes are stated in as plain a manner as the nature of the case will permit.

Extent and effect of judicial authority to interpret statutes.

9. The rules enunciated in this treatise as to the interpretation and effect of statutes are in the main taken from the decisions of the courts of law, and the *dicta* of the judges.

The sole judicial authorities ultimately competent to construe a statute extending to the whole or any part of the United Kingdom, are the Supreme Court of Judicature and the House of Lords.

The interpretations whether of officers or Departments of State, or of resolutions of one House of Parliament, or of subordinate judicial authorities, ecclesiastical or temporal, must yield to the judicial interpretation of the Supreme Courts, which will never adopt an erroneous construction, of however long standing, unless it justifies the application of the principle *communis error facit jus*. Parliament may

(q) *Loc. cit.* p. 307.

declare wrong or repeal any judicial legislation effected by interpretation or misinterpretation of statutes, and may make the declaratory or repealing enactment retrospective. Coke (2 Inst. 618), in speaking of judicial authority, said: "Which answers and resolutions, although they were not enacted by authority of Parliament, as our statute of *Articuli cleri* in 9 Edw. 2 was: yet being resolved unanimously by all the judges of England and Barons of the Exchequer, are, for matters in law, of highest authority sent to the Court of Parliament." One of these resolutions referred to was that the interpretation of statutes concerning the clergy belongs to the judges of the Common Law.

The marked tendency of judicial decisions is to render uniform for all Her Majesty's dominions the rules relating to the construction of statutes.(*r*) As Lord Watson said in *Cooper* v. *Cooper* (1888), 13 App. Cas. 104, the House of Lords is the *commune forum* of England, Scotland, and Ireland, and takes judicial notice of the law of each country in an appeal from the other. In dealing with the statutes common to the whole United Kingdom, the House of Lords has to lay down rules applicable to all those countries alike, and to consider and reconcile, or select from the conflicting decisions of Scotch, English, and Irish Courts upon such enactments.(*s*)

The Judicial Committee of the Privy Council is in a like manner the *commune forum* for the rest of the Empire, and composed of almost the same judges as sit in the House of Lords. The decisions of these august Courts restrain the disposition of subordinate Courts in different parts of the empire to set up divergent rules of construction, and are producing practical uniformity as to rules of construction. Where such restraint cannot be imposed, in some cases the different moral sentiment in different

(*r*) See per Lords Watson and Macnaghten in *Income Tax Commissioners* v. *Pemsel* (1891), App. Cas. 532, 557, 577.

(*s*) English judges differ as to whether they are bound by Scotch decisions on an Act common to England and Scotland; see *Blake* v. *Midland Ry. Co.* (1852), 18 Q. B. 98, 109 (Coleridge, J.); *Ford* v. *Wiley* (1889), 23 Q. B. D. 203 (Coleridge, L.C.J.).

parts of the United Kingdom has led to a different construction of the same statute. This is conspicuously illustrated by the divergence between the English and the Scotch and the Irish Courts on the application of 12 & 13 Vict. c. 92, s. 2, to the dishorning of cattle.(*s*) No appeal being available to the House of Lords on this statute, this divergence can be settled only by legislation.(*t*)

Interpretation of statutes sole province of the temporal courts.

As Eyre, C.J., pointed out to the House of Lords, in *Home* v. *Lord Camden* (1795), 6 Br. Parl. Cas. 201, 1 H. Bl. 476; 2 *ib.* 533, the duty of expounding Acts of Parliament devolves solely upon the "King's temporal Courts, and your Lordships in the last instance."(*u*) That duty was once claimed as a right by James I., and Lord Coke has given us(*x*) a report of the opinion on the point which he delivered, "with the clear consent of all the judges of England and the Barons of the Exchequer," to the effect that "the King in his own person cannot adjudge any case." And "the province of the Legislature," as the Court of Exchequer said in *Russell* v. *Ledsam* (1845), 14 M. & W. 574, at p. 589, "is not to construe, but to enact, and their opinion, not expressed in the form of law as a declaratory provision would be,(*y*) is not binding on Courts whose duty it is to expound the statutes they [the Legislature] have enacted." It would be no easy task,(*z*) even if it were the object of the present treatise to do so,

---

(*s*) *Ford* v. *Wiley* (1889), 23 Q. B. D. 203; *Callaghan* v. *S. P. C. A.* (1885), 16 L. R. Ir. 325; *Renton* v. *Wilson* (1888), 15 Rettie, Justiciary (Sc.), 84; see 5 Law Quarterly, 443.

(*t*) The Privy Council is careful to avoid applying British prejudices to colonial legislation.

(*u*) And, as Jessel, M.R., pointed out in *Chilton* v. *Corporation of London* (1878), L. R. 7 Ch. D. 740, "a judge is theoretically bound to take judicial notice of all Acts of Parliament," he is bound also "theoretically to know the contents of them" all, and consequently it may not be assumed, when not disputed by the pleadings, that a right has been created by an Act of Parliament, which, as a matter of fact, has not been so created, for the judge is "theoretically bound to be aware that there is no such Act of Parliament."

(*x*) *Prohibitions del roy*, 12 Rep. 63.

(*y*) See below, p. 161, where the meaning of the phrase "parliamentary exposition of a statute" is explained.

(*z*) Sedgwick on Statutory Law (2nd ed.), 174, says, "We have no means of tracing the manner in which the transfer of authority to the judges was effected, but at a very early day we find it asserted in more than its present plenitude." See also Dwarris on Statutes (2nd ed.), pp. 708, 792.

to ascertain at what period and by what means our courts of law obtained the right of being the sole expositors of the statutes of the realm. In the early ages of the English system it appears that the line between the judiciary and the Legislature was not distinctly marked.(*a*) Originally the Houses of Lords and Commons sat together, and the courts of law were clearly subordinate to the Parliament. A writ of error lay from them to the Parliament, and they were accustomed even to consult Parliament before they decided points of difficulty and importance.(*b*) But it is now one of the axioms of our law that it is not only "the right," but also the duty of the judiciary to expound and interpret doubtful provisions of our legislative enactments.(*c*)

Temporal courts may issue prohibition to prevent court of peculiar jurisdiction from acting on a wrong construction of a statute.

And since it is the sole province of the King's temporal courts and of the House of Lords in the last instance to expound the statute law, "the possibility," as the judges pointed out in *Home* v. *Lord Camden* (1795), 2 H. Bl. 536, "of two different rules prevailing upon the same law, one in the King's temporal courts, and the other in courts of peculiar jurisdiction, is effectually prevented without any unreasonable interference or breaking in upon the courts of peculiar jurisdiction by the temporal courts issuing their prohibitions in every such case. And this is no more than saying, 'proceed to the very extent of your jurisdiction without interference from us, only remembering that . . . . when any question arises touching the exposition of the statute law, if the subject is originally of temporal jurisdiction and comes incidentally before you, it is to be expounded by you as we expound it, or if the statute concerns your proceedings only, you are to expound it as we say it ought to be expounded, when the

(*a*) Sedgwick, p. 18.

(*b*) Per Sir J. Campbell *arguendo* in *Stockdale* v. *Hansard* (1837), 9 A. & E. 1, 3 St. Tr. N. S. 723.

(*c*) Sedgwick, p. 173. And in *Sheffield* v. *Ratcliffe* (1616), Hob. 346, cited in *Att.-Gen.* v. *Pougett* (1816), 2 Price 381, at p. 388, it is said, in answer to the inquiry by what rule judges were guided in expounding statutes, "It is by that liberty and authority that judges have over laws, especially over statute laws, according to reason and best convenience to mould them to the truest and best use."

question is brought before us in prohibitions.'" Therefore, even with regard to the exposition by ecclesiastical courts of Acts of Parliament which relate exclusively to ecclesiastical matters, the ecclesiastical courts must accept the interpretation put upon the statute by the temporal courts. Lord Coke tells us, in 2 Institutes, p. 601, that this was stated as their opinion "by all the judges of England and the Barons of the Exchequer upon mature deliberation and consideration with one unanimous consent," in answer to certain questions put to them by the Lords of the Council with respect to the complaint exhibited by Archbishop Bancroft in the name of the whole clergy, in Michaelmas Term, *anno* 3 Jac. 1 (1605). The complaint (as stated at p. 614) was "that no temporal judges, under colour of authority to interpret statutes, ought, in favour of their prohibitions, to make causes ecclesiastical to be of temporal cognizance." To which the answer was, "that as for the judges expounding of statutes, which concern the ecclesiastical government or proceedings, it belongeth to the temporal judges." And, after setting out the whole of these complaints and the answers thereto, Lord Coke adds, at p. 618, "We will now proceed to the exposition of the same [*i.e.*, 9 Edw. 2], which office the clergy claimed, viz., to interpret all statute laws concerning the clergy; but it was resolved by all the judges of England, that the interpretation of all statutes concerning the clergy, being parcel of the laws of the realm, do belong to the judges of the common law." It is, in fact, now well settled, that if ecclesiastical courts are called upon to construe statutes, no matter what they relate to, they are bound to construe them upon the same principles as the courts of common law. "Whatever," said Lord North, in *Carter* v. *Crawley* (1681), Sir T. Raym. 496, "is determined by the common law to be the true meaning of this Act, must be a rule to the ecclesiastical courts, for the courts of common law are entrusted with the exposition of Acts of Parliament, and we ought not to suffer them to proceed in any other manner than shall be adjudged by the King's courts to be the true meaning of

the Act." And if ecclesiastical courts construe statutes otherwise than in accordance with the principles acted upon in the common law courts, it is now clear that prohibition lies. This was finally decided in *Gould* v. *Gapper* (1804), 5 East 345. In that case it was contended that the misconstruction of a statute by an ecclesiastical court was matter of appeal and not of prohibition. Lord Ellenborough, however, in an elaborate judgment, in which he reviewed all the previous authorities, held otherwise, on the broad ground "that the courts of common law have in all cases, in which matter of a temporal nature has incidentally arisen, granted prohibitions to courts acting by the rules of the civil law, where such courts have decided on such temporal matters in a manner different from that in which the courts of common law would decide the same."(*d*)

(*d*) The importance of this rule has been accentuated by *The Bishop of Lincoln's case* (1888), 13 P. D. 221, 14 *ib.* 148, now under appeal to the Privy Council. The Prayer-book (14 Car. 2, c. 4, s. 1 ; 1 Rev. Statt. (2nd ed.), 633, *note*) and Articles of Religion (13 Eliz. c. 12 ; 14 Car. 2, c. 4, s. 26) are scheduled to Acts of Parliament. In *Julius* v. *The Bishop of Oxford* (1880), 5 App. Cas. 214, and in *The Bishop of London's case* (1891), A. C. 666, the supremacy of the temporal courts in matters regulated by statute over the ecclesiastical courts was fully recognised, and the bishops were regarded as standing much in the position of justices of the peace as to the exercise of their functions. In matters relating to Convocation and its mode of election the temporal courts have not jurisdiction, although with reference to the election of municipal officers the courts are competent : *R.* v. *Archbishop of York* (1888), 20 Q. B. D. 740.

CHAPTER II.

THE DRAFTING OF STATUTES.

	PAGE		PAGE
1. No positive rules as to language to be used . .	20	4. Suggested remedies for defective drafting . .	26
2. Statutes originally drafted by judges . . .	20	Classification of defects .	27
Subsequently by conveyancers	21	(a) Accident . .	28
3. Judicial criticism of statutory language . .	22	(b) Ignorance . .	29
Not universal nor wholly just	24	(c) Legislation by reference . .	29
		How far justifiable	31
		5. Aids to the draftsman .	32

Statutes need not be drafted according to any particular form.

1. "THE Legislature," said the twelve judges in *Longmead's case* (1795), Leach C. C. 694, at p. 696, "when they intend to pass, to continue, or to repeal a law, are not bound to use any precise form of words;" consequently we find that at different periods of English history statutes have been drawn in different ways and according to different methods.

Statutes originally drafted by judges.

2. Till 1487 the judges, as a rule, drafted the statutes in Latin or Norman French by the light of the Parliament Rolls, which were not engrossed until the conclusion of each Parliament. The statutes, when drafted, were engrossed on the statute roll now preserved in the Tower.

"Parliament recognised that those who administered the law were supposed to have a real, and not a merely nominal, hearing in the making of laws."(*a*)

That the judges believed their right to be constitutional appears from the fact that the Chancellor and judges (in 15 Edw. 3) protested against a number of statutes

(*a*) Y. B. 14 & 15 Edw. 3, Pref. by Pike, p. lxii.

on the grounds—(1) That they did not assent to the making, or to the form, of the statutes; (2) That they could not observe the statutes if contrary to the laws and usages of the realm which they were sworn to keep. These protests involved the contention that the law could not be changed by Act of Parliament, or that there could not be an operative Act if the Chancellor, Treasurer, and judges were opposed to its provisions, neither of which has now any constitutional validity.(*b*)

Drafting by the judges was contemporaneous with the Statute Rolls (1278–1468). It has to some extent a parallel in the modern practice of settling only the general principles of law by statute, and giving judicial or other departments of State authority to make rules for the execution of statutes. It led to difficulties and controversies between the Commons and the Crown,(*c*) and occasionally to the omission of a statute actually passed, or the promulgation of a statute which had not received the necessary assent, and was finally discontinued in the reign of Henry VII. Nor are the productions of the early judges marked by any special precision of language. "In ancient statutes," as Lord Ellenborough observed in *Wilson* v. *Knubley* (1806), 7 East 128, at p. 136, as to 4 Edw. 3, c. 7, "no great precision of language prevailed, and the words were very loose and general." In the reign of Richard III. the sessional publication of printed statutes began, and from 1487 the statute roll was no longer made up in the old form. English superseded Latin and French, and Parliament appears to have handed over the drafting of statutes to conveyancers, who seem to have been encouraged into prolixity by the invention of printing, and diluted their native language by that cautious use of synonyms (*d*) which is the common characteristic of deeds and statutes. Upon this change a wordy style(*e*) was

Subsequently by conveyancers.

(*b*) *Loc. cit.* p. lviii. (*c*) See 1 Clifford, 326.

(*d*) This may have been originally due to uncertainty which of several English words accurately rendered a Latin or Norman French law term.

(*e*) "A remarkable circumstance of the statutes of Henry VIII. is the prodigious length to which they ran." (Reeves' History of English Law, by Finlason, vol. iii. p. 426.)

introduced, not only into the drafting of statutes, but also in deeds of conveyance and other legal documents, which continued in full use as late as 1861, so that "the true objection to modern statutes," as Barrington says in his Observations on Statutes, ed. 3, p. 175, "is rather their prolixity than their want of perspicuity."

Judicial criticism of statutory language.

3. The phraseology of Acts of Parliament has been subjected of late to much adverse judicial criticism, many judges having, like Lord Campbell, a keen sense of "the vast superiority of judge-made law over the crude enactments of the Legislature," and a disposition for what has been described as "drawing the fang teeth of an Act of Parliament." Sir Alexander Cockburn, in a speech at the Guildhall, March 9, 1876, described Acts of Parliament as being "more or less unintelligible, by reason of the uncouth barbarous phraseology in which they are framed;" and he attributed this to the fact that "the work of framing them is committed to few hands, while the task is a Herculean one, far beyond the strength of the men employed properly to discharge." Particular statutes, such as the Franchise Acts,(*f*) the Married Women's Property Act of 1882,(*g*) the Divided Parishes Act of 1876,(*h*) the Bills of Sale Act, 1882,(*i*) the Infants' Relief Act, 1874,(*j*) and certain parts of the County Courts Act, 1888,(*k*) have brought judicial execration on the conjoint efforts of draftsman and Legislature, and Lord Macnaghten said in *Thomas* v. *Kelly* (1888), 13 App. Cas. 506, at p. 517: "To say that the Bills of Sale Act (1878) Amendment Act, 1882, is well drawn, or that its meaning is reasonably clear, would be to affirm a proposition to which I think few lawyers would subscribe,

---

(*f*) *Bradley* v. *Baylis* (1881), 8 Q. B. D. 235 (Brett, L.J.); *Knill* v. *Towse* (1889), 2 Q. B. D. 186, 195 (Mathew, J.).

(*g*) Per Esher, M.R. in *Ex parte Boyd* (1888), 21 Q. B. D. 264. See 4 Law Quarterly Review, 234; 6 *ib.* 313.

(*h*) 6 Law Quarterly, 118.

(*i*) *Ex parte Yarrow* (1889), 59 L. J. Q. B. 20, per Cave, J. See 4 Law Quarterly, 370.

(*j*) *Duncan* v. *Duncan* (1890), 43 Ch. D. 215. Pollock on Contracts, p. 34.

(*k*) *Bazett* v. *Morgan* (1889), 24 Q. B. D. 51 (Field, J.); *Curtis* v. *Stovin* (1889), 22 Q. B. D. 513, 518 (Fry, L.J.).

and which seems to be contradicted by the mass of litigation which the Act has produced, and is producing every day. For my own part, the more I have occasion to study the Act, the more convinced I am that it is beset with difficulties which can only be removed by legislation. At the same time I cannot help thinking that some of the puzzles which were presented in the course of the argument disappear if the scope of the Act is steadily kept in view." In speaking of one of the private Acts of the New River Co. (15 & 16 Vict. c. clx.), Lord Herschell said(*l*): "It has been my lot to attempt to construe many Acts of Parliament which were obscurely worded, but I do not think I ever met with one upon which it was more impossible to put a satisfactory construction than the statute with which we have to deal in the present case. If the object had been to render it as difficult of construction as possible success could hardly have been more complete." Lord Fitzgerald said of the same Act, at p. 703, "It might almost be said to be the result of malicious ingenuity if it had not been probably that the Bill was submitted to a select committee, and we may take the contradictions in it as resulting from some effort at compromise in the course of the deliberations of the committee." And Lord Macnaghten called it, at p. 704, a "curiously ill-drawn enactment."

In 1877, in his Digest of the Criminal Law, Introduction, p. xix., Sir James Stephen complained of the phraseology of statutes: "The style of the [Criminal Law Consolidation] Acts is no less unfavourable to those who might wish to derive information from them than their length and their arrangement. Acts of Parliament are formed upon the model of deeds, and both deeds and statutes were originally drawn up under the impression that it was necessary that the whole should form one sentence. It is only by virtue of the provision contained in 13 & 14 Vict. c. 21, s. 2,(*m*) that a full stop can be introduced

(*l*) In *Cook* v. *New River Co.* (1889), 14 App. Cas. 698.
(*m*) Enacting that Acts are to be divided into separate sections: repealed 52 & 53 Vict. c. 63, and not re-enacted in the same terms.

into an Act of Parliament at all.(*n*) The effect of this rule of style has been to cause the sections of an Act of Parliament to consist of single sentences of enormous length, drawn up, not with a view to communicating information easily to the reader, but to preventing a person bent upon doing so from wilfully misunderstanding them. The consequence is, that sections of Acts of Parliament frequently form sentences of thirty, forty, or fifty lines in length. [And] the length of these sentences is only one of the objections to them; they are as ill arranged as they are lengthy."(*o*)

In speaking of ss. 14 and 15 of 24 & 25 Vict. c. 100, Stephen, J., said in *R.* v. *Brown* (1882), 10 Q. B. D. at p. 38:

"I cannot help myself thinking that a very much simpler enactment would have suited every purpose, and would have dispensed with these very intricate sections."(*p*)

And it has been justly observed that:

"The criminal law exhibits, in perhaps a somewhat exaggerated form, all the characteristic defects of the English statute law, because of the very great number and dispersion of the enactments constituting crimes, the almost total absence of definitions explaining the scope of the enactments, and to some extent specimens of all the vices of drafting that have been known from the beginning of English history."(*q*)

Partial injustice of these criticisms.

To all these strictures it may be answered with Lord Macnaghten, "We are not living in Utopia, where a perfect or ideal language may be had very readily" (*Com-*

(*n*) Romilly, M.R., pointed out in *Barrow* v. *Wadkin* (1857), 24 Beav. 330, that "in the rolls of Parliament the words are never punctuated." But in the vellum prints substituted for the old Parliament rolls, it is common, if not now invariable, to insert the stops.

(*o*) As to the length of statutes, Lord Coleridge in *R.* v. *Whitfield* (1885), L. R. 15 Q. B. D. 122, at p. 132, quoted "the *brevis esse laboro obscurus fio* of Horace."

(*p*) This was the view of the draftsman, Mr. Greaves, who makes it clear, in his introduction to the Acts of 1861, that their form was due, not to his own inclination, but to parliamentary exigencies.

(*q*) By Mr. R. S. Wright, Parl. Rep. 1875, No. 208, p. 91. See his Report on Criminal Law, 1878.

missioners for Income Tax v. *Pemsel* (1891), A.C. 576), and some judges, who have had experience of the difficulty of drafting and passing Acts, have been less severely critical than their brethren.

"I am sure," said Lord St. Leonards in *O'Flaherty* v. *M'Dowell* (1857), 6 H. L. C. 142, at p. 179, "we ought to make great allowances for the framers of Acts of Parliament in these days; nothing is so easy as to pull them to pieces, nothing is so difficult as to construct them properly, as the law now stands." And Jessel, M.R., said in *Att.-Gen.* v. *Great Western Railway* (1876), L. R. 4 Ch. D. 738, "I am not one of those judges who carp at the language of the Legislature, and say that the draftsman might have put it differently." Stephen, J., in construing a portion of the Public Health Act, 1875, said: "It would be unreasonable to suppose that every section of this long Act, of 343 sections and many schedules, could at the time when it was passed be criticised with all the care which conveyancers might use in a complicated deed. I do not join the censure on the mode in which Acts of Parliament are drawn. Considering their number and length, the defects in them seem to me to be few. But there are occasions on which any one may doubt whether the attention of the Legislature was directed to the words of a particular clause, and to the question whether they were likely to carry out the intention of the Legislature."(*r*) And in *Winyard* v. *Toogood* (1882), 10 Q. B. D. 230, he said, "I think the words of the section are quite clear, though possibly they might have been made more decisive if this point had been present to the draftsman."

In *Tearle* v. *Edols* (1888), 13 App. Cas. 183, 185, it was pointed out that though the Crown Lands Act of N.S.W. of 1884 was open to considerable criticism, it must be in candour admitted that the complicated and conflicting interests it had to deal with rendered such legislation extremely difficult.(*s*)

The truth seems to lie in the view of an eminent

(*r*) *Vinter* v. *Hind* (1882), 10 Q. B. D. 63, at p. 68.
(*s*) It took a session of thirteen months to pass the Act.

authority, Sir Erskine May (Lord Farnborough): "No one can doubt that with the multifarious legislation which takes place numerous errors are detected. So far as the judges are concerned there can be no doubt that when a judge says an Act of Parliament is obscure the obscurity is unquestionable: but we must bear in mind that the only statutes which are brought before the judges for adjudication are the difficult statutes which involve points of obscurity and uncertainty; and I cannot help thinking myself, from reading some of their observations, that the judges look at Acts of Parliament in rather a different spirit from that which characterised the observations of judges in former times. I think they show less reverence to the traditional 'wisdom of Parliament' than was formerly the case with the old authorities."(*s*)

In *River Wear Commissioners* v. *Adamson* (1877), 2 App. Cas. 756, Lord O'Hagan suggested, as a remedy for the failings of the statute law, the institution of "a department by which Bills, after they have passed committee, might be supervised and put into intelligible and working order, and then submitted for final revision to Parliament before they passed into laws." But it is most unlikely that the Legislature will admit its own incompetence, and delegate to any outside person one of its most important functions.

Suggested remedies for defective drafting.

4. Nevertheless, considerable efforts have been made to remove the defects which have evoked these various criticisms, and to simplify the language and improve the structure of Acts of Parliament, and the labours of the eminent men who had to draft the Indian Codes have reacted upon the aims and methods of English legislation.

Sir James Stephen, in the Preface already referred to, and Sir Henry Thring(*t*) have alone written anything which may guide the private draftsman; but perusal of the

(*s*) Sir Erskine May, 1875, Parl. Rep. 208, p. 4; Thring, "Simplification of the Law," Quart. Rev. Jan. 1874.

(*t*) See his pamphlet Practical Legislation; or the Composition and Language of Acts of Parliament, in which are laid down general rules for drafting statutes. See also "Simplification of the Law," Quart. Rev. Jan. 1874, by the same author.

evidence taken before and the reports of parliamentary committees points out the causes, and consequently suggests the remedies, of most of these defects.

In 1856, the Statute Law Commissioners recommended the appointment of an officer or board to revise Bills in their passage through Parliament, somewhat in the same way as judges then dealt with Estate Bills. In consequence of this report an inquiry was held by a Select Committee of the House of Commons, but it came to nothing, owing to the dissolution in that year.

In 1868 the Statute Law Committee was appointed,(*u*) which has been labouring at the revision and consolidation of the Public General Statutes.

Since 1869 all Government Bills not relating solely to Scotland and Ireland are subjected to the revision of the Parliamentary Council of the Treasury.(*x*) Purely Scotch Bills are drawn in the Scotch office, under the supervision of the Lord Advocate; and purely Irish Bills in the Irish office, under the Irish law officers, and the source of the Bills is clearly traceable in the difference of style and method.

A Select Committee was appointed on 4th March 1875, to consider "whether any and what means might be adopted to improve the manner and language of current legislation." It presented a report,(*y*) to which reference will presently be made, but a motion (*z*) that effect should be given to its recommendations was opposed by the Government and defeated. They have, therefore, remained counsels of perfection only, but have considerably influenced the method of drafting public Bills, and are of sufficient importance to merit a *résumé* in this chapter.

Classification of defects in Acts.

The leading objections, not merely captious, to the style and structure of modern public Acts arise: (*a*)

(1) From the mode in which Bills are prepared

(*u*) Preface to vol. i. of Revised Statutes, first edition, p. v.
(*x*) Sir E. May, Parl. Pap. 1875—C—208, p. 9.
(*y*) 25 June 1875—C—208.
(*z*) 24 March 1876.
(*a*) Parl. Pap. 1875—C—203, p. v.

and the extent to which they vary or deal with previous statutes;

(2) From the uncertainty which is often caused by inconsistent and ill-considered amendments;

(3) From want of consolidation where groups of statutes on similar subjects are left in a state of great perplexity;(*b*) and

(4) From the absence of a proper classification of the public Acts of Parliament.

Of these, the second depends on inherent difficulties of legislation, and on the political or legal capacity of the Member of Parliament who has the conduct of the Bill.

In the Judicature Bill, 1873, the amendments caused a serious error with respect to the number of the judges and the status of the Chancellor in the High Court, which was corrected by the Bill of 1875.

The question of classification is dealt with later at pp. 62 *et sqq.*

But the first and third defects depend to a considerable extent on the draftsman.

The evils arising from imperfections in drafting fall into three classes according to their origin, viz.:—

Accidental slips;(*c*)

Ignorance of the draftsman (*d*); and

More or less intentional obscurities, perplexities, or imperfections, inserted or permitted with a view to facilitate the passage of the Bill through Parliament.

1. Accidental slips.

Accidental slips are numerous, and are dealt with in detail in the chapter on "Mistakes," *infra*, Part II. ch. viii.

2. Ignorance.

Ignorance is probably oftener displayed in private members' Bills than in those originated in Government departments. "It is, however, a very serious matter to hold, that where the main object of a statute is clear, it shall be reduced to a nullity by the draftsman's unskilful-

(*b*) *Loc. cit.* p. v, and *infra*, pp. 29, 30, 31.
(*c*) Parl. Pap. 1875—C—208, p. v; and *vide infra*, Part II. ch. viii.
(*d*) See *Salmon* v. *Duncombe* (1886), 11 App. Cas. 627.

ness or ignorance of law. It may be necessary for a court of justice to come to that conclusion, but their lordships hold that nothing can justify it except necessity, or the absolute intractability of the language used."(*e*)

3. Legislation by reference.

Legislation by reference is usually the outcome, not of negligence, ignorance, or incapacity in the draftsman, but of the foibles of Parliament, and is excused on the ground that it lessens political difficulties and simplifies the process of getting Bills through committee by lessening the area for amendment, as is also the practice of putting very long clauses, elaborately divided into many subdivisions, in what are called fighting Bills.(*f*)

Legislation by reference consists in reference to parts of several Acts, some of which are repealed, some amended, and others kept alive subject to the provisions of the amending Bill. This practice, which was increasing in 1875, and has since that date still further developed, was described by the committee as making an Act so ambiguous, so obscure,(*g*) and so difficult that the judges themselves can hardly assign a meaning to it, and the ordinary citizen cannot understand it without legal advice.

Objections thereto.

With this parliamentary criticism judicial opinion coincides.

In *Knill* v. *Towse* (*h*) the question for decision was, whether upon the construction of the Local Government Act, 1888, s. 75, and the enactments incorporated therein by reference, a county elector could vote in more than one electoral division of the same county. In deciding that he could not, the Court (Lord Coleridge, C.J., and Mathew, J.) said(*i*): "We have arrived at this conclusion with some difficulty, though without doubt. The difficulty has arisen, not from anything inherent in the subject itself, which is simple enough, and might be quite simply treated, but from the mode of legislation now usual in these

(*e*) *Loc. cit.* p. 634, J. C., per Lord Hobhouse.
(*f*) *E.g.*, the Local Government Act of 1888.
(*g*) Parl. Rep. 1875—C—208, p. iv; and per Jessel, M.R., at p. 84.
(*h*) (1889), 24 Q. B. D. 186, affirmed at p. 697.
(*i*) *Loc. cit.* at p. 195.

matters. Sometimes whole Acts of Parliament, sometimes groups of clauses of Acts of Parliament, entirely or partially, sometimes portions of clauses, are incorporated into later Acts, so that the interpreter has to keep under his eye, or, if he can, bear in his mind, large masses of bygone and not always consistent legislation in order to gather the meaning of recent legislation. There is very often the further provision that these earlier statutes are incorporated only so far as they are not inconsistent with the statutes with which they are incorporated; so that you have first to ascertain the meaning of a statute by reference to other statutes, and then to ascertain whether the earlier Acts qualify only, or absolutely contradict, the later ones, a task sometimes of great difficulty, always of great labour—a difficulty and labour, generally speaking, wholly unnecessary. It has, indeed, been suggested (*j*) that to legislate in this fashion, keeping Parliament, in truth, in ignorance of what it is about, is the only way in which at the present day legislation is possible. We know not whether the suggestion is correct; what we do know is that this procedure makes the interpretation of modern Acts of Parliament a very difficult and sometimes doubtful matter. We, the judges, have, perhaps, the least cause to complain. We sit here for the purpose, among other things, of interpreting Acts of Parliament, and bring, or ought to bring, to our task trained and experienced intellects. But in practical matters of every-day concern, such as the possession and exercise of the franchise, it is of the last importance that the law conferring it, and the rules which govern its exercise, should be easily comprehensible by the mass of the ordinary voters. We are well aware that protest as to past legislation is unavailing, but for the future to call attention to a plain evil may, perhaps, be the first step towards its remedy."

Legislation by reference is also a source of much administrative inconvenience, as will appear from the following illustration :—

(*j*) See *supra*, p. 28.

By s. 34 of the Elementary Education Act, 1876, "all enactments relating to guardians and their officers and expenses and to relief given by guardians shall, subject to the provisions of this Act, apply as if the guardians, including the school attendance committee, were acting under the Acts relating to the relief of the poor, and the Local Government Board may make rules, orders, and regulations accordingly." In interpreting this section, Field, J., in *Reg.* v. *Eaton* (1881), 8 Q. B. D. at p. 160, said: "It is impossible to exaggerate the inconvenience of this mode of legislation. Instead of the Legislature referring specially to any previous Acts or sections of Acts which it proposes to incorporate in this section, the only incorporation is that of 'all enactments relating to guardians,' rendering it necessary, therefore, for any tribunal required to construe the Act to search through every Act of Parliament in which guardians are referred to, to see whether any particular enactment can be found bearing upon the matter in hand, and, inasmuch as there is in this very Act a set of clauses expressly referring to legal proceedings, I am not at all surprised that the parties in the present case, finding no extension of the jurisdiction in those clauses, conceived that it had not been given to them." 39 & 40 Vict. c. 79.

When legislation by reference is justifiable or excusable.

Legislation by reference may be justifiable in a country where a code exists with properly classified titles, but is unsuited to an undigested statute-book. Its inconvenience is, that it does not make plain to the citizen what may be clear enough to the draftsman who has all the threads of the subject in his hands. But with the rapid progress of consolidation it may be soon possible without causing obscurity.(*k*) And there are even now certain cases in which it is beneficial, and saves useless repetition without causing any difficulty of interpretation.

The description of an offence created by statute as treason-felony or misdemeanour has long been held to

(*k*) See also *infra*, Part II. ch. vii., "Consolidation and Revision"; see also Parl. Pap. 1875—C—208, p. 7, per Sir E. May, and "Simplification of the Law," by Sir H. Thring, Quart. Rev. Jan. 1874.

attract the common law incidents applicable to those crimes. And now that summary punishment is available by many statutes for minor offences, it is usual and unobjectionable to insert "on conviction in manner provided by the Summary Jurisdiction Acts" (as defined by the Interpretation Act, 1889), as indicating succinctly the code of procedure to be adopted with relation to the offence.

52 & 53 Vict. c. 63, s. 13.

Another mode of legislation by reference, too well established for criticism, is that adopted in the Clauses Acts of 1845 and 1847, whereby a large body of clauses is incorporated into subsequent Acts without repetition.(*l*)

This method attaches certain statutory incidents to certain classes of corporations subject to modification by special Acts, and is analogous to the method by which the Conveyancing Act of 1881 imports by implication into deeds certain common form clauses.

The advantages of this method may easily be overrated, for in every case the special Act to which one of the Clauses Acts applies must be examined to see if any modifications have been effected, and very difficult questions must arise as to the effect of subsequent public legislation upon so complicated a system of combined general and special Acts.(*m*)

Aids to the draftsman.

5. The labours of the draftsman have been enormously lightened, and his excuses in proportion diminished, by the efforts of the Statute Law Revision Committee, not yet fully utilised by the legal profession, which have resulted in the following improvements in, and aids to the understanding of, the statute law:

(1) Expurgation of defunct statutes;

(2) Issue of the revised editions, showing the effect of the expurgation;

(3) Preparation of chronological tables of statutes showing the repeals and amendments effected up to the date of the revision;

(*l*) Parl. Pap. 1875—C—208, p. iv.

(*m*) *E.g.*, of the effect of the railway ticket section, (5), of the Regulation of Railways Act, 1889, upon the Railways Clauses Act, 1845, c. 20, ss. 104, 105, and the innumerable special railway Acts passed since 1845.

(4) The alphabetical index to the statutes in force up to 1889; and

(5) The table inserted at the end of each sessional publication of the statutes showing the express repeals effected by the legislation of each year, in such a form as to enable the practitioner to correct his copy of statutes to date without much labour.

But except Lord Thring's pamphlet already referred to and his article on the simplification of the law(*n*) there is no guide by any experienced person to the unofficial draftsman, and a casual perusal of the statutes of any session will show clearly wide divergences between the mode of drafting Acts which might advantageously be obliterated, and the result of all that has yet been done in this direction may be summed up in the words of Sir F. Pollock(*o*) :—

"Perhaps our progress in the art of legislation is that which we have least cause to be proud of; it is some consolation that this is also the department of legal reform least within the control of lawyers. The Queen has been at divers times pleased to put her trust in divers and many learned persons to see how the statute law could be better ordered. They executed their trust with all diligence, with some dissension, and with infinite shedding of ink and production of carefully written Reports now lurking in the least accessible corners of the Inns of Court libraries. So far the visible result is the Revised Statutes, which some may think barely adequate. Our current Acts of Parliament are certainly better arranged and more concisely (*p*) expressed than they used to be; they are not always more intelligible and less ambiguous."(*q*)

(*n*) Quarterly Review, Jan. 1874.

(*o*) 3 Law Quarterly Review, 346.

(*p*) The latest change has arisen, as Bowen, L.J., pointed out in *Ex parte Pratt* (1884), 12 Q. B. D. 340, from "framing Acts on the idea that a code [on some particular subject] is being constructed and [then] when the present tense is used, it is used, not in relation to time, but as the present tense of logic." This practice is based on the rule of Lord Thring that an Act of Parliament is always speaking.

(*q*) Even the Arbitration Act of 1889 contains many obscurities, although it is almost wholly a Consolidation Act.

CHAPTER III.

AUTHENTICATION AND CITATION.

	PAGE
1. Promulgation	34
(a) English Acts	35
(b) Scottish	36
(c) Irish	36
(d) British	36
(e) Acts extending to Channel Islands	36
(f) Or to Colonies	36
(g) Subordinate legislation	37
(h) Sessional publication	39
2. Authentication	40
(a) Public Acts	40
(b) Private Acts	41
(c) U.S. rules	43
(d) Inquiry as to sufficiency of words of assent	44
(e) Inquiry as to truth of preambles	46
(f) Limits of judicial notice	49
3. Text and editions	50
(a) Old Acts of record	50
(b) Acts not of record	50
(c) Original Acts	51
(d) Record Commission edition	51
(e) Acts since 1713	52
(f) Revised Statutes	53
(g) Scottish Acts	54
(h) Irish Acts	54
4. Language	55
5. Pleading statutes	55
(a) In criminal proceedings	56
(b) In civil proceedings	56
6. Citation	57
(a) Older Acts	57
(b) Modern Acts	58
(c) Effect of errors in citation	59

Promulgation.

1. FORMAL promulgation is not necessary to make an Act binding, and many Acts come into force on the date when they receive the royal assent, and some time before an official print is obtainable. But the earlier statutes were proclaimed by the sheriffs in the county courts,(*a*) and exemplifications under the Great Seal were prepared and sent to them for this purpose. Some Acts still in the Statute-book are not found in the records of Parlia-

(*a*) *R.* v. *Sutton* (1816), 4 M. & S. 532, at p. 542, per Ellenborough, L.C.J.

ment, and have been printed from these exemplifications.(*b*)

It was also the practice to provide transcripts for the use of the courts at Westminster and the justices of assize.(*c*) The *Ordinacio de Conspiratoribus* (33 Edw. 1) concludes: *et ordinatum est quod Justiciarii assignati ad diversas transgressiones et felonias in singulis comitatibus Angliae audiendas et terminandas habeant inde transcriptum.*(*d*)

English Acts.

Precepts were sent to the sheriffs requiring them to read and proclaim the statutes sent therewith under seal in the full county court, and in each hundred, borough, market town, &c., and to make transcripts and deliver them to trusty knights of the county, and to every justice of the peace when that office was instituted.(*e*)

The earliest modes of promulgation are exemplified with reference to a statute against the Jews passed in 1271, and preserved only in the Gesta Abbatum Sti. Albani. That chronicle, vol. i. 402, contains:

(1) A letter from Walter, Archbishop of York, then Primate, to the Chief Justice requesting the full enrolment (*inrotulari integre et complete*) and speedy publication of the Act, of which the Archbishop gives an abridgment; and

(2) Letters patent of the King setting out the Act, and commanding its public proclamation and observance *per totam ballivam vestram* (*i.e.*, the liberty of St. Albans).

Scottish Acts.

Similar provisions were made in Scotland. By an Act of 1425 the Clerk Register was directed to register the statutes, and to give them to the sheriffs for proclamation, and to give copies to any one who asked and would pay for them.

(*b*) *E.g.*, Stat. de Pistoribus, 1 Rev. Statt. (2nd ed.) p. 76; 7 Edw. 2, forbidding wearing of armour, 1 Rev. Statt. p. 63.

(*c*) *E.g.*, 10, 11, 14, 18, and 20 Hen. 6, 1 Rev. Statt. (2nd ed.) pp. 217–225.

(*d*) Some statutes have been preserved only through these transcripts in the Red-books of the Exchequer in Dublin and Westminster.

(*e*) 1 Statt. Realm, Intr. p. lxxxvii; *R.* v. *Sutton* (1816), 4 M. & S. 532 (Ellenborough, L.C.J.).

Till 1581 it seems to have been generally believed in Scotland that a statute did not bind the lieges in any shire until proclaimed at the market cross of the chief town in the shire. In that year it was enacted that publication and proclamation should be made only at the market cross of Edinburgh, which should be equivalent to publication in every shire, and that all subjects should be bound by the laws forty days after such publication.(*f*)

There is no statutory provision for the proof of Scottish Acts in England or Ireland.

Irish Acts.

In many of the Acts of the Irish Parliament provision was made for their proclamation, and that no penalty should be incurred until they had been duly proclaimed.(*g*)

Acts of the Irish Parliament are proved in Great Britain by production of a copy printed by the duly authorized printer (41 Geo. 3, c. 90, s. 9).

British Acts.

Statutes of Great Britain and the United Kingdom are promulgated, not by proclamation, but by being printed and circulated among the persons named on what is called the Promulgation List.(*h*)

Acts of the English and British Parliament are proved in Ireland by copies printed by the duly authorized printer (41 Geo. 3, c. 90, s. 9). There is no statutory provision for the proof in Scotland of Acts of the English Parliament.

Acts extending to Channel Islands.

Those affecting the Channel Islands are promulgated by registration in the Royal Courts of the islands,(*i*) and in modern Acts it is usual to insert a provision requiring such registration.

In British colonies acquired from the French some proof of registration of French legislative acts in the colony is required to justify their acceptance as part of the colonial law.(*j*)

(*f*) 1 Statt. Realm, Intr. pp. lxxix, lxxxviii; Bell, Dict. Law Scot. *tit.* Statute. See also 2 Hen. 5, stat. 1, c. 8.

(*g*) English Acts intended to bind Ireland were exemplified and sent over for proclamation. (*h*) *Vide infra*, p. 39.

(*i*) See *In re States of Jersey* (1853), 9 Moore P. C. 185; 54 & 55 Vict. c. 21, s. 17.

(*j*) See *Du Bowlay* v. *Du Boulay* (1869), L. R. 2 P. C. 430.

The British statutes are circulated in the colonies through the Colonial Office, to which 136 copies are annually supplied, and the Governments of the chief colonies annually reprint, as an annex to the sessional publication of the colonial statutes, such of the imperial statutes of the year as extend to the colony. Or to other colonies.

Colonial laws are proved out of the colony by a certificate of the proper officer of the colonial Legislature that the document to which it is attached is a true copy of the law in question (28 & 29 Vict. c. 63, s. 6).(*k*)

Subordinate legislation.

The London, Edinburgh, and Dublin Gazettes are the received official channels for the publication of all the administrative legislation effected under the authority of Acts of Parliament. But all the more important rules and orders made in 1890 by different departments of State have been published in a single volume, and it is proposed to continue this official edition in subsequent years.(*l*)

Until the publication in 1891, under the supervision of the Statute Law Revision Committee, of an index to the innumerable regulations and orders made by the various departments of Government, it was impossible to realise, or even to find out without great research, what rules or regulations were in force under any given Act. By the aid of this index and the annual volumes, the accessibility of the growing body of subordinate legislation will be enormously increased.

Evidence of proclamations, departmental orders, &c.

The effect of the numerous enactments(*m*) relating to proof of subordinate legislation is thus summed up in s. 21 of the Evidence Bill, 1891 :—" Evidence of any proclamation, order, warrant, license, certificate, rule, regula-

(*k*) In Canada the publication, &c., of the statutes is regulated by 49 Vict. c. 2 (1 Rev. Statt. Can. p. 11).

(*l*) This volume is admissible in evidence by virtue of 45 Vict. c. 9, s. 4.

(*m*) 17 & 18 Vict. c. 104, s. 7 ; 31 & 32 Vict. c. 37, ss. 2, 3 ; 33 & 34 Vict. c. 14, s. 12 (5) ; 33 & 34 Vict. c. 75, ss. 83, 84 ; 33 & 34 Vict. c. 79, s. 21 ; 34 & 35 Vict. c. 70, s. 5 ; 38 & 39 Vict. c. 22, s. 9 ; 40 & 41 Vict. c. 21, s. 51 ; 40 & 41 Vict. c. 53, s. 58 ; 45 Vict. c. 9, s. 4 ; 46 & 47 Vict. c. 52, s. 140 ; 47 & 48 Vict. c. 76, s. 15 ; 51 & 52 Vict. c. 25, s. 53 ; 52 & 53 Vict. c. 30, s. 7 ; 52 & 53 Vict. c. 63, s. 30.

tion, or other document issued by Her Majesty or by the Privy Council, or by any department or officer mentioned in the first column of the First Schedule to this Act, or by the Lord Lieutenant of Ireland, either alone or acting with the advice of the Privy Council in Ireland, may be given as follows:—

"(*a.*) By the production of a copy of the London, Edinburgh, or Dublin Gazette, as the case may be, containing a copy of the document; or

"(*b.*) By the production of a copy of the document printed by the Queen's printer in England, or by the Queen's printer in Ireland, or under the superintendence or authority of Her Majesty's Stationery Office, or where the question arises in a court in any British possession, of a copy printed under the authority of the legislature of that British possession;

"(*c.*) In the case of any document issued by Her Majesty, or by the Privy Council in England or Ireland, or by the Lord Lieutenant, either alone or acting with the advice of the Privy Council in Ireland, by the production of a copy or extract certified to be true by the proper officer of the Privy Council in England or Ireland, as the case may be, or by any one of the lords or others of the Privy Council in England or Ireland, as the case may be;

"(*d.*) In the case of any document issued by any department or officer mentioned in the first column of the First Schedule to this Act, by the production of the document authenticated by the seal of the department or by the signature of the person specified in the second column of that Schedule in connexion with that department or officer, or by the production of a copy of or extract from that document certified as true by that officer."

FIRST SCHEDULE.

EVIDENCE OF DEPARTMENTAL ORDERS.

First Column. Name of Department or Officer.	Second Column. Name of Certifying Officer.
The Treasury . .	Any commissioner, secretary, or assistant secretary of the Treasury.
The Admiralty . .	Any commissioner of the Admiralty, or any secretary or assistant secretary of the Admiralty.
Secretaries of State .	Any secretary or under secretary of State.
The Board of Trade .	Any secretary or assistant secretary of the Board of Trade, or any person authorised in that behalf by the President of the Board of Trade.
The Education Department	Any member or secretary or assistant secretary of the Education Department.
The Postmaster-General	Any secretary or assistant secretary of the Post Office.
The Local Government Board	Any member or secretary or assistant secretary of the Local Government Board.
The Board of Agriculture	Any member or secretary or assistant secretary of the Board of Agriculture.

Sessional publication.

The printed promulgation of the statutes in the form of sessional publications began in 1484 in England (*n*) and in 1540 in Scotland, but in Ireland not till the reign of Charles I.

In 1801, by resolution of the House of Commons, the King's printer was authorized and directed to deliver a certain number of copies of each public general statute in accordance with a list appended to the resolution.

This list (*o*) was not based on any definite principle, but continued until 1881 as the basis of the distribution of statutes, with additions made by successive Secretaries of State, also sanctioned without any guiding principle, and without revision by any proper authority, or any

(n) 1 Statt. Realm, Intr. p. lvi.
(o) Annexed to the Report of the Committee appointed in 1881 to consider and revise it: Parl. Pap. 1883—C—3648, p. 27.

provision for responsibility for ensuring the delivery of the statutes at their proper destination.

In 1835 a Committee of the House of Commons considered and reported(*p*) on the regulations for the issue of printed papers, but no action seems to have been taken on the Report.

In 1881 a departmental committee was appointed for the revision of the promulgation list, on the recommendation of the Select Committee appointed by both Houses to consider the First Report of the Stationery Office.

The reformed distribution of the statutes is, however, in the nature, not of a promulgation *urbi et orbi*, but of a supply for administrative and judicial purposes to the officials of the Government and of counties and boroughs. And there seems to be no right of public access to any of the statutes so distributed except where they are in the British Museum or public libraries. Those who have to administer the law are informed of the Acts of the Legislature, while those who have to obey it have to find out its terms by experience and the daily papers.

In 1886, Mr. Howell, M.P., induced the Government to sanction the publication of the second revised edition of the statutes in a cheap form, in order that it might be easily purchasable for the libraries accessible to the working classes, and by the end of 1891 the edition will be completed down to the present reign.

Authentication. Public Acts.

2. "Strictly speaking, public statutes need no proof, being supposed to exist in the memories of all."(*q*) But this pleasant fiction merely dispenses with formal proof of the existence of the Act, and the necessity of reference to it in pleading. The enactments making Queen's printer's copies evidence apply only to private Acts, not to be judicially noticed, and there is no corresponding provision as to public Acts of the United Kingdom.

The presence of any ancient document vouched as a statute on the Parliament Roll or Statute Roll, or its

(*p*) Parl. Pap. 1835.
(*q*) Taylor on Evidence (8th ed.), § 5, 1523.

absence therefrom, is not conclusive for or against its legislative validity.(*r*)

The judges have to some extent power to inquire whether a statute is what it purports to be—an Act of Parliament.(*s*)

With irregularities or departures from the usage of Parliament(*t*) the Courts have nothing to do. They cannot review or correct, or in any way deal with them. "But though a departure from the usage of Parliament during the progress of a Bill will not vitiate a statute, informalities in the final agreement of both Houses have been treated as if they would affect its validity. No decision of a court of law upon the question has ever been obtained, but doubts have arisen there;(*u*) and in two modern cases Parliament has thought it advisable to correct by law irregularities of this description."

Sir E. May (Parl. Pr. (9th ed.) p. 601) propounds three questions which might arise—

(1) Will the royal assent cure all prior irregularities in the same way as the passing of a Bill in the Lords would preclude all inquiry as to irregularities in any previous stage?

(2) Is the indorsement on the Bill recording the assent of Queen, Lords, and Commons conclusive evidence of the fact?

(3) May the Journals of either House be permitted to contradict it?

It is submitted that the Courts, in an ordinary case, would regard the existence of an enrolled copy among the records of Parliament and Chancery, purporting to be duly assented to, as conclusive out of Parliament, and would decline to enter upon any inquiry into the contents of the Journals or into the usages or resolutions of

---

(*r*) See *The Prince's case* (1605), 8 Co. Rep. 20 b; 4 Ruffhead, Statutes, p. xiii.

(*s*) *Loc. cit.* 18 a.

(*t*) May, Parl. Pract. (9th ed.) p. 600.

(*u*) *Pylkington's case* (1450), Y. B. 33 Hen. 6, f.; and see per Hale, C.J., in *College of Physitians* v. *Cooper* (1675), 3 Keb. 537, and Coke, in *The Prince's case* (1605), 8 Rep. 18 a.

either House, except so far as they purport to alter the law.(*x*)

Once satisfied of the authenticity of an Act, the judges would be bound to take judicial notice of its contents, and as it is not permissible to refer to debates in Parliament in explanation of the meaning of an Act, so also it would seem no part of the judicial office to scrutinise the contents of the Journals of either House or the drafts of Bills to see whether the Act in question had properly received the assent of the Legislature.

If a serious question were raised as to the validity of an Act, no doubt the judges would adjourn the proceeding in which it arose until Parliament had an opportunity of settling the question by a fresh Act, as was done in the case in 1450 referred to by Sir Erskine May (Pr. of Parl. 9th ed. p. 601).

If any reason arises for doubting the accuracy of the print of any statute, reference may be had to the Chancery enrolment as to statutes passed prior to 1849, and also, as to Acts between 1487 and 1849, to the original Acts preserved in the Parliament Office.

Apparently this is to be done by the Court itself with reference to public general Acts, and it does not seem to be the duty of the parties to examine or to produce an examined copy of the entry on the Chancery Roll or of the vellum print. The records of Parliament are open (for a fee) to all who desire to collate the Queen's printer's copy with the Parliament Roll or original Act or print on vellum, and it is in accordance with ordinary judicial practice to require the person who disputes the accuracy of an official document to make good his assertion.

Private Acts. Private Acts printed and for sale are proved by a copy printed by authority.

Private Acts not printed for sale(*y*) are proved by an

(*x*) *Stockdale* v. *Hansard* (1837), 3 St. Tr. N. S. 723, 850. The Court, in *Bradlaugh* v. *Gosset* (1884), 12 Q. B. D. 27, declined to go behind a resolution of the House of Commons as to its own internal management.

(*y*) Collections of these Acts are available in the libraries of the Inns of Court.

exemplification,(*z*) transcript,(*a*) or certified copy of the original from the Rolls House or Clerk of the Parliaments.

The old practice, where a private Act had to be proved, was to obtain a certification of the Act out of Chancery. The fact of its enrolment there justified the assumption that the royal assent had been given.

When doubt arose as to the correctness of the enrolment in Chancery, that Court issued a *certiorari* to the Clerk of the Parliaments, who made a return by exemplifying the Act from the records in his custody.(*b*)

Until the Judicature Acts the Common Law Courts could not send to the Clerk of the Parliaments.(*c*)

But at the present time, when any doubt arises on on any statute, the High Court requires the attendance of an officer from the Parliament Office with the original Act, engrossed or printed on vellum as the case may be, and the formalities of *certiorari* and return are superseded by collation of the original Act with the Queen's printer's copy circulated for public use, or, in the case of statutes not printed for circulation, by reference to the original Act, which is now always printed.

U.S. rule as judicial inquiry into authenticity.

The Supreme Court of the United States takes judicial notice of the statutes of all the States.(*d*)

The principles to be adopted by the judges, in case of any doubt arising, are thus stated by Fuller, C.J., in *Re Duncan* (1890), 139 U. S. at p. 457, in a manner which seems equally applicable to British Acts :—

"On general principles, the question as to the existence of a law is a judicial one, and must be so regarded by the [Federal] Courts of the United States. This subject was

(*z*) A copy made from the Chancery Roll—(1) for the safe custody, proclaiming, or recording of the Act; or (2) for affording authentic evidence of its tenor. It was examined with the record and certified by the old masters in Chancery: 1 Statt. Realm, Intr. p. xxxv.

(*a*) Transcripts by writ were copies sent into Chancery, in answer to the King's writ of *certiorari* or mandate, to the officer who had the custody of the original.

(*b*) Per Hale, C.J., in *College of Physitians* v. *Cooper* (1675), 3 Keb. 587.

(*c*) See 1 Statt. Realm, Intr. p. lxix.

(*d*) *Gormley* v. *Bunyan* (1890), 139 U. S. 623, at p. 635 (Lamar, J.).

fully discussed in *Gardner* v. *Collector* [1867, 6 Wall. U. S. 499 (*e*)]. After examining the authorities, the Court in that case lays down the general conclusion ('on principle as well as authority') that 'whenever a question arises in a court of law of the existence of a statute, of the time when it took effect, or of the precise terms of a statute, the judges who are called upon to decide it have a right to resort to any source of information which, in its nature, is capable of conveying to the judicial mind a clear and satisfactory answer to such question, always seeking first for that which in its nature is most appropriate unless the positive law has enacted a different rule.' Of course, any particular State [of the Union] may by its Constitution and laws prescribe what shall be conclusive evidence of the existence or non-existence of a statute; but, the question of such existence or non-existence being a judicial one in its nature, the mode of ascertaining and using that evidence must rest in the sound discretion of the Court on which the duty in any particular case is imposed."(*f*) It has also been laid down in the United States that "a statute duly certified is presumed to have been duly passed until the contrary appears, a presumption arising in favour of the law as printed by authority, and in a higher degree of the original on file in the proper repository,"(*g*) and that "the Court, for the purpose of informing itself of the existence or terms of a statute, cannot look beyond the enrolled Act certified to by those officers who are charged by the Constitution with the duty of certifying."(*h*) In substance,

Presumption of accuracy of copies printed by authority or certified.

(*e*) Upon the existence of a Federal Act said to have been approved in 1861. The case deals with the early English authorities on the subject.

(*f*) The Federal Courts adopt the adjudication of the State Courts as to the authenticity of State Acts and the evidence by which they may be impeached, but are free under their own jurisdiction to pronounce on the validity of the enactments. The Privy Council would doubtless follow a somewhat similar rule, but with greater liberty on the question of authentication, being constitutionally capable of overruling any colonial Act if *ultra vires*, and any colonial decision if erroneous.

(*g*) *Re Duncan* (1890), 139 U. S. at p. 457 (Fuller, C.J.). The Supreme Court is now considering whether the omission of certain formalities invalidates the Presidential assent to the MacKinlay Tariff Act.

(*h*) *Loc. cit.* at p. 459.

therefore, the law of the two countries is the same, allowing for the particular exigencies of the written Constitutions of the Union and the States, and the consequent capacity of the Courts to pronounce on the validity of legislative enactments. And it seems likely that our courts would also adopt the American rule that: "Wherever a suit comes to issue, whether in the court below or in the higher tribunal, an objection resting upon the failure of the Legislature to comply with the provisions of the Constitution should be so presented that the adverse party may have opportunity to controvert the allegations, and to prove by the record due conformity with the constitutional requirements."(*i*)

Authenticity to be raised.

The only parts of a public statute which may be traversed or contested to any extent in an English court of justice are—

(1) The words of assent, and

(2) The preamble and recitals.

These alone contain any allegations of fact, the rest of the Act expressing the will of the Legislature.

The consent of Queen, Lords, and Commons being essential to constitute an Act of Parliament,(*k*) any doubt as to the giving of this consent may be investigated by the Courts, and is the only question as to the validity of the Act which, under our Constitution, the Courts may investigate.

Inquiry as to sufficiency of words of assent.

The proper mode of determining any doubt of this kind would be by certificate from the Speakers of both Houses of Parliament, or by proof that the impugned statute was duly enrolled in Parliament, or the original duly indorsed with the fact and date of the royal assent. But it is more than likely that the judges, as to modern Acts, would decline to go behind the Parliament Roll or the Queen's printer's copies of Acts officially supplied, unless they received official intimation

(*i*) *In re Duncan* (1890), 139 U. S. at p. 457, citing *People* v. *Supervisors of Chenango* (1853), 8 N. Y. (4 Selden) 317, 325.

(*k*) *The Prince's case* (1605), 8 Co. Rep. 18; *College of Phisitians* v. *Cooper* (1675), 3 Keb. 587 (Hale, C.J.). By this rule fell all the ordinances of the Long Parliament. *Vide infra*, pp. 62, 63.

from some branch of the Legislature that the necessary consents had not been given.(*l*)

18 Edw. 1, c. 1. The earliest rule on the subject is given by Coke (on Littleton, 98 b) with reference to the statute of *Quia Emptores*: "Secondly, it is (amongst other Acts of Parliament) entered into the Parliament Roll, and therefore shall be intended to be ordained by the King by the consent of the Lords and Commons in that Parliament assembled. Thirdly, it is a general law whereof the judges may take knowledge, and therefore it is to be determined by them whether it is a statute or not."

Evidence of the royal assent, other than the words of enactment, was never required as to the earlier statutes, public or private [per Hale, C.J., in *College of Phisitians* v. *Cooper* (1675), 3 Keb. 587], and from 3 Edw. 1 to Hen. 6 there is no mention of the royal assent on public or private Acts other than the words of enactment.

The importance of this question with reference to old Acts lay in the fact that, as the Act was in the form of a petition, unless it was indorsed *le roy le veult* or *soit fait come il est désiré*, the sole evidence of royal assent was the appearance of the Bill on record.

Since 1793 it is submitted that such evidence may in some cases be necessary, for the commencement of an Act is now regulated by the indorsed date of royal assent, and not by the commencement of the session, and that in the absence of such indorsement by the Clerk of the Parliaments no document can be treated as an Act without further inquiry as to the fact and date of assent. But the judges take judicial knowledge of the order and course of proceedings in Parliament with reference to statutes.(*m*)

Assent is now usually given by Royal Commission, to which are scheduled the Bills assented to, specified by their short titles.

(*l*) See May, Parl. Pr. (9th ed.) pp. 601 *et sqq.*

(*m*) See Roscoe, Nisi Prius (16th ed.), p. 80; Taylor, Evidence (8th ed.), p. 107.

The preamble precedes the words of enactment, and is in the nature of a recital of the facts operative on the mind of the lawgiver in proceeding to enact.

Inquiry as to truth of preambles and recitals.

The validity of its contents can never come in question, nor that they induced the Legislature to legislate; but it does not therefore follow that the facts stated are true, nor that they are to be judicially noticed as evidence conclusive against all the world.

It has been contended, on the one hand, that recitals in Acts of Parliament are not evidence of facts, but only of the opinion of the Legislature, or of representations made to it and believed by it. On the other hand, it is urged that recitals of facts contained in a preamble amount to findings with respect to those facts in the High Court of Parliament, and conclusive upon all inferior Courts and all subjects, being in the nature of *res judicata*. But thus far the Courts have steered a middle course between these two opinions, as appears from the opinion of Bayley, J., in *R.* v. *Sutton* (1816), 4 M. & S. at p. 549: "The preambles to the two Acts of Parliament, I think, are still more free from objection than the proclamation, and they assume as facts that outrages did exist. When we consider in what manner an Act of Parliament is passed, and that it is a public proceeding(*n*) in all its stages, and challenges a public inquiry, and when passed is in contemplation of law the act of the whole body,(*o*) it seems to me that its recital must be taken as admissible evidence, and in this case was confirmatory evidence."

52 Geo. 3, cc. 16, 17.

The same conclusion was reached by Lord Ellenborough(*p*): "Next it is objected that the Acts of Parliament were not evidence. For what purpose, then, are the judges bound to take judicial notice of public Acts of Parliament but in order that they may have a knowledge of them themselves and communicate it to others? The judge is bound, not only to take judicial notice of their

52 Geo. 3, cc. 16, 17.

(*n*) *I.e.*, a proceeding by or on behalf of the public.
(*o*) *I.e.*, of the nation.
(*p*) *Loc. cit.* p. 542.

contents himself, but to state it to the jury; for if he is not to state the same, for what purpose is he to take notice of them? . . . . Public Acts of Parliament are binding upon every subject, because every subject is in judgment of law privy to the making of them, and therefore supposed to know them, and formerly the usage was for the sheriff to proclaim them at his county court; and yet what every subject is supposed to know, and what the judge is bound judicially to take notice of, it is said the jury cannot advert to, for if this evidence was inadmissible it must be because the jury could not be charged with it."

The reasoning of Lord Ellenborough and Bayley, J., leads further than they followed it. An Act of Parliament is not evidence in the ordinary sense of the term, but a declaration of the will of the Legislature on the subject to which it relates. Words of enactment are clearly separable from the motives or beliefs which lead to legislation. So far as the enactment is concerned, it is "*sic volo sic jubeo, stet pro ratione voluntas.*" But so far as a preamble recites facts *in pais*, other considerations apply. It is incontrovertible in law that the recitals motived the enactment, but it does not therefore follow that the recitals are true or conclusive in fact upon individuals.

The omnipotence of Parliament does not extend to facts, nor imply its infallibility.(*q*) Yet if judge or jury were free to controvert the motives of an enactment, and its recitals were to be merely admissible in evidence, it would seem that to deal with them otherwise than as a conclusive decision upon a question of fact would be either—

(a) Not to take judicial notice of the recitals; or

(b) To decide that the statute, being based on false recitals, was not binding.

The *via media* between these two alternatives is to regard the preamble as conclusive in so far as it elucidates the intention of Parliament expressed in the enacting

(*q*) In spite of that method of drafting which requires A. to be deemed B.

part, but as *primâ facie* evidence only of the matters of fact, in the same way as recitals in old deeds are by the Vendor and Purchaser Act, 1874. 37 & 38 Vict. c. 78, s. 2.

As the oldest Acts were in the form of a grant with recitals, it was always conceivable that the King might be deceived in his grant, but the *onus* of proof was on the person who challenged the correctness of the recitals.

Limits of judicial notice.

The Courts are occasionally asked to infer the existence of a statute which is not of record in order to give effect to the judicial rule of endeavouring to find a legal origin for a well-established usage.(*r*) This is an attempt to extend the presumption as to lost grants to statutes, and seems to be based on the original identity in form between royal charters and statutes. The most recent instance of this contention is in *Chilton* v. *Corporation of London* (1878), 7 Ch. D. 735, where the inhabitants of a parish claimed, by custom, a right to lop wood within a manor. Jessel, M.R., there said (at p. 740): "But then it is said, though the right is not known to the common law, it may be created by Act of Parliament, and the judge is bound to assume, when not disputed by the pleadings, that it has been so created. The answer to that is, simply, that the judge is theoretically bound to take notice of all Acts of Parliament; that is, he is bound theoretically to know the contents of them, and to be aware that there is no such Act of Parliament. I say 'theoretically,' but practically the judge requires attention to be called to the particular statute, and the clauses and sections of it that bear on the matter in hand. But he is bound to take judicial notice of all Acts of Parliament; and even on demurrer, which is our strictest form of pleading, any Act of Parliament can be taken notice of without being pleaded on either side." But it is submitted that this statement of the law is too wide. The duty of the judges to take judicial notice of a

(*r*) See per Bowen, L.J., in *Phillips* v. *Halliday* (1889), 23 Q. B. D. 48, affirmed (1891) A. C. 228.

statute is confined to public Acts.(*s*) Private Acts must be both pleaded and proved, unless by a special clause or under Brougham's Act (13 & 14 Vict. c. 21), s. 7, or the Interpretation Act, 1889, s. 9, judicial notice is to be taken of them.(*t*)

Text and editions.

3. When the authenticity and validity of a statute are ascertained, the next questions arising upon its construction are the correctness of the text vouched and the mode of solving any doubts arising on that head. From this point of view new statutes fall into four classes—

(1) Statutes passed prior to the invention of printing which are of record;

(2) Like statutes not of record;

(3) Statutes passed since the invention of printing, printed and circulated by authority; and

(4) Like statutes unprinted, or printed and not so circulated.

In case of doubt as to the text of a statute which is to be judicially noticed, it is for the judges to refer to the record or document containing the most authentic copy of the statute.

Old Acts of record.

Most Acts between 1278 and 1487 appear on the Statute Roll preserved in the Tower, which is a record of Chancery on which most of the statutes of the period are entered when drawn up in form for proclamation and publication.(*u*) There is a gap from 8 Hen. 6 to 23 Hen. 6, owing to the Wars of the Roses. It would seem that the roll was made up till 4 Hen. 7. The last statute preserved in the Statute Roll form is also the first of which no Latin or French version is extant.(*x*)

Statutes not of record.

Coke and Hale say that some of the earlier statutes are not of record;(*y*) but subsequent research has shown

---

(*s*) Co. Litt. 98 b.

(*t*) See Taylor on Evidence (8th ed.), p. 1303; Roscoe, Nisi Prius (16th ed.), pp. 104, 105.

(*u*) 1 Statt. Realm, Intr. p. xxxiv.

(*x*) 1 Rev. Statt. (2nd ed.) p. 235.

(*y*) Ruffhead's Statt. vol. i. Pref. p. xxiv; Hale, Hist. C. L. ch. 1; *College of Phisitians* v. *Cooper* (1675), 3 Keb. 587; Statt. Realm, vol. i. Intr. p. xxxii.

them to be in error as to most of the Acts and ordinances which they specify as unrecorded.

Whether of record or not, a statute is equally binding if its authenticity is once ascertained,(*z*) and evidence of its promulgation is, as already said, not required.

Unrecorded statutes are from time to time discovered in reprinting documents in the Record Office,(*a*) but those found are not of any practical value or present legislative validity.

The original Acts.

Acts from 1487 to 1849, with few exceptions,(*b*) are among the original Acts in the custody of the Clerk of the Parliaments, which show the original text as engrossed in black letter,(*c*) with all subsequent additions and erasures, and indorsed with the signatures of the Clerks of both Houses. Of this a transcript, which was much more legible than the original, was made and certified by the Clerk of the Parliaments, and sent to the Rolls House.

Since 1849 two prints on vellum of every Act, public, local, or private, are prepared. One is retained by the Clerk of the Parliaments, with a certificate of royal assent. The other, similar in every respect, and bearing a like certificate, is sent to the Rolls House. The original Acts retained by the Clerk of the Parliaments are numbered consecutively, regardless of distinction between public and other Acts. The copies sent to the Rolls House are numbered in three series in accordance with the classification adopted in the sessional publication of the statutes.

Record Commission edition.

Inquiry into the printed editions of the statutes may be material—

(1) As to the authenticity of an Act;

(2) Its proof in judicial proceedings; or

(3) The accuracy of the text vouched.

(*z*) The documents in which they are preserved usually contain evidence of promulgation.

(*a*) *E.g.*, a statute forbidding Jews to hold land, in Gesta Abbatum Sti. Albani, vol. i. pp. 402–404, 523.

(*b*) *Vide* 1 Cliff. 328. Not all these Acts are printed.

(*c*) 1 Cliff. 322.

For ordinary purposes as to statutes prior to 1713 reference is usually made to the folio edition of the Statutes of the Realm published by the Record Commission, the text of which is adopted in the revised editions of the statutes.(*d*)

It also contains (Intr. p. xlix) a *catalogue raisonné* of all editions published by public or private venture prior to 1811, all of which it has for practical purposes superseded. The origin of the edition and the *modus operandi* of the editors deserve brief notice.

In 1800 the House of Commons presented an address to the Crown asking that directions should be given for the better preservation, arrangement, and more convenient use of the public records of the kingdom.(*e*) In consequence, a Royal Commission was appointed in the same year, whose first resolution was that a complete and authentic collection of the statutes of the realm be prepared, including every law, as well those repealed or expired as those now in force, with a chronological list of them and a table of their principal matters. As a result of the labours of this Commission, the statutes of the realm up to 1713 were published between 1811 and 1828.

This edition contains—

(1) All instruments contained in any general collection of statutes published prior to that of Serjeant Hawkins in 1735;

(2) Such matters of a public nature purporting to be statutes as were introduced by him or subsequent editors, particularly Cay and Ruffhead; and

(3) Such new matters of the like nature as could be taken from sources of authority not to be controverted—viz., statute rolls, inrolments of Acts, exemplifications, transcripts by writ, and original Acts.

Acts since 1713. Of all public and many private Acts since 1713 Queen's printer's copies are obtainable. They used to be

(*d*) 1 Statt. Realm, Intr. p. xxxv. The sources from which the statutes printed are derived, and the *variæ lectiones*, are indicated in these editions.
(*e*) 1 Statt. Realm, Intr. p. viii.

printed in three forms—folio, quarto, and octavo. A Committee of the House of Commons in 1835 recommended discontinuance of the folio and quarto editions, but the folio was not dropped till 1881, and the quarto is still published.

Till 1886 Acts of Parliament, when printed subject to the promulgation list, became the private property of the Queen's printer, who had the monopoly of their publication, and did not act merely as agents of the Crown. But in 1881 a Select Committee of both Houses recommended that this arrangement should be discontinued, and that Acts of Parliament should be printed and sold under the same regulations as other parliamentary papers.(*f*)

By the Documentary Evidence Act, 1882, the Stationery Office was put into the position of the Queen's printer with reference to public documents which are by statute evidence, or conclusive evidence, if purporting to be printed by the Queen's printer. 45 Vict. c. 9.

Since 1886 statutes and all parliamentary papers and public documents emanating from the different departments of Government are printed for and issued by the Stationery Office, and letters patent have been issued to the controller of the office constituting him the Queen's printer.

The revised statutes.

Doubts as to the correctness of any of these received editions can only be solved by reference to the original authorities referred to above. In no case is the official print made conclusive evidence as to the text of a statute.(*g*) But the revised editions may now be said to have attained the position of an authorized version of the statutes by the effect of the Interpretation Act, 1889, s. 35 (2).(*h*)

Where any Act passed after December 31, 1889,

(*f*) Parl. Pap. 1881, No. 356.

(*g*) The first print of the Education Act, 1891, was withdrawn as not embodying the tenor of the Act as ultimately assented to by Parliament. See Chitty's Statutes of 1891, ed. Lely, p. 23.

(*h*) Provisions to the like effect used to be inserted at the head of the repeal schedules annexed to S. L. Revision and Consolidation Acts.

contains a reference to any Act by its short title or regnal year, the reference, unless a contrary intention appears, is to be read as referring, in the case of statutes included in any revised edition of the statutes purporting to be printed by authority to that edition, and in the case of Acts not so included, and passed before 1714 (1 Geo. 1), to the edition prepared under the direction of the Record Commission, and in other cases to the copies of the statutes purporting to be printed by the Queen's printer, or under the superintendence or authority of H.M.'s Stationery Office.(*i*)

This enactment only authorizes the version for parliamentary purposes, such as recital or repeal, and leaves untouched the question of the accuracy of the text or the validity of the statutes. But in substance it constitutes the editions named as part of the official text of the Statute-book.

Scottish Acts.

It was the exclusive privilege and official duty of the Lord Clerk Register to enter the Acts of the Scottish Parliament in the proper record, and to furnish copies to sheriffs, magistrates of burghs, and such as might demand them.

Scottish Acts were first printed in 1541 by virtue of an ordinance of James V., which directed the Clerk Register to make authentic copies, so far as concerned the common weal (*i.e.*, except of private Acts), under his hand, to be printed by what printer he chose.

In 1592 and 1607 the Scottish Parliament directed the printing and publication of the editions of Scottish Acts prepared by Sir John Skene, Clerk Register,(*j*) which are received as the authorized text.

There is no statutory provision for the proof in English legal proceedings of any Act of the Scottish Parliament.

Irish Acts.

The Irish statutes were printed in 1765 in folio in pursuance of the order of the Lord Lieutenant (the Earl

(*i*) See Parl. Pap. 1881, No. 356, p. vii, and Documentary Evidence Act, 1882 (45 Vict. c. 9).

(*j*) 1 Statt. Realm, Intr. pp. xliii, lxxix.

of Halifax) to give effect to a resolution of the Irish House of Lords that an edition of the statutes should be prepared under the inspection of the Lord Chancellor and judges. This edition has always been exclusively referred to and accepted in the courts in Ireland,(*k*) but is now superseded by the revised edition of the statutes of Ireland (1310–1800) published in 1885 by authority.(*l*)

Acts of the Irish Parliament may be proved in legal proceedings in Great Britain by producing a copy purporting to have been printed by the official printer (41 Geo. 3, c. 90, s. 9).

Language.

4. The statutes were recorded in Latin or Norman French until the death of Richard III. In the first Parliaments of Henry VII. the practice seems to have continued, but no printed edition in French has been discovered. From 1488 (4 Hen. 7) the Statute Roll was no longer made up in the ancient form,(*m*) and the statutes have been published in English only.

The English translations published in the revised statutes are not always accurate, and have no legislative validity. The source from which each is derived is stated in the Statutes of the Realm and Statutes Revised.

Pleading statutes.

5. It is laid down by Sir John Comyns (Dig. tit. Action upon Statute, G, H, I) that in both criminal and civil pleadings upon a statute the statute must be recited, except where the statute merely extends a right or remedy already existing at common law.

Since 1875 this rule no longer holds good in its entirety as to statements of claim. In certain actions of debt upon statutes it appears still to be necessary to specify the Act upon which the action is based (*e.g.*, 25 Geo. 2, c. 36, s. 11). But this kind of action is quasi-criminal upon a penal statute.(*n*)

It appears to be still needful to plead an Act, private,

(*k*) 1 Statt. Realm, Intr. p. lxxxv.
(*l*) Rev. Statt. Ireland, Pref. p. v.
(*m*) 1 Rev. Statt. (2nd ed.) p. 228, *note*.
(*n*) See *Bradlaugh* v. *Clarke* (1883), 8 App. Cas. 354.

local, or personal in its nature, even if it contains a clause requiring judicial notice to be taken of it; and apparently also any enactment vouched as an exception to the general law.

In criminal proceedings.

In proceedings for an offence, including actions upon a penal statute, it appears to be still necessary to state the offence substantially in the words of the statute. As to indictable offences, this is the common law rule;(*o*) with reference to offences punishable on summary conviction, the common law rule is adopted with modifications by the Summary Jurisdiction Act, 1879, s. 45.

42 & 43 Vict. c. 49.

Reference by title, year, chapter, or section is, however, neither necessary, nor usual, nor prudent, and the facilities for amendment of immaterial errors given by modern Acts (*p*) and practice render the exactitude of pleading of less consequence.

Thus, in indictments, the formal conclusion *contra formam statuti* or *statutorum* is no longer essential.(*q*) But one relic of the old technicalities remains—that the indictment must negative all the provisoes, qualifications, and exemptions which it is now common to attach to the definition of a statutory offence, instead of stating the crime and leaving the defendant to bring himself within the exception.

In Scotland the statute and section are specified, and the same mode of identifying the offence may, under the Interpretation Act, 1889, s. 35, be adopted in England, but is, as already pointed out, unusual.

52 & 53 Vict. c. 63.

In civil proceedings.

According to the modern rule of civil pleading, facts only are to be stated.(*r*) Nothing need be stated in a civil pleading of which the Courts will take judicial notice. Consequently, public general Acts need not be specially pleaded in the High Court, save in a few cases—viz., that of the Statutes of Frauds and Limitations,(*s*)

(*o*) *Vide* Archbold, Cr. Pl. (20th ed.) p. 70; *Longmead's case* (1795), 2 Leach C. C. at p. 696.

(*p*) 7 Geo. 4, c. 64, s. 21; 14 & 15 Vict. c. 100, s. 24.

(*q*) *Castro* v. *R.* (1881), 6 App. Cas. 229, 242, per Lord Blackburn.

(*r*) Bullen and Leake (4th ed.), p. 8; 1 Chitty, Pl. p. 236; Taylor, Evidence (8th ed.), p. 290; Roscoe, Nisi Prius (16th ed.), pp. 301 *et sqq.*

(*s*) R. S. C. Ord. 19, r. 15; Ann. Pr. 1892, p. 433.

those by which a defendant is permitted to plead the general issue,(*t*) and statutes rendering illegal any claim made. These exceptions appear to be based on judicial hostility to the statutes in question.

Mode of citation of older Acts.

6. Many of the ancient statutes are cited by the name of the place where the Parliament was held in which they were made; *e.g.*, the Provisions of Merton and Statutes of Westminster.(*u*)

Others are named from their subject-matter; *e.g.*, *Articuli Cleri* and the statute *de Donis Conditionalibus* and the Statutes of Jewry.(*x*)

A third class are named from their initial words, in the same manner as Papal Bulls and the Psalms in the Vulgate; *e.g.*, *Quia Emptores*.(*y*)

From the reign of Edward II. it has been usual to cite by reference to the regnal year in which the session of Parliament began, it being the common law rule that an Act comes into force as of the first day of the session in which it was passed,(*z*) unless another date is provided in the body of the statute.

This mode of citation was by Brougham's Act (13 & 14 Vict. c. 21), s. 3,(*a*) adopted for parliamentary purposes as to all Acts prior to the reign of Henry VII.

The common law rule does not apply to Acts passed since 1793, and an Act now comes into force on the day on which it receives the royal assent, unless another day is named in the body of the Act.

The ancient and cumbrous mode of citing statutes is superseded as to many Acts by their having received short titles(*b*) in subsequent statutes, while almost every modern Act contains a section embodying its short title, and groups of statutes *in pari materiâ* receive

---

(*t*) R. S. C. Ord. 19, r. 12; Ord. 21, r. 19; Ann. Pr. 1892, p. 461.
(*u*) 1 Bl. Comm. ed. Hargrave, p. 86, *note*.
(*x*) 4 Co. Inst. 25.
(*y*) Comyns, Dig. tit. Action upon Statute, I.
(*z*) In Scotland Acts appear not to have been binding in any shire until proclaimed at the market cross of the shire town. *Vide supra*, p. 36.
(*a*) Repealed and re-enacted in substance by 52 & 53 Vict. c. 63, ss. 35, 41.
(*b*) See Appendix B.

a conjoint statutory short title; *e.g.*, the Merchant Shipping Acts, 1854 to 1887,(*c*) the Tithe Acts,(*d*) and the Summary Jurisdiction Acts.(*e*)

Modern.

Since 1889 (*f*) all Acts, whether public, local and personal, or private, may be cited in any statute, instrument, or document either—

(1) By the short title, if any (*g*) (*i.e.*, the short title given by statute, not the popular short title, nor the ordinary title even if it be short); or

(2) By reference to the regnal year in which the Act was passed, and, where there are more statutes or sessions than one in the same regnal year, by reference to the statute(*h*) or session,(*i*) as the case may require, and, where there are more chapters then one, by reference to the chapter, and particular enactments may now be cited by reference to the section or sub-section in which they are contained.

The object of these provisions is mainly to facilitate the work of the parliamentary draftsman and to shorten the rules and orders made by departments of State under statutory authority. But they also apply to pleadings, and it is therefore no longer necessary, where a statute has to be pleaded, to refer to it in such detail as has hitherto been usual. The new rule of citation will be of most value, and will be most tardily adopted in criminal pleadings.

The second mode has hitherto, as a rule, been adopted only by the draftsmen of statutes relating solely to Scotland,(*j*) who usually describe a statute as "the Act [twenty and twenty-one] Victoria, chapter [seventy-two]."(*k*) The draftsmen of English Acts before, and very

(*c*) 50 & 51 Vict. c. 62, s. 1 (2).
(*d*) 54 & 55 Vict. c. 8, s. 12 (3).
(*e*) 52 & 53 Vict. c. 63, s. 13 (10).
(*f*) *Ibid.* s. 35 (1).
(*g*) Few Acts prior to 1793 have short titles; but in modern legislation, when an old Act is amended or dealt with, it frequently receives a statutory short title. See Appendix B.
(*h*) Here used in its original sense; *vide* p. 62, *infra*.
(*i*) As in 1886.
(*j*) But see the Allotments Act, 1887 (50 & 51 Vict. c. 48), s. 4.
(*k*) See 53 & 54 Vict. c. 67, s. 29.

often since, 1890, describe a recited Act which has no short title as an Act of, or passed in, the session held in the and years of H Majesty , intituled, &c., with, or until recently without, mention of the chapter.(*l*)

Citation by the regnal year in a Bill is inconvenient for parliamentary purposes, as the risk of clerical error is great, and the figures convey no idea to the legislator. For forensic purposes, on the other hand, this is the more convenient method, as it gives the reference to the Statute-book, which the short title does not. But citation by the regnal year will in time give way to the preferable method of citation by the secular year, already adopted in some of the colonies and in India (Act No. 5 of 1880).(*m*)

Effect of erroneous citation.

(1) Old rule.

Under the old system of pleading, where the statute was the basis of a claim or defence, and was not referred to by way of inducement only, any variance in the description, even such as reference to the wrong regnal year, was held fatal.(*n*) The other party to the proceeding could take the exception that no such statute existed, and the Courts declined to take judicial notice of a public general Act not correctly referred to, or to accept as proof of a private Act a record out of Chancery not identical with that pleaded. Thus, in referring to Acts of Philip and Mary the figures 4 & 5 mean 4th of Philip and 5th of Mary, and a plaintiff was nonsuited by Lord Mansfield for describing as of 4 Ph. & Mar. an Act which, on reference to the Parliament Roll, appeared to be of 4 & 5 Ph. & Mar.: *Rann* v. *Green* (1776), Cowp. 474.(*o*) Even in modern times it is doubtful whether leave would be given to amend a wrong reference in the case of a plea of not guilty by statute, and in the case of *James* v. *Smith* (1891), 1 Ch. 384, Kekewich, J., refused to allow

(2) Modern rule.

(*l*) See 52 & 53 Vict. c. 45, s. 28 (1); c. 47, s. 1 (2); 54 & 55 Vict. c. 8, s. 12 (3), (4), (5).

(*m*) In Victoria the Acts are numbered in a continuous series without regard to the year in which they were passed.

(*n*) *Bryant* v. *Withers* (1813), 2 M. & S. 123, 132.

(*o*) See Beven on Negligence, p. 779, note 1, for the former consequences of omitting A.D.

amendment when the wrong section of the Statute of Frauds had been pleaded.

When a session began in one regnal year and continued into another, an Act passed in the session could not be pleaded as having been passed in both years, but had to be described as having been passed either in a session held in both years, or in the year in which it received the royal assent, according as the Act was prior or subsequent to 1793: per Parke, B., in *Gibbs* v. *Pike* (1841), 8 M. & W. 228.

In 1793 it was enacted (33 Geo. 3, c. 13) that Acts should come into force on the day on which they received the royal assent, in the absence of other provision in the body of the Act, and that the Clerk of the Parliaments should indorse in English on each Act the date of the royal assent as soon as it was given, and that this indorsement should be taken as part of the Act. In the printed copies this date is not *indorsed*, but is placed on the first page of the Act, just below the full title, and for the Parliament Roll the Clerk of the Parliaments prefixes the certificate to the vellum print of the statute.

The Courts were bound to take judicial notice of the beginning and end of prorogations and sessions of Parliament.(*p*) They used to discharge this duty by holding any misrecital of the date of an Act fatal, until, to avoid the risk, the ingenuity of the pleader introduced the phrase: "Against the form of the statute (or statutes) in that case made and provided."(*q*)

But even this device was not without its risks until the reform of civil pleading, and the passing of 14 & 15 Vict. c. 100, s. 24, as to criminal pleading.

As to Acts since 1793, no occasion can arise for the execution of this duty except in the case of temporary Acts, whether included or not in an Expiring Laws Continuance Act, the general statutory rule being that a temporary Act does not expire until the end of the

---

(*p*) *R.* v. *Wilde* (1671), 1 Lev. 296.
(*q*) *Palgrave* v. *Windham* (1718), 1 Str. 214.

session, after the time fixed for its duration has run out.

It was also held needful to set out the full title of the Act referred to,(*r*) but the Courts gradually relaxed strictness as to this requirement so long as the Act could be identified, and short titles supersede the necessity of this practice.(*s*) A Bill is before Parliament in this session (1892) to give short titles to about 800 Acts, which, if passed, will enormously simplify the mode of citation.

(*r*) *Beck* v. *Beverley* (1843), 11 M. & W. 845.
(*s*) *R.* v. *Westley* (1860), Bell Cr. Cas. 193; *Esdaile* v. *Maclean* (1846), 15 M. & W. 277.

CHAPTER IV.

CLASSIFICATION OF STATUTES.

	PAGE
1. Statute defined	62
Statutes at large	63
2. Attempts to classify statutes	63
3. Classification by date	64
4. Classification by extent	64
(a) Public and general	65
(b) Local and personal	65
(c) Private	65
(d) Blackstone's classification	65
(e) Criticism thereon	66
(f) Modern history of classification of local and private Acts	67
5. By subject-matter	68
6. By their object	69
(a) Declaratory	69
(b) Remedial	70
(c) Enabling	71
7. By their method	72
(a) Mandatory	73
(b) Directory	74
8. By their duration	74
(a) Temporary	74
(b) Perpetual	74

Statute defined.

1. THE word "statute" in English law(*a*) has always meant "an Act of Parliament" in the proper sense of the word. "If an Act be penned," says Lord Coke in *The Prince's case* (1605), 8 Rep. 206, "that the King with the assent of the Lords, or with the assent of the Commons, it is no Act of Parliament, for three ought to assent to it,(*b*) *scil.* the King, the Lords, and the Commons, or otherwise it is not an Act of Parliament." It is used in contradistinction to the "common law" and to "ordinance,"(*c*) which, as Lord Coke points out (1 Inst. 159 b), differ from a statute in this, that every statute must be made by the King with the assent of the Lords and Commons, and if it appears by the Act that it was made by two only, it is no statute, but merely an

(*a*) When used by the Civilians, "statute" meant the whole municipal law of the State, from whatever source emanating. See Dwarris on Statutes (2nd ed.), p. 485; Sedgwick on Statutory Law (2nd ed.), p. 33.

(*b*) Some of the earliest statutes lack this triple assent; *e.g.*, 20 Hen. 3.

(*c*) The laws of certain Crown colonies are termed ordinances, as are the Acts of the Long Parliament.

ordinance. A charter made "*de assensu prælatorum comitum baronum ac totius communitatis regni in instanti Parliamento apud Westmonasterium convocato*" has been held equivalent to an Act of Parliament.(*d*) But in the *Willes Peerage Claim* (1862-9), L. R. 4 H. L. 126, 158, a solemn adjudication by the King in Parliament, with the assent of the peers at the request of the Commons, was held not to be a statute. (See 29 Neist, Const. Hist. p. 22, *note*.)

The term at one time was taken as meaning all the Acts of one session, but it has long been used as equivalent to a separate Act as distinct from the enactments included therein.

Statutes at large.

The term "statutes at large," first employed in the edition of Barker published in 1587, is used in distinction to the abridgments of the statutes frequently published prior to that date,(*e*) and still represented by Chitty's and Paterson's Statutes and the Law Journal Abridgment.

Attempts to classify statutes.

2. Various attempts have been made to classify the statutes according to the real or supposed difference of the rules of interpretation to be applied, and although the rules which govern their interpretation and effect, as will be seen,(*f*) do not vary much, to whatever class a statute belongs, still it is desirable, if only as a matter of nomenclature, before considering the rules, to indicate the chief methods of classification which have been adopted. "The most popular division of Acts of Parliament," says Wynne, in Dialogue III. vol. ii. p. 99, "arises from considering them as public or private, temporary or perpetual, remedial or explanatory, in affirmance or derogation of common law." The main divisions recognised are made with reference to—

(a) The time when the Acts were passed;
(b) Their extent;
(c) Their contents or subject-matter;
(d) Their object;
(e) Their method; and
(f) Their duration.

(*d*) Islington Market Bill (1835), 3 Cl. & F. 513.
(*e*) See 1 Statt. Realm, Intr. p. xxiii.
(*f*) See the rules as to construing penal statutes, *post*, Part III.

Classification by date.

3. The earliest division is into "*vetera*" and "*nova statuta.*" This classification is first found in Coke's Institutes. The *vetera statuta* include all statutes or ordinances (*g*) recognised as having the force of law which are either prior to the reign of Edward III. or *incerti temporis.* Those from the reign of Edward III. have been styled *nova statuta.* But few of the former now remain on the Statute-book.(*h*) Of the remaining statutes many only declare the common law, and few have come under judicial consideration (*i*) during the last twenty-five years except the Statutes of Merton and Westminster,(*j*) Marlbridge,(*k*) and Gloucester,(*l*) and the statute *de Donis.*(*m*)

The main distinctions between these earlier enactments and those of later date are—

(1) The greater difficulty in authenticating their text and legislative validity; and

(2) The greater latitude permitted or taken in their construction by the earlier judges and text-writers, whose opinions would be regarded as *contemporanea expositio* (see p. 94).

By extent.

4. Classification by reference to the extent of the operation of an Act is unsatisfactory.

The mediæval judges seem to have roughly divided the statutes into general and special, and to have decided, as to the first class, that they would notice them judicially in the same way as they noticed the common law or custom of the realm which the statutes declared or altered, and, as to the second class, that they would treat them, like local customs, as exceptions on the general law requiring special proof. This led to a second classification, into public and

---

(*g*) See Co. Litt. 159 b, and p. 61, *supra*, and Dwarris (2nd ed.), p. 460; Bacon's Abridgement, tit. Statute (7th ed.), p. 431.

(*h*) They take up in text and translation only eighty-two pages of the Revised Statutes (2nd ed.), but a few not specifically repealed have been omitted from that edition.

(*i*) See 2 Reeves, Hist. Eng. Law (3rd ed.), pp. 85, 354; Dwarris *on* Statutes (2nd ed.), p. 460; Bacon, Abridgement, tit. Statute (7th ed.), p. 431; Comyn, Dig. tit. Parliament, R.

(*j*) *Robinson* v. *Duleep Singh* (1878), 11 Ch. D. 798.

(*k*) *Avis* v. *Newman* (1889), 41 Ch. D. 532.

(*l*) *Mount* v. *Taylor* (1868), L. R. 3 C. P. 645.

(*m*) *Rivett-Carnac's Will* (1885), 30 Ch. D. 136.

private, which was thrown into confusion by the practice introduced in the last century of inserting in special Acts a clause requiring them to be deemed public Acts. And at present there is no proper or authoritative classification of public or private Acts, those adopted by Parliament and the judges differing, and neither being scientific.

Public and general.

For judicial purposes an Act is general which is included in the Public General Acts, published by authority at the close of every session, whatever be the area over which it extends. For parliamentary purposes an Act is public which is not brought in on petition, and is not subject to parliamentary fees.

Local and personal.

The term "local and personal" is now a term of art. It is recognised in the Interpretation Act, 1889, s. 35, and in the Statute Law Revision Act of 1890, by which certain Acts previously included among the public general Acts are declared local and personal, *i.e.*, quasi-public, but not of general public interest. Since 1868 this class of Acts is printed in a series of volumes separately from both public and private Acts, the Acts being numbered in Roman numerals. All since 1850, and many before that date, are to be judicially noticed; but in passing through Parliament they are to be treated as private Bills.

Private.

The term "private" in the Standing Orders of both Houses includes all Bills affecting the interests of particular localities, and not of a general public character.(*o*) It covers local and personal Bills. As a classification of Acts, it means those which require proof in a court of justice;(*p*) *i.e.*, in respect to Acts since 1850, those only which contain an express provision that they shall not be deemed public. Such as are printed are numbered in Arabic numerals.(*q*)

Blackstone's classification.

Blackstone(*r*) divides statutes into *general* or *special*, *public* or *private*, but goes on to treat the terms "general" and "public" as applicable to the same Acts.

(*o*) 1 Clifford, 267, 491; see May, Parl. Pr. (9th ed.) 745, 898; Standing Orders of House of Commons, Parl. Pap. 1891—C—No. 395, p. 106.

(*p*) *Loc. cit.* 268; Co. Litt. 98 a, ed. Thomas, note (16); and see 8 & 9 Vict. c. 113, ss. 3, 5; 14 & 15 Vict. c. 99, s. 14; 45 Vict. c. 9, s. 2.

(*q*) *Vide* 2 Clifford, 770.

(*r*) 1 Comm. 86.

"A general(*s*) or public Act is an universal rule that regards the whole community, and of this the courts of law are bound to take notice judicially and *ex officio*, without the statute being particularly pleaded."

52 & 53 Vict. c. 63, s. 9.

This definition has been altered for judicial purposes by the Interpretation Act, 1889 (repealing and re-enacting 13 & 14 Vict. c. 21, s. 7), which declares that all Acts passed after 1850 are to be public Acts, and to be judicially noticed as such, unless they contain a provision to the contrary.(*t*) The effect of this is to make it unnecessary to prove any modern Act which does not contain a clause declaring that it is a private Act, and to give such an Act all the effect of a public Act.(*u*) Blackstone goes on (1 Comm. 86) to define "*special* or *private* Acts" as "rather exceptions than rules, being those only which operate upon particular persons and private concerns."

Criticism thereon.

But this definition does not cover what are now called local Acts, which constitute a special public law for a particular area, but applies to an enormous number of Acts relating to railways, canals, gas, water, insurance, and other companies, and to inclosure Acts. The term "special Act" is still in frequent use with reference to the Lands, Companies, and Railways Clauses Acts of 1845. In that context it has the meaning given it by Blackstone, and is used in opposition to the general Acts, whose clauses it incorporates for the purposes of the particular undertaking. In some cases public Acts giving powers for the compulsory taking of land are put into the position of special Acts with reference to the Lands Clauses Acts.(*v*)

Blackstone's definition is made with regard only to the law of England. Since the Treaty and Act of Union, and the extension of the British empire—

(1) Few Acts cover the whole empire;

(*s*) See May, Parl. Pract. (9th ed.) 898.

(*t*) The first general Act in the same direction was 27 Geo. 2, c. 16, s. 2, enacting that all Acts previously passed for erecting local courts of requests or courts of conscience should be judicially noticed as public Acts.

(*u*) Per Lord Cairns in *Aiton* v. *Stephen* (1876), 1 App. Cas. 456; *vide post*, pp. 67, 68.

(*v*) *E.g.*, Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), ss. 38 (4), 98.

(2) Only a small proportion, the United Kingdom;

(3) Many are local to England, Scotland, or Ireland, and some to Wales; and

(4) Many Acts not extending to the whole of any part of the United Kingdom are printed among the public general statutes, although they are certainly not general;(*w*) and

(5) Many Acts described as public Acts of a local character are included among local and personal Acts.

The term "public general Act" no longer includes all Acts to be judicially noticed, for all Acts since 1850 which are printed by authority are judicially noticed,(*x*) and, so far as Parliament is concerned, Acts are really classified by reference to the difference of method adopted in examining the Bills, and to the fact that parliamentary fees are levied on one set of Acts and not on the other.

The proper classification would therefore seem to be (*y*)—

(1) Public Acts:

(a) General; *i.e.*, with reference to the whole empire, or one of its main subdivisions.

(b) Local; *i.e.*, relating to a subordinate area in a constituent part.

(c) Personal; *i.e.*, relating to incorporations of trading bodies, &c.

(2) Private Acts, relating to the affairs of individuals:

(a) Printed.

(b) Not printed.

(1 c) would more properly fall under private Acts but that the parliamentary charters which form this class of Act almost always grant rights of interference with public and private property.

Modern history of classification of local and private Acts.

Till 1798 local and personal Acts to be judicially noticed were printed with the public Acts. From 1798 to 1813

(*w*) This classification is made with reference to the procedure in Parliament in passing the Acts.

(*x*) 52 & 53 Vict. c. 63, s. 9.

(*y*) 1 Clifford, 267, 268.

the statutes were divided into three classes: (1) Public and general; (2) Local and personal, to be judicially noticed; (3) Private and personal, not to be judicially noticed. The last class was not ordered to be printed at all. In 1814 class (3) was subdivided into—(i.) Private Acts printed by the Queen's printer, and (ii.) Private Acts not so printed.(*z*)

From that date until 1850 a clause was inserted in all the Acts in sub-class (a) to the following effect:—

"And be it further enacted, that this Act shall be printed by the several printers to the Queen's most excellent Majesty duly authorized to print the statutes of the United Kingdom, and a copy thereof so printed by any of them shall be admitted as evidence thereof by all judges, justices, and others."

In 1850, by Brougham's Act (13 & 14 Vict. c. 21), s. 7, it was provided that every Act passed after the 10th of June 1850 shall be deemed and taken to be a public Act, and shall be judicially taken notice of as such, unless the contrary be expressly provided and declared by such Act. This provision is now embodied in the Interpretation Act, 1889, s. 9, as a general rule of construction, and its effect is to make all modern Acts, with few exceptions, public Acts so far as judicial notice by the courts is concerned.(*a*)

Since 1868 the class "local and personal" has been altered to "local," all personal Acts being relegated to the class "private Acts," and in the tables of the statutes a distinction is made between public Acts of a local character, and other local Acts, by putting the mark P. before the former, which mainly consist of provisional orders confirmation Acts and marriage validation Acts. But it is clear that this distinction has no judicial significance, and in no way alters the rules of construction applicable to the Acts in question.

By subject-matter.

5. The only serious attempt to classify Acts by their subject-matter is that in the Consolidated Digest of the

---

(*z*) 1 Clifford, 267.

(*a*) *Ante*, p. 65.

Statutes, which, however, only deals with public general Acts.(*b*)

6. Most of the judicial terms applied to Acts relate to their object. Acts are, from this point of view, described as declaratory, remedial, enabling, or penal,(*c*) and as being in affirmation or derogation of the common law. By their object.

If a doubt was felt as to what the common law is on some particular subject, and an Act was passed to explain and declare the common law, such an Act was called a *Declaratory* Act.(*d*) Declaratory.

For modern purposes a declaratory Act(*e*) may be defined as an Act passed to remove doubts existing as to the common law, or the meaning or effect of any statute, or to codify the rules of equity and the common law as established by judicial decisions. The passing of a declaratory Act, viewed constitutionally, is an assertion of supreme judicial authority, such as was often exercised in earlier Parliaments, and not of legislative authority.

A common application of declaratory Acts is to set aside what Parliament deems to have been judicial errors, whether in the statement of the common law or the interpretation of statutes. Usually, if not invariably, such an Act contains a preamble, and also the word "declared" as well as the word "enacted." Thus, in *Price* v. *Bradley* (1885), 16 Q. B. D. 149, the Court decided eels to be fresh-water fish within 41 & 42 Vict. c. 39. This decision was regarded by Parliament as a scientific error, and by 49 Vict. c. 2, it was *declared* that fresh-water fish in the first-mentioned Act did not include eels. The most

---

(*b*) *Vide infra*, p. 145, as to statutes *in pari materiâ*.

(*c*) As to these, *vide post*, Part III.

(*d*) These two classes of statutes are mentioned by Blackstone (1 Comm. 86), but at the present day it is not usual to give a statute a different operation according as it is a *declaratory* or *remedial* Act; Lord Coke, however, says that, "by reason of this word [declared], whereby it appeareth what the law was before the making of this Act, like cases in semblable mischief shall be taken within the remedy of such an Act": Co. Litt. 290.

(*e*) Numerous Acts of this kind have passed in recent sessions; *e.g.*, the Partnership Act, 1890, which declares and amends the common law, the law merchant, and the statute law on that subject, and forms a code. This Act aims mainly at declaring the common law, and only to a small extent at overruling judicial decisions.

salient instance in modern times of a declaratory Act is
41 & 42 Vict. c. 73. the Territorial Waters Jurisdiction Act, 1878, passed in order to overrule the opinion of the majority of the
(1878) 2 Ex. D. 73. judges in *The Franconia case* as to the limits of British territorial waters. The preamble asserts, in defiance of the judicial majority, that "the right jurisdiction of her Majesty, her heirs and successors, extends, *and has always extended*, over the open seas adjacent to the coasts of the United Kingdom, and of all other parts of her Majesty's dominions, to such a distance as is necessary for the defence and security of such dominions." The opinion of the minority in *The Franconia case* has been therefore not only enacted, but declared to have been always the law.(*f*)

Remedial Acts. A Remedial Act is defined by Blackstone(*g*) as one made to "supply such defects and abridge such superfluities in the common law as arise, either from the general imperfection of all human laws, from change of time and circumstances, from the mistakes and unadvised determinations of unlearned (and even learned) judges, or from any other cause whatever." But this definition is too narrow, for the operation of remedial Acts is not confined to the common law, but extends also to prior enactments. In earlier Acts the grievance is usually recited in the preamble, and the statute resembles in form a petition for redress of grievances, for which the existing law was insufficient (see 23 Hen. 8, c. 5, Commission of Sewers, preamble), and in many Acts the words "for remedy whereof" immediately precede the words of enactment. In modern public Acts a preamble is usually dispensed with, and the nature of the grievance, if any, to be remedied left to be gathered from the tenor of the title and enacting part.

The distinction between declaratory and remedial Acts was originally taken with reference to their effect on the common law or custom of England, and not with reference to their explanation or repeal of prior statutes. An Act

(*f*) *Per Curiam, Reg.* v. *Dudley* (1884), 14 Q. B. D. at p. 281.
(*g*) 1 Comm. 80.

is said by Blackstone to be declaratory "where the old custom of the realm is almost fallen into disuse or become disputable, in which case Parliament has thought proper, *in perpetuum rei testimonium*, and for avoiding all doubts and difficulties, to declare what the law is, and ever hath been."(*h*)

Enlarging and restraining Acts.

Remedial Acts are subdivided by Blackstone into *enlarging* and *restraining* Acts, the former widening the common law where it was too strict or narrow, the latter taking away or cutting down rights existing at common law. His instance of an enlarging Act is 5 Eliz. c. 11, which makes it treason to clip the current coin of the realm. A more happy example would be that of the statutes increasing the powers of tenants for life to deal with settled lands which would match his instance of 13 Eliz. c. 10, restricting the powers of leasing by spiritual corporations. Both terms are in truth purely relative. The same statute may be "enlarging" as to one set of persons, "restraining" as to others. Every creation of a new offence enlarges the scope of the criminal law and restrains *pro tanto* the liberty of individuals.(*i*) The Irish Land Acts enlarge the rights and interests of the tenant, and restrict those of the landlord. Indeed, the same Act may be "remedial" from one point of view and "penal" from another.(*j*) And almost every statute, except appropriation Acts, may be described as *remedial*, since its passing presupposes some grievance which the Act is intended to rectify. Even a Statute Law Revision Act or a Consolidation Act remedies the grievance of the prolixity, complexity, and undigested redundancy of the contents of the Statute-book.

Enabling Acts.

A statute which makes it lawful to do something which would not otherwise be lawful is called an *Enabling* Act.(*k*)

(*h*) 1 Comm. 86. Magna Charta is for the most part declaratory. The Statute of Treasons (25 Edw. 3, c. 2) purports to be wholly so.

(*i*) See per Wills, J., in *Re Bellencontre* (1891), 2 Q. B. at p. 141.

(*j*) 11 Geo. 2, c. 19, has been held remedial in *Stanley* v. *Wharton* (1821), 9 Price 301, but penal in *Hobbs* v. *Hudson* (1890), 25 Q. B. D. 232.

(*k*) See effect of enabling Acts, discussed *post*, Part II. ch. ii.

The most ordinary instances of such statutes are to be found in Acts which authorize land to be taken compulsorily in order to carry out some public work, or legalising what would otherwise be a public or private nuisance. But there are a number of other things which can only be done by Act of Parliament; for instance, as Lord Eldon pointed out in *Westmeath* v. *Westmeath* (1830), 1 Dow & Cl. 519, at p. 544, "according to the law of this country, marriage is indissoluble, and can only be dissolved by Act of Parliament, enabling to marry again;" as Cockburn, C.J., said in *R.* v. *Twiss* (1869), L. R. 4 Q. B. 412, "nothing short of an Act of Parliament can divest consecrated ground of its sacred character;" as the Judicial Committee pointed out in *Duranty* v. *Hart* (1863), 2 Moore P. C. N. S. 389, at p. 313, note (*b*), "nothing short of an Act of Parliament can displace a decision of the Supreme Court." So, in *Re Bishop of Natal* (1864), 3 Moore P. C. N. S. 115, at p. 148, the Judicial Committee said, "After the establishment of an independent Legislature in a colony, there is no power in the Crown by virtue of its prerogative, and without an Act of Parliament, to create a bishopric or other ecclesiastical corporation." So, in *The Prince's case* (1605), 8 Rep. 16 b, it was pointed out that "a course of inheritance which is against the rules of the common law cannot be created by charter without the force and strength of an Act of Parliament." So, in *Brumfitt* v. *Roberts* (1870), L. R. 5 C. P. 233, it appeared that by the private Act of 2 & 3 Vict. c. xxxiii., a special interest in certain pews not known to the common law was created; and in a similar way the Court (in *Medway* v. *Earl Romney* (1861), 30 L. J. C. P. 236) recognised the creation of a new species of statutory property and interest in water. So, in *Montrose Peerage* (1853), 1 Macq. H. L. (Sc.) 404, Lord Cranworth said: "I take it to be a matter admitting of no controversy that . . . . the effect [of the Act] was to destroy that creation [*i.e.*, the Dukedom of Montrose]. It was not necessary that there should be any attainder. Parliament was omnipotent."

The terms "*Obligatory*," "*Permissive*," "*Mandatory*," and "*Directory*,"(*l*) seem to have reference to the method by which the Legislature sets about attaining its object. By their method.

The epithets "*Obligatory*" and "*Permissive*" are applied to enabling statutes according as the persons affected by such statutes have an option or not about doing the thing which the statute deals with. If there is no option, the statute is called "obligatory," but if there is, it is called "permissive."

The epithets "*Imperative*" and "*Mandatory*" are used with reference both to enabling Acts and to statutes which create duties. A statute which creates a duty is called "imperative," if it is not optional whether that duty be performed or not, and the same term applies to Acts imposing a condition satisfaction whereof is essential to the validity of the Act or document as to which it is imposed. Imperative Acts.

In *Young* v. *Leamington* (1883), 8 App. Cas. 517, it was in dispute whether s. 174 (1) of the Public Health Act, 1875, enacting that contracts made by an urban sanitary authority, whereof the value exceeded £50, should be in writing and sealed with the common seal of the authority, was imperative or directory. The Court of Appeal and the House of Lords decided that it was imperative, and that a contract not so sealed was void although executed, and that, although the sanitary authority had obtained the benefit of it, they were free from the usually correlative obligation of payment. 38 & 39 Vict. c. 55.

Again, when a statute is passed for the purpose of enabling something to be done, and prescribes the formalities which are to attend its performance, those prescribed formalities which are essential to the validity

(*l*) Mr. Sedgwick, in his treatise on Statutory Law (2nd ed.), p. 318, points out that it is somewhat singular that this epithet "directory" should be used in this sense when applied to statutes, whereas, strictly speaking, it is synonymous with "mandatory." Thus, in *Entwistle* v. *Dent* (1848), 1 Ex. 812, at p. 823, Pollock, C.B., used the word with regard to a commercial letter of instructions in the sense of "mandatory," by reference to the Roman law term *mandatum*.

of the thing when done are called *imperative* or *absolute;* but those which are not essential, and may be disregarded without invalidating the thing to be done, are called *directory*.(*m*)

Directory Acts.

It has been laid down in Ireland that statutes are to be construed as mandatory and imperative when they prescribe acts to be done by private parties, but are only directory when they require public officers to do the acts, in which case the default or mistake of the officers will not destroy the rights of the parties.(*n*)

But this decision is inadequate. An Act may be mandatory upon a public officer, and may expressly or implicitly render him liable to punishment for disobedience to its provisions, without also exposing private persons to any civil or criminal liability or loss by reason of the default of the official. On the other hand, although the officer may be liable for a breach of duty, the performance by him of the duty may be a condition precedent to the attaching of the civil rights of other persons.

Thus, if a book or design is not registered, the owner cannot sue for infringement, even though non-registration is due to default of an official who can be compelled by mandamus to register, or be punished in criminal or civil proceedings for his default.

So, also, if an elector's name is omitted from the register, he cannot contend that the provisions of the Registration Acts are directory. His only remedy is by action,(*o*) or by summary proceeding before the revising barrister.

By their duration.

8. Acts are also classified, by reference to their duration, as temporary or perpetual.

Temporary statutes are those on the duration of which some limit is put by Parliament.(*p*)

Perpetual Acts are those upon whose continuance no

(*m*) See this discussed, *post*, Part II. ch. ii.
(*n*) *Plunket* v. *Molloy* (1856), 8 Ir. Jur. N. S. 83.
(*o*) See *Reg.* v. *Hall* (1891), 1 Q. B. 747.
(*p*) The standing orders require a time clause to be inserted in such Acts. The best known of these Acts is the Army Annual Act, formerly called the Mutiny Act, whose temporary duration depends on constitutional considerations.

limitation of time is expressly named or necessarily to be understood. They are not perpetual in the sense of being irrevocable.(*q*)

These classes are more fully dealt with in Part II. ch. v.

A considerable number of Acts originally passed as an experiment are annually continued by an Expiring Laws Continuance Act.

(*q*) Dicey, Law of the Constitution (3rd ed.), pp. 42, 61.

PART I.

CONSTRUCTION OF STATUTES.

CHAPTER I.

GENERAL RULES OF CONSTRUCTION WHERE THE MEANING IS PLAIN.

	PAGE
1. If meaning plain, consequences to be disregarded	76
(a) Various modes of expressing rule	77
(b) Intention of Legislature not to be speculated on	78
(c) Validity not to be questioned	80
(d) Construction *ut res magis valeat quam pereat*	82
(e) *Casus omissus* not to be created or supplied	82
(f) Provisions of Act not subject for equitable relief	86
(g) Evasion of a statute	88
(h) Fraud upon an Act	90
2. *Contemporanea expositio*	93
3. Difference between primary and parliamentary meaning	98
4. Exceptions to rule as to following plain meaning	101
5. Judges not to modify statutes to suit their own views of right	105
6. Legislature assumed to choose the clearer of two expressions	107

If meaning plain, consequences to be disregarded.

1. STRICTLY speaking, there is no place for interpretation or construction except where the words of a statute admit of two meanings.(*a*) "Where the language of an Act is clear and explicit, we must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the Legislature."(*b*) In other words, if the language used by the Legislature is precise and

(*a*) Bell, Dict. Law of Scotland, tit. Statute.
(*b*) *Warburton* v. *Loveland* (1831), 2 D. & Cl. (H. L.) 489.

unambiguous, a court of law at the present day has only to expound the words in their natural and ordinary sense. "*Verbis plane expressis omnino standum est.*"(*c*) The most effective recent exposition of this canon is that given in *Hornsey L. B.* v. *Monarch Investment Building Society* (1889), 24 Q. B. D. 5, by Lord Esher: "An Act of Parliament is to be construed according to the ordinary meaning of the words in the English language as applied to the subject-matter, unless there is some very strong ground, derived from the context or reason, why it should not be so construed." Lindley, L.J., added at p. 9: "Where an expression is ambiguous, in considering what construction it is proper to put upon it we must look a little at the object of the Act, and the consequences of the rival construction. If one construction produces consequences in conformity with the scope of an enactment, and with the consequences which follow from the constructions put upon other enactments of the same sort, while the rival construction introduces a startling novelty, no lawyer would adopt the latter construction."

Various modes of expressing the rule.

This rule is expressed in various terms by different judges. The epithets "natural," "ordinary," "literal," "grammatical," and "popular" are employed almost interchangeably, but their indiscriminate use leads to some confusion, and probably the term "primary"(*d*) is preferable to any of them, if it be remembered that the primary meaning of a word varies with its setting or context, and with the subject-matter to which it is applied; for reference to the abstract meaning of words, if there be any such thing, is of little value in interpreting statutes.

The view expressed in the case last cited accords with the opinion of Lord St. Leonards in *Myers* v. *Perigal* (1852), 2 D. M. & G. 619, expressed with regard to the construction of the Mortmain Act: "It is impossible to deny that the current of modern decisions is against the older cases, and that, while there is to be discovered an inclination formerly to carry the provisions of the Act

(*c*) Per Dr. Lushington, in *The St. Cloud* (1863), Bro. & Lush. 17.
(*d*) See Elphinstone on Interpretation of Deeds, ch. iv.

beyond the intention of the Legislature, the tendency of modern decisions has been the other way. My inclination is neither to the one side nor the other. I desire to give such a construction to the statute as shall satisfy its terms and meet the intention of the Legislature." And Lord Cairns said in *Brook* v. *Badley* (1868), 3 Ch. App. at p. 673, "I desire very much, in a case of this kind, to follow the rule laid down by Lord St. Leonards."

Intention of Legislature not to be speculated on.

In an earlier case, *R.* v. *Archbishop of Canterbury* (1848), 11 Q. B. 665, Lord Denman observed: "My brother Coleridge's admirable argument has confirmed me in the opinion of the danger of exposing an Act of Parliament, and the most simple construction of the plainest language . . . . to the speculations of those who will bring their forgotten books down and wipe the cobwebs from decretals and canons before they can find one argument for disturbing the settled practice of 300 years." Having then so expounded the enactment, it only remains to enforce and administer the law as it is found to be, notwithstanding the consequences, international, political,(*e*) or otherwise;(*f*) notwithstanding also the fact that it may be a very generally received opinion that the particular enactment in question "does not produce the effect which the Legislature intended,"(*g*) or "might with advantage be modified."(*h*) "If," said Pollock, C.B., in *Miller* v. *Salomons*

(*e*) In *Att.-Gen.* v. *Sillem* (1863), 2 H. & C. 510, Pollock, C.B., said, "We have nothing to do with the political consequences of our decision, or the dissatisfaction which it may create in any quarter anywhere, and I cannot help expressing my regret, not unmixed with some surprise, that the learned Attorney-General has more than once adverted to the consequences of our holding that what the defendants have done is not contrary to our municipal law."

(*f*) In *Kindersley* v. *Jarvis* (1856), 25 L. J. Ch. 541, Romilly, M.R., said, "No doubt if the Legislature had so enacted, however startling the proposition, however much it may be doubted whether the consequences were distinctly presented to the notice of Parliament, this Court must carry the enactments into effect regardless of the consequences." In *Hindmarch* v. *Charlton* (1860), 8 H. L. C. 166, Lord Campbell said, in holding a will invalid, which had not been executed according to the statute, "I may honestly say that we have a strong inclination in our minds to support the validity of the will in dispute, which the parties *bonâ fide* made, as they believed, according to law. But we must obey the directions of the Legislature . . . ."

(*g*) Per Blackburn, J., in *Preston* v. *Buckley* (1870), L. R. 5 Q. B. 394.

(*h*) *General Iron Co.* v. *Moss* (1861), 15 Moore P. C. 131.

(1852), 7 Ex. 560, "the language used by the Legislature be clear and plain, we have nothing to do with its policy or impolicy, its justice or injustice,(*i*) its being framed according to our views of right or the contrary; we have nothing to do but to obey it, and administer it as we find it; and I think to take a different course is to abandon the office of judge, and assume that of a legislator." "I do not understand," said Lord Redesdale in the case of *The Queensberry Leases* (1819), 1 Dow (H. L.) 491, 497, "what right a court of justice has to entertain an opinion of a positive law upon any ground of political expediency. The Legislature is to decide upon political expediency; and if it has made a law which is not politically expedient, the proper way of disposing of that law is by an Act of the Legislature, and not by the decision of a court of justice." And although, as we shall see presently,(*k*) it is allowable, and sometimes desirable, for a Court which is called upon to interpret a statute to acquaint itself with the history of the statute, and of the circumstances under which it was passed; and even to compare it with any similar statutes passed in other countries, and to examine decisions of British and even of foreign Courts upon similar statutes; still, it must be borne in mind, as Pollock, C.B., said in *Att.-Gen.* v. *Sillem* (1863), 2 H. & C. 508, "if a statute, in terms reasonably plain and clear, makes what the defendants have done a punishable offence within the statute, we want not the assistance which may be derived from what eminent statesmen have said or learned jurists have written . . . . we want not the decisions of American Courts to see whether the case before us is within the statute."

And even in a doubtful case search for the supposed intention of the Legislature must not be pressed too far.

Lord Herschell, in *Cox* v. *Hakes* (1890), 15 App. Cas. at p. 528, said: "It is not easy to exaggerate the magnitude of

(*i*) Or even "its absurdity": per Cotton, L.J., in *Yates* v. *R.* (1885), 14 Q. B. D. 660.

(*k*) *Infra*, p. 143: "What sources outside the statute may be had recourse to for throwing light on its meaning." See also rules in *Heydon's case*, *infra*, p. 112.

this change; nevertheless, it must be admitted that, if the language of the Legislature, interpreted according to the recognised canons of construction, involves this result, your lordships must frankly yield to it, even if you should be satisfied that it was not in the contemplation of the Legislature."

And in *Vestry of St. John, Hampstead*, v. *Coffin* (1886), 12 App. Cas. 1, Lord Halsbury said, at p. 6: "Doubtless there are cases in which, when in the instrument itself, whether a will, or a contract, or a statute, evidence may be discovered of the general intention of the framer, and of the general meaning, or what has been called the governing sense, in which the words or provisions are to be understood, you may occasionally modify the language you have to construe with reference to that general intention which has been so ascertained." He added: "In this case I confess myself wholly unable to discover any general intention on which I can rely as governing or modifying the language which the Legislature has used. It is obvious that two sets of learned judges have construed these sections differently, according as they have regarded the object which the Legislature had in view; and each of them has in turn pointed out the absurdities which would be the result of the opposite construction to that which their lordships have favoured. That seems to me to show that at all events it is difficult, if not impossible, to obtain any such key to the statute as is to be found in its ascertained *governing intention*. The result of that appears to me to be that your lordships should place upon it that construction which every Court is bound to place upon any instrument whatsoever; namely, that if there is nothing to modify, nothing to alter, nothing to qualify the language which the instrument contains, it must be construed in the ordinary and natural meaning of the words and sentences."

No statute may be treated as void.

From this rule several consequences follow; first, that no statutory enactment (*l*) may be treated as null and void or

(*l*) It is enacted by the 28 & 29 Vict. c. 63, s. 3, that "no colonial law shall be deemed to be void on the ground of repugnancy to the law of England." *Vide infra*, Part II. ch. vii., as to Acts in force in colonies.

unconstitutional.(*m*) This was pointed out by Blackstone, 1 Comm. 91, where he says, "If Parliament would positively enact a thing to be done which is unreasonable, there is no power in the ordinary forms of the Constitution that is vested with authority to control it." There are, indeed, *dicta* in the books which go to show that certain judges have considered that Acts of Parliament may, under certain circumstances, be declared to be and treated as null and void. Thus, in *Dr. Bonham's case* (1610), 8 Rep. 118 a, Lord Coke says that, "when an Act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will control it and adjudge such Act to be void."(*n*) There is, however, no instance of any British (*o*) statute having ever been declared null and void, or, as the Judicial Committee put it in *Logan* v. *Burslem* (1842), 4 Moore P. C. 297, "not binding, if it is contrary to reason," for, as it is stated in Blackstone's Commentaries, i. 91, "the examples usually alleged . . . . do none of them prove that where the main object of a statute is unreasonable, the judges are at liberty to reject it, for that were to set the judicial power above that of the Legislature, which would be subversive of all government." The very reverse, in fact, was held in *Lee* v. *Bude* (1871), L. R. 6 C. P. 580, where it was argued that certain Acts of Parliament had been obtained by inserting in them false recitals. "I would observe," said Willes, J., "that these Acts of Parliament are the law of the land, and we do not sit here as a court of appeal from Parliament. It was once said(*p*) that, if an Act of Parliament were to create a

(*m*) The expression "unconstitutional," as applied to an English Act of Parliament, merely means that the Act in question, as, for instance, the Irish Church Act, 1869, is, in the opinion of the speaker, opposed to the spirit of the English Constitution; it cannot mean (as it might, if applied to a French or an American Act) that the Act is either a breach of law or void. Dicey, Law of the Constitution (3rd ed.), p. 427.

(*n*) See also *Day* v. *Savadge* (1615), Hob. 87; *City of London* v. *Wood* (1700), 12 Mod. 687; and *Duchess of Hamilton* v. *Fleetwood* (1714), 10 Mod. 115, and notes to the case above cited.

(*o*) Statutes of the United States or British colonies may be declared by judges to be *ultra vires* by reference to their Constitutions.

(*p*) In *Day* v. *Savadge* (1615), Hob. 87, where it is laid down that "even

man a judge in his own cause, the Court might disregard it. That dictum, however, stands as a warning rather than as an authority to be followed. If an Act of Parliament has been obtained improperly, it is for the Legislature to correct it by repealing it; but so long as it exists as law the Courts are bound to obey it." A statute, even more than a contract, must be construed *ut res magis valeat quam pereat*, so that the intentions of the Legislature may not be treated as vain or left to operate in the air.(*q*) Even rules of international law are to be regarded merely as aiding to a construction of ambiguous enactments, and not as controlling British Acts. The judges may not pronounce an Act *ultra vires* as contravening international law, but may recoil, in case of ambiguity, from a construction which would involve a breach of the ascertained and accepted rules of international law.

Construction *ut res magis valeat quam pereat.*

Casus omissus not to be created or supplied.

¶ Another consequence of this rule is that a statute may not be extended to meet a case for which provision has clearly and undoubtedly been omitted to be provided.(*r*) The judges may not wrest the language of Parliament even to avoid an obvious mischief. "No case can be found to authorize any Court to alter a word so as to produce a *casus omissus*," said Lord Halsbury, in the *Mersey Docks case* (1888), 13 App. Cas. 602; and a like opinion was given in *Crawford* v. *Spooner* (1846), 6 Moore P. C. 9: "We cannot aid the Legislature's defective phrasing of an Act, we cannot add, and mend, and, by construction, make up deficiencies which are left there." In other words, the language of Acts of Parliament, and more especially of modern Acts, must neither be extended beyond its natural and proper

---

an Act of Parliament made against natural equity, as to make a man a judge in his own case, is void in itself."

(*q*) Per Bowen, L.J., in *Curtis* v. *Stovin* (1889), 22 Q. B. D. 512, 517.

(*r*) For good instances of *casus omissi* (which were afterwards remedied by the Legislature), see *R.* v. *Arnold* (1864), 5 B. & S. 322, and *R.* v. *Denton* (1864), 5 B. & S. 821. The mere fact that some certain point was not present to the mind of the draftsman when he drew the Act does not necessarily constitute that point a *casus omissus*. "Whether," said Bramwell, L.J., in *Ex parte Welchman* (1879), 11 Ch. D. 48, 55, "the draftsman had it in his mind or not is another question; but very often Courts have to discover what provision has been made for the happening of an event which was not in the contemplation of the person who drew the Act."

limits, in order to supply omissions or defects,(*s*) nor strained to meet the justice of an individual case.(*t*) "If," said Lord Brougham, in *Gwynne* v. *Burnell* (1840), 7 Cl. & F. at p. 696, "we depart from the plain and obvious meaning on account of such views (as those pressed in argument on 43 Geo. 3, c. 99), we do not in truth construe the Act, but alter it. We add words to it, or vary the words in which its provisions are couched. We supply a defect which the Legislature could easily have supplied, and are making the law, not interpreting it. This becomes peculiarly improper in dealing with a *modern* statute, because the extreme conciseness of the ancient statutes was the only ground for the sort of legislative interpretation frequently put upon their words by the judges. The prolixity of modern statutes, so very remarkable of late, affords no grounds to justify such a sort of interpretation." In *Pinkerton* v. *Easton* (1873), 16 Eq. 490, at p. 492, Lord Selborne said, "It has long been settled that the language of *modern* Acts of Parliament cannot be extended. . . . ." Said James, L.J., in *Scott* v. *Legg* (1877), 10 Q. B. D. at p. 238, "No doubt it probably is a source of mischief to have buildings of an inordinate size in a large town like London, where fires may produce great mischief; but it seems to me that we cannot, because we think there is a mischief, the existence of which is not provided for by the Act, depart from what appears to me to be the clear meaning of the Act of Parliament." Thus, in *Jones* v. *Smart* (1785), 1 T. R. 44, the question was whether a doctor of physic in a Scotch university was qualified to kill game under 22 & 23 Car. 2, c. 25, which enacted "that every person . . . . other than the son of an esquire, or other person of higher degree . . . . is declared to be a person by the law of this realm

(*s*) Even "if the language used is incapable of a meaning, we cannot supply one." Per Lord Denman, C.J., in *Green* v. *Wood* (1845), 7 Q. B. at p. 185.

(*t*) In *Whiteley* v. *Chappell* (1868), L. R. 4 Q. B. 149, Hannen, J., said, "It would be wrong to strain words to meet the justice of the present case, because it might make a precedent, and lead to dangerous consequences in other cases."

not allowed to have any guns . . . . for taking game." Amongst other arguments for proving that a Scotch doctor of physic was qualified, it was contended that the Legislature could not have intended to exclude such a person. "Be that as it may," said Buller, J., in his judgment, "we are bound to take the Act of Parliament as they have made it; a *casus omissus* can in no case be supplied by a court of law, for that would be to make laws." As a general rule, as Blackburn, J., pointed out in *R.* v. *Cleworth* (1864), 4 B. & S. 927, 934, if it appears that the class or thing which it is sought to bring within the Act (under consideration) was known to the Legislature at the time when the Act was passed, and that class is omitted, "it must be supposed to have been omitted intentionally." It will make no difference if it appears that the omission on the part of the Legislature was a mere oversight, and that without doubt the Act would have been drawn otherwise had the attention of the Legislature been directed to the oversight at the time the Act was under discussion. Thus, in *Lane* v. *Bennett* (1836), 1 M. & W. 70, it being admitted that Ireland was a place beyond the seas within the meaning of 4 & 5 Anne, c. 3, s. 19, which enacted that if a defendant shall be beyond the seas at the time a cause of action accrued, the plaintiff should be at liberty to sue him within a certain specified time after his return, it was contended that 3 & 4 Will. 4, c. 42, s. 7, which enacted that Ireland should not be deemed to be beyond the seas so far as related to certain statutes (but without naming this statute of Anne), ought to be held to extend to this statute of Anne. "The great probability," said the Court, "is that the omission to name the statute of Anne is an oversight, but even if we were quite satisfied that it was so we could not supply the defect." Similarly, in *N. E. Rail. Co.* v. *Leadgate L. B.* (1870), L. R. 5 Q. B. 157, Cockburn, C.J., said, at p. 161, with regard to the effect of the wording of the Local Government Act, 1858 (21 & 22 Vict. c. 98), "I regret that I cannot see my way to putting such a construction upon s. 55 as would meet the equity of the case, and include a railway like the present

(4 Anne, c. 16, *Ruffhead*).

(one constructed without parliamentary powers) . . . . though I have no doubt the Legislature would have drawn the clause so as to embrace the present case, had such a case been present to their minds." And the rule is perhaps even better stated by Jessel, M.R., in *Att.-Gen.* v. *Noyes* (1881), 8 Q. B. D. at p. 139: "It is the duty of judges in all cases to give fair and full effect to Acts of Parliament, without regard to the particular consequence in the special case, and not to indulge in conjecture as to what the Legislature would have done if a particular case had been presented to their notice. We first of all have to see what the Act of Parliament says, and then to apply it to the case; and I do not think it is a fair criticism on an Act of Parliament to say that the result will be unfair, or that it will result in making people pay duty who ought not to pay duty." An extreme instance of the adoption of this rule is given in *R.* v. *Dyott* (1882), 9 Q. B. D. 47. The Act 17 Geo. 2, c. 3, s. 1, required publication of a rate in church as a condition precedent to its validity. 7 Will. 4 & 1 Vict. c. 45, s. 2, substituted for publication in church or chapel publication by affixing the notice on or near the door of the church or chapel. 20 Vict. c. 19, s. 1, made all extra-parochial places parishes for poor law purposes. Among the places made parochial by this Act was Hopwas Hays, in Staffordshire, which contained neither church nor chapel, and only one house, a gamekeeper's lodge. The validity of a poor rate made for the parish fell into dispute, and the Queen's Bench Division decided that as the provisions of 17 Geo. 2, c. 3, s. 1, and 7 Will. 4 & 1 Vict. c. 35, s. 2, could not be complied with, no valid rate could be made. Grove, J., said (at p. 49): "It would be making legislation, and not interpreting the language of the statutes, were the Court to say that the rate could be levied without any previous publication. It may be that where the language of a statute is merely directory, and it is impossible to follow the direction, the Court would give effect to the doctrine of *cy-près*, and say that the direction should be carried out as nearly as possible. The maxim, *Nemo*

tenetur ad impossibilia, would then apply. But in this case the words of the statute are not directory, but positive and prohibitory. Very likely a provision for publishing a rate in places where there is no church or chapel was omitted from these statutes through a slip, but, if so, it is for the Legislature to remedy it."(*u*) And North, J., in the same case, said (p. 51): "The question being whether the statute is to be treated as one in which notice has been deliberately dispensed with or has escaped observation, I come to the conclusion that it has escaped observation. It is a *casus omissus*, from which no inference can be drawn against the necessity of notice."

When an Act contains special reference to, or saving of, another Act, and omits all allusion to a third Act *in pari materiâ*, it is safer to presume that the omission is deliberate than that it is due to forgetfulness or made *per incuriam*. Even if the omission flows from forgetfulness, those who claim the benefit of the omitted Act cannot succeed; the Courts cannot alter the law to meet a *casus omissus*.(*x*) It would also seem that omission, even *per incuriam*, to repeal or preserve inconsistent enactments will not save the earlier enactments.

Equity will not relieve against express statutory provisions.

III. A third consequence of this rule is that the High Court at the present day (*y*) declines to interfere for the assistance of persons who seek its aid to relieve them against express statutory provisions. This was clearly pointed out by Mellish, L.J., in *Edwards* v. *Edwards* (1876), 2 Ch. D. 297. "If," said he, "the Legislature says that a deed shall be 'null and void to all intents and purposes, whatsoever,' how can a court of equity say that in certain circumstances it shall be valid? The courts of equity have given relief on equitable grounds from provisions in old Acts of Parliament, but this has not been done in the case of

(*u*) In *Fenney* v. *Godfrey* (1870), L. R. 9 Eq. 356, James, V.C., read the command to be conditional on the existence of a church or chapel.

(*x*) *Re Williams* (1887), 34 Ch. D. 573, at p. 582 (North, J.).

(*y*) In *Lindsay* v. *Lynch* (1804), 2 Sch. & L. 5, Lord Redesdale said that repeated attempts had been made "to put a court of equity in such a situation that, without departing from its rules, it feels itself obliged to break through the statute. It is, therefore, absolutely necessary to make a stand, and not carry the decisions further."

modern Acts, which are framed with a view to equitable as well as legal doctrines." "Acts of Parliament," said Holker, L.J., in *Gibbs* v. *Guild* (1882), 9 Q. B. D. 75, "are omnipotent, and are not to be got rid of by declarations of courts of law or equity." Thus, in *Curtis* v. *Perry* (1802), 6 Ves. 739, the plaintiffs prayed that certain ships which stood registered in the name of one Nantes should be declared to be his separate property, although it appeared that the ships had always been treated as part of the property of a firm of which he was a member. Lord Eldon held that the plaintiff's prayer must be complied with, because the statutory enactment was precise and clear to the effect that every ship was to be considered as the property of the person in whose name it stood registered, and that, if a transfer was made of a ship, it must be made in a prescribed form. As the requirements of the Act had not been complied with, the Court could not interfere.

It has been often said, with reference to the Statute of Frauds, that "courts of equity will not permit the statute to be made an instrument of fraud." "By this," said Lord Selborne, in *Alderson* v. *Maddison* (1883), 8 App. Cas. at p. 474, "it cannot be meant that equity will relieve against a public statute of general policy in cases admitted to fall within it, and I agree with an observation made by Cotton, L.J., in *Britain* v. *Rossiter* (1882), 11 Q. B. D. 123, that this summary way of stating the principle (however true it may be when properly understood) is not an adequate explanation either of the precise grounds or of the established limits of the equitable doctrine of part performance." He went on to point out—

(1) That both at law (*z*) and in equity, s. 4 of the Statute of Frauds had been held not to avoid parol contracts, but only to bar their remedies, a view to which effect has been given by the Rules of Court requiring the statute to be specially pleaded; and

(2) That, in the decisions in equity resting upon part performance the defendant is charged on the

(*z*) *Crosby* v. *Wadsworth* (1805), 6 East 602, 611.

equities arising out of the acts done in execution of the contract, and not within the meaning of the statute upon the contract itself.

It is only with reference to a few statutes that attempts have been made at equitable construction, and these attempts are unwarranted so far as they contravene the old rules of the Court of Chancery which relieved from erroneous construction put upon statutes by courts of law, but only under circumstances thus stated by Lord Hardwicke in *Bassett* v. *Bassett* (1744), 3 Atk. at p. 206: "There are several cases where, in consequence of an Act of Parliament, this Court will intervene. As where a new Act of Parliament is made to alter the law, and the judges are formal in adhering to rules of [the common] law and will not construe according to the words and intention of the Act, there the Court will take it up and will give remedy here, though it is the business of judges to mould their practice so as to make it conformable to the Legislature."

Evasion of a statute.

IV. A fourth consequence of this rule is that a court of law cannot interfere to prevent a mere evasion (*a*) of an Act of Parliament, an evasion, that is to say, which does not amount to a positive breach of, or fraud upon, the Act. As was said by Grove, J., in *Att.-Gen.* v. *Noyes* (1881), 8 Q. B. D. at p. 137: "There must, in every law, be marginal cases which come very near the point at which the statute can

(*a*) "There is always an ambiguity," said Lindley, L.J., in *Yorkshire* v. *Maclure* (1882), 21 Ch. D. 318, "about the expression 'evading an Act of Parliament;' in one sense you cannot evade an Act, that is to say, the Court is bound so to construe every Act as to take care that that which is really prohibited may be held void. On the other hand, you may avoid doing that which is prohibited by the Act, and you do something else equally advantageous to you which is not prohibited by the Act." Again, in *Edwards* v. *Hall* (1856), 25 L. J. Ch. 84, Lord Cranworth said, "I never understood what is meant by an evasion of an Act of Parliament; either you are within the Act or you are not within it; if you are not within it, you have a right to avoid it, to keep out of the prohibition." And in *Jefferies* v. *Alexander* (1860), 8 H. L. C. 594, at p. 637, Willes, J., said, "To say that what was done is an evasion of the law is idle, unless it means that, though in apparent accordance with it, it really was in contravention of the law." "The word 'evasion,'" said Grove, J., in *Att.-Gen.* v. *Noyes* (1881), 8 Q. B. D. 133, "may mean either of two things. It may mean an evasion of the Act by something which, while it evades the Act, is within the sense of it, or it may mean an evading of the Act by doing something to which the Act does not apply."

be avoided; and the persons intending to avoid the operation of a statute can always succeed by doing it directly. If a man with a mortal disease, although he knows that he cannot live six months, chooses to convey his property to his heirs expectant, he may do so, and they will pay no succession duty. So, again, an old man may do so. He may hand over his property by a *bonâ fide* conveyance."(*b*) Such an evasion was described by Grove, J., in *Ramsden* v. *Lupton* (1873), L. R. 9 Q. B. 32, as "getting away from the remedial operation of the statute while complying with the words of the statute." "An Act evaded is not an Act infringed,"(*c*) and an arrangement which is designed "to defeat the intentions of the Legislature, and to enable a person to accomplish indirectly what he could not under the Act in question have done directly," will not necessarily be held on that account invalid by courts of law.(*d*) It has always been the pride of a competent conveyancer to be able, when required, to drive a coach and four, or six, through any Act of Parliament. In *Smale* v. *Burr* (1872), L. R. 8 C. P. 64, it appeared that a bill of sale had been given by one Price to the plaintiff, but, instead of registering it before the expiration of the twenty-one days allowed for that purpose by Bills of Sale Act 1854 (17 & 18 Vict. c. 36), another bill of sale was given by Price to the plaintiff in exchange for the first. This was done fifteen or sixteen times, and ultimately the bill of sale last given was registered before the expiration of twenty-one days from the day on

(*b*) See also per Jessel, M.R., at p. 140.

(*c*) Per Bramwell, B., in *Ramsden* v. *Lupton* (1873), L. R. 9 Q. B. at p. 28, and in the same case, at p. 30, Keating, J., said, "If that were the enactment, the Act would have been infringed—not evaded, but infringed," &c. In *Ritchie* v. *Smith* (1848), 6 C. B. at p. 462, Williams, J., describes an agreement as one "by which the plaintiff co-operated with other persons for the purpose of contravening *and evading* the provisions of the Act," using the word "evade" as synonymous with "infringe;" and in *Re Mead* (1876), 3 Ch. D. 122, Bacon, C.J., makes a similar use of the word. The former seems the accepted meaning of the term.

(*d*) In *Barton* v. *Muir* (1874), L. R. 6 P. C. 139, an arrangement which was sought to be enforced was described in these words by the Chief Justice of the Supreme Court of New South Wales, and on that account set aside by that Court; but this decision was reversed by the Judicial Committee. In *Davis* v. *Stephenson* (1890), 24 Q. B. D. 529, a deliberate and scarcely disguised attempt to evade a penal Act was held to have succeeded. And see *In re Watson* (1890), 25 Q. B. D. 27.

which it (the last bill) had been given. The plaintiff then sued the defendant, who had taken Price's goods in execution. The defence was that the transaction was fraudulent, and ought not to be upheld. It was held, however, that, notwithstanding that the transaction was clearly of a most fraudulent character, the requirements of the 17 & 18 Vict. c. 36, had been complied with, and that consequently, although the spirit of the Act had been evaded, the bill of sale must be held to be valid. "I should have been extremely glad," said Denman, J., "if I could have found an authority which would have enabled us to defeat this bill of sale. But I find none." The Courts will, however, always examine into the real nature of the transaction by which it is sought to evade an Act: *Re Watson* (1890), 25 Q. B. D. 72. The Licensing Acts and the Bills of Sale Acts are daily evaded with success. But this can only be effected by acts which are clearly *casus omissi*, having regard to the meaning of the enactment as ascertained by the Courts, and not of course by individual judgment: for "Parliament would legislate to little purpose," said Lord Macnaghten,(e) "if the objects of its care might supplement or undo the work of legislation by making a definition clause of their own. People cannot escape from the obligation of a statute by putting a private interpretation on its language."

Fraud upon an Act.

As Abbott, C.J., said in *Fox* v. *Bishop of Chester* (1824), 2 B. & C. 635, at p. 655, it is a "well-known principle of law that the provisions of an Act of Parliament shall not be evaded by shift or contrivance"; consequently, as Lord Coleridge said in *Wright* v. *Davies* (1876), 1 C. P. D. 638, at p. 646, if a contract be "framed so as entirely to defeat the object of an Act of Parliament," such a contract, "although not within its express prohibition," might very well be held "to be impliedly forbidden by it." We accordingly find that a court of law will not tolerate such an evasion of an Act of Parliament as amounts to a positive "fraud upon the Act," such an evasion being, as Lord Eldon described it

(e) In *Netherseal Co.* v. *Bourne* (1889), 14 App. Cas. 247.

in *Fox* v. *Bishop of Chester* (1829), 1 D. & Cl. (H. L.) 416, at p. 429, "a fraud on the law, or an insult to an Act of Parliament." The expression "a fraud upon an Act" is one which we find used with reference to a transaction, "which," as Lord Coleridge said in *Ramsden* v. *Lupton* (1873), L. R. 9 Q. B. 24, "no Court would give effect to, because it had no legal foundation from the beginning. It is rather difficult," continued he, "to put into any other form [of words] what exactly is meant by an arrangement that is a fraud upon an Act of Parliament of this sort. I perfectly understand the expression, and it may be a very legitimate one to use with regard to the bankruptcy laws, which are passed for different purposes, and an attempt to evade which, while complying with the letter of the statute, has been held by the Courts, and has repeatedly been decided to be, not a successful evasion of the statute, but such a colorable attempt to evade the statute as the Court would describe as a fraud upon it." But the phrase "fraud upon an Act" is somewhat unfortunate, and there is, as Turner, L.J., said in *Alexander* v. *Brame* (1855), 7 De G. M. & G. 525, at p. 539, "perhaps no question of law more difficult to determine than the question, what particular Acts, not expressly prohibited, shall be deemed to be void as being against the policy of a statute. It is no doubt the duty of the Courts so to construe statutes as to suppress the mischief against which they are directed, and to advance the remedy which they are intended to provide, but it is one thing to construe the words of a statute, and another to extend its operation beyond what the words of it express." This question has often arisen in cases which turned upon the Statutes of Mortmain. "Prohibitory statutes," said Lord Cranworth, in *Philpot* v. *St. George's Hospital* (1857), 6 H. L. C. 338, at p. 348 (a case upon the Statutes of Mortmain), "prevent you from doing something which formerly it was lawful for you to do; and, whenever you find that anything done is substantially that which is prohibited, I think it is perfectly open to the Court to say that it is void, not because it comes within the spirit of the statute, or tends to effect the object which the statute

meant to prohibit, but because by reason of the true construction of the statute it is the thing, or one of the things, actually prohibited." And, if a statute has been passed for some one particular purpose, a court of law will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its scope. Thus in *Macbeth* v. *Ashley* (1874), L. R. 2 H. L. (Sc.) 352, it appeared that 25 & 26 Vict. c. 35, gave magistrates the power to close public-houses "in any particular locality" before the statutory hour; and it was held that, if the magistrates, under the guise of exercising this power, were to order the public-houses to be closed earlier, not merely in one particular locality, but in portion after portion of the whole district, until eventually all the public-houses in the whole district had been closed at the earlier hour, this would be, as Lord Cairns said, "adopting a course for the purpose of doing what I must describe as evading an Act of Parliament, and your lordships would not be prepared to sanction, but would discountenance and prevent, the exercise of a power so used."

An illustration of the way in which the intention of an Act of Parliament may be successfully evaded without contravening the letter of the enactment was afforded by the appointment, in November 1871 of Sir Robert Collier as a member of the Judicial Committee. It was enacted by 34 & 35 Vict. c. 91, s. 1 (now repealed), that her Majesty might, within twelve months after the passing of the Act, appoint four persons to act as members of the Judicial Committee of the Privy Council, but that any persons so appointed must be specially qualified as follows —that is to say, must, at the date of their appointment, be or have been judges of one of her Majesty's Superior Courts at Westminster. Sir Robert Collier, who, at the time of the passing of the Act, was Attorney-General, was in November 1871 made a judge of the Court of Common Pleas, and one week after his appointment, and without ever having acted as judge, he was appointed under the above-mentioned Act as a member of the Judicial Com-

mittee. It was clear that this was a valid appointment, and no question was ever raised about it in any court of law, but the Legislature, in passing the Act, cannot be supposed to have contemplated the use to which it would be put by the Government.(*f*)

Terms to be read in their English meaning at date of passing of Act.

2. The rule that the language used by the Legislature must be construed in its natural and ordinary sense requires some explanation. The sense must be that which they ordinarily bear *in this country;* and the words must be construed according to the meaning which they bore at the time when the statute was passed. Said Lord Esher, M.R., in *Clerical, &c., Assurance Co.* v. *Carter* (1889), 22 Q. B. D. p. 448, "There has been a long discussion of various puzzling matters in relation to the provisions of the Income Tax Acts, but, after all, we must construe the words of schedule D. according to the ordinary canon of construction; that is to say, by *giving them their ordinary meaning in the English language as applied to such a subject-matter, unless some gross and manifest absurdity would be thereby produced.*" Thus, the word "marriage," as used in an English statute, means the contract into which a man and woman enter *in this country*, and does not, therefore, include polygamy. "There is no magic in a name," said Lord Penzance (Sir James Wilde) in *Hyde* v. *Hyde* (1866), L. R. 1 P. & M. 133 (a case in which the validity of a Mormon marriage was discussed), "and if the relation there (in Utah) existing between a man and a woman is not the relation which in Christendom we recognise and intend by the words 'husband' or 'wife,' but another and altogether different relation, the use of a common term to express these two different relations, will not make them one and the same, though it may tend to confuse them to a superficial observer." And even with reference to marriages contracted abroad by British subjects, the term means monogamous marriages whether Christian or not.(*g*)

(*f*) In the House of Commons a motion condemning the appointment was lost by 241 to 268 (Hans. 3rd ser. 209, p. 758), and in the House of Lords by 87 to 88 (Hans. 3rd ser. 209, p. 461).

(*g*) See *Bethell's case* (1887), 38 Ch. D. 220 (Stirling, J.); *Brinkley* v. *Att.-Gen.* (1890), 15 P. D. 76 (Hannen, P.).

Rule modified as to Colonial Acts.

In applying this rule to colonial statutes penned in English it must be modified so as to give effect to any difference between English and colonial usage as to the meaning attached to a word or phrase. For the term "marriage" in an Indian or South African statute might include polygamous unions, having regard to the recognition of such unions in those possessions.

Many terms are used in United States and Colonial statutes in a sense different from that attached to them in England.(*h*) And in the construction of the British North America Act, 1867, some divergence has arisen between the Canadian Courts and the Privy Council as to what is meant by "indirect taxation."(*i*) Likewise where the colonial statute is penned in French or Dutch as the sole or concurrent language of legislation, it must be read by reference to the colonial dialect of those languages, and not to the mother tongue, in the case of any divergence between the two.

Contemporanea expositio.

The rule as to *contemporanea expositio* was first laid down by Sir E. Coke (2 Inst. ed. Thomas, p. 2, *note* (1)), in speaking of Magna Charta, in the following terms:— "This and the like were the forms of ancient Acts and graunts, and the ancient Acts and graunts must be construed and taken as the law was holden at that time when they were made." The earlier statutes were in the form of charters, and no difference was at first made between the construction of a statute and that of any other instrument.(*j*) Coke's rule has been adopted by the Courts, and for modern use is best expressed by Lord Esher in *Sharpe* v. *Wakefield* (1888), 22 Q. B. D. 241: "The words of a statute must be construed as they would have been the day after the statute was passed, unless some subsequent Act has declared that some other construction is to be adopted or has altered the previous statute."

"It has often been held," said Lord Cranworth in *Montrose Peerage* (1853), 1 Macq. H. L. (Sc.) 401, at p.

(*h*) See *Bell* v. *Master in Equity* (1877), 2 App. Cas. at p. 565.
(*i*) See *Pigeon* v. *Recorder's Court* (1890), 17 Canada 495, 503.
(*j*) Parl. Pap. 1875—C—208, p. 84. *Vide supra*, pp. 6, 7.

406, "and not unwisely or improperly, that the construction of very ancient statutes may be elucidated by what in the language of the courts is, called *contemporanea expositio*;(*k*) that is, seeing how they were understood at the time [they were passed]." "In construing ancient statutes," said Lawrence, J., in *Wilson* v. *Knubley* (1806), 7 East 136, "attention is always to be paid to the language of the times. The statute of 4 Edw. 3 speaks of a trespass as of a wrong generally, and when it enacts that executors shall have an action against the trespassers, it means thereby against wrongdoers generally." In *Smith* v. *Lindo* (1858), 27 L. J. C. P. 200, Byles, J., said, as to the Act of 6 Anne, c. 16, "That statute was passed 150 years ago. Therefore, we must resort to the contemporaneous exposition of the words." The canon is also applied to modern Acts. In *Aërated Bread Company* v. *Gregg* (1873), L. R. 8 Q. B. 355, it appeared that, by 6 & 7 Will. 4, c. 37, s. 4, any baker who sold bread otherwise than by weight was liable to a penalty; but there was a proviso that this enactment was not to apply to "bread usually sold under the denomination of French or fancy bread." The appellants had been fined for selling otherwise than by weight a kind of bread which was called in the trade French or fancy bread, but which did not as a matter of fact differ in material from ordinary bread. In confirming the conviction, Blackburn, J., said, "My opinion is that by the proviso the Legislature meant to except such bread as, *at the time the Legislature passed this Act*, was sold under the denomination of 'French or fancy bread.' . . . . And that, as the justices have found that the bread in question was not the article called 'French or fancy bread' *at that time*, they rightly convicted the appellants."

A slight confusion, however, at times arises in the application of this canon. It is the business of the judges to find out the contemporary meaning of the terms used in the statute. For this purpose they may have recourse to contemporary exposition, but that exposition is not of necessity conclusive upon them. If ancient

(*k*) See also *McWilliam* v. *Adams* (1851), 1 Macq. H. L. (Sc.) 120.

error is clearly proved, it acquires no prescription to pass as right in the construction of statutes. With reference to contracts, it appears to be established that *communis error facit jus.* Lord Herschell has so held in *Tancred* v. *Steel Co. of Scotland* (1889), 15 App. Cas. at p. 141, saying, "I think that that doctrine having been laid down so long ago, whether it rests upon any sound basis or not, it would be most improper to depart from it now, because one would be really altering the law between the parties." It has indeed been contended that an erroneous but well-established construction of a statute, reached when or soon after the Act came into force, is conclusive even upon the highest Courts. But this is not so. In *Hamilton* v. *Baker* (1889), 14 App. Cas. at p. 221, Lord Macnaghten said, "The respondent contends that the decision was right, but, whether it was right or not, he contends that it is too late even for this House to interfere. I am sensible of the inconvenience of disturbing a course of practice which has continued unchallenged for such a length of time [since 1865], and which has been sanctioned by such high authority. But if it is really founded upon an erroneous construction of an Act of Parliament, there is no principle which precludes your lordships from correcting the error. To hold that the matter is not open to review would be to give the effect of legislation to a decision contrary to the intention of the Legislature, merely because it has happened, for some reason or another, to remain unchallenged for a certain length of time." This constitutes a judicial approval of the opinion of Mr. Elphinstone, that "if the words of a statute are clear, an interpretation which contradicts them cannot be supported on the ground of usage."(*l*)

Different rules as to statutes and contracts.

Old decisions.

But if a decision is old enough it stands a good chance of acceptance even by the highest Courts. Speaking of *Bill* v. *Bament* (1841), 9 M. & W. 36, a decision upon s. 4 of the Statute of Frauds, Lord Esher said (*m*):

(*l*) Elphinstone, p. 68, citing *Sheppard* v. *Gosnold* (1672), Vaughan 159, at p. 169; *Dunbar* (*Magistrates of*) v. *Roxburghe* (*Duchess of*), (1835), 3 Cl. & F. 335; *Att.-Gen.* v. *Rochester* (1854), 5 De G. M. & G. 797.

(*m*) *Lucas* v. *Dixon* (1889), 22 Q. B. D, 357, 359.

"That case has never been overruled, but has been mentioned in subsequent cases as having been accepted, and it would be wrong that we should now differ from it." And Bowen, L.J., added,(*n*) "There is thus distinct authority, forty-seven years old, and, so far as I know, not questioned, but acted on and treated as binding; and though it may appear a technical point, I should hesitate to do anything to disturb a rule laid down about the Statute of Frauds, and acted upon for so long."

Practice of conveyancers.

Courts of justice have always in the past paid great regard to the uniform opinion and practice of eminent conveyancers, and in *Basset* v. *Basset* (1744), 3 Atk. 208, Lord Hardwicke gave as one of his reasons for a particular construction of 10 Will. 3, c. 22 (10 & 11 Will. 3, c. 16, Ruffhead), that before the passing of the Act the constant method of all skilful conveyancers was to insert a limitation to preserve contingent remainders to posthumous children, and that ever since the Act they had omitted the clause, which the Chancellor regarded as a strong circumstance to show the uniform opinion of eminent conveyancers that the statute gave to the posthumous heir, not only the estate of his ancestor, but the intermediate profits between the death of the ancestor and the birth of the heir.

U.S. doctrine.

In the United States the rule is thus stated: "In all cases of ambiguity in an enactment the contemporaneous construction, not only of the Courts, but of the Departments, and even of the officials whose duty it is to carry the law into effect, is controlling." (*o*) This accords with the view expressed by Lord Macnaghten in *Income Tax Commissioners* v. *Pemsel* (1891), A. C. 531, at p. 590. But a construction of a doubtful or ambiguous statute by the executive department charged with its execution, in order to be binding on the Courts, must be long continued and unbroken.(*p*) And where a statute is free from all ambiguity, its letter is not to be disregarded in favour of

(*n*) *Lucas* v. *Dixon* (1889), 22 Q. B. D. at p. 362.
(*o*) Per Brown, J., in *Schell's Exors.* v. *Fauché* (1890), 138 U. S. 562, at p. 572.
(*p*) *Merrit* v. *Cameron* (1890), 137 U. S. 542, per Lamar, J., at p. 552.

a presumption as to the policy of the Government, even on proof of the settled practice of the department of State charged with its administration.(*q*)

Primary meaning not always parliamentary sense.

3. We find it sometimes assumed that the real meaning of a statute may be arrived at by construing it according to its "grammatical" construction. Thus, in *Att.-Gen.* v. *Lockwood* (1842), 9 M. & W. 378, at p. 398, Alderson, B. said, "The rule of law upon the construction of all statutes is to construe them according to the plain, literal, and grammatical meaning of the words." But, besides the fact that "the language of statutes is not always that which a rigid grammarian would use,"(*r*) it must be borne in mind that a statute consists of two parts, the letter and the sense. "It is not the words of the law," said Plowden, p. 465, "but the internal sense of it that makes the law, and our law (like all other) consists of two parts—viz., of body and soul; the letter of the law is the body of the law, and the sense and reason of the law is the soul of the law—*quia ratio legis est anima legis.*" Therefore, as Pollock, C.B., points out in *Waugh* v. *Middleton* (1853), 8 Ex. 352, at p. 356, it is by no means clear that, "if it were laid down as a general rule that the grammatical construction of a clause shall prevail over its legal construction, a more certain rule would be arrived at than if it were laid down that its legal meaning shall prevail over its grammatical construction." "In my opinion," continued Pollock, C.B., "grammatical and philological disputes (in fact, all that belongs to the history of language) are as obscure and lead to as many doubts and contentions as any question of law; and I do not, therefore, feel sure that the rule, much as it has been commended, is on all occasions a sure and certain guide. It must, however, be conceded that where the grammatical construction is clear, and manifest, and without doubt, that construction ought to prevail, unless there be some strong and obvious reason to the contrary. But the rule

(*q*) *St. Paul, Minneapolis, &c., Co.* v. *Phelps* (1890), 138 U. S. 528, at p. 533 (Lamar, J.)

(*r*) Per Grove, J., in *Lyons* v. *Tucker* (1880), 6 Q. B. D. 664.

adverted to is subject to this condition, that however plain the apparent grammatical construction of a sentence may be, if it be properly clear from the contents of the same document that the apparent grammatical construction cannot be the true one, then that which, upon the whole, is the true meaning shall prevail, in spite of the grammatical construction of a particular part of it." This rule was perhaps better stated by an Irish judge, Burton, J., in *Warburton* v. *Loveland* (1828), 1 Hud. & Bro. 632, at p. 648, in terms quoted and approved by Lord Fitzgerald in *Bradlaugh* v. *Clarke* (1883), 8 App. Cas. at p. 384—viz., "I apprehend it is a rule in the construction of statutes that in the first instance the grammatical sense of the words is to be adhered to. If that is contrary to, or inconsistent with, any expressed intention or declared purpose of the statutes, or if it would involve any absurdity, repugnance, or inconsistency, the grammatical sense must then be modified, extended, or abridged, so far as to avoid such an inconvenience, but no further." And substantially the same opinion is thus expressed by Lord Selborne: "The mere literal construction of a statute ought not to prevail if it is opposed to the intentions of the Legislature as apparent by the statute, and if the words are sufficiently flexible to admit of some other construction by which that intention can be better effectuated."(s) Thus, in *Ruther* v. *Harris* (1875), 1 Ex. D. 97, the question arose, whether a person who fished for, but did not catch any salmon was liable to forfeit the net used by him on the occasion. The Act of 24 & 25 Vict. c. 109, s. 21, enacts that, "any person acting in contravention of this section shall forfeit all fish taken by him, and *any net used by him in taking the same*." Inasmuch as no fish had actually been caught, the justices had refused to hold that the net was forfeited; but the Court overruled this decision. "I think," said Grove, J., "that the words 'used by him in taking the same' must mean 'used for the purpose of taking the same.' It is no doubt a rule of interpretation

(s) In *Caledonian Ry. Co.* v. *North British Ry. Co.* (1881), 6 App. Cas. 114, at p. 122.

that the grammatical construction of a sentence must be followed, but this is not to be adopted when it leads to difficulty. I think it plain that the language of the section is not strictly accurate and grammatical."

The canon as to departure from the grammatical meaning is thus stated by Lord Blackburn in *Caledonian Railway Company* v. *North British Railway Company* (1881), 6 App. Cas. at p. 131: "There is not much doubt about the general principle of construction. Lord Wensleydale used to enunciate (I have heard him many and many a time) that which he called the golden rule for construing all written engagements. I find that he stated it very clearly and accurately in *Grey* v. *Pearson* (*t*) in the following terms: 'I have been long and deeply impressed with the wisdom of the rule, now, I believe, universally adopted—at least in the courts of law in Westminster Hall—that 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 some absurdity, or some repugnance 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 the absurdity and inconsistency, but no further.' I agree in that completely, but in the cases in which there is a real difficulty this [rule of construction] does not help us much, because the cases in which there is a real difficulty are those in which there is a controversy as to what the grammatical and ordinary sense of the words, used with reference to the subject-matter, is. To one mind it may appear that the most that can be said is that the sense may be what is contended by the other side, and that the inconsistency and repugnancy is very great, that you should make a great stretch to avoid such absurdity, and that what is required to avoid it is a very little stretch or none at all. To another mind it may appear that the words are perfectly clear—that they can bear no other meaning at all, and that to substitute

(*t*) (1857) 6 H. L. C. 61, at p. 106. See also *R.* v. *Banbury* (1834), 1 A. & E. (1836), 142.

any other meaning would be not to interpret the words used, but to make an instrument for the parties—and that the supposed inconsistency or repugnancy is perhaps a hardship—a thing which perhaps it would have been better to have avoided, but which we have no power to deal with."

And Grove, J., in *Richards* v. *McBride* (1881), 8 Q. B. D. 119, at p. 123, said: "I even doubt whether if there were words in the Act tending strongly the other way I could pass from the plain grammatical construction of the phrase in question. The onus of showing that the words do not mean what they say lies heavily on the party who alleges it. He must, as Parke, B., said in *Becke* v. *Smith*,(*u*) advance something which clearly shows that the grammatical construction would be repugnant to the intention of the Act or lead to some manifest absurdity." And in *The Duke of Buccleuch* (1889), 15 P. D. 86, Lord Justice Lindley put the rule thus: "You are not so to construe the Act of Parliament as to reduce it to rank absurdity. You are not to attribute to general language used by the Legislature in this case, any more than in any other case, a meaning which would not carry out its object, but produce consequences which, to the ordinary intelligence, are absurd. You must give it such a meaning as will carry out its objects."

The same canon of construction also applies to rules made by authority of the Legislature. In a recent case, with reference to the rules for preventing collision at sea, it was laid down in the Privy Council that "we must construe the rule (one made under statutory authority) as nearly as possible literally; we must construe it as strictly as it will bear so as not to lead to the absurdities which have been pointed out; short of that it must be construed to its full context."(*v*)

Rule as to following plain meaning not

(4) It is clear that, "if," as Jervis, C.J., said in *Abley* v. *Dale* (1851), 20 L. J. C. P. 235, "the precise words used

(*u*) (1836) 2 M. & W. 191, 195.

(*v*) *The Fanny M. Carvill* (1888), 13 App. Cas. 455, n, (P. C.), approved by the House of Lords.

allowed to produce manifest absurdity or futility, palpable injustice, or absurd inconvenience or anomaly.

are plain and unambiguous, we are bound to construe them in their ordinary sense, even though it does lead to an absurdity or manifest injustice. Words may be modified or varied where their import is doubtful or obscure, but we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning." "There is," said Brett, L.J., in *Ex parte Corbett* (1880), 14 Ch. D. 129, "a general rule of construction of statutes, that, unless you are obliged to do so, you must not suppose that the Legislature intended to do a palpable injustice,"(*x*) and the same judge said, in *R.* v. *Tonbridge* (1884), 13 Q. B. D. 342, "If the inconvenience is not only great, but what I may call an absurd inconvenience, by reading an enactment in its ordinary sense, whereas if you read it in a manner in which it is capable, though not its ordinary sense, there would not be any inconvenience at all: there would be reason why you should not read it according to its ordinary grammatical meaning." Therefore, if a too literal adherence to the words of the enactment appears to produce an absurdity or an injustice, it will be the duty of a court of construction to consider the state of the law at the time the Act was passed,(*y*) with a view to ascertaining whether the language of the enactment is capable of any other fair interpretation,(*z*) or whether it may not be desirable to put upon the language used a secondary (*a*) or restricted (*b*) meaning, or perhaps to adopt a construction not quite strictly grammatical.(*c*) "The general rule," said

(*x*) But in *Capell* v. *Great Western Ry.* (1883), 11 Q. B. D. 348, Brett, M.R., said, "I protest against the suggestion that where the words of an Act of Parliament are plain, the Court is to make any alteration in them because injustice may be otherwise done."

(*y*) Per Brett, J., in *Gover's case* (1875), 1 Ch. D. 198.

(*z*) Per Jessel, M.R., in *Wear River Commissioners* v. *Adamson* (1876), 1 Q. B. D. 549.

(*a*) Per Lord Westbury in *Ex parte St. Sepulchre's* (1864), 33 L. J. Ch. 373.

(*b*) In *Ex parte Walton* (1881), 17 Ch. D. 757, Lush, L.J., said, "In order to prevent absurdity we must read the word 'surrendered' in a qualified sense."

(*c*) Per Field, J., in *Williams* v. *Evans* (1876), 1 Ex. D. 284.

Willes, J., in *Christopherson* v. *Lotinga* (1864), 33 L. J. C. P. 123, "is stated by Lord Wensleydale in these terms—viz., 'to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the Legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified so as to avoid such inconvenience, but no further.' I certainly," continued Willes, J., "subscribe to every word of that rule, except the word 'absurdity,' unless that be considered as used there in the same sense as 'repugnance'; that is to say, something which would be so absurd with reference to the other words of the statute as to amount to a repugnance." This rule was thus expressed by Jessel, M.R.(*d*): "Any one who contends that a section of an Act of Parliament is not to be read literally must be able to show one of two things—either that there is some other section which cuts down its meaning, or else that the section itself (if read literally) is repugnant to the general purview of the Act." Thus, in *R.* v. *Everdon* (1807), 9 East 101, it appeared that 35 Geo. 3, c. 101, s. 2, enacted that in case any person should from thenceforth be brought before a justice for the purpose of being removed, the justice might, if such poor person was sick, suspend the execution of the order of removal until the poor person might safely be removed. It was contended that, according to the literal construction of the words of the Act, this enactment was confined to cases where the pauper was personally brought up before the justice. But the Court held otherwise, and Lord Ellenborough, in giving judgment, said: "I hope the apparent justice of the one construction, and the great and manifest inconvenience of the other, does not too much warp my mind, for it would indeed be a grievous construction if we were bound to adopt the literal sense of the words of the statute. But I hope we shall do no violence to the words, and I am sure we shall not violate the spirit of the Act by construing the words 'in case any

(*d*) *North* v. *Tamplin* (1881), 8 Q. B. D. 253.

poor person shall from henceforth be brought before any justice for the purpose of being removed' to mean, in case a question concerning the removal of any poor person, or, if the case of any poor person shall be brought before a justice for the purpose of his removal." Again, 6 Geo. 3, c. 53, s. 1, gave a form of oath which it was required should be taken by certain persons. The form of oath contained the name of King George III. and made no provision for the necessary alteration in the name of the Sovereign at his death. It was argued in consequence, in *Miller* v. *Salomons* (1852), 7 Ex. 475, that, as the form of the oath mentioned the name of King George only, the obligation to administer it ceased with the reign of that Sovereign, because it was applicable to no other than to him. "I think," said Parke, B., in his judgment, at p. 553, "this argument cannot prevail. It is clear that the Legislature meant the oath to be taken always thereafter, and as it could not be taken in those words during the reign of a Sovereign not of the name of George, it follows that the name George is merely used by way of designating the existing Sovereign, and the oath must be altered from time to time in the name of the Sovereign. This is an instance in which the language of the Legislature must be modified, in order to avoid absurdity and inconsistency with its manifest intentions."

The argument *ab inconvenienti* is only admissible in construction where the meaning of the statute is obscure. Where the language is explicit, its consequences are for Parliament, and not for the Courts to consider. *Quidquid delirant reges, plectuntur achivi.* In such a case the suffering citizen must appeal to the lawgiver, and not to the lawyer, for relief. The readiness to infer an inconvenience depends, to some extent, on the personal equation of the judge. But the safe rule is that laid down by Cotton, L.J., in *Reid* v. *Reid* (1886), 31 Ch. D. 407: "In considering the true construction of an Act, I am not so much affected as some judges are by the consequences which may arise from different constructions. Of course, if the words are *ambiguous*, and one construction leads to *enormous* in-

convenience, and another construction does not, the one which leads to least inconvenience is to be preferred." And the Courts will not lightly impugn the wisdom of the Legislature, and if any alternative construction, although not the most obvious, will give a reasonable meaning to the Act and obviate the absurdities or inconveniences of absolutely literal construction, the Courts deem themselves free to adopt it.

This view is thus stated by Lord Esher, in *R.* v. *Commissioners under the Boiler Explosions Act*, 1882 (1891), 1 Q. B. at p. 716: "It is said that it is very inconvenient that the Board of Trade should have jurisdiction (under the Boiler Explosions Act, 1882), because it is not denied that the Home Secretary has jurisdiction under the Mines Regulation Act (1887). The inconvenience is manifest, in my opinion, and, if I could have done so properly, I should have been very willing to hold that the sole jurisdiction was in the Home Secretary; but if any mistake has been made, it is not the province of the Court to legislate so as to cure defects."

And in *Re Law* (1891), 1 Q. B. 47, the same judge said: "The only difficulty suggested in following the words of the section [125 (10) of the Bankruptcy Act, 1883] is, that if they are taken literally in a case where there are two [bankruptcy] notices, one in respect of each judgment debt, the debtor might pay on one, and so no bankruptcy petition could be presented. I do not think that is a sufficient reason for reading the words of the section otherwise than as they are written." But in *R.* v. *Cumberland Justices* (1881), 8 Q. B. D. 309, the Court held it necessary to limit the meaning of "premises" in s. 45 of the Licensing Act, 1872 (35 & 36 Vict. c. 94), to premises for which an "on" licence is sought, in order to put a reasonable construction on the Act, and to obviate the necessity of holding that an Act passed to regulate "on" licences repealed 3 & 4 Vict. c. 61, which relates wholly to "off" licences. 46 & 47 Vict. c. 52.

5. It must, however, be borne in mind that it is not competent to a judge to modify the language of an Act of Judge not to mould language of

statute so as to bring it into accordance with his own views of what is expedient or just or right, or to avoid hardships.

Parliament in order to bring it into accordance with *his own* views as to what is right or reasonable. *Boni judicis est jus dicere, non jus dare.* This was well pointed out by Willes, J., in *Abel* v. *Lee* (1871), L. R. 6 C. P. 371. In that case the question was, what was the proper construction to be put upon the Reform Act, 1867, s. 3 (4), which enacts that any man is entitled to be registered as a voter who, on or before July 20, has paid "all poor rates that have become payable by him up to the preceding fifth day of January." It appeared that the person in question had paid all the rates of the current year, but had been excused, on account of poverty, from paying a rate that had been payable in the preceding year. The question therefore was, did the expression, "all poor rates that have become payable," include the rate he had been excused, or not? It was argued, that if these words were construed in their ordinary and strictly grammatical meaning, so as to include *all* past rates, this absurdity might follow, that the claimant would lose his franchise for ever, unless he paid up this old rate, which he had been excused, and that therefore the language of the Act ought to be modified, and the words construed in a restricted sense. This argument, however, did not prevail. "No doubt," said Willes, J., "the general rule is that the language of an Act is to be read according to its ordinary grammatical construction, unless so reading it would entail some absurdity, repugnancy, or injustice. . . . . But I utterly repudiate the notion that it is competent to a judge to modify the language of an Act in order to bring it in accordance with his views of what is right or reasonable."

An extreme instance of the application of this rule is given in *Young* v. *Leamington* (1882), 8 Q. B. D. 579, 8 App. Cas. 517. S. 174 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), requires contracts entered into by a sanitary authority for a sum over £50 to be under seal. The plaintiff executed works approved by the defendants under the supervision of their engineer, and under a contract in writing with the engineer which was not sealed

by the corporation. The Court of Appeal decided that the defendants were not bound by the contract, although they had had the benefit of it, on the ground that to hold otherwise would be to repeal the enactment. "It may be," said Lindley, L.J. (at p. 585), "that this is a hard and narrow view of the law; but my answer is, that Parliament has thought it expedient to require this view to be taken, and it is not for this or any other Court to decline to give effect to a clearly expressed statute because it may lead to apparent hardship."

The same view has been stated by Lord Coleridge in *R.* v. *Mansel Jones* (1889), 23 Q. B. D. 29, at p. 32, that it is the business of the Courts to see what Parliament has said, instead of reading into an Act what ought to have been said. This involves the assumption that the Act in question is intelligible.(*e*) But the consequences of any other mode of construction would be to defeat the purposes of the Legislature. And Martin, B., in *Latham* v. *Lafone* (1867), L. R. 2 Ex. at p. 121, said: "I think the proper rule for construing this statute is to adhere to its words strictly; and it is my strong belief that, by reasoning on long drawn inferences and remote consequences, the Courts have pronounced many judgments affecting debts and actions in a manner that the persons who originated and prepared the Act never dreamed of." A similar opinion is thus stated by Coleridge, L.C.J., in *Coxhead* v. *Mullis* (1878), 3 C. P. D. 442: "It is better to suppose that Parliament meant what Parliament has clearly said, and not to limit plain words in an Act of Parliament by considerations of policy, if it be policy, as to which minds may differ and as to which decisions may vary." But the same judge, upon the same Act, in a subsequent case,(*f*) allowed himself to be affected by considerations of natural justice, which is, perhaps, even more difficult to ascertain judicially than the policy of a statute.

6. In conclusion, with regard to what is meant by the expression, "the plain meaning of the words of a statute," Legislature is always assumed to 6

(*e*) See 6 Law Quarterly Review, 118.
(*f*) *Valentini* v. *Canali* (1889), 24 Q. B. D. 166.

have employed the clearer of two ways of expressing same idea.

it is necessary, on all occasions, to give the Legislature credit for employing those words which will express its meaning more clearly than any other words; so that if in any particular instance it can be shown that there are two expressions which might have been used to convey a certain intention, but one of those expressions will convey that intention more clearly than the other, we are bound to conclude that, if the Legislature uses that one of the two expressions which would convey the intention less clearly, it does not intend to convey that intention at all, and we must then look about to discover what intention it did intend to convey. "In endeavouring," said Pollock, C.B., in *Att.-Gen.* v. *Sillem* (1863), 2 H. & C. 515, "to discover the true construction of any particular clause of a statute, the first thing to be attended to, no doubt, is the actual language of the clause itself, as introduced by the preamble; 2nd, the words or expressions which obviously are by design omitted; 3rd, the connection of the clause with other clauses in the same statute, and the conclusions which, on comparison with other clauses, may reasonably and obviously be drawn. . . . . If this comparison of one clause with the rest of the statute makes a certain proposition clear and undoubted, the Act must be construed accordingly, and ought to be so construed as to make it a consistent and harmonious whole. If, after all, it turns out that that cannot be done, the construction that produces the greatest harmony and the least inconsistency is that which ought to prevail." Thus, in *Waugh* v. *Middleton* (1853), 8 Ex. 352, the Court said: "We are not compelled to read 'now' exactly as if the Legislature had used the word 'heretofore.' A very strong reason for holding that the Legislature have not used the word 'now' in that sense is that, if the Legislature intended so to use it, expressions would have been adopted which would have left no possible doubt as to what was intended. But there are no expressions which clearly and distinctly indicate the intention of giving effect to deeds which had theretofore been entered into, and completed so as to bind other persons not parties to them. And in the absence of those expressions, which

might have been so easily used, grave doubts may be entertained as to whether this could have been the meaning." Similarly, in *Dover Gaslight Co.* v. *Mayor of Dover* (1855), 1 Jur. N. S. 813, Turner, L.J., held that a certain construction, which it had been suggested might be put upon an Act, was not the right construction; "for," said he, "if such had been the intention of the Legislature, I think more appropriate language might have been used." Again, in *Att.-Gen.* v. *Sillem* (1863), 2 H. & C. 526, it was contended, on the part of the prosecution, that 59 Geo. 3, c. 69, s. 7, was meant to put ships constructed for war upon a footing different from any other munitions of war: to leave cannon, arms, and gunpowder to be freely supplied to belligerent Powers, but to prevent ships of a war-like character from being furnished to them. "If this had been the object of our Legislature," said Pollock, C.B., "it might have been accomplished by the simplest possible piece of legislation; it might have been expressed in language so clear that no human being could entertain a doubt about it, instead of the awkward, difficult, and doubtful clause which it is admitted, on the part of the prosecution, we have to deal with."

CHAPTER II.

RULES FOR CONSTRUCTION WHEN THE MEANING IS NOT PLAIN.

	PAGE
1. Mode of ascertaining meaning if obscure . . .	110
2. Rules in *Heydon's case* .	112
3. Exposition *ex visceribus actûs*	114
4. Construction by the equity	118
5. Construction *ut res magis valeat quam pereat* . .	121
6. Rejection of surplusage .	124
7. Construction by consideration of what is not said .	125

Mode of ascertaining meaning if obscure.

1. If the language of an Act of Parliament is clear and explicit, it must, as already stated,(*a*) receive full effect, whatever may be the consequences. Of many an Act, however, it can be fairly said, as was said by Lord Herschell (*b*) of the Building Societies Act, 1884 (47 & 48 Vict. c. 41) that no construction of it "is free from difficulty, and no construction carries out a clear and well-defined policy of the Legislature."(*c*) If (as is often the case) the

(*a*) *Ante*, p. 77.

(*b*) *Western Building Society* v. *Martin* (1885), 17 Q. B. D. 609.

(*c*) For other examples of obscure statutes, see *Winter* v. *Att.-Gen. of Victoria* (1875), L. R. 6 P. C. 378, where the Judicial Committee described the Land Act, 1869, s. 98, as "not merely ambiguous, but, according to the literal meaning of its language, insensible." In *Cocker* v. *Cardwell* (1869), L. R. 5 Q. B. 15, Cockburn, C.J., stigmatises the drafting of the Nuisance Removal Acts, therein cited, as "one of the most remarkable specimens of legislative incuria of the many which are daily brought before us." Sir James Stephen, in his Digest of Criminal Law, points out several obscurely worded statutes; at p. xix, note 2, he says, "Let any one read and try to construe 24 & 25 Vict. c. 98, ss. 13–16, and ss. 27, 28, are still worse." As to 39 & 40 Vict. c. 36, ss. 188, 189, he says, at p. 44, note 2, "There must be some mistake in the drafting, as there is no nominative case to the verb . . . ." And at p. 173, note 4, he points out that, in 38 & 39 Vict. c. 94, s. 3, "the words [with or without her consent] ought either to be omitted altogether, or else changed into 'even with her consent.'" It was the opinion of Daines Barrington that the statutes of the last century were much better drawn than in former times. He says, in his Observations on the Statutes (3rd ed.), p. 174, "It may with justice be asserted that modern statutes are infinitely more perspicuous and intelligible than the ancient ones, of which there can be no stronger proof than that there is not perhaps

meaning of an enactment, whether from the phraseology used (*d*) or otherwise, is obscure, or if the enactment is, as Brett, L.J., said in *The R. L. Alston* (1883), 8 P. D. 9, "unfortunately expressed in such language that it leaves it quite as much open, with regard to its form of expression, to the one interpretation as to the other," the question arises,—"What is to be done? We must try and get at the meaning of what was intended by considering the consequences of either construction." And if it appears that one of these constructions will do injustice, and the other will avoid that injustice, "it is the bounden duty of the Court," as Lord Cairns said in *Hill* v. *East and West India Dock Co.* (1884), 9 App. Cas. 456, "to adopt the second, and not to adopt the first, of those constructions." However "difficult, not to say impossible," it may be to put a perfectly logical construction upon a statute, a court of justice "is bound" (as Sir James Wilde pointed out in *Phillips* v. *Phillips* (1866), L. R. 1 P. & M. 173) "to construe it, and, as far as it can, to make it available for carrying out the objects of the Legislature, and for doing justice between parties."(*e*)

Sense to be made if possible.

The first business of the Courts is to make sense of the ambiguous language, and not to treat it as unmeaning, it being a cardinal rule of construction that a statute is not to be treated as void, however oracular. This was thus laid down by Bowen, L.J., in *Curtis* v. *Stovin* (1889), 22 Q. B. D. 512, at p. 517: "The rules for the construction of statutes are very like those which apply to the construction of other documents, especially as regards one crucial rule—viz., that, if possible, the words of an Act of Parliament must be construed so as to give a sensible meaning to

---

a single statute, since the Statute of Frauds and the Statute of Distributions in the reign of Charles II., which hath required much explanation."

(*d*) As to the phraseology employed being the cause of many questions which arise as to the meaning of statutes, it was said by Lord Coke in the preface to part ii. of his Reports, as follows:—*Neque enim (ut quod res est dicam) difficiles propemodum ac spinosæ questiones ex principiis juris oriuntur sed . . . . nonnunquam ex ipsis comitiorum institutis cautionum atque additionum mole onustis, et vel in pulvere ac festinatione conscriptis, vel a sciolo quopiam in hoc genere correctis et emendatis.*

(*e*) In *Freme* v. *Clement* (1881), L. R. 18 Ch. D. 499, at p. 508, Jessel, M.R., expressed the same idea in the following words: "We ought to adopt that interpretation which will make the law uniform, and will remedy the evil which prevailed in all the cases to which the law can be fairly applied."

them. The words ought to be construed *ut res magis valeat quam pereat.* And Fry, L.J., added (*loc. cit.* p. 519): "The only alternative construction offered to us would lead to this result—that the plain intention of the Legislature has entirely failed by reason of a slight inexactitude in the language of the section. If we were to adopt this construction, we should be construing the Act in order to defeat its object rather than with a view to carry its object into effect." In the particular case the Court had to deal with s. 65 of the County Courts Act, 1888, empowering the High Court to send certain actions which could not be commenced in a county court, for trial "in any county court in which the action might have been commenced."(*f*) If these words had been taken literally, the section would have been ineffectual, for, *ex hypothesi*, the actions in question could not be commenced in the county court. The Court of Appeal therefore read into the section the words "*if it had been a county court action*," in order to give effect to the rule above enunciated.

51 & 52 Vict. c. 43.

Rules in *Heydon's case.*

2. The most firmly established rules for construing an obscure enactment are those laid down by the Barons of the Exchequer in *Heydon's case*,(*g*) which have been continually cited with approval (*h*) and acted upon, and are as follows:—"That for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law), four things are to be discerned and considered. (1) What was the common law before the making of the Act. (2) What was the mischief and defect for which the common law did not provide. (3) What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth. (4) The true reason of the remedy. And then the office of all the judges is always to make such

(*f*) In the same section is used the Hibernicism, "convenient thereto," which has further embarrassed the judges in *Burkill* v. *Thomas* (1892), 1 Q. B. 99.

(*g*) (1584) 3 Co. Rep. 8. See 1 Bl. Comm. ed. Hargrave, p. 87, n. 38.

(*h*) *E.g.*, in *Miller* v. *Salomons* (1852), 7 Ex. 475; *Att.-Gen.* v. *Sillem* (1863), 2 H. & C. 431; *R.* v. *Castro* (1874), L. R. 9 Q. B. 360; *Davies* v. *Kennedy* (1869), Ir. R. 3 Eq. 668, 693.

construction as shall suppress the mischief and advance the remedy, and to suppress subtle inventions and evasions for the continuance of the mischief and *pro privato commodo*, and to add force and life to the cure and remedy according to the true intent of the makers of the Act *pro bono publico*." These rules are still in full force and effect, with the addition that regard must now be had, not only to the common law, but also to prior legislation and to the judicial interpretation thereof. A good illustration of the way in which these rules are put in practice is to be found in the case of *Salkeld* v. *Johnson* (1848), 2 Ex. 256, 272. In that case the question was whether, under the statute of 2 & 3 Will. 4, c. 100, a valid and indefeasible claim of exemption from payment of tithes can be sustained for lands which have never paid tithes for sixty years. "This question depends," said the Court, "upon the construction of this Act, which unfortunately has been so penned as to give rise to a remarkable difference of opinion among the judges. . . . . We propose to construe the Act, according to the legal rules for the interpretation of statutes, principally by the words of the statute itself, which we are to read in their ordinary sense, and only to modify or alter so far as it may be necessary to avoid some manifest absurdity or incongruity, but no further. It is proper also to consider (1) the state of the law which it proposes or purports to alter; (2) the mischief which existed, and which it was intended to remedy; and (3) the nature of the remedy provided, and then to look at the statutes *in pari materiâ* as a means of explaining this statute. These are the proper modes of ascertaining the intention of the Legislature."

Lord Blackburn, in *Young* v. *Leamington* (1883), 8 App. Cas. at p. 526, said the Courts "ought in general, in construing an Act of Parliament, to assume that the Legislature knows the existing state of the law." The assumption may be taken as correct with reference to the knowledge of the draftsman of Government Bills, and perhaps his knowledge may be imputed to Parliament. From this assumption springs the practice

of the Courts to examine the pre-existing law in order to clear up any doubt as to the meaning of an Act. Such an examination was instituted by Lord Blackburn, in the case last cited, to assist him to the conclusion that s. 174 of the Public Health Act, 1875, was intended to get rid of the doubts raised by judicial decisions whether certain corporations could contract otherwise than under their common seal. This was the regular practice of that very learned judge in all cases in which any doubt arose in his mind, whether they arose upon the construction of an English (*i*) or a colonial (*k*) statute, and is generally recognised as a proper method of ascertaining the true meaning of an enactment. Thus, in *Yorkshire Insurance Co.* v. *Clayton* (1881), 8 Q. B. D. 421, deciding the meaning of 41 Vict. c. 15, s. 13 (inhabited house duty), Brett, L.J., laid the rule down thus (p. 426): "It might have been difficult to have come to this conclusion if one had not known the state of the law as to taxation of houses at the time this statute was enacted, but it is a well-known rule or canon of construction that, in construing an Act of Parliament, one ought to take into account the state of the law and of judicial decisions at the time the Act is passed."

Said not to apply to penal statutes.

Pollock, C.B., in *Att.-Gen.* v. *Sillem* (1863), 2 H. & C. 509, observed, that although the rules laid down in *Heydon's case* are said to apply to all statutes alike, including penal statutes, the penal statutes there alluded to are statutes which create some disability or forfeiture. "I think," he added, "it is altogether a mistake to apply the resolutions in *Heydon's case* to a criminal statute which creates a new offence." Statutes creating crimes, as we shall see presently, (*l*) are to be construed by somewhat different rules from those which regulate the mode of construing statutes in general.

Exposition *ex visceribus actûs.*

3. But besides the rules which were laid down in *Heydon's case* for the exposition of obscurely penned statutes, there is a general rule of construction which is applicable to all

(*i*) *Bradlaugh* v. *Clarke* (1883), 6 App. Cas. pp. 373–75.
(*k*) *Carter* v. *Molson* (1883), 6 App. Cas. pp. 536–41.
(*l*) *Infra*, Part III. ch. i.

statutes alike, and which is usually spoken of as a construction *ex visceribus actûs* (*m*)—within the four corners of the Act. "The office of a good expositor of an Act of Parliament," said Lord Coke in *Lincoln College case* (1595), 3 Rep. 59 b, "is to make construction on all the parts together, and not of one part only by itself—*Nemo enim aliquam partem recte intelligere potest antequam totum iterum atque iterum perlegerit.*" And again, in 1 Inst. 381 *b*, he says: "It is the most natural and genuine exposition of a statute to construe one part of a statute by another part of the same statute, for that best expresseth the meaning of the makers . . . . and this exposition is *ex visceribus actûs.*" But this rule of construction is never allowed to alter the meaning of what is of itself clear and explicit; (*n*) it is only when, as the Court said in *Palmer's case* (1784), 1 Leach C. C. 355 (4th ed.), "any part of an Act of Parliament is penned obscurely and when other passages can elucidate that obscurity, that recourse ought to be had to such context for that purpose;" for, as the judges said in the House of Lords, in *Warburton* v. *Loveland* (1831), 2 D. & Cl. 500, "no rule of construction can require that when the words of one part of a statute convey a clear meaning, it shall be necessary to introduce another part of a statute for the purpose of controlling or diminishing the efficacy of the first part." "It is not the duty of a court of law," said Selwyn, L.J., in *Smith's case* (1869),

(*m*) Sir R. Palmer, in a speech on the Collier appointment (Feb. 1872), well expounded the meaning of "construction *ex visceribus actûs.*" He then said as follows: "Nothing is better settled than that a statute is to be expounded, not according to the letter, but according to the meaning and spirit of it. What is within the true meaning and spirit of the statute is as much law as what is within the very letter of it, and that which is not within the meaning and spirit, though it seems to be within the letter, is not the law, and is not the statute. That effect should be given to the object, spirit, and meaning of a statute, is a rule of legal construction, but the object, spirit, and meaning must be collected from the words used in the statute. It must be such an intention as the Legislature has used fit words to express." See 209 Hansard (3rd series), p. 685.

(*n*) In *Bentley* v. *Rotherham* (1876), 4 Ch. D. 592, Jessel, M.R., put it in this way: "There is no doubt a rule, applicable to Acts of Parliament as well as to other legal instruments, that you may control the plainest words by reference to the context. But then, as has been said very often, you must have a context even more plain, or at least as plain as the words to be controlled."

4 Ch. App. 614, "to be astute to find out ways in which the object of an Act of the Legislature may be defeated."

This rule of construction has frequently been recognised and acted upon by courts of law from Lord Coke's time down to the present day. In *Brett* v. *Brett* (1826), 3 Addams 210, Sir John Nicholl says as follows: "The key to the opening of every law is the reason and spirit of the law; it is the *animus imponentis*, the intention of the law maker expressed in the law itself, taken as a whole. Hence, to arrive at the true meaning of any particular phrase in a statute, the particular phrase is not to be viewed detached from its context in the statute; it is to be viewed in connection with its whole context, meaning by this as well the title and preamble as the purview or enacting part of the statute." In *Bywater* v. *Brandling* (1828), 7 B. & C. 643, at p. 660, Lord Tenterden said: "In construing Acts of Parliament we are to look not only at the language of the preamble or of any particular clause, but at the language of the whole Act. And if we find in the preamble or in any particular clause an expression not so large and extensive in its import as those used in other parts of the Act, and upon a view of the whole Act we can collect from the more large and extensive expressions used in other parts the real intention of the Legislature, it is our duty to give effect to the larger expressions, notwithstanding the phrases of less extensive import in the preamble or in any particular clause." In *R.* v. *Mallow* (1859), 12 Ir. C. L. R. 35, the question was whether the Common Lodging House Acts of 1851 and 1853 applied to Ireland. "*Primâ facie*," said Lefroy, C.J., "since the Union every Act applies to Ireland, but according to Lord Coke the construction of a statute is best made *ex visceribus actûs*, and, on looking carefully through the details of these Acts, I think abundant proof will be found of their inapplicability to Ireland." In *Ex parte St. Sepulchre's* (1864), 33 L. J. Ch. 375, Lord Westbury said: "The Vice-Chancellor has taken these words apart from the context. . . . . He is of opinion that what he denominates the abstract justice of the case requires this interpretation.

I cannot concur in that reasoning. I cannot admit the principle that in a matter of positive law abstract justice requires or justifies any departure from the established rules of interpretation. In *Rein* v. *Lane* (1867), L. R. 2 Q. B. 151, Blackburn, J., said: "It is, I apprehend, in accordance with the general rule of construction that you are not only to look at the words, but you are to look at the context, the collocation,(*o*) and the object of such words relating to such matter, and interpret the meaning according to what would appear to be the meaning intended to be conveyed by the use of the words under the circumstances."(*p*)

"It is beyond dispute, too, that we are entitled, and indeed bound, when construing the terms of any provision found in a statute, to consider any other parts of the Act which throw light on the intention of the Legislature, and which may serve to show that the particular provision ought not to be construed as it would be alone and apart from the rest of the Act" (Lord Herschell in *Colquhoun* v. *Brooks* (1889), 14 App. Cas. at p. 506).

"It certainly is not a satisfactory method of arriving at the meaning of a compound phrase to sever it into several parts, and to construe it by the separate meaning of each of such parts when severed. Many examples will occur to the mind where such a process would lead to absurdity." (Halsbury, C., in *Mersey Docks Board* v. *Henderson* (1888), 13 App. Cas. 595, at p. 599.)

It follows from the rule thus variously stated that all statutory definitions or abreviations must be read subject to the qualification, variously expressed in the definition clauses which create them—

(1) "unless the context otherwise requires;"

(2) "unless a contrary intention appears;"

(*o*) In *R.* v. *Ramsgate* (1827), 6 B. & C. 712, at p. 717, Holroyd, J., said that certain words "must be construed, according to their nature and import, in the order in which they stand in the Act of Parliament."

(*p*) Hence the rule laid down by Lord Coke (2 Inst. 386), "that a case, out of the mischief intended to be remedied by a statute shall be construed to be out of the purview, though it be within the words." Quoted and acted upon by Abbott, C.J., in *Doe* v. *Bartle* (1822), 5 B. & Ald. 492, at p. 501.

(3) if not inconsistent with the context or subject-matter;

or, in other words, unless the judges think the statutory definition inapplicable to the particular part of the statute under their consideration.

Construction by the equity of a statute.

4. There is also another mode of construction called proceeding upon "the equity of the statute," which mode, as Lord Westbury said in *Hay* v. *Lord Provost of Perth* (1863), 4 Macq. H. L. (Sc.) 544, was "very common with regard to our earlier statutes, and very consistent with the principle and manner according to which Acts of Parliament were at that time framed." This mode of construction was explained (*q*) by Lord Coke in 1 Inst. 24 b. "'Equity,'" said he, "is a construction made by the judges, that cases out of the letter of a statute, yet being within the same mischief, or cause of the making of the same, shall be within the same remedy that the statute provideth: and the reason hereof is, for that the law-makers could not possibly set down all cases in express terms."(*r*)

But this mode of interpretation has at the present day altogether fallen out of use in courts of law in England,(*s*) and at the present time "much more weight," as Lord Blackburn said in *Bradlaugh* v. *Clarke* (1883), 8 App. Cas. 373, "is given to the natural meaning of the words than was done in the time of Elizabeth." "I cannot forbear observing," said Lord Tenterden in *Brandling* v. *Barrington* (1827), 6 B. & C. 467, at p. 475, "that I think there is always danger in giving effect to what is called the equity of the statute, and that it is much safer and better to rely on and

---

(*q*) See also 3 Rep. 31, 5 *ib.* 99. Perhaps the fullest dissertation on the subject is to be found in a note at the end of *Eyston* v. *Studd* (1574), Plowden, 465. See also Viner's Abr. Statutes, E. 6; Com. Dig. tit. Parliament, R. 10; *ante*, p. 86.

(*r*) In *Greaves* v. *Tofield* (1880), 14 Ch. D. 578, Bramwell, L.J., said that a good many of the doctrines of courts of equity seemed to him to be "the result of a disregard of general principles and general rules in the endeavour to do justice more or less fanciful in certain particular cases." See *Salt* v. *Marquis of Northampton* (1891), 8 Times L. R. 104 (H. L.).

(*s*) Mr. Sedgwick, in his treatise on Statutory Law (2nd ed.), chap. vii. p. 311, endeavours to prove that statutes are still construed in England "by the equity": at p. 258, *note*. He says that *Edwards* v. *Dick* (1821), 4 B. & Ald. 212, "seems to be decided on the equity of the particular case."

abide by the plain words, although the Legislature might possibly have provided for other cases had their attention been directed to them." "Nor can I conceive," said Buller, J., in *Jones* v. *Smart* (1785), 1 T. R. at p. 52, "that it is our province to consider whether such a law that has been passed is tyrannical or not." And in *Att.-Gen.* v. *Sillem* (1863), 2 H. & C. 532, Bramwell, B., said: "I must here record the well-founded remark of the Attorney-General to the effect, that whereas formerly statutes, being extended equitably, as it was called, beyond their natural meaning, penal statutes were exempt from such extension; now that such liberties are not taken with statutes, there is no reason for construing penal statutes on such different principles as were formerly applied." Where a statute provided that any person who shall do a certain act, "and shall be thereof convicted," was to be liable to indictment, and upon conviction to a certain punishment, the words "and shall be thereof convicted" were rejected as surplusage, because they implied that an offender must be convicted before he could be indicted (*U.S.* v. *Stern* (1867), 5 Blatchford C. C. (U.S. Circ. Ct.) 512).

But although the expression "equity of the statute" is not now favoured by the Courts, we find that a somewhat similar principle of construction is sometimes acted upon,(*t*) and that if it is manifest that the principles of justice require something to be done which is not expressly provided for in an Act of Parliament, a court of justice will take into consideration the spirit and meaning of the Act apart from the words; in other words, there is still, as Jessel, M.R., said, in *Re Bethlem Hospital* (1875), 19 Eq. 459, "such a thing as construing an Act according to its intent, though not according to its words."

Discussion has often arisen in the courts whether the statutes prescribing notice of action as a condition prece-

(*t*) Mr. Sedgwick, in his work on Statutory Law, discusses this question in a chapter entitled "Strict and Liberal Construction," chap. vii. p. 250. But (as is pointed out *ante*, p. 12, and in Part III. ch. i. on "Penal Statutes") all statutes, whatever may be the subject of them, are now construed according to the same rules, so that the question of "strict or liberal construction" does not now arise in the same way as formerly.

dent to a right to recover apply in the case where an injunction is sought to restrain the commission of some imminent deadly breach of the law to the person entitled to notice.

The courts have come thereon to the following conclusions:—

(1) That application for an injunction (when that is the substantial part of the claim) is not presented by a notice of action clause: *Att.-Gen.* v. *Hackney* (1875), 20 Eq. 626 (Bacon, V.C.); *Flower* v. *Low Leyton L. B.* (1877), 5 Ch. D. 347 (Jessel, M.R.); *Chapman* v. *Auckland* (1889), 23 Q. B. D. 302 (Bowen, L.J.). For an injunction has no reference to the past save so far as it gives reason to apprehend future repetition of the wrong at which it is aimed.

"It is obvious that if such a section (to a notice of action) were allowed to paralyse the operation of the remedy by injunction, a man would have to sit still while his property was threatened with manifest, immediate, and in many cases it might be irreparable, injury."

(2) "Where an action is really brought to obtain by injunction protection for the future, and not merely damages for the past, the Court, if convinced that the plaintiff can be sufficiently protected without an injunction, or will sufficiently be compensated by damages in lieu of injunction, is not precluded from giving damages by a notice of action clause" (Bowen, L.J., *Chapman* v. *Auckland Guardians* (1889), 23 Q. B. D. 304.)

(3) "So far as the action relates to claims for damage in respect of the past, to allow such damage to be given in the absence of notice of action seems to me a breach of the provisions of an Act of Parliament which is intended to throw a shield over public bodies, such as the Local Board, in respect of claims of damages for what is past" (Bowen, L.J., 23 Q. B. D. 303.)

The effect of these rules is in one sense to supply the equity of the statutes; but in truth no more is done than

to construe the statute according to its plain language, though the effect of the construction incidentally and equitably denies to local authorities an overriding privilege, such as to exempt them from all forms of injunction.

Construction *ut res magis valeat quam pereat.*

5. "It is a good general rule in jurisprudence," said the Judicial Committee in *Ditcher* v. *Denison* (1857), 11 Moore P. C. 325, at p. 337, "that one who reads a legal document, whether public or private, should not be prompt to ascribe—should not, without necessity or some sound reason, impute—to its language tautology or superfluity, and should be rather at the outset inclined to suppose every word intended to have some effect or be of some use."(*u*) And this is as justly and even more tersely put by Lord Bramwell, who says, in *Cowper-Essex* v. *Acton L. B.* (1889), 14 App. Cas. 153, at p. 169: "The words of a statute never should in interpretation be added to or subtracted from, without almost a necessity." "It may not always be possible," said Jessel, M.R., in *Yorkshire Insurance Co.* v. *Clayton* (1881), L. R. 8 Q. B. D. 424, "to give a meaning to every word used in an Act of Parliament," and many instances may be found of provisions put into statutes merely by way of precaution. "Nor is surplusage, or even tautology, wholly unknown in the language of the Legislature."(*x*) "A statute," said Lord Brougham, in *Auchterarder* v. *Lord Kinnoull* (1839), 6 Cl. & F. 646, at p. 686, "is always allowed the privilege of using words not absolutely necessary." And in *Commissioners of Income Tax* v. *Pemsel* (1891), A. C. 589, Lord Macnaghten pointed out that "it is not so very uncommon in an Act of Parliament to find special exemptions which are already covered by a general exemption." And Lord Herschell pointed out, at p. 574, that "such specific exemptions are often introduced *ex majori cautelâ* to quiet the fears of those

(*u*) Dwarris on Statutes (2nd ed.), p. 568, puts the rule thus: "The rule is to adopt such an interpretation, *ut res magis valeat quam pereat.*" "It is," said James, L.J., in *Re Florence Land Co.* (1878), 10 Ch. D. 544, "a cardinal rule of construction that all documents are to be construed *ut res valeat magis quam pereat.*" *Vide ante*, p. 82.

(*x*) Per Lord Macnaghten in *Commissioners of Income Tax* v. *Pemsel* (1891), A. C. 589.

whose interests are engaged or sympathies aroused in favour of some particular institution, and who are apprehensive that it may not be held to fall within a general exemption." In *Fryer* v. *Morland* (1876), 3 Ch. D. 685, Jessel, M.R., said, with regard to s. 17 of 16 & 17 Vict. c. 51, "Why was it put in? Well, I don't know; I find it quite impossible to answer that question. It was probably put in to quiet the fears of persons interested in insurance companies *ex cautelâ*." And in *Re Bank of London* (1871), 6 Ch. App. 421, at p. 426, Lord Hatherley said: "I do not attach much importance to the exception of insurance companies in s. 27 of 20 and 21 Vict. c. 14. I think it is mere surplusage, and unfortunately such surplusage is not uncommon in Acts of Parliament." And in *Hough* v. *Windus* (1883), 12 Q. B. D. 232, Brett, M.R., said: "I have come to the conclusion that in this Act of Parliament the Legislature intended to be verbose and tautologous." Nevertheless, as Lord Brougham remarks in the same passage, "a statute is never supposed to use words without a meaning." Therefore, if the language used in a statute is ambiguous and capable of two constructions, the rule, as enunciated by the Judicial Committee in *Cargo ex Argos* (1872), L. R. 5 P. C. 134, at p. 153, is "to adopt that construction which will give some effect to the words rather than that which will give none." "To reject words as insensible is," said Erle, C.J., in *R.* v. *St. John* (1862), 2 B. & S. 706, "the *ultima ratio* when an absurdity would follow from giving effect to the words of an enactment as they stand." So also in *R.* v. *Berchet* (1688), 1 Show. 108, it is said to be a known rule in the interpretation of statutes, that such a sense is to be made upon the whole as that no clause, sentence, or word shall prove superfluous, void, or insignificant, if by any other construction they may all be made useful and pertinent.(*y*) And in *Harcourt* v. *Fox* (1693), 1 Show. 532, Lord Holt said: "I think we should be very bold men, when we are

(*y*) This *dictum* of Sir B. Shower is cited by the Court of Queen's Bench in *R.* v. *Bishop of Oxford* (1879), 4 Q. B. D. 261, as "a settled canon of construction."

entrusted with the interpretation of Acts of Parliament, to reject any words that are sensible in an Act." This rule has often been acted upon. Thus, in *Re Steele* (1868), L. R. 1 P. & M. 578, Sir J. P. Wilde said: "I hesitate to come to the conclusion that the express words of the section meant to leave the matter in the same state in which it would have stood if they had never been introduced." So in *Green* v. *R.* (1876), 1 App. Cas. 537, Lord Cairns states, as a reason for differing from the Court below, that "the learned judges absolutely reduce to silence the second part of this sentence, and make it altogether inapplicable." So in *Cooper* v. *Slade* (1858), 27 L. J. Q. B. 449, in the court below, Bramwell, B., was inclined to treat the proviso at the end of s. 2 of the Corrupt Practices Prevention Act, 1854, as mere surplusage; but in his judgment in the House of Lords (*z*) he stated that he had altered his opinion as to this, because it appeared that a reasonable construction could be put upon that proviso, and therefore that construction ought to prevail, instead of treating that proviso as if it did not exist at all. So in *East London Railway* v. *Whitchurch* (1874), L. R. 7 H. L. 81, Lord Cairns expressed a strong opinion against treating words in an Act of Parliament as surplusage, if any meaning can be put upon them. In that case the question at issue was as to the meaning of s. 128 of the East London Railway Act, 1865, which enacted that, "while the company are possessed under this Act of any lands liable to be assessed to any rate, they shall, from time to time, until the railway or works thereof are completed *and assessed, or liable to be assessed*, be liable to" pay a deficiency rate. It was argued by the parish that this deficiency rate was payable until the whole railway was completed, thus treating the words "and assessed, or liable to be assessed," as mere surplusage. But the House of Lords held that these words were not to be so treated. "If," said Lord Cairns, "your lordships were to adopt this construction, the consequence would be that all those words which follow the word

(*z*) 6 H. L. C. at p. 766.

'completed' might be entirely removed, and ought to be removed, out of the clause, because, if the deficiency rate is payable before the railway is completed from end to end, the words that ought to have been used would be simply 'until the railway or the works thereof shall be completed,' and those words following, 'and assessed, or liable to be assessed,' ought not to be added; they would be entirely superfluous."

Rejection of surplusage.

6. But a court of law will reject words as surplusage (*a*) if it appears that, by "attempting to give a meaning to every word, we should," as Coleridge, J., said in *R.* v. *East Ardsley* (1850), 14 Q. B. 801, "have to make the Act of Parliament insensible," or if it is clear that otherwise the manifest intention of the Legislature will be defeated. Thus, in *Fisher* v. *Val de Travers Asphalte Co.* (1875), 1 C. P. D. 259, a question arose whether a judge belonging to a particular Divisional Court was entitled to hear an appeal from that Court if he himself had not taken part in the first hearing. The Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 4, enacted that "no judge shall sit as a judge on the hearing of an appeal from any judgment or order made by himself, or made by any Divisional Court of which he was *and is* a member." It was held that, in order to give effect to the intention of the Legislature, the words "and is" must be rejected, "for there could be no reason why a judge should not hear an appeal from a judgment or order in the making of which he had taken no part."

The question at times arises whether, admitting a statute to have a certain intention, it must, through defective drafting or faulty expression, fail of its intended effect.

The rule on this subject laid down in the Privy Council in *Salmon* v. *Duncombe* (1886), 11 App. Cas. at p. 634, is as follows:—"It is, however, a very serious matter to hold that where the intention of a statute is clear, it shall be reduced to a nullity by the draftsman's unskilfulness or

(*a*) "Nothing can be more mischievous than to attempt to wrest words from their proper and legal meaning only because they are superfluous": per Lord Selborne in *Hough* v. *Windus* (1883), 12 Q. B. D. 229.

ignorance of law. It may be necessary for a court of justice to come to such a conclusion, but their lordships hold that nothing can justify it except necessity, or the absolute intractability of the language used."(*b*)

Meaning of obscure enactment sometimes arrived at by observing that certain words are designedly omitted.

7. Sometimes, if the meaning of an enactment is not plain, light may be thrown upon it by observing that certain words "have been," as Brett, L.J., said in *Union Bank of London* v. *Ingram* (1882), 20 Ch. D. 465, "designedly omitted." Thus, in *Att.-Gen.* v. *Sillem* (1863), 2 H. & C. 515, in discussing the meaning of the old Foreign Enlistment Act (59 Geo. 3, c. 69), s. 7, which enacts that, "if any person . . . . equip, furnish, fit, or arm . . . . any vessel with intent that such vessel shall be employed in the service of any foreign prince," for warlike purposes, such person shall be liable to certain punishments, Pollock, C.B., pointed out that the clause did not contain the word "build." To this the Attorney-General replied, "It is dangerous to try to explain a statute by words that are not to be found in it." Pollock, C.B., however, in his judgment, said, as to this: "On the first impression, the objection of the Attorney-General seems not at all unreasonable, but the answer, on a little consideration, is quite obvious. In order to know what a statute *does* mean, it is one important step to know what it *does not* mean; and if it be quite clear that there is something which it *does not* mean, then that which is suggested or supposed to be what it *does* mean must be in harmony and consistent with what it is clear that it *does not* mean. What it forbids must be consistent with what it permits. The 7th section contains the words 'equip, furnish, fit out, and arm,' but it does not contain the word 'build,' and I think no one can doubt that that word was purposely omitted from the Act." So also in the Licensing Act, 1872, s. 16 consists of a series of clauses headed "Offences against Public Order." The section contains three sub-sections, the first of which defines offences which must be "knowingly" committed; the other two

(*b*) *Ante*, p. 28.

sections omit the word "knowingly." Consequently, in *Mullins* v. *Collins* (1874), L. R. 9 Q. B. 294, where the defendant was prosecuted because his servant supplied a constable on duty with drink, it was held to be no defence on his part that his servant had done this without his knowledge. "The appellant," said Archibald, J., "has been convicted under the second sub-section, where the word 'knowingly' is omitted. This seems to point to the conclusion that the licensed victualler will be liable for the act of his servant, although he himself has not knowingly committed an offence against the second sub-section."(*c*)

(*c*) See also *Bond* v. *Evans* (1888), 21 Q. B. D. 249; *Dyke* v. *Gower* (1892), 1 Q. B. 220; and as to *mens rea*, *post*, Part III. ch. ii.

CHAPTER III.

WHAT MAY AND WHAT MAY NOT BE IMPLIED IF THE MEANING IS NOT PLAIN.

	PAGE
1. Omission may be supplied by implication	127
(a) In order to prevent existing words from being deprived of all meaning	127
(b) In the case of enabling statutes which omit to mention some detail.	130
2. For what purposes express language is necessary	131
(1) For imposing a charge	131
(2) To confer rights	134
(3) To take away rights, whether public or private	134
Rights sometimes reserved by statute *ex majori cautelâ*	137
(4) To alter clear principles of law	138
(5) To add to or take away from jurisdiction of superior courts	140
(6) To cut down effect of a written instrument.	141

1. If the meaning of a statute is not plain, we are at liberty in certain cases to have recourse to a construction by implication, and to draw inferences or supply apparent omissions. We say, in certain cases, because the general rule is, as Patteson, J., said in *King* v. *Burrell* (1840), 12 A. & E. 460, at p. 468, "not to import into statutes words which are not to be found there," and because there are, as we shall see, particular purposes for which express language is absolutely indispensable.

Omission may be supplied by implication.

(a) In order to prevent existing words from being deprived of all meaning.

(1) We have already seen (*a*) that, if a matter is altogether omitted from a statute, it is clearly not allowable to insert it by implication, for to do so would, as James, L.J., said in *Re Sneezum* (1876), 3 Ch. D. 472, "not be to con-

(*a*) *Ante*, p. 82.

strue the Act of Parliament, but to alter it." But where the alternative lies between either supplying by implication words "which," as the Court said in *Jubb* v. *Hull Dock Co.* (1846), 9 Q. B. 455, "appear to have been accidentally omitted," or adopting a construction which deprives certain existing words of all meaning, it is usual to supply the words. Thus, in *Re Wainewright* (1843), 1 Phil. 261, Lord Lyndhurst, C., said, as to s. 33 of the Fines and Recoveries Act (3 & 4 Will. 4, c. 74): "There is an omission here which it is proper to notice. The words are, 'If any person, protector of a settlement, shall be convicted of treason or felony, or if any person, not being the owner of a prior estate under a settlement, shall be the protector of such settlement and shall be an infant, or if it shall be uncertain whether such last-named person be living or dead, then his Majesty's High Court of Chancery shall be the protector of such settlement, in lieu of the person who shall be an infant or whose existence cannot be ascertained'—omitting the case of a person convicted of treason or felony. But I think that the omission must be supplied by implication, otherwise no effect can be given to the previous words, 'if any person, protector of a settlement, shall be convicted of treason or felony.' Now these words cannot be struck out of the Act, and it is much more natural to supply the words, 'in lieu of the person who shall be convicted,' than to adopt a construction which would deprive the preceding words of all meaning." So also, in *Quin* v. *O'Keeffe* (1859), 10 Ir. C. L. R. 407, it appeared that the Common Law Procedure Act, 1853, s. 135, enacted that, "if a debtor have an estate or interest in any stock, funds, annuities, or shares or *money* . . . . it shall be lawful for the Court to make such order as to such stock, funds, annuities, shares, and the dividend, interest, and annual produce thereof . . . . but no such order shall prevent the Bank of Ireland from permitting any transfer of such stocks, funds, annuities, and shares or *money*. . . . ." The question was, whether, as this section omitted the word "money"

in the second clause, it was competent for the Court to make an order with respect to *money*. The Court, following the last-mentioned case of *Re Wainewright*, held that it was competent for them to supply this word by implication, and Lefroy, C.J., in his judgment, said as follows: "I admit that in s. 135, where it is said that it shall be lawful for the Court to make such order, the word *money* is dropped, and that the order is only to be made 'as to such stocks, funds, annuities, shares, and the dividends, interest, and annual produce thereof,' but in a subsequent part of the section the word 'money' is introduced, thus clearly bringing it within the operation of the proviso, and if the proviso is to have any effect at all in respect of it, it must be upon the supposition that it was contemplated as being otherwise included in the body of the section . . . . unless, therefore, we insert the word 'money' into the enacting part of the section, that section as to *money* will be completely nugatory." But in *Underhill* v. *Longridge* (1859), 29 L. J. M. C. 65, the Court declined to act upon the authority of *Re Wainewright* (1843), 1 Phil. 261, or to supply certain words by implication. In that case it appeared that it is enacted by 18 & 19 Vict. c. 108, s. 9, that "if loss of life to any person employed in a coal mine occurs by reason of any accident within such coal mine, *or if any serious personal injury arises from explosion therein*, the owner of such mine shall, within twenty-four hours next *after such loss of life*, send notice of such accident," &c., or be liable to a penalty. An accident having occurred which caused "serious personal injury," but *not* loss of life, it was contended that the owner of the mine ought to have sent notice of the accident, for it was argued that it was quite clear that there was an accidental omission after the words "such loss of life," and that the Legislature must have intended to insert the words "or such serious personal injury," otherwise the words "or if any serious personal injury arises from explosion therein" are wholly inoperative. The Court, however, declined to imply that these words had been omitted by accident, for "we cannot,"

said the Court, "take upon ourselves the office of the Legislature."(*b*)

(b) In the case of enabling statutes which omit to mention some detail.

So, also, if a statute is passed for the purpose of enabling something to be done, and omits in terms to mention some detail which is of great importance (if not actually essential) to the proper and effectual performance of the work which the statute has in contemplation, the Courts are at liberty to infer that the statute by implication empowers that detail to be carried out. Thus, in *Cookson* v. *Lee* (1854), 23 L. J. Ch. 473, an Act vested certain lands in trustees for the purpose of enabling them to sell the lands for building purposes, but the Act contained no express power to expend any portion of the purchase-moneys in setting out the lands or in making roads. Under these circumstances the Court held that, having regard to the object of the Act—namely, the sale of the property as building land—such power ought to be implied. "In point of fact," said the Court, "the Act did not contain the power, though Acts of Parliament of a similar nature generally do so; but it is a very natural question whether, though it does not in terms do it, it does not do it by implication—whether we must not infer that, from the powers given, the Legislature considered that they had given the power which is contended for, and whether, in directing something to be done, they must not be considered by necessary implication to have empowered that to be done which was necessary in order to accomplish the ultimate object."

The Courts have sometimes felt constrained to narrow the effect of a repealing section in order to give full effect to the intention of the Act which contained it.

A local Act of 1877 (40 & 41 Vict. c. ccxxxv.), by its 33rd section, provided for the purchase of lands for the accommodation of the working classes likely to be displaced by certain metropolitan improvements. A subsequent Act

(*b*) Sir Benson Maxwell, in his treatise on the Interpretation of Statutes, 2nd ed. p. 333, says that, if in this case the statute had been a remedial one, instead of being a penal statute, "the omission would probably have been supplied," as it was in the case of *Re Wainewright* (1843), 1 Phil. 261. This may be so, but the Court did not give this as their reason for refusing to supply the omission; and see *Quin* v. *O'Keeffe* (1859), 10 Ir. C. L. Rep. 407, cited *ante*, p. 128.

of 1882 (45 & 46 Vict. c. ccxxii.), by s. 3, provided that the provisions of s. 33, *supra*, should cease to be in force with respect to certain lands mentioned, and that in relation thereto the earlier Act should be read as though s. 33 were not contained therein.

But North, J., held (*Wigram* v. *Fryer* (1887), 36 Ch. D. 87)—

(1) That nothing outside the two Acts enabled the local authority to erect buildings for housing the working classes;

(2) That the Legislature plainly intended that such buildings should be erected; and

(3) That, to give effect to this intention, the Court must imply that the later Act conferred upon or preserved to the authority the powers expressly conferred by the repealed section of the Act of 1877.

The learned judge was amply justified in saying that "it is a very lamentable way of legislating that we should be driven to get at the meaning of these Acts by removing difficulties (as far as can be done) by construction rather than that the intention of the Legislature should be clearly expressed upon the face of the Act."

2. But for certain purposes express language in statutes is absolutely indispensable. Express language necessary in certain cases.

These purposes are: (1) Imposing a tax (*c*) or charge; (2) Conferring or taking away legal rights, whether public or private; (3) Altering or excepting from the operation of clearly established principles of law; (4) Altering the jurisdiction of courts of law; (5) Cutting down the effect of a written instrument.

(1) If a statute professes to impose a charge, "the rule," said the Judicial Committee in *Oriental Bank* v. *Wright* (1880), 5 App. Cas. 856, is "that the intention to impose a charge upon a subject must be shown by clear and unambiguous language." "A taxing Act," said (1) For imposing a charge.

(*c*) Also exempting from a tax. "Duties given to the Crown," said Lord Selborne in *Mersey Docks* v. *Lucas* (1883), 8 App. Cas. 902, "taxes imposed by the authority of the Legislature, by public Acts for public purposes, cannot be taken away by general words in a local and personal Act. . . . ."

Lord Cairns in *Cox* v. *Rabbits* (1878), 3 App. Cas. 478, "must be construed strictly; you must find words to impose the tax, and if words are not found which impose the tax it is not to be imposed." This rule, said Lord Cairns in *Pryce* v. *Monmouthshire* (1879), 4 App. Cas. 202, "probably means little more than this, that, inasmuch as there was not any *à priori* liability in a subject to pay any particular tax, nor any antecedent relationship between the taxpayer and the taxing authority, no reasoning founded upon any supposed relationship of the taxpayer and the taxing authority could be brought to bear upon the construction of the Act, and therefore the taxpayer has a right to stand upon the literal construction of the words used, whatever might be the consequence." And if a statute imposes a tax upon the whole United Kingdom, it must be construed in such a way that like interests in property may be subjected to like charges wheresoever in the United Kingdom the property is situate, and so that all the subjects of each kingdom may be taxed equally under the same circumstances; therefore, as Lord Campbell said in *Braybrooke* v. *Att.-Gen.* (1861), 9 H. L. C. 150, at p. 165, such a statute must be "construed, not according to the technicalities of the law of real property in England or in Scotland, but according to the popular use of the language employed."

The Courts, in dealing with taxing Acts, will not, however, presume in favour of any special privilege of exemption from taxation. Said Lord Young, in *Hogg* v. *Parochial Board of Auchtermuchty* (1880), 7 Rettie (Sc.) 986: "I think it proper to say that, *in dubio*, I should deem it the duty of the Court to reject any construction of a modern statute which implied the extension of a class privilege of exemption from taxation, provided the language reasonably admitted of another interpretation."

Dock dues.

We find this principle acted upon with regard to all kinds of charges. Thus, with regard to dock dues, in *Gildart* v. *Gladstone* (1809), 11 East 679, at p. 684, the Court in deciding that the dock due in question was rightfully claimed, said: "If the words of the statute would

fairly admit of a different meaning, it would be right to adopt that which would be most favourable to the interest of the public . . . . because the public ought not to be charged unless it is clear that it was so intended; but we think that the words here used are plain." Similarly, with regard to the Stamp Acts, Lord Tenterden said, in *Tomkins* v. *Ashby* (1827), 6 B. & C. 542: "A stamp was not necessary in this case. Statutes imposing duties are to be so construed as not to make any instruments liable to them unless manifestly within the intention of the Legislature." So with regard to the payment of rates. Thus, in *R.* v. *Sedgley* (1831), 2 B. & Ad. 65, it appeared that, by 43 Eliz. c. 2, s. 1, occupiers of coal mines are to be rated for the relief of the poor, but no other mines are mentioned in the statute. It was argued, however, that the coal mines may be considered as having been mentioned in the statute as examples, and that in fact it was intended that the occupiers of all kinds of mines should be rated. This argument was not acceded to, and it was held that, according to the maxim *expressio unius*, the expression "coal mines" has the effect of excluding all other mines. Similarly, with regard to the payment of tolls. Thus, in *Leeds and Liverpool Canal* v. *Hustler* (1823) 1 B. & C. 424, it appeared that, by 10 Geo. 3, c. 114, it is enacted that no boat of less burden than twenty tons shall pass any of the locks without paying tonnage equal to a boat of twenty tons, but no toll was imposed upon empty boats; and that, by the subsequent Act of 23 Geo. 3, c. 47, boats of greater burden than twenty tons, but carrying less than that quantity of cargo, were put upon the same footing as boats of twenty tons. But no toll was expressly imposed upon empty boats by this subsequent statute any more than it had been by the former statute. Nevertheless, it was argued that by the subsequent statute a toll upon empty boats was imposed by inference. To this argument the Court declined to accede. "Those who seek," said Bayley, J., "to impose a burden upon the public, should take care that their claim rests upon plain and unambiguous language."

Stamps.

Rates.

Tolls.

The same rule is applied by the Scotch Courts, and is thus stated by Inglis, L.P., in *Laird* v. *Clyde Trustees* (1879), 6 Rettie (Sc.), at p. 785: "No body of statutory trustees or other persons can be allowed to levy a toll or duty unless they have unequivocal statutory authority for so doing; and in interpreting enactments imposing tolls, rates, or dues, I think the Court is bound to construe the Act according to its ordinary meaning and use."

(2) For conferring rights.

(2) Rights cannot be conferred by mere implication from the language used in a statute, but there must be a clear and unequivocal enactment.(*d*) Thus, in *R.* v. *Harrald* (1872), L. R. 7 Q. B. 362, it appeared that by 32 & 33 Vict. c. 55, s. 9, it is enacted that whenever in Acts relating to municipal elections, "words occur which import the masculine gender, the same shall be held to include females"; and by 33 & 34 Vict. c. 93, coverture ceased to be a bar to holding property. It was contended, therefore, that the former enactment might reasonably be held to apply, not only to single, but also to married women; but it was held otherwise. "By the common law," said Cockburn, C.J., "a married woman is incapable of voting. . . . . It is quite clear that the Act of 32 & 33 Vict. had not married women in its contemplation, nor can it be supposed that the subsequent statute of 33 & 34 Vict., by which the status of married women with regard to the power to hold property has been recognised and established, and which was passed *alio intuitu*, has by a side wind given them political and municipal rights."(*e*) And the same opinion was given with reference to the eligibility of women to municipal office under the Local Government Act, 1888, in *Beresford-Hope* v. *Sandhurst* (1889), 24 Q. B. D. 79, and *De Souza* v. *Cobden* (1891), 1 Q. B. 687.

(3) To take away public or private rights.

(3) "In the construction of statutes you must not construe the words so as to take away rights which already existed before the statute was passed, unless you have

(*d*) Therefore, "a saving clause," as Wood, V.C., said in *Arnold* v. *Mayor of Gravesend* (1856), 2 K. & J. 574, at p. 591; 20 Jur. 13, 703, 26 L. T. O. S., 182; 27 *ib.* 97; 4 W. R. 478, 763, "can be taken to give any right which did not exist already."

(*e*) See also *Chorlton* v. *Lings* (1868), L. R. 4 C. P. 374.

plain words which indicate that such was the intention of the Legislature," said Bowen, L.J., in *Re Cuno* (1889), 43 Ch. D. 17.

Therefore rights, whether public or private, are not to be taken away, or even hampered,(*e*) by mere implication from the language used in a statute, unless, as Fry, J., said in *Yarmouth* v. *Simmons* (1878), 10 Ch. D. 527, 'the Legislature clearly and distinctly authorize the doing of something which is physically inconsistent with the continuance of an existing right." "In order to take away a right," said the Judicial Committee in *Western Counties Railway Co.* v. *Windsor, &c., Railway Co.* (1882) 7 App. Cas. 189, "it is not sufficient to show that the thing sanctioned by the Act, if done, will of sheer physical necessity put an end to the right; it must also be shown that the Legislature have authorized the thing to be done at all events, and irrespective of its possible interference with existing rights." By 51 Geo. 3, c. 115, s. 2, it is enacted that certain lords of manors may grant for public purposes any waste land of the manor, "freed and absolutely discharged from all rights of common." In *Forbes* v. *Eccles. Comm.* (1872) L. R. 15 Eq. 53, it was contended that this enactment authorized the lord to discharge the land, not only of manorial right, but also of public or customary rights. But it was held that "the language of the statute was fully satisfied by interpreting it to mean, what indeed is the plain and natural meaning of the words used, a power to discharge the land of manorial rights. To hold otherwise would be to destroy by a side wind public rights which were not in the contemplation of the Legislature." So also it being, as Cockburn, C.J., said in *R.* v. *Payne* (1872), 1 C. C. R. 355, "a distinguishing characteristic of our criminal system that a

(*e*) In *R.* v. *Strachan* (1872), L. R. 7 Q. B. 463, it was argued that, by virtue of 33 & 34 Vict. c. 97, sch. (Voting paper), which enacted that "any instrument for the purpose of voting by any person entitled to vote at any meeting," should be liable to a penny stamp duty, it became necessary for voting-papers used at municipal elections to be stamped. "But," said Cockburn, C.J., "it can never have been the intention of the Legislature, by such an enactment as this—viz., by the use of the words 'at any meeting' in the schedule—to have altered the whole system of voting at public elections."

prisoner on his trial can neither be examined or cross-examined," it was held in *R.* v. *Buttle* (1870), 1 C. C. R. 248, that the answers given by a person in his evidence before Bribery Commissioners were not admissible as evidence against him on a charge of perjury. "These answers," said Martin, B. (at p. 251), "were not admissible in evidence, unless the witness is deprived of his common law protection. We cannot assume that this protection is taken away unless the Legislature clearly says so, and as the statute (26 Vict. c. 29, s. 7) does not clearly say so, I think the protection is not taken away."(*f*) Again, it being the right of every prisoner to challenge peremptorily the jurors to the number of twenty in all cases of felony, the question arose in *Gray* v. *R.* (1844) 11 Cl. & F. 427, whether, when a new kind of felony is created by statute, that peremptory right of challenge exists with regard to this new kind of felony. It was held that it did. "A prisoner," said Tindal, C.J. (at p. 480), "is not to be deprived by implication of a right of so much importance to him, given by the common law and enjoyed for many centuries, unless such implication is absolutely necessary for the interpretation of the statute."(*g*) Again, it being a recognised right that, as Erle, C.J., said in *Cooper* v. *Wandsworth* (1863), 14 C. B. N. S. 180 (at p. 187), "no man is to be deprived of his property without his having an opportunity of being heard," it was laid down in that case by Byles, J. (at p. 194), that "although there may be no positive words in a statute requiring that a party shall be heard, yet a long course of decisions, beginning with *Dr. Bentley's case* (1722) 1 Str. 557, Ld. Raym. 1334, 8 Mod. 148 Fort. 202, established that the justice of the common law will supply the omission of the Legislature." So also with regard to the right of trial by jury. "An Act of Parliament," said Best, C.J., in *Looker* v. *Halcomb* (1827), 4 Bing.

(*f*) By 46 & 47 Vict. c. 51, s. 59 (1 b), the Legislature passed a fresh enactment in accordance with this decision.

(*g*) This *dictum* of Tindal, C.J., was cited with approval by the Judicial Committee in giving judgment in *Levinger* v. *R.* (1870), L. R. 3 P. C. 282, at p. 289, a case in which a similar point was raised. See this case cited below Part II. Ch. iii. on "Effect of Statutes on the Common Law."

183, at p. 188, "which takes away the right of trial by jury . . . . ought to receive the strictest construction; nothing should be holden to come under its operation that is not expressly within the letter and spirit of the Act."

Reservation of rights *ex abundanti cautelâ.*

We may sometimes find that Acts of Parliament, *ex abundanti cautelâ*, have thought it necessary specially to reserve rights; as, for instance, in certain (*h*) of the Acts regulating the law of bankruptcy we find that the privilege of freedom from arrest belonging to peers of Parliament is specially reserved. But this special reservation was unnecessary, for, said Lord Hatherley in *Duke of Newcastle* v. *Morris*, (1870), L. R. 4 H. L. 661, at p. 671, "it is not because, *ex majori cautelâ*, several Acts of Parliament have thought it necessary specially to reserve that privilege, that it is to be held to be abolished and annihilated in every other Act of Parliament in which it is not expressly reserved."

As a general rule, "the Legislature," as Bramwell, L.J., said in *Wells* v. *London, Tilbury, &c., Rail. Co.* (1877), 5 Ch. D. 130, never takes away the slightest private right without providing compensation for it, and a general recital in an Act providing for the execution of public works, that it is expedient that the works should be done, is never supposed to mean that in order to carry them out a man is to be deprived of his private rights without compensation." The effect of an Act of Parliament upon a private right was much discussed in *Walsh* v. *Secretary of State for India* (1863), 10 H. L. C. 367. In that case it appeared that Lord Clive, whose representative the plaintiff was, had transferred to the East India Company a sum of money, and they had covenanted to pay out of that sum pensions to disabled officers and soldiers so long as the Company employed troops in India, and if they ceased to employ troops, the money was to be handed back to Lord Clive or his representatives. By 21 & 22 Vict. c. 106, the government of India was transferred from the

(*h*) 4 Geo. 3, c. 33, s. 4, and 12 & 13 Vict. c. 106, s. 66; see the argument of Sir R. Palmer in *Duke of Newcastle* v. *Morris* (1870), L. R. 4 H. L. 661. In the Palmer Act (19 & 20 Vict. c. 16) and the Central Criminal Court Act, 1834, a similar reservation is made as to the trial of peers.

Company to the Crown, and the same Act vested in the Crown all the funds at the disposal of the Company, and it was contended on the part of the Crown that, although the Company had ceased to employ troops in India, this Act had deprived the plaintiff of his right to have the money handed back to him. The House of Lords, however, did not adopt this view, and they held that as this claim of Lord Clive's representative against the Company was neither expressly released nor prohibited by the Act in question, that Act could not in any manner avail to take away the right of action under that covenant. "This result," said Lord Westbury, "follows of necessity, consistently with every rule by which Acts of Parliament ought to be interpreted, especially the rule that they should be so interpreted as in no respect to interfere with or prejudice a clear private right or title, unless the private right or title is taken away *per directum*." So in *Randolph* v. *Milman* (1868), L. R. 4 C. P. 107, it was contended that by virtue of 3 & 4 Vict. c. 113, passed for the purpose of vesting in the Ecclesiastical Commissioners the estates of certain deaneries, the non-residentiary prebendaries of cathedrals were deprived of their right to vote at the election of proctors. They had enjoyed this right from time immemorial, and there being no express words in the statute by which the right was taken away, the Court decided that they still retained the right. "We agree," said the Court (at p. 113), "with the principle of the law stated by Sir Roundell Palmer at the outset, that vested rights are not to be taken away without express words or necessary intendment or implication, and upon adverting to the statute it will be found that there is no express extinction of the right here claimed, and no necessary implication or intendment to that effect."

(4) To alter a clear principle of law.

(4) It also requires a distinct and positive legislative enactment to alter any clearly established principle of law.(*i*) "Statutes," said the Court of Common Pleas in *Arthur* v. *Bokenham* (1708), 11 Mod. 150, "are not presumed to

(*i*) See this point further discussed in chapter on "Effect of Statutes on the Common Law," Part II. ch. iii.

make any alteration in the common law further or otherwise than the Act does expressly declare." Thus, in *Rolfe and the Bank of Australasia* v. *Flower* (1866), L. R. 1 P. C. 27, it was contended that it was the intention of the Colonial Legislature by their Act of 5 Vict. No. 17, s. 39, to alter the well-known principle of bankruptcy law, that a joint creditor having a security upon the separate estate is entitled to prove against the joint estate without giving up his security. In deciding against this contention the Judicial Committee said, at p. 48: "If this were the establishment of a new code of insolvent law, and it was the object of the Colonial Legislature to prevent the operation of a rule which they considered unjust, it is hardly to be imagined that they would have committed their intention to the equivocal meaning of a few words in a single section of the Act."

(5) To add to or take from jurisdiction of court of law.

(5) A distinct and unequivocal enactment is also required for the purpose of either adding to or taking from the jurisdiction of a superior court of law. "I cannot think," said Grove, J., in *Cousins* v. *Lombard Bank* (1876), 1 Ex. D. 406, "that by 38 & 39 Vict. c. 50, s. 6, the Legislature contemplated an extension of the right of appeal. . . . . The change would have been great in principle, and if the Legislature had intended to introduce it, clear language would have been employed." Thus, in *Smith* v. *Brown* (1871), L. R. 6 Q. B. 729,(*k*) it was argued that 24 Vict. c. 10, s. 7, which gives jurisdiction to the Admiralty Court over "any claim for damage done by a ship," gave the Admiralty Court jurisdiction to entertain a suit on account of personal injuries occasioned by the collision of two vessels. But," said the Court, "it seems to us impossible to suppose that the Legislature can have intended under a general enactment like the present, as it were by a side wind, to effect so material a change in the rights and relative positions of the parties concerned in such an action." Similarly, in *Att.-Gen.* v. *Sillem* (1864), 10 H. L. C. 704, the question

(*k*) Approved by the House of Lords in *Seward* v. *Vera Cruz*, (1884) 10 App. Cas. 59.

arose whether 22 & 23 Vict. c. 21, s. 26, which gave the Court of Exchequer power to make rules as to the "process, practice, and mode of pleading" on the revenue side of the Court, enabled them to grant a right of appeal in such cases to the Exchequer Chamber, a right which had not previously existed. The House of Lords decided that the Court of Exchequer had no such power, there being no express mention in the Act as to giving any new right of appeal. "The creation," said Lord Westbury, "of a new right of appeal is plainly an act which requires [distinct] legislative authority."

Similarly as to ousting the jurisdiction of a superior Court. "No rule is better understood," said Pollock, B., in *Oram* v. *Brearey* (1877), 2 Ex. D. 348, "than that the jurisdiction of a superior Court is not to be ousted unless by express language in, or obvious inference from, some Act of Parliament."(*l*) "I do not mean to say," said Jessel, M.R., in *Jacobs* v. *Brett* (1875), L. R. 20 Eq. 6, "that it may not be done by necessary implication as well as by express words, but at all events it must be done clearly." "The general rule undoubtedly is," said Tindal, C.J., in *Albon* v. *Pyke* (1842), 4 M. & G. 424, "that the jurisdiction of superior Courts is not taken away except by express words or necessary implication." In *Balfour* v. *Malcolm* (1842), 8 Cl. & F. 485, at p. 500, Lord Campbell said: "There can be no doubt that the principle is that the jurisdiction of the supreme courts can only be taken away by positive and clear enactments in an Act of Parliament." Therefore, inasmuch as "the power of the Court of Queen's Bench to change the *venue* is a common law power, words," said Lord Campbell in *Southampton Bridge Co.* v. *Southampton L. B.* (1858), 8 E. & B. 604, "should be very strong which are relied upon to take away such power." This general rule, when relating to the trial of new offences created by statute, was well explained by Lord Mansfield in *Hartley* v. *Hooker* (1777), 2 Cowp. 523. In

(*l*) The decision in this case was overruled in *Dale* v. *Chapman* (1885), 14 Q. B. D. 855, but the observation quoted was adopted by Lindley, L.J., at p. 858.

that case a *qui tam* information was brought in the Sheriff's Court of the city of York, under 13 & 14 Car. 2, c. 26, which enacted that "all offences shall be determined . . . . in the Court of Record of the city wherein such offence shall be committed," and it was sought to remove the information into the Court of King's Bench. It was objected, however, that the jurisdiction of the King's Bench was taken away by the words of the statute. But Lord Mansfield said as follows: "If a *new* offence is created by statute, and a special jurisdiction, *out of the course of the common law*, is prescribed it was to be followed. . . . . But where a new offence is created and directed to be tried in an inferior court, such inferior court tries the offence as a common law court, subject to all the consequences of common law proceedings, one of which consequences is that it is liable to be removed in this Court, and this Court cannot be ousted of this jurisdiction without express negative words."

(6) To cut down effect of a written instrument.

(6) Also, as Lord Tenterden said in *Morris* v. *Mellin* (1827), 6 B. & C. 446, "It is a general rule, in the interpretation of Acts of Parliament, that an enactment, the effect of which is to cut down, abridge, or restrain any written instrument shall have a limited construction;" or, in other words, as Bayley, J., put it, "in order to avoid any written instrument by positive enactment, the words of that enactment ought to be so clear and express as to leave no doubt of the intention of the Legislature." Thus, 12 & 13 Vict. c. 106, s. 137, enacts that "every judge's order made by consent given by a trader defendant in a personal action shall be filed," as therein required, "otherwise such order shall be null and void to all intents and purposes whatever." But it was held in *Bryan* v. *Child* (1850), 5 Ex. 368, that this enactment does not avoid such a judge's order as against the trader himself, but only as against his assignees if he afterwards becomes bankrupt.

CHAPTER IV.

WHAT SOURCES OF INFORMATION OUTSIDE A STATUTE MAY BE USED FOR THROWING LIGHT UPON ITS MEANING.

PAGE

1. Debates in Parliament or reports of commissioners 143
2. *Other statutes* . . . 145
   (a) *Statutes in pari materiâ* . . . 147
   Statutes *in pari materiâ* to be read together . . . 147
   If two statutes are *in pari materiâ*, whatever is decided as to one holds good as to the other . . 148
   This rule applies to colonial Acts . . 149
   But not, apparently, to local Acts . . 149
   Application of rule . 151
   Provisions in a statute *in pari materiâ* with another statute may not be borrowed and applied to that other statute . . . 153
   Effect of enacting that one Act shall be construed as one with another . . . 154
   (b) *Earlier statutes* . 155
   Presumption if different language is employed in subsequent statutes . . . 156
   Language previously employed may be departed from without intending to alter meaning . . . 158
   Exception to presumption if later statute is carelessly drawn . 159
   If section of earlier Act is introduced into later Act . . . 160
   (c) *Subsequent statutes* . 161
   Relevant only as "parliamentary exposition" of prior statute . . . 161
3. Expositions of text-writers 162
4. Usage 164
   Construction long acquiesced in will not, as a rule, be departed from, even though the construction appears to be incorrect 165
   But usage will not affect construction of statute if meaning is plain . . . 168
   Nor will usage operate unless particular construction has been universally acquiesced in . . . 170
5. Statutory rules . . . 171

1. Upon the failure of what Dr. Lushington, in *Gough* v. *Jones* (1863), 9 Jur. N. S. 82, describes as "the most satisfactory mode of construction"—viz., examining the statute, and if possible ascertaining the meaning from the statute alone—it is necessary to consider whether it is in any case allowable to have recourse to anything beyond the four corners of the statute for the purpose of ascertaining what was the intention of the Legislature when they passed the particular Act of Parliament which is under consideration. The rules laid down in *Heydon's case* (*a*) allow, to a certain extent, the circumstances which led to the passing of the Act to be considered; (*b*) and it is not unusual, in arguments of counsel as to the construction of a statute, to find facts referred to "which are stated to exist outside the Act of Parliament" which is under consideration.(*c*) But there is one matter which, until very recently,(*d*) it was never allowable to refer to in discussing the meaning of an obscure enactment, and that is what is sometimes called "the parliamentary history" of a statute, that is to say, the debates which took place

Not allowable to refer to debates in Par-

(*a*) *Ante*, p. 112.

(*b*) In *Mounsey* v. *Ismay* (1865), 34 L. J. Ex. 55, the Court of Exchequer said, "The occasion of the enactment of the Prescription Act is well known. . . . ." And in *R.* v. *Dean of Hereford* (1870), L. R. 5 Q. B. 196, at p. 201, the Court said, "The meaning of the Act appearing to us open to doubt, it occurred to us . . . . to ascertain the state of things existing at the time of the passing of the Act. . . . ." But in *Lancashire* v. *Mayor of Rochdale* (1883), 8 App. Cas. 501, Lord Bramwell said, "I do not know historically how this Act came into existence, and I doubt very much whether, if one did know, one would have the right to apply that knowledge to the construction of the Act."

(*c*) In *Green* v. *R.* (1876), 1 App. Cas. at p. 531, Lord Cairns said, "The doubt which has arisen [as to the meaning of the Act] has arisen from the facts which are stated to exist outside the Act of Parliament, and which I will now refer to. . . . ."

(*d*) See the decision of Bramwell and Baggallay, L.JJ., *dubitante* Thesiger, L.J., in *R.* v. *Bishop of Oxford* (1879), 4 Q. B. D. 525, allowing a speech of the Lord Chancellor in the House of Lords to be cited as an authority as to the construction of a statute. And in *S. E. Railway* v. *Railway Commissioners* (1880), 5 Q. B. D. 236, Cockburn, C.J., said, "Where the meaning of an Act is doubtful, we are, I think, at liberty to recur to the circumstances under which it passed into law as a means of solving the difficulty;" and he accordingly proceeded to quote a speech made by Mr. Cardwell on the introduction of the Bill into the House of Commons, and a speech made by the Lord Chancellor on introducing it into the House of Lords. These decisions are inconsistent with the opinion of Lord O'Hagan (*infra*, p. 144), and the first was strongly disapproved by Earls Cairns and Selborne in *Julius* v. *Bishop of Oxford* (1880), 49 L. J. Q. B. 578.

liament or reports of commissioners.

in Parliament when the statute was under consideration; and the alterations made in it during its passage through Committee, are, as the Court said in *R.* v. *Hertford College* (1878), 3 Q. B. D. 693, at p. 707, "wisely inadmissible to explain it." This was well pointed out by Pollock, C.B., in the *Alexandra case* (1863), 2 H. & C. 521. "No Court," said he, "can construe any statute, and least of all a criminal statute, by what counsel are pleased to suggest were alterations made in Committee by a member of Parliament, who was 'no friend to the Bill,' even though the Journals of the House should give some sanction to the proposition. That is not one of the modes of discovering the meaning of an Act of Parliament recommended by Plowden, or sanctioned by Lord Coke or Blackstone." So also in *Holme* v. *Guy* (1877), 5 Ch. D. 905, Jessel, M.R., said, "The Court is not to be oblivious of the history of law and legislation, although it is not at liberty to construe an Act of Parliament by the motives which influenced the Legislature." The reports of commissioners and similar documents are considered as (said Lord O'Hagan in *Rankin* v. *Lamont* (1880), 5 App. Cas. 52) "scarcely legitimate guides to the construction of the statute which is the outcome of" a report. "We shall not refer," said the Court in *Salkeld* v. *Johnson* (1848), 2 Ex. 273, "to the report of the Real Property Commissioners, published shortly before the passing of this Act, and to which it is supposed to have owed its origin, in order to explain its meaning, not believing that we can legitimately do so, however strongly we may believe that it was introduced in order to carry into effect its recommendations." So also, in *Farley* v. *Bonham* (1861), 30 L. J. Ch. 239, Wood, V.C., said, "The question is not what alterations the commissioners have recommended, but what recommendation the Legislature has adopted." Nevertheless, as Tindal, C.J., said in *Salkeld* v. *Johnson* (1846), 2 C. B. 749, at p. 757, "if we were allowed to draw any inference from a comparison between the language of the [Commissioners'] Report and that of the Legislature, the more legal inference would

be, that the marked distinction observable between the two could not have been the result of accident, but must have been advised or intentional."(*e*)

The memorandum or breviate now usually prefixed to Bills of considerable importance, and especially to consolidation Bills, often supplies useful hints as to the intention of the draftsman, but has never been adopted as an aid to the judges in construing the Act when passed. Memorandum prefixed to Bills.

There are, however, several(*f*) sources of information, outside the statute itself, to which it is allowable to have recourse in order to throw light upon the meaning of an obscure enactment. These sources are—(1) other statutes; (2) expositions of text-writers; (3) usage, including judicial decisions and the practice of conveyancers.

2. In considering what light one statute may throw upon the meaning of another statute, we will first consider the assistance to be derived from statutes which are *in pari materiâ* with the statute under consideration; and secondly, from earlier statutes, not precisely *in pari materiâ*, but in some way relating to or affecting the same subject-matter, bearing in mind "that," as the Judicial Committee said in *Escott* v. *Mastin* (1842), 4 Moore P. C. 104, at p. 123, "the same enactment of a statute (or the same direction in a rubric) may receive one construction when it deals for the first time with a given subject-matter, and Light thrown upon meaning of statute by other statutes.

(*e*) Except *Fellows* v. *Clay* (1843), 4 Q. B. 313, at p. 356, in which Lord Denman referred to the Report of the Real Property Commissioners, none of the earlier cases countenance reference to such Reports. In *Martin* v. *Hemming* (1854), 18 Jur. 1002, and *Arding* v. *Bonner* (1856), 2 Jur. N. S. 763, the Report of the Common Law Commissioners was rejected; and in *Ewart* v. *Williams* (1854), 3 Drew. 21, that of the Chancery Commissioners was also rejected. In *R.* v. *Bishop of Oxford* (1879), 4 Q. B. D. 525, the Court considered that the Church Discipline Act (3 & 4 Vict. c. 86) might be "looked at by the light of the report of the Ecclesiastical Courts Commissioners which preceded it." And in *Curran* v. *Treleaven* (1891), 2 Q. B. 545, 557, the Report of a Royal Commission was referred to as elucidating the intentions of the Legislature with reference to the law of conspiracy; and see *R.* v. *Bishop of London* (1890), 24 Q. B. D. 213. *Vide supra*, pp. 143, 144.

(*f*) "We have been referred," said Brett, L.J., in *Ex parte Chick* (1879), 11 Ch. D. 738, "to a passage in Cicero which is to give the rule for construing an English statute. To my mind, to quote Cicero for such a purpose is too ambitious." It would be idle to refer to classical Latin or Parisian French in the interpretation of the earlier English statutes.

have another meaning and construction when it deals with a matter which has already been made the subject of enactment, and that this is most specially the case where the posterior enactment deals with the matter without making any reference to the prior enactment." Thirdly, we will consider what assistance may be derived from subsequent statutes as being what is called "parliamentary expositions" of prior statutes.

In the interpretation of statutes the Courts decline to consider any other statutes proceeding on different lines and including different provisions, or the judicial decisions thereon.(*g*) And Lord Macnaghten, when discussing the phraseology of two Revenue Acts, said, in *Commissioners of Inland Revenue* v. *Forrest* (1890), 15 App. Cas. at p. 353: "The two Acts differ widely in their scope; and even when they happen to deal with the same subject their wording is not the same. It was argued, indeed, that the language was 'practically identical;' but that expression, to my mind, involves an admission that the language is different."

In the following cases it may be profitable to refer to one Act for the construction of another:—

(1) When the statutes are *in pari materiâ*—*i.e.*, deal with the same subject-matter, or, in other words, constitute a part or the whole of the code of legislation on a particular subject; (*h*)

(2) When the later Act specifically directs that it is to be read and construed as one with the prior Act;

(3) When the later Act is a consolidation Act re-enacting the provisions of earlier Acts without substantial alteration;

(4) When the clause to be construed is a common form clause re-enacted from time to time in different statutes as occasion arises, such as clauses as to

---

(*g*) Per Lord Halsbury in *Knowles* v. *L. & Y. Rail. Co.* (1889), 14 App. Cas. 248, at p. 253. He had been asked to consider the Railways Clauses Act, 1845, as an aid to construing 31 Geo. 3, c. lxviii.

(*h*) *R.* v. *Tonbridge Overseers* (1883), 11 Q. B. D. 134, 13 *ib.* 339.

notice of action, perjury, administration of oaths, and the like; and

(5) When the term or phrase to be construed occurs in another Act and has been already construed in a particular way, and nothing in the context prevents the use of the definition already attached by the legal dictionary to the term or phrase in question.

Statutes *in pari materiâ*.

Where Acts of Parliament are *in pari materiâ*, the rule as laid down by the twelve judges in *Palmer's case* (1784), 1 Leach C. C. 3rd ed. 393, is that such Acts "are to be taken together as forming one system, and as interpreting and enforcing each other." And, as Knight Bruce, L.J., said in *Ex parte Copeland* (1853), 22 L. J. Bank. 21, upon a question of construction arising "upon a subsequent statute on the same branch of the law, it is perfectly legitimate to use the former Act, though repealed." "For this," continued he, "I have the authority of Lord Mansfield, who in *R.* v. *Loxdale* (1758), 1 Burr. 447, thus lays down the rule,—'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.' If it had been necessary, I should myself have acted on this rule in the present case."

Rule that statutes *in pari materiâ* should be read together.

In conformity with this rule, in construing a consolidation Act, prior statutes repealed, but reproduced in substance, are regarded as *in pari materiâ*, and judicial decisions on the repealed statute are treated as applicable to the corresponding provision of the repealing Act in the same manner as references to a repealed Act are, by the Interpretation Act, 1889, read as applicable to any section in which its terms are reproduced. This view was taken in *Mitchell* v. *Simpson* (1890), 25 Q. B. D. 183, and has also been adopted by the House of Lords in *Smith* v. *Baker* (1891), App. Cas. 325,(*i*) where

52 & 53 Vict. c. 63, s. 38.

(*i*) See also *Hodgson* v. *Bell* (1890), 24 Q. B. D. 525, on s. 65 of the Act, following *Foster* v. *Usherwood* (1877), 3 Ex. D. 1, on the prior County Courts Act of 1867.

51 & 52 Vict. c. 43.

Lord Watson, at p. 349, referred for the construction of s. 120 of the County Courts Act, 1888, relating to appeals, to the decision in *Clarkson* v. *Musgrave* (1881), 9 Q. B. D. 386, upon the terms of the repealed County Courts Act, 1875, and held that decision to be equally applicable to the Act of 1888.

The rule as to statutes *in pari materiâ* applies even without any statutory provision. In *Waterlow* v. *Dobson* (1857), 27 L. J. Q. B. 55, Lord Campbell said, with regard to a similar clause, "That clause is frequently inserted in modern Acts of Parliament, but if the two Acts be *in pari materiâ*, the construction would be the same without it." But it is now common to insert clauses which make certain Acts one for purposes of construction, *e.g.*, the Land Act (Ireland), 1889, s. 11, which runs thus: "All other words and expressions in this Act which are not thereby defined or explained, and are defined or explained in any of the Tramways (Ireland) Acts, have, unless there is something inconsistent in the context, the same meaning as in the last-mentioned Acts; and the said Acts, as varied by this Act, and this Act shall, so far as is consistent with the tenor thereof, be read together and construed as one Act."

Statutory rules are, so far as valid, regarded as *in pari materiâ* with statutes. Thus, it was held in *Re Foster* (1881), 8 Q. B. D. 515, at p. 522, per Brett, L.J., that s. 28 of the Regulation of Railways Act, 1873, should be construed in the same manner as Ord. 55 of the R. S. C. 1875, on the ground that it was substantially identical in terms, and was *in pari materiâ* as giving jurisdiction to a judicial tribunal with reference to costs.

If two statutes are *in pari materiâ*, whatever is decided as to one holds good as to the other.

Another rule with regard to the construction of statutes *in pari materiâ* is that any judicial decision as to the meaning of one is, as Buller, J., said in *R.* v. *Mason* (1788), 2 T. R. 586, "a sound rule of construction for the other." In that case the question was whether an indictment under 30 Geo. 2, c. 24, for obtaining money by false pretences was good if it did not show what the false pretences were. It appeared that it had been held in *R.*

v. *Munoz* (1739), 2 Str. 1127, that an indictment for procuring a promissory note by false tokens, under 33 Hen. 8, c. 1, was bad because it did not specify what the false tokens were. "30 Geo. 2, c. 24," said Buller, J., "only enlarges the description of the offence in the statute of Henry VIII. Both statutes are made *in pari materiâ*, and whatever has been determined in the construction of one of them, is a sound rule of construction for the other. The judgment was arrested in the case in Strange because the indictment did not specify the false tokens; therefore, by the same reason, an indictment on 30 Geo. 2, c. 24, which speaks of false pretences, must state what the false pretences are, otherwise the indictment is bad."

This rule also holds good with regard to a colonial Act *in pari materiâ* with an English Act. In *Catterall* v. *Sweetman* (1845), 9 Jur. 954, Dr. Lushington said: "I must construe the Act of New South Wales . . . . as an Act *in pari materiâ*. . . . . And I conceive (though I know of no direct authority for the position) that an Act of a colonial Legislature where the English law prevails must be governed by the same rules of construction as prevail in England, and that English authorities upon an Act *in pari materiâ* are authorities for the interpretation of the colonial Act. I think this is true as a general principle."(*k*)

This rule applies to colonial Acts.

But as regards private and local Acts (at any rate in Scotland), this rule of construction does not hold good. In *Strachan* v. *Thomson* (1850), 13 Dunlop (Sc.) 279, the Court declined to give to the word "dung," when used in a local Act, a construction similar to that which is given to it in another local Act which was *in pari materiâ*, on the ground that the general rule above stated did not apply in construing private and local Acts.

But not, apparently, to local Acts.

Some difficulty arises in deciding what statutes are *in pari materiâ*. Roughly speaking, all those indexed under the same head in the General Index to the Statutes may be regarded as *in pari materiâ*, but the Index in

(*k*) See *post*, Acts relating to colonies, Part II. ch. vii.

question has no authority except such as is derived from the care and method bestowed on its preparation. Incorporation by reference or directions that Acts are to be read as one is *primâ facie* evidence that Parliament regarded them as *in pari materiâ*.(*l*)

The question has frequently been raised as to when statutes are to be considered as being *in pari materiâ* and when not. There are several dicta in the books on the point, but (in England) the question has never been very clearly answered. Thus, in *Crosley* v. *Arkwright* (1788), 2 T. R. 609, Buller, J., said that all Acts relating to such a subject as stamps must be construed *in pari materiâ*. In *R.* v. *Loxdale* (1758), 1 Burr. 447, Lord Mansfield said that the laws concerning Church leases, and those concerning bankrupts, also all the statutes providing for the poor, are to be considered as one system. See also *Doe d. Tennyson* v. *Lord Yarborough* (1822), 1 Bing. 24; *Bayly* v. *Murin* (1675), 1 Vent. 246. In *Duck* v. *Addington* (1791), 4 T. R. 447, it was admitted, without argument on the point, that all statutes regulating hackney coaches and their drivers were *in pari materiâ*. In *Davis* v. *Edmonson* (1803), 3 B. & P. 382, it was held that all statutes making provisions as to the certificate to be taken out by solicitors were *in pari materiâ*. In *Redpath* v. *Allan* (1872), L. R. 4 P. C. 518, it was held that certain Canadian statutes relating to pilotage were *in pari materiâ*. But in *Bazing* v. *Skelton* (1792), 5 T. R. 16, it was held that certain statutes which only incidentally affected toll-gate keepers were not to be considered *in pari materiâ*, and in *Moore's case* (1704), 2 Ld. Raym. 1028, it was held that a statute which prohibited a warrant from being executed on a Sunday was not *in pari materiâ* with a subsequent statute which regulated the arrest of escaped prisoners. In *Howden* v. *Rocheid* (1869), L. R. 1 H. L. (Sc.) 562, it was observed by Lord Colonsay that the mere fact that ancient statutes are contemporaneous will not entitle

(*l*) *Vide infra*, Consolidation and Revision, Part II. ch. iv.

them to be used as explanatory of one another. The question was raised in America in *United Society* v. *Eagle Bank* (1829), 7 Conn. 457, and at p. 470 Hosmer, J., said: "Statutes are *in pari materiâ* which relate to the same person or thing, or to the same class of persons or things. The word *par* must not be confounded with the word *similis*. It is used in opposition to it, as in the expression *magis pares sunt quam similes*, intimating not likeness merely, but identity. It is a phrase applicable to the public statutes or general laws made at different times and in reference to the same subject." (See also Sedgwick on Statutory Law, ed. 2, p. 210.)

Application of rule.

And if there is a large number of statutes which are *in pari materiâ*, considerable difficulty has been felt in deciding what effect these rules with regard to the construction of statutes which are *in pari materiâ* will have. Thus, in *R.* v. *Surrey* (1788), 2 T. R. 504, the question was whether an appeal lay from the decision of two justices for an offence against the excise laws. The conviction had been on 25 Geo. 3, c. 72, which statute enacted in s. 33 that all and every the powers, authorities, directions, rules, methods, penalties, &c., which by 12 Car. 2, c. 24, "or by any other law now in force relating to the excise," are provided for securing, &c., the duties or penalties thereby granted, should be exercised as fully and effectually as if all and every the said powers were particularly repeated, and again enacted in this present Act, and in s. 34, that all fines, &c., respecting the inland duties imposed by this Act, shall be sued for by such ways as any fines may be sued for by *any law of excise*. It was argued that these general clauses of reference adopted all former laws of excise, and, therefore, inasmuch as some of the former laws gave the power of appeal, they were virtually included in this. This argument, however, did not prevail, and Ashhurst, J., in delivering judgment, explained as follows the effect of this general reference to all former statutes contained in ss. 33 and 34 of 25 Geo. 3, c. 72:—"The fair construction to be put upon this Act seems to be this;

that all the *general* powers and provisions given and made in Acts *in pari materiâ*, shall be virtually incorporated into this, but that such provisions as are always considered as *special* provisions shall not.(*m*) The power of appealing from the judgment of justices seems to be of this kind, and does not, therefore, attach without being expressly given." Again, in *R.* v. *Johnson* (1845), 8 Q. B. 102, the 2 & 3 Vict. c. 12, s. 4, forbade any prosecution for an offence committed under that Act, unless it was commenced by the Attorney-General, and s. 6 enacted that that Act should be construed as one Act with 39 Geo. 3, c. 79. The question then was whether, in consequence of the enactment contained in s. 6, a conviction under 39 Geo. 3, c. 79, was bad if the prosecution had not been instituted by the Attorney-General. The Court held that it was not bad, and with regard to the enactment of s. 6, Lord Denman said as follows:—"I do not well know what was intended by the enactment that 39 Geo. 3, c. 79, should be construed as one Act with 2 & 3 Vict. c. 12. This, however, is an offence against 39 Geo. 3, c. 79. . . . . If the 2 & 3 Vict. c. 12, had not created any fresh offence, there might have been some ground for the argument now urged."

In *Mather* v. *Brown* (1876), 1 C. P. D. 596, the questions arose how far the provisions of the old Municipal Corporations Act (6 & 7 Will. 4, c. 76) were incorporated in the Municipal Elections Act, 1875, by virtue of s. 13 of the latter Act, which says, "This Act, so far as consistent with the tenor thereof, shall be contrued as one with the [former] Act and the Acts amending it." S. 142 of the earlier Act contained provisions for amending inaccuracies, and it was vainly contended that this section applied to inaccuracies in nomination papers under the later Act. Lord Coleridge said, at p. 601, "These terms [those of s. 142] do not seem to me to extend the operation of the amending section in the earlier Act to a

(*m*) In *R.* v. *Excise Commissioners* (1788), 2 T. R. 387, Buller, J., said, "As far as statutes are *in pari materiâ*, they may be taken into consideration together as to the *general* provisions of the Act."

document which had no existence then, and therefore could not have been in the contemplation of the Legislature." And Lindley, L.J., added (p. 602): "I have examined the authorities to see if they would supply any reasoning by which we might get over this objection. But I have found nothing to support the petitioner's view. On the contrary, I have found two cases which look the other way, showing that a mere incorporation by reference of a former Act does not extend all the provisions of the earlier to the later Act. These are *Lane* v. *Bennett*(*n*) and *Davison* v. *Farmer*(*o*)."

Provisions in a statute *in pari materiâ* with another statute may not be borrowed and applied to that other statute.

It is important to bear in mind that statutes which are *in pari materiâ* cannot be treated precisely in the same way as if they were merely parts of one Act, and it is clearly not competent for a Court to borrow from one Act any provision(*p*) that may be wanting in another which is *in pari materiâ* with it. Thus, in *Casanova* v. *R.* (1866), L. R. 1 P. C. 277, it appeared that a foreign ship having been seized in a British harbour on suspicion of being engaged in the slave trade, and subsequently set at liberty again, and the suspicion having turned out to be groundless, application was made to the Admiralty Court of Sierra Leone to decree that the damages should be paid to the foreign ship for its wrongful seizure, by virtue of 5 Geo. 4, c. 113, s. 35, which enacted that "the prosecutors in such a case should pay such sums in the nature of costs and damages as the Court might decree when it appeared to such Court that the seizure was not justified *by the circumstances of the case*." The question therefore arose whether the seizure was justified or not. Now, it was proved that the suspicion had arisen from the fact that the ship had on board a very large number of empty water-casks. By the subsequent statute of 5 & 6 Will. 4, c. 60—apply-

(*n*) (1836) 1 M. & W. 70.
(*o*) (1851) 6 Ex. 242.
(*p*) But it seems to be otherwise with regard to a preamble, for in *Blake* v. *Attersoll* (1824), 2 B. & C. 882, Littledale, J., said, "Both Acts are *in pari materiâ* . . . . therefore . . . . the preamble of the first Act may be considered as virtually incorporated in the second Act."

ing to the seizure of foreign vessels, not in British harbours (as this was), but on the high seas—it is enacted that the mere fact of an unreasonable number of water-casks being found upon a ship shall of itself be sufficient evidence to justify its seizure; the judge of the Admiralty Court at Sierra Leone therefore decided that the seizure of this vessel was justified by this fact alone, and referred to this subsequent statute as enabling him to come to this conclusion, and he did not, as he ought to have done in accordance with 5 Geo. 4, take into consideration any other "circumstances of the case." The Judicial Committee reversed his judgment. "The learned judge," said they, "referred to the subsequent statute of 5 & 6 Will. 4, c. 113, as enabling him to arrive at the conclusion that the existence on board this ship of an unusual number of water-casks is a circumstance of such grave suspicion as to justify the seizure. The learned judge was not at liberty to use the rule of evidence introduced by the subsequent statute as applicable to the case before him. It was perfectly competent to him to refer to that statute as an Act that recognised the fact of having an unusual number of water-casks on board as a circumstance of suspicion, but he was not at liberty to take that circumstance *per se*, as a judge applying the Act of 5 & 6 Will. 4, c. 60, might have done. He was bound, in accordance with the 5 Geo. 4, c. 113, to take it in conjunction with all the other circumstances of the case."

Effect of enacting that one Act shall be construed as one with another.

It is not unfrequently enacted that an Act "shall, as far as is consistent with the tenor thereof, be construed as one with" some other Act; the question therefore arises as to what the effect of such an enactment is. In the latest(*q*) case on the point, *Mather* v. *Brown* (1875), 1 C. P. D. 596, it appeared that by 38 & 39 Vict. c. 41, s. 1, it was necessary that "the surname and other names of the persons nominated" as candidates at municipal

(*q*) In *Norris* v. *Barnes* (1872), L. R. 7 Q. B. 537 (*diss.* Lush, J.), and in *Blades* v. *Lawrence* (1874), L. R. 9 Q. B. 374 (*dub.* Blackburn, J.), it had been held otherwise.

elections should be stated in full, otherwise the nomination would be void, but that by 5 & 6 Will. 4, c. 76, s. 142 (which Act is, by s. 13 of 38 & 39 Vict. c. 40, "to be construed as one with" it), it was enacted that "no misnomer or inaccurate description of any person shall hinder the full operation of the Act;" consequently, it was argued that this last enactment would cure an inaccurate description of a person nominated under 38 & 39 Vict. c. 40. "But," said Lord Coleridge, "the 38 & 39 Vict. c. 40, does not say that the provision in s. 142 of the former Act shall be extended to the later Act, but merely that it shall be construed as one with it," and Lindley, J., added, "A mere incorporation by reference to a former Act does not extend all the provisions of the earlier to the later Act." The nomination paper, therefore, which did not contain "the surname and other names of the person nominated," was rejected as void.

Earlier statutes.

Assistance in ascertaining the meaning of an enactment may also be obtained by comparing its language with that used in earlier statutes relating to the same subject.(*r*) "An earlier statute," said Day, J., in *Morgan* v. *London Gen. Omnibus Co.* (1883), 12 Q. B. D. 205, "may be referred to for the purpose of throwing light upon the construction of a provision in a subsequent statute." "It has been a general rule," said Blackburn, J., in *Hadley* v. *Perks* (1866), L. R. 1 Q. B. 449, at p. 457, "for drawing legal documents from the earliest times, which one is taught when one first becomes a pupil to a conveyancer, never to change the form of words unless you are going to change the meaning, and it would be as well if those who are engaged in the preparation of Acts of Parliament would bear in mind that that is the real principle of construction."

(*r*) And this is so, according to some judges, even though the earlier statute has been repealed. "In order," said Brett, L.J., in *Titterton* v. *Cooper* (1882), 9 Q. B. D. 487, "to construe the Bankruptcy Act, 1869, we have a right to look back at the Bankrupt Act, 1849, although that Act has been repealed." But Lord Watson in *Bradlaugh* v. *Clarke* (1883), 8 App. Cas. 380, said that it appeared to him "to be an extremely hazardous proceeding to refer to provisions which have been absolutely repealed in order to ascertain what the Legislature intended to enact in their room and stead."

But in *Lawless* v. *Sullivan* (1881), 6 App. Cas. 383, the Judicial Committee said that, although "the employment of different language in the same Act may *in some cases* help to show that the Legislature had in view different objects, a change in language cannot be relied on as furnishing a *general rule of construction*, and the weight to be given to such changes must depend on a view of the entire enactments in which they occur." Acting on this principle, in *Alison* v. *Burns* (1889), 15 App. Cas. 51, they examined, not only the sections of the Colonial Land Act, but also the previous legislation of the colony on the subject, in order to ascertain the policy and intention of the Legislature. If a statute, upon which a particular construction has been long put, is re-enacted *ipsissimis verbis*, "this construction," as the Court said in *Mansell* v. *R.* (1857), 8 E. & B. 73, "must be considered to have the sanction of the Legislature." Likewise, if Acts are framed using the forms of words or clauses in prior Acts which have received judicial construction, unless a contrary intention appears, the Courts will presume that the Legislature has adopted the judicial interpretation, or has used the words in the sense attributed to them by the Courts (*Ex parte Campbell* (1870), 5 Ch. App. 703, per James, L.J., and per Lord Coleridge, C.J., in *Barlow* v. *Teal* (1884), 15 Q. B. D. 403). And, conversely, if we find that the particular language employed by the Legislature in the earlier statutes on a particular subject has been departed from in a subsequent statute relating to the same subject, it is generally,(*s*) a fair presumption that the alteration in the language used in the subsequent statute was intentional. "Where two statutes," said Brett, J., in *Dickenson* v. *Fletcher* (1873), L. R. 9 C. P. 8, "dealing with the same subject-matter use different language, it is an acknowledged rule of construction that one may be looked at as a guide to the construction of the other." When an Act, though mainly a consolidation Act, is not wholly so, but introduces fresh words, the judicial decisions upon

Presumption from different language employed in subsequent statute.

(*s*) For the exceptions, see *post*, p. 158.

the construction of the consolidating Act are no longer an authority, and cannot affect the interpretation of the new Act. This doctrine was laid down with reference to one of the Criminal Law Consolidation Acts of 1861,(*t*) by Lord Coleridge and Lord Esher in *Reed* v. *Nutt* (1890), 24 Q. B. D. 669. And in *R.* v. *Jennings* (1838), 2 Lewin C. C. 130, it being an indictable offence under 1 Vict. c. 85, s. 4, to "stab, cut, or wound" any person, it was held that under this statute a person could not be convicted unless the wound was inflicted by some instrument. But the subsequent Act of 24 & 25 Vict. c. 100, s. 11, used different language, and made it indictable "by any means whatsoever to wound or cause any grievous bodily harm to any person," and accordingly it was held in *R.* v. *Bullock* (1868), 1 C. C. R. 117, that this alteration in the language of the statute was intentional, and was made for the purpose of meeting the case of a wound inflicted otherwise than by an instrument, as, for instance, with the hand. 26 Vict. c. 29, s. 7, enacts that any witness who answered a question put to him by commissioners appointed to inquire into corrupt practices at an election, "shall be entitled to receive a certificate stating that such witness was required by the commissioners to answer questions, the answers to which tended to criminate him and that he had answered such questions." In *R.* v. *Price* (1871), L. R. 6 Q. B. 411, it was contended that under this section the commissioners had a discretion as to granting certificates of indemnity, and that they might refuse to grant such certificates if the questions had not in their opinion been satisfactorily answered. In support of this contention it was argued that this enactment was in substance the same as that of 15 & 16 Vict. c. 57, ss. 9, 10, for which statute the later enactment of 26 Vict. c. 29, s. 7, had been substituted. It appeared, however, that the earlier statute merely enacted that "where any witness is examined by

(*t*) How far these Acts were intended to consolidate and to amend respectively is best ascertained by reference to the editions of the Acts published by the late Mr. Greaves, Q.C., the draftsman of the Acts.

commissioners, such witness shall not be indemnified unless he receive from such commissioners a certificate. . . . ." There was, therefore, a material difference between the language employed in the two statutes, "and when," said Cockburn, C.J., "the Legislature, in legislating *in pari materiâ* and substituting certain provisions for those which existed in an earlier statute, has entirely changed the language of the enactment, it must be taken to have done so with some intention and motive."

Language may be altered without intending to alter meaning.

But although, as we have said, this presumption is generally to be made, and "it is certainly to be wished," as the Judicial Committee said in *Casement* v. *Fulton* (1845), 5 Moore P. C. 130, at p, 141, "that, in framing statutes, the same words should always be employed in the same sense;" still, there are many instances to be found of the Legislature departing from language previously used for the purpose of conveying a certain meaning without intending to depart from that meaning. "When the Legislature," said Blackburn, J., in *R.* v. *Buttle* (1870), 1 C. C. R. 252, "change the words of an enactment, no doubt it must be taken *primâ facie* that there was an intention to change the meaning." (*u*) This, however, is not *necessarily* so, for we find, as a matter of fact that, as Blackburn, J., observed in *Hadley* v. *Perks* (1866), L. R. 1 Q. B. 457, "in drawing Acts of Parliament, the Legislature, as it would seem, to improve the graces of the style, and to avoid using the same words over and over again, constantly change" the words without intending to change the meaning. Thus, in *Re Wright* (1876), 3 Ch. D. 78, Mellish, L.J., said, with regard to the departure in the Bankruptcy Act, 1869, from the language used in the Act, 1849: "Every one who is familiar with the present Act knows that the language of the former Acts has been very much altered in many cases where it could not have been intended to make any change in the law." Similarly, as Brett, M.R., said in *Attorney-General* v.

(*u*) In 46 & 47 Vict. c. 51, s. 59 (1, b) the old enactment of 15 & 16 Vict. c. 57, s. 8, is re-enacted, thereby showing that the change of words introduced into 26 Vict. c. 29, s. 7, was not intended to change the meaning.

Bradlaugh (1884), 14 Q. B. D. 684: "It was contended that the word 'made' in the expression in the Parliamentary Oaths Act, 1866, 'the oath shall be made,' was to be construed as if it were different from the word 'taken.' But," said Brett, M.R., "it seems to me, looking at the preamble, and at the manner in which the word is used, that the word 'made' has precisely the same effect as if it were 'taken.'"

Exception may be rebutted if statute carelessly drawn.

It was said by Lord Cottenham, in *Monteith* v. *McGavin* (1838), 5 Cl. & F. 479, that "when Parliament provides for a particular mode of proceeding in one particular case, and makes no such provision in another case, it must not as a general rule be assumed that this arises from mere negligence or inattention in the framers of the Act." But, as Brett, M.R., said in *Nottage* v. *Jackson* (1882), 11 Q. B. D. 630, "persons who draw Acts of Parliament will sometimes use phrases that nobody else uses;" consequently we do sometimes meet with expressions in statutes which we are compelled to believe were introduced, not for any specific purpose, but in consequence of the slovenliness of the draftsman. Thus, in *R.* v. *Buttle* (1870), 1 C. C. R. 250, the question was whether, when 26 Vict. c. 69, s. 7, enacted that "no statement made by any person in answer to any question put by [certain] commissioners shall, except in cases of indictments for perjury, be admissible in evidence in any proceeding," the expression "indictments for perjury" applied to perjury in general, or only to perjury committed before the commissioners. It appeared that a previous statute had contained a similar provision, but that the expression used in that statute was "indictments for perjury committed in such answers;" consequently it was argued that the Legislature intended a change of meaning by this change of words. It was held, however, that to put upon the expression used in the later statute the meaning contended for, would be subversive of one of the most important principles of the common law, and that it must be supposed, therefore, that there was no reason at all for altering the language used by the earlier statute, and

that, as Kelly, C.B., said, "whoever framed the statute, did it in a slovenly way, and showed great want of care in drawing it." So also, if it appears that the older statute contains words of surplusage, these words may very well be left out in a subsequent Act without there being any intention on the part of the Legislature to alter the law. "It appears to me," said Mellish, L.J., in *Re Wood* (1872), 7 Ch. App. 306, "that the framers of this [later] Act thought it would be an improvement to omit words as to intent in the cases where it was not necessary to prove such an intent, the words being then surplusage and misleading; and I think they may have been very properly left out without in any way altering the law." Therefore, as Jessel, M.R., said in *Hack* v. *London Provident Building Society* (1883), 23 Ch. D. 108, "it is the duty of the Court, first of all to find out what the Act of Parliament under consideration means, and not to embarrass itself with previous decisions on former Acts when considering the construction of a plain statute framed in different words from the former Acts." "Any other course," said the same judge in *Ex parte Blaiberg* (1883), 23 Ch. D. 258, "would be apt to lead us astray. If the later Act can clearly have only one meaning, we ought to give effect to it accordingly. But if, instead of doing this, we compare it with the former Act, and say that it differs from it to such and such an extent . . . . and then consider the decisions upon the former Act, we might in that way go back to half-a-dozen older Acts, and after considering the decisions on them, we might at last arrive at a conclusion exactly contrary to the later Act."

If section of earlier Act is introduced into later Act.

"Where a single section of an Act," said Lord Blackburn in *Mayor of Portsmouth* v. *Smith* (1885), L. R. 10 App. Cas. 371, is introduced into another [*i.e.*, a subsequent] Act, it must be read in the sense which it bore in the original Act from which it was taken, and consequently it is perfectly legitimate to refer to all the rest of that Act in order to ascertain what the section meant, though those other sections are not incorporated into the

new Act. I do not mean that if there was in the original Act a section not incorporated, which came by way of proviso or exception on that which was incorporated, that should be referred to; but all others, including the interpretation clause, if there be one, may be referred to."

Subsequent statutes relevant only as "parliamentary exposition" of prior statutes.

Light may also be thrown upon the meaning of an Act by taking into consideration enactments contained in subsequent Acts.(*w*) Sometimes an Act is passed for the express purpose of explaining or clearing up doubts as to the meaning of a previous Act, and is called "An Act of explanation." As to such Acts Lord Coke has said, in *Butler and Baker's case* (1591), 3 Rep. 31 a, that such an Act "should not be construed by any strained sense against the letter of the previous Act, for if any exposition should be made against the direct letter of the exposition made by Parliament there would be no end of expounding." So also in Cro. Car. 33, pl. 6, the Court said: "A statute of explanation shall be construed only according to the words, and not with an equity or intendment, for there cannot be an explanation upon an explanation." But Acts of Parliament, without having been passed for the express purpose of explaining previous Acts, are sometimes spoken of as being "legislative declarations" or "parliamentary expositions" of the meaning of some earlier Act. Thus, in *Battersby* v. *Kirk* (1836), 2 Bing. N. C. 584, at p. 609, the Court said: "We cannot but consider these legislative enactments as forming a glossary for the proper interpretation of the expressions in the Bristol Dock Act, which are considered to be left in doubt." In *Sandiman* v. *Breach* (1827), 7 B. & C. 99, the Court said: "The subsequent statutes, which contain regulations as to hackney coaches, are too ambiguous to be taken as legislative expositions of the former Acts." So again, in *Swift* v. *Jewsbury* (1874), L. R.

(*w*) In *Morgan* v. *London General Omnibus Co.* (1883), 12 Q. B. D. 207, Day, J., expressly withdrew an expression of opinion to which he had previously given utterance at p. 205, as to not "construing the language of an earlier by that of a subsequent one."

9 Q. B. 312, Lord Coleridge said: "Whether one looks to the antecedent reason of the thing, or whether one looks to what may be called parliamentary exposition of the statute, upon both grounds it seems to me that the true construction is the one which has been contended for by the defendant." But, as we have already pointed out,(*x*) it is the courts of law, and not the Legislature, who are the authorized expositors of the statute law of the land, so that anything in the nature of a "parliamentary exposition" of an Act of Parliament is only an argument that may be prayed in aid of attaching some certain meaning to a statute, and cannot be treated as *per se* conclusive.

But except as a parliamentary exposition, subsequent Acts are not available on the construction of prior Acts.

It has been lately laid down by A. L. Smith, J.,(*y*) in *Ward* v. *Folkestone Waterworks* (1890), 62 L. T. N. S. 325, that a statute cannot be construed by the light of subsequent statutes. In the case an attempt was made to construe the Waterworks Clauses Act, 1847, by reference to the Folkestone Water Act, 1888.

Though a private or local Act may repeal to some extent a public general Act, the parliamentary history of local bills forbids the inference that the latter were intended to explain or construe the former.

On the other hand, prior Acts may in some cases be construed by the light of subsequent Acts, if the latter by their terms indicate that they were meant as a parliamentary exposition of the meaning of the former.

Expositions of text-writers.

3. Light may also be thrown upon the meaning of an obscure enactment by the exposition of a statute by a text-writer,(*z*) for "although," as Jessel, M.R., said in

(*x*) *Ante*, p. 9.

(*y*) His opinion is supported by that of Lord Halsbury in *Knowles* v. *L. & Y. Rail. Co.* (1889), 14 App. Cas. 248, at p. 253.

(*z*) The authority of text-writers is of course very different. "Bacon's readings," said Erle, C.J., in *Heelis* v. *Blain* (1864), 18 C. B. N. S. 108, "is entitled to very great respect. So Chief Baron Comyns, whose great work stands high in the estimation of every one in the profession."

Henty v. *Wrey* (1882), 21 Ch. D. 348, "the text-books do not make law, they show more or less whether a principle has been generally accepted." Such expositions are often prayed in aid. "I should have no difficulty," said Jessel, M.R., in *Re Warner* (1881), 17 Ch. D. 713, "without the assistance of the text-writers; but it is very satisfactory to find they have considered it independently in the same way." Thus, in *Strother* v. *Hutchinson* (1837), 4 Bing. N. C. 89, it was doubted whether, by 13 Edw. 1, c. 31, a bill of exceptions could be tendered to the judge of a sheriff's court. "If we look only at the express words of the statute," said Tindal, C.J., "the question could not be argued, for the statute refers only to proceedings before the superior courts. We must look, however, not only to the statute, but to the commentary of Lord Coke, which has been uncontradicted to the present day. . . . . When we see the authority of so great a writer not only uncontradicted but adopted in all the digests and text-books, we can scarcely err if we adhere to his opinion." So in *Newcastle* v. *Att.-Gen.* (1845), 12 Cl. & F. 402, it was a question what was the meaning of the words "all and every person and persons" as used in 39 Eliz. c. 3. It appeared that Lord Coke, in 2 Inst. 722, had explained these words as extending "to such bodies politic as may aliene," but that there had never been any judicial decision on the point. It was sought by the appellants to overrule Lord Coke's opinion as being "an opinion written in a closet, offhand, without any discussion, and not confirmed by any decision in Court." But the House of Lords unanimously adopted Lord Coke's exposition of the statute. Or, if the meaning of some particular word in a statute is doubtful, "the expressions of text-writers, as evidencing the constant practice of the profession" (as Lord Cairns said in *Alexander* v. *Kirkpatrick* (1874), L. R. 2 H. L. Sc. 400, with regard to the construction of deeds) may very properly be taken into consideration, especially if there is no interpretation clause in the statute. Thus, in *R.* v. *Ritson* (1869), 1 C. C. R. 201, the question to be decided was the meaning

of the word "forge" in 24 & 25 Vict. c. 98, s. 20. "There is," said Kelly, C.B., "no definition of the word 'forgery' in the statute on which this indictment is framed, but the offence has been defined by very learned authors, and we find that there is among them no conflict of authority." The Court then adopted the definition as laid down in the text-books on the subject.

III. Usage.

4. Thirdly, light may be thrown upon the meaning of an obscure enactment by taking into consideration the particular construction which for a long period of time (*a*) has, as a matter of fact, been put upon it. "*Optima legum interpres consuetudo*," said Lord Coke, (*b*) in 2 Rep. 81, and this principle still holds good. "We did not think," said the Court in *Cox* v. *Leigh* (1874), L. R. 9 Q. B. 340, "that the words of the statute are sufficiently wide to justify us in putting a construction upon the statute different from that which has been entertained for 160 years." Thus, in *R.* v. *Cutbush* (1867), L. R. 2 Q. B. 379, the question arose whether justices have power, under 11 & 12 Vict. c. 43, s. 25, to sentence to imprisonment which is to commence at the expiration of an existing term of imprisonment. The enactment being similar to that of 7 & 8 Geo. 4, c. 28, s. 10, the Court, before arriving at a decision, "thought it important to ascertain what had been the practice of the judges under the last-mentioned Act." Upon ascertaining what had been the practice, they treated it as affording "a contemporaneous exposition of the effect of 7 & 8 Geo. 4 c. 28, s. 10," and accordingly held that the statute of 11 & 12 Vict. c. 43, must be construed in the same

---

(*a*) That is to say, "one or two centuries," as Lord Watson said in *Clyde Navigation Trustees* v. *Laird* (1883), 8 App. Cas. 658, 673; but, he added, "*Contemporanea expositio* is of no value in construing a statute passed in the year 1858."

(*b*) In 2 Inst. 136, he says: "*Contemporanea expositio est fortissima in lege;*" and (1 Inst. 186 *a*) that *communis opinio* is "of good authority in law: *a communi observantia non est recedendum.*" See also note (69), by Hargrave, where it is said that this is the origin of the maxim, *Communis error facit jus.* A maxim which Lord Kenyon said in *R.* v. *Essex* (1792), 4 T. R. 594, he "would never resort to." As to deeds, see Elphinstone, pp. 53, 70, note (*a*).

way. The settled practice of conveyancers appears to be accepted as *contemporanea expositio.*(*c*)

Construction long acquiesced in will not be departed from even though the construction appears to be incorrect.

And this rule of construction will hold good even if the Court be of opinion that the particular construction which has been so long acquiesced in is not the right one; for, as Jessel, M.R., said in *Ex parte Willey* (1883), 23 Ch. D. 127, "where a series of decisions have put a [particular] construction on an Act of Parliament, and have thus made a law which men follow in their daily dealings, it has been held, even by the House of Lords, that it is better to adhere to the course of the decisions than to reverse them, because of the mischief which would result from such a proceeding."(*d*)

"I think," said Lord Cairns in *Commissioners of Inland Revenue* v. *Harrison* (1874), L. R. 7 H. L. 9, "that with regard to statutes of that kind above all others it is desirable not so much that the principle of the decision should be capable at all times of justification, as that the law should be settled, and should, when once settled, be maintained without any danger of vacillation or uncertainty." Thus, in *Mignault* v. *Malo* (1872), L. R. 4 P. C. 136, the question arose as to what was the effect of a Canadian statute, passed in 1801, which enacted that, "whereas doubts

(*c*) *Ford* v. *Hill* (1879), 10 Ch. D. 370, per James, L.J.; and see Elphinstone on Deeds, p. 63 *g*.

(*d*) This rule of construction is also acted upon in America. In *McKeen* v. *Delancy* (1809), 5 Cranch (U. S.) 22, Marshall, C.J., said at p. 32: "Were this Act of 1715 now for the first time to be construed, the opinion of this Court would certainly be that this deed was not regularly proved. . . . . But in construing the statutes of a State on which land titles depend, infinite mischief would ensue should this Court observe a different rule from that which has been long established in the State." Similarly, we find that where there has existed for a long series of years a practice in a particular court as to the inadmissibility of evidence of a certain character, the ultimate Court of Appeal will not alter such practice, although it appears that the practice was erroneous in its origin. *Janvrin* v. *De la Mare* (1861), 14 Moore P. C. 334. Similarly, with regard to the construction of ancient documents, Lord Chelmsford said in *Lord Advocate* v. *Sinclair* (1867), L. R. 1 H. L. Sc. 178: "The rule is that ancient documents of every description may, in the event of their containing ambiguous language, be interpreted by what is called contemporaneous and conterminous usage under them." And in *Nicol* v. *Paul* (1867), L. R. 1 H. L. Sc. 131, Lord Westbury said: "A very liberal interpretation should be given to the language of these decrees, so as to support long usage, and the conclusions which may fairly be derived from the acquiescence of persons who had an interest in disturbing them if not well founded."

have arisen touching the method now followed of proving wills before a judge of the courts of civil jurisdiction in the province; be it therefore enacted, that such proof shall have the same force and effect as if made and taken before a Court of Probate." "At first sight," said the Judicial Committee, "it certainly appeared to their lordships that this language availed to introduce the law of England with respect to the conclusiveness of a probate duly granted into the law of Canada. . . . . This, moreover, appears to their lordships to be the *true construction* of the words 'such proof shall have the same force and effect as if made and taken before a Court of Probate.' Their lordships, however, think that they cannot consider this matter now as *res integra*. They cannot disregard the practice of the Canadian courts with respect to it for the last seventy years. They have therefore made as careful an investigation into the practice as circumstances permit." . . . . (and at p. 139), "Upon the whole, it appears to their lordships that, by the uninterrupted practice and usage of the Canadian Courts since 1801, the law has received an interpretation which does not affix to the grant of probate that binding and conclusive character which it has in England . . . . their lordships therefore think that they ought not to advise Her Majesty that a different construction ought *now* to be put upon the law." Similarly, in *Evanturel* v. *Evanturel* (1869), L. R. 2 P. C. 462, which turned upon the construction of article 289 of the *Coutume de Paris*, as declared by the Parliament of Paris in 1580, the Court said as follows: "It appears therefore to their lordships that even if the French authorities were admitted to be in favour of the stricter construction of the article in question, the latter interpretation has, both by decision and long usage, acquired the force of law in Lower Canada."

Lord Esher, M.R., in *Phillips* v. *Rees* (1889), 24 Q. B. D. 21, said, as to a decision on the construction of a contract: "If this were a contract in daily use, and if the decision which we are overruling had been acted upon throughout the country for a long time, it might be

that we should feel bound to follow it, on the ground of the number of persons who had acted upon it, even though we did not agree with it."

Lord Fitzgerald, in *Harding* v. *Howell* (1889), 14 App. Cas. at p. 315, put the same rule as follows:— "Their lordships do not intend in the least to question the principle which governs the construction and effect of that statute as now long established by decided cases. It has been said, over and again, that 'so many titles stand on it that it must not be shaken,' and in that their lordships concur." And in *Lanc. and Yorks. Ry. Co.* v. *Bury Corporation* (1889), 14 App. Cas. 417, a case upon s. 46 of the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), Lord Herschell said: "A construction was put upon the clause with which we are now dealing as long ago as 1858, and by very learned judges of the Court of Queen's Bench.(*e*) The view so taken was shortly afterwards approved and followed by the Court of Exchequer.(*f*) And there are, as it seems to me, special reasons why a judgment so given should not be disturbed, unless it be clearly shown to have proceeded upon an erroneous view of the law, inasmuch as the clause which there received construction was contained in an enactment which did not of itself produce any legal results; it only had effect if incorporated by a subsequent Act of the Legislature in statutes giving powers to railway companies. And one cannot but see that the construction put upon an enactment of that description may well have affected the action of the Legislature in subsequent cases when they had to consider what obligations they should or should not impose upon the railway companies to whom they were giving powers. At the same time, if it could be established that the decision was manifestly erroneous, your lordships would be bound to give effect to that view,

(*e*) *North Staffordshire Ry. Co.* v. *Dale* (1857), 8 E. & B. 836.
(*f*) *Newcastle Turnpike Trustees* v. *North Staffordshire Rail. Co.* (1860), 5 H. & N. 160.

and to hold that the statute must be construed according to its natural meaning, notwithstanding the interpretation which had so long ago been put upon it by eminent judges."

Usage is not admitted as interpreting a statute or rule, unless established uniformly and for a long period. Eight years was held by Lord Blackburn (in *Danford* v. *M'Anulty* (1882), 8 App. Cas. 463) insufficient to establish a particular construction of R. S. C. 1875, Ord. 19, r. 15, as to pleading possession in an action for ejectment.

Limitations on the rule.

Fry, L.J., in *Reid* v. *Reid* (1886), 31 Ch. D. 410, said: "We are told that a series of decisions on this section has gone far to establish the rights under it; but, looking at the conflict which has taken place in the courts of first instance, it appears to me impossible to say that there is any course of decisions which can in any way bind, or ought seriously to influence, the Court, although we shall always look with the greatest possible respect on the reasons for which the judges of first instance have come to their decisions."

21 & 22 Vict. c. cxlix.

In *Clyde Navigation Trustees* v. *Laird* (1883), 8 App. Cas. 658, it was in dispute whether the Clyde Navigation Consolidation Act, 1858 (repealing eight prior Acts), imposed navigation dues on timber floated up the Clyde in logs chained together. From 1858 to 1882 dues had been levied on this class of timber without resistance from the merchants who owned it. And some judges in the Court of Session suggested that this non-resistance might be considered in construing the statute. On this Lord Blackburn, at p. 670, said: "I think that [submission] raises a strong *primâ facie* ground for thinking that there must exist some legal ground on which they [the merchants] could not resist. And I think a Court should be cautious, and not decide unnecessarily that there is no such ground. If the Lord President [Inglis] means no more than this when he calls it '*contemporanea expositio* of the statutes which is almost irresistible,' I agree with him. I do not think that he means that en-

joyment at least for any period short of that which gives rise to prescription, if founded on a mistaken construction of a statute, binds the Court so as to prevent it from giving the true construction. If he did, I should not agree with him, for I know of no authority, and am not aware of any principle, for so saying." And Lord Watson added, at p. 673: "Such usage as has in this case been termed *contemporanea expositio* is of no value in construing a British statute of the year 1858. When there 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 persons 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."

Usage will not affect construction of statute if meaning is plain.

And it is important to bear in mind, as Grose, J., pointed out in *R.* v. *Hogg* (1787), 1 T. R. 728, that although, "where the words of an Act are doubtful, usage may be called in to explain them," still that "usage ought not to be attended to in construing an Act of Parliament which cannot admit of different interpretations." "Where," said Lord Brougham, in *Magistrates of Dunbar* v. *Duchess of Roxburgh* (1835), 3 Cl. & F. 354, "a statute speaking on some points is silent as to others, usage may well supply the defect; for, where the statute uses language of doubtful import, the acting under it for a long course of years may well give an interpretation to that obscure meaning and reduce that uncertainty to a fixed rule . . . . but it is quite plain that against a plain statutory law no usage is of any avail;" and in *Northam Bridge Co.* v. *R.* (1886), 55 L. T. 759, Chitty, J., held that neither usage nor long-continued practice (for eighty years) could render the Crown liable to pay bridge tolls from which it was exempted by the plain terms of the Post Office Management Act.

7 Will. 4 & 1 Vict. c. 33.

Nor will usage operate unless particular construction has been universally acquiesced in.

Again, usage cannot be operative as an interpreter of a statute unless it appears that the statute in question has been universally construed in a particular way. If, said Lord Cottenham in *Lord Waterford's Peerage claim*(*g*) (1832), 6 Cl. & F. at p. 172, "there has been a course of decisions, and the decision first made has been adhered to and confirmed by other decisions, that is what is called a current of authorities too strong to be resisted. . . . . I am not aware of any case in which a single decision, even of a court of competent jurisdiction, having before it properly and judicially the matter on which it was pronouncing a judicial decision, has been held to operate so upon the plain meaning of a statute." Thus, in *Bank of Ireland* v. *Evans's Charity* (1855), 5 H. L. C. 405, it appeared that it has been the usual, but not the universal, practice to make up the record, when a bill of exceptions had been tendered, in a particular way in accordance with what was supposed to be the meaning of 28 Geo. 3, c. 31. But the House of Lords, acting on the opinion of the judges, held that this statute had been wrongly understood. "The answer to the question put to us," said the judges, "depends wholly on the construction of the Irish Act of 28 Geo. 3, c. 31. We understand that in acting upon the statute in Ireland a practice has been prevalent, though not universal, which is at variance with our opinion as to its proper construction. We conceive that the meaning of the Act is so clear that we ought not to give any weight to the practice." Similarly, in *R.* v. *Hogg* (1787), 1 T. R. 728, it was argued that a certain class of property in Rochester was not liable to be rated under 43 Eliz. c. 2, s. 1, because it was not the custom of the town to rate that class of property. But this argument did not prevail. "We are," said Grose, J., "interpreting an universal law, which cannot receive

(*g*) It was argued in this case that an opinion given by Lord Coke and the two other Chief Judges of England, at the request of the Privy Council, upon the effect of the Irish statute, 28 Hen. 8, c. 3, ought to be conclusive, even though erroneous.

different constructions in different towns. It is the general law that this kind of property should be rated, and we cannot explain the law differently by the usage of this or that particular place." He added that while an agreement among the inhabitants might bind them, it was no guide to the construction of the statute.(*h*)

Statutory rules.

5. Where the language of an Act is ambiguous and difficult to construe, the Court may, for assistance in its construction, refer to rules made under the provisions of the Act.

For not only is every part of the statute itself to be taken into consideration in order to ascertain the meaning of any obscure expression, but "recourse may [also] be had to rules which have been made under the authority of the Act, if the construction of the Act is ambiguous and doubtful on any point, and if we find that in the rules any particular construction has been put on the Act, it is our duty to adopt and follow that construction": per James and Mellish, L.JJ., in *Ex parte Weir* (1871), 6 Ch. App. 879.

These rules form a sort of *contemporanea expositio*. But it is not clear whether they are to be deemed—

(a) The practice of conveyancers;
(b) Parliamentary exposition; or
(c) Administrative exposition.

Rules made for the Courts may be regarded as judicial expositions of the Act.(*i*)

But too much stress cannot be rested upon rules, inasmuch as they may be questioned as being in excess of the powers of the subordinate body to which Parliament has delegated authority to make them.(*k*)

(*h*) *Vide ante*, p. 90.
(*i*) Per Lord O'Hagan in *Danford* v. *M'Anulty* (1882), 8 App. Cas. at p. 460.
(*k*) Terms used in statutory rules made after 1889 are construed in the same way as the terms used in the statute authorizing the making of the rules, unless a contrary intention appears: Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 31.

CHAPTER V.

INTERPRETATION OF WORDS.

	PAGE
1. Interpretation by context	172
Reference to dictionaries	173
The legislative dictionary	175
(a) Interpretation clauses	175
(b) The Interpretation Act, 1889	175
Rules as to number, gender, "person," time, distance, "writing," oath, county, borough, parish, union, "shall" and "may"	175
2. Ordinary terms to be read in popular rather than etymological, technical, or scientific sense	180
Ordinary term not read to give unnecessary powers	181
Elliptical expressions	182
The more reasonable meaning to be preferred	182
3. Technical terms better avoided	183
If used, to be given technical meaning	184
Same word may be used in different sense in the same Act	186
Meaning to be determined by reference to subject and occasion of use	187
Terms in Franchise Acts	191
Terms in Statute of Distributions	191
Judicial interpretation of words to be applied to same words in subsequent Acts	192
4. Construction by public policy to be avoided	196
5. Limitation of meaning	198
How to ascertain need of limitation	198
General words limited by the *ejusdem generis* rule	199
General words will not include anything of a class superior to the particular words they follow	201
Meaning of general words not following particular words, how limited	202
Difficulty of laying down general rule	203
General words in statute apply only to English and not to foreign persons or things	205
Meaning of general words in a statute to be limited so as not to alter the common law	207

Interpretation by context.

1. THE best dictionary (*a*) is but a guide to the true meaning of a word in a particular context, and can never

(*a*) The position of a writer on the construction of statutes is at best that of the author of a judicial lexicon. He can at most be a compiler and

be an absolute authority on so varied and fluctuating a subject as language. It facilitates the comparison of the different meanings of a word, and aids the memory of the person in search of the particular meaning, but can rarely anticipate the exact colour which will be given to any word or phrase by the context in which it is set.

The true mode of ascertainment is that said to have been used by Sir Thomas More (*b*)—viz., that words cannot be construed effectively without reference to their context.

Their meaning is to be ascertained by reference to the whole of the Act, including, if necessary, the preamble. (*Colquhoun* v. *Brooks* (1889), 14 App. Cas. 493). But now that Acts are divided into separate sections, each having effect as a substantive enactment without introductory words,(*c*) the section in which the obscure words occur is first to be considered.(*d*) It is only in a second or last resort that the rest of the statute or the preamble or the scheme or governing intention is to be regarded.

It is a well-established rule of grammar that the meaning of words depends largely, if not wholly, upon their collocation, and the statutory rule of construction is to follow the rules of grammar if possible. It is, however, by no means unusual for Parliament, by interpretation clauses, to alter the ordinary meaning of words.

Use of dictionaries.

Ordinary dictionaries are somewhat delusive guides in the construction of statutory terms.

In *Midland Ry. Co.* v. *Robinson* (1889), 15 App. Cas.

---

arranger of materials, and can but facilitate the formation of the judgment of others by arranging and marshalling the materials furnished by the statute-book and by judicial decisions thereon.

(*b*) "Here I will remark that no one ever lived who did not at first ascertain the meaning of words, and from them gather the meaning of the sentences which they compose—no one, I say, with one single exception, and that is our own Thomas More. For he is wont to gather the force of the words from the sentences in which they occur, especially in his study of Greek. This is not contrary to grammar, but above it, and an instinct of genius" (Pace, quoted in Bridgett's Life of More, p. 12).

(*c*) Interpretation Act, 1889, s. 8. It is by virtue of this general rule that the Statute Law Revision Acts excise the words of enactment in Acts before 1850.

(*d*) *Spencer* v. *Metropolitan Board of Works* (1882), 22 Ch. D. 142, 162 (Jessel, M.R.).

at p. 34, the question arose whether the word "mine" in the Railways Clauses Act, 1845, included beds or seams which could only be worked by open or surface operations. Lord Herschell had cited Dr. Johnson as defining a quarry to be a "stone mine." But Lord Macnaghten (at p. 34) said: "I continue to think that the word [mine] was used both in the heading and in the section in the sense in which, if I am not mistaken, every English judge who had occasion to consider the meaning of the word before *Farie's case* was decided, took to be its ordinary signification. It seems to me that on such a point the opinions of such judges as Kindersley, V.C., Turner, L.J., and Sir George Jessel are probably a safer guide than any definitions or illustrations to be found in dictionaries."

8 & 9 Vict. c. 20.

(1888) 13 App. Cas. 657.

No doubt reference to the better dictionaries does afford, either by definition or illustration, some guide to the use of a term in a statute. Lord Coleridge said in *R.* v. *Peters* (1886), 16 Q. B. D. at p. 641, "I am quite aware that dictionaries are not to be taken as authoritative exponents of the meanings of words used in Acts of Parliament, but it is a well-known rule of courts of law that words should be taken to be used in their ordinary sense, and we are therefore sent for instruction to these books." But there is not at present any complete English dictionary, such as that of Grimm in German or Littré in French, which affords an adequate amount of apt illustration for the accurate ascertainment of the meaning of an ambiguous word, and the statutory context is probably a far better guide than any lexicon.

Till quite recently the terminology of statutes has been mainly derived from what may be called the dictionary of law; and the accurate interpretation of legal terms is to be sought in decided cases or authoritative works rather than in popular dictionaries. Law books are usually altogether at sea about the derivation of law terms, but are generally pretty accurate as to their received meaning.

Where terms of art are used, reference must be made to books which show the sense in which they were understood when the statute in question was passed.

Thus, "political crime" in *Re Castioni* (*e*) was defined after considering Mill's and Stephen's discussions of its meaning.

"Direct taxation" in the British North America Act of 1867 was determined by regard to works on political economy.(*f*)

Legislative dictionary.

(a) Interpretation clauses.

The more modern statute contains, in the form of an interpretation clause, a little dictionary of its own, in which it endeavours to define, often arbitrarily, the chief terms used.

Any ambiguity in the definition of such terms can rarely be solved otherwise than by examination of the statute itself, or other enactments with which it is to be read by reason of its subject-matter or the direction of the Legislature.

The Interpretation Act, 1889.

Besides the special interpretation clauses now usual, the Interpretation Act of 1889 (52 & 53 Vict. c. 63) (*g*) has provided many general statutory interpretations of words presumably applicable, "unless a contrary intention appears," in all Acts, whether public, local and personal, or private.(*h*)

These definitions sometimes overlap those in prior Acts, but do not touch the prior definitions, except so far as the Interpretation Act repeals and re-enacts, with or without modification, the substance of prior legislation.

Where the Act of 1889 contains a rule as to construing Acts passed after 1889, it does not affect the construction of Acts passed before that date, although continued or amended by Acts passed after 1889.(*i*)

Those definitions which are of most general importance are set out below, the rest being relegated to Appendix A.

Number and gender.

In all Acts passed since 1850, and in the case of

(*e*) (1891) 1 Q. B. 149.
(*f*) *Bank of Toronto* v. *Lambe* (1887), 12 App. Cas. 581.
(*g*) Interpretation Acts have also been passed in Canada (49 Vict. c. 1; 1 Rev. Statt. Canada, p. 1), and in Victoria in 1890 (1 Statt. of Victoria, p. 1).
(*h*) Int. Act, 1889 (52 & 53 Vict. c. 63), s. 39.
(*i*) Int. Act, s. 40.

offences punishable on an indictment or on summary conviction, also in Acts passed in or before that year relating to the offence, words importing the masculine gender include females, and words in the singular include the plural and words in the plural include the singular.(*j*) Lord Selborne has laid down, as of general validity, the latter part of this rule in *Conolly* v. *Steer* (1881), 7 Q. B. D. 570, 577: "In construing a statute, plural is to be read as singular whenever the nature of the subject-matter requires it."

Person. In all enactments relating to offences, the word "person" includes a body corporate, and in all penal Acts "party aggrieved" includes a body corporate.(*k*)

In the Interpretation Act, 1889, and in all other Acts passed since 1889, "person" presumably includes any body of persons, corporate or unincorporate. This rule gives statutory effect to the rule of construction of "person" as stated by Lord Selborne, L.C., in *Pharmaceutical Society* v. *London and Provincial Supply Association*. (1880), 5 App. Cas. 857, at p. 861, where it was decided that "person" in ss. 1, 15, of the Sale of Poisons Act, 1868 (31 & 32 Vict. c. 121), did not include a corporation:— "There can be no question that the word 'person' may, and I should be disposed myself to say *primâ facie* does, in a public statute include a person in law, that is, a corporation, as well as a natural person. But, although that is a sense which the word will bear in law, and which, as I said, perhaps ought to be attributed to it in the construction of a statute unless there should be any reason for a contrary construction, it is never to be forgotten that in its popular sense and ordinary use it does not extend so far. Statutes, like other documents, are constantly conceived according to the ordinary use of language; and it is certain that this word is often used in statutes in a sense in which it cannot be intended to extend to a corporation. That accounts for the frequent

(*j*) Int. Act. s. 1; repealing and re-enacting 7 & 8 Geo. 4, c. 28, s. 14, and 13 & 14 Vict. c. 21, s. 4.

(*k*) Int. Act. s. 2. *Vide infra*, Part III. ch. ii.

appearance in some statutes of an express declaration that it shall extend to a body politic or corporate." And he added (p. 862): "If a statute provides that no person shall do a particular act except on a particular condition, it is *primâ facie* natural and reasonable (unless there be something in the context, or in the manifest object of the statute, or in the nature of the subject-matter to exclude that construction) to understand the Legislature as intending such persons as, by the use of proper means, may be able to fulfil the condition; and not to those who, though called 'persons' in law, have no capacity to do so at any time, by any means, or under any circumstances whatsoever."(*l*)

Time. "Month" means calendar month in all Acts passed after 1850.(*m*)

"Commencement," as applied to all Acts, means the time when the Act comes into operation,(*n*) *i.e.*, immediately on the expiry of the day previous to the giving of the royal assent or to the date specified in the Act, for its coming into operation.

This definition applies also to Orders in Council, orders, warrants, schemes, letters patent, rules, regulations, and bye-laws made under statutory powers.

"Financial year" in Acts passed since 1889 means, as to matters relating to the Consolidated Fund, or moneys provided by Parliament, or to the Exchequer, or to Imperial taxes or finances, the twelve months ending the 31st day of March.(*o*)

Distance. In Acts passed in or since 1890 distance is measured in a straight line on a horizontal plane.(*p*)

Writing. In all Acts expressions referring to writing are to be

(*l*) See also, p. 869, observations by Lord Blackburn as to offences of which a corporation is capable.

(*m*) Int. Act, s. 34. The computation is the same both for civil and criminal cases. In the United States, whether in Federal or State Acts, *primâ facie* "month" means calendar and not lunar month. The English rule (*Lacon* v. *Hooper* (1795), 6 T. R. 226) was never followed: *Guaranty Trust Co.* v. *Green Cove Railroad* (1890), 139 U. S. at p. 145, per Brown, J.

(*n*) Int. Act, s. 36 (1).

(*o*) Int. Act, s. 22. The old financial year ended 25 March (O.S.), *i.e.*, 5 April (N.S.).

(*p*) Int. Act, s. 3 (13 & 14 Vict. c. 21, s. 4).

read as including printing, lithography, photography, and other modes of reproducing *words* in a visible form.(*q*) This definition appears to get rid of the difficulty which arose in *R.* v. *Cowper* (1889), 24 Q. B. D. 60, 533, as to the printed signature of a solicitor to a document.

Oath. "Oath" and "affidavit" in the case of persons allowed to affirm or declare instead of swearing, include "affirmation" and "declaration," and the term "swear" includes "affirm."(*r*) This definition does not apply to what are usually called statutory declarations, made under the Statutory Declarations Act, 1835.(*s*) The latter are substitutes for oaths in certain cases for all persons, without regard to questions of religious belief or unbelief.

5 & 6 Will. 4, c. 62.

County. In Acts passed between 1850 and 1890, "county" includes county of a city and county of a town as well as a county at large.(*t*)

Borough. In Acts passed since 1889, "borough," when used with reference to local government, means a municipal borough in a place, including a city, for the time being subject to the Acts relating to municipal corporations in England or Ireland. When used with reference to parliamentary elections or the registration of parliamentary electors, it means any borough, burgh, place, or combination of places (other than a county or division of a county, or a university or combination of universities) which returns a member to serve in Parliament.(*u*)

Parish. In Acts passed since 1866, "parish" means, as respects England and Wales, a place for which a separate poor rate is or can be made, or for which separate overseers are appointed.(*x*)

Poor law union. In Acts passed since 1889, "poor law union" means, as to England and Wales, any parish or union of parishes for which there is a separate board of guardians elected under the Poor Law Act, 1834, or amending Acts, or body

(*q*) Int. Act, s. 20.
(*r*) Int. Act, s. 4. See Oaths Act, 1888.
(*s*) Int. Act, s. 21.
(*t*) Int. Act, s. 4 (13 & 14 Vict. c. 21, s. 4).
(*u*) Int. Act, s. 15.
(*x*) Int. Act, s. 5.

of persons performing under any local Act the like functions.(*y*)

"Shall" and "may."

The meaning of the words "shall" and "may" is subject of constant and conflicting interpretation. The proper rule is laid down in *Julius* v. *Bishop of Oxford* (1881), 5 App. Cas. 214, which arose on the meaning of the words "it shall be lawful" in the Church Discipline Act. Lord Cairns, at p. 222, states it in these terms:— 3 & 4 Vict. c. 86.

"The question has been argued and has been spoken of by some learned judges in the courts below as if the words 'it shall be lawful' might have a different meaning and might be differently interpreted in different statutes or in different parts of the same statute. I cannot think that this is correct. The words 'it shall be lawful' are not equivocal. They are plain and unambiguous. They confer a faculty or power, and they do not of themselves do more than convey a faculty or power. 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 person or 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 is reposed to exercise that power when called upon to do so. Whether the power is one coupled with a duty such as I have described is a question which, according to our system of law, speaking generally, it falls to the Court of Queen's Bench to decide on an application for a *mandamus*."(*z*)

It should be observed that the word "shall" is now avoided in statutes except where it creates a duty. It is, as a rule, not used as a future tense. In certain Acts "shall and may" are put together (*e.g.*, 11 & 12 Vict. c. 42). They seem to create a judicial duty, but in certain cases may be perhaps held to create a ministerial duty.

(*y*) Int. Act, s. 16 (1), (2). For Irish definition, see sub-ss. (3), (4).

(*z*) He then proceeded to discuss the previous cases, as did Lord Penzance at p. 230, and Lord Blackburn at p. 240.

Ordinary terms and expressions to be construed according to their popular sense.

2. There are two rules as to the way in which ordinary terms and expressions are to be construed when used in an Act of Parliament. The first rule was stated by Lord Tenterden in *Att.-Gen.* v. *Winstanley* (1831), 2 D. & Cl. 302, 310, to be that "the words of an Act of Parliament which are not applied to any particular science or art" are to be construed "as they are understood in common language."(*a*) Critical refinements and subtle distinctions are to be avoided, and the obvious and popular meaning of the language should, as a general rule, be followed.(*b*) "I know," said Bramwell, B., in *Re Barker* (1861), 30 L. J. Ex. 407, "that Acts of Parliament are to be interpreted by lawyers, but the language of this Act seems to me to admit of but one construction." "It is incumbent," said Willes, J., in *Mansell* v. *R.* (1857), 8 E. & B. 54, at p. 109, "on those who say that any word is a 'term of art,' for which no equivalent can be substituted, to show that it has been so held." In other words, as was said by Pollock, B., in *Grenfell* v. *Commissioners of Inland Revenue* (1876), 1 Ex. D. 248, if a statute contains language which is capable of being construed in a popular sense, such "a statute is not to be construed according to the strict or technical meaning of the language contained in it, but is to be construed in its popular sense, meaning of course by the words 'popular sense' that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it." "I base my decision," said James, L.J., in *Cargo ex Schiller* (1877), 2 P. D. 161, "on the words of the statute as they would be understood by plain men who know nothing of the technical rule of the Court of Admiralty, or of flotsam, lagan, and jetsam." Thus, in *Sherwood* v. *Ray* (1837), 1 Moore P. C. 353, 395, it was held that the expression, "a suit which shall be depending at the time of the passing of this Act," as used in 5 & 6 Will. 4, c. 54, s. 1, was not to be understand as an equivalent for the technical term *lis pendens*, or "to

(*a*) "*Uti loquitur vulgus*," as Dr. Lushington said in *The Fusilier* (1864), 34 L. J. P. & M. 25, 27.

(*b*) Bell, Dict. Law of Scotland, tit. Statute.

be construed in any other than their ordinary and popular sense." And in *Att.-Gen.* v. *Bailey* (1847), 1 Ex. 281, it was held that the word "spirits," being "a word of known import . . . . is used in the Excise Acts (*c*) in the sense in which it is ordinarily understood." "We do not think," said the Court (at p. 292), "that, in common parlance, the word 'spirits' would be considered as comprehending a liquid like 'sweet spirits of nitre,' which is itself a known article of commerce not ordinarily passing under the name of 'spirits.'"

The strict sense may mean the etymological or scientific sense as well as the legal or technical. As to the first, Grove, J., said in *Gordon* v. *Jennings* (1882), 9 Q. B. D. 45, at p. 46 (a case on 33 & 34 Vict. c. 30, s. 1), "Now, it may be that the term 'wages,' according to the etymological meaning of the word, may be correctly applied to any remuneration for services, but it seems to me that the popular signification must be looked to."

Scientific language.

Lord Esher, M.R., in *R.* v. *Commissioners under Boiler Explosions Act*, 1882 (1891), 1 Q. B. 703, in considering the meaning of the term "boiler," said, at p. 716, "I apprehend that in this Act it was not meant to draw scientific distinction, but to deal with the thing in which there is steam under pressure which is likely to explode."(*d*)

Terms are, however, often used in modern statutes in their scientific sense.(*e*)

Ordinary expression not assumed to give unnecessary powers.

1 The second rule is, as put by Bowen, L.J., in *Wandsworth L. B.* v. *United Telephone Company* (1883), 13 Q. B. D.

(*c*) In America the rule of interpretation adopted in construing Excise Acts is, that the particular words used by the Legislature in the denomination of articles are to be understood according to the common commercial understanding of the terms used, and not in their scientific or technical sense, "for the Legislature does not suppose our merchants to be naturalists, or geologists, or botanists;" consequently, the word "bohea," when used in an excise law, means "that article which, in the known usage of trade, has acquired that distinctive appellation." See *200 Chests of Tea* (1824), 9 Wheaton (U. S.) 435, per Story, J. See also *Elliott* v. *Swartout* (1836), 10 Peters (U. S.) 151, as to the meaning of "worsted;" and *U.S.* v. *Breed* (1832), 1 Sumner (U. S.) 159 (Story, J.), as to the meaning of "loaf-sugar."

(*d*) *Cf. Stanley* v. *Western Assurance* (1867), L. R. 3 Ex. 71, per Kelly, C.B., on the meaning of the term "gas" in an insurance policy.

(*e*) See Int. Act, 1889, s. 34; *cf.* 52 & 53 Vict. c. 62 (Factories).

920, "that if a word in its popular sense, and read in an ordinary way, is capable of two constructions, it is wise to adopt such a construction as is based upon the assumption that Parliament merely intended to give so much power as was necessary for carrying out the objects of the Act, and not to give any unnecessary powers."

Expressions in statutes sometimes held to be elliptical.

Expressions are sometimes to be found in statutes which require to be somewhat expanded in order to arrive at what is really meant. Thus, in *Robertson* v. *Day* (1881), 5 App. Cas. 63, it appeared that by the Lands Act Amendment Act (New South Wales), 1875, s. 31, power was given to a Crown lessee to apply to purchase lands comprised within his lease, "provided that no such application should be made for more than one square mile within each block of five miles square out of each lease." It was contended that this enactment gave a right to pre-emption of one square mile, *only* if it formed part of a block which was a geometrical square containing an area of twenty-five square miles, and that was no power to purchase a square mile if the block, although containing twenty-five square miles, was not a precise square. But the Judicial Committee held otherwise. "It is doing," said they, "no violence to language to read the words as if slightly elliptical, and as if they were 'within each block of an area of five miles square.'"

If words susceptible of reasonable and also of unreasonable construction, former must prevail.

Another important rule as to the meaning which is to be put upon ordinary words or expressions when used in statutes is, as Keating, J., said in *Boon* v. *Howard* (1874), L. R. 9 C. P. 308, "that if the words are susceptible of a reasonable and also of an unreasonable construction, the former construction must prevail." "That," said Bowen, L.J., in *Gard* v. *London Commissioners of Sewers* (1885), 28 Ch. D. 511, "is what Lord Coke calls the *argumentum ab inconvenienti*." Thus, in *R.* v. *Skeen* (1859), 28 L. J. M. C. 91, it appeared that it was enacted by 5 & 6 Vict. c. 39, s. 6, that "no agent shall be liable to be convicted by any evidence whatsoever in respect to any act done by him, if he shall at any time previously to his being indicted for such offence have *disclosed* the

same in any examination before a commissioner in bankruptcy." The prisoner, after he had been committed for trial, but before the indictment, had been examined before a commissioner in bankruptcy, and had then made a statement in every respect in accordance with the evidence upon which he was convicted. The question was raised as to whether the prisoner had made "a disclosure" within the meaning of the above section. It was argued that the statement which the prisoner had made before the commissioner, although containing nothing more than what was proved against him upon his trial, was nevertheless "a disclosure" sufficient to entitle him to be acquitted. But the majority of the Court held otherwise. "If," said they, "the language employed admit of two constructions, and according to one of them the enactment would be absurd and mischievous, and according to the other it would be reasonable and wholesome, we surely ought to put the latter construction upon it as that which the Legislature intended. . . . . For, can it be supposed that the Legislature intended wantonly to extend the indemnity to cases where there is no merit whatever in the accused, where he states only what he knows to be already notorious, and where neither civil nor criminal justice can be at all advanced by the alleged disclosure?"

Technical words better avoided in Acts of Parliament.

3. In the opinion of Lord Thring (*f*) "technical phraseology should be avoided" in drafting Acts of Parliament; (*g*) "the word," says he, "best adapted to express a thought in ordinary composition will generally be found to be the best that can be used in an Act of Parliament." In *Earl of Zetland* v. *Lord Advocate* (1878), 3 App. Cas. 522, the question arose as to what was meant by the expression "devolution by law" as used in 16 & 17 Vict. c. 51, s. 2. "'Devolution by law,'" said Lord Blackburn,

(*f*) "Practical Legislation," p 31.

(*g*) Also it would seem desirable to avoid "language neither wholly popular nor altogether technical, and which, therefore, is not to be interpreted readily either by a lawyer or a layman": per Mathew, J., in *R.* v. *Yates* (1882), 11 Q. B. D. 752.

"is not a technical set of words . . . . probably it was purposely chosen as being a phrase which the law had neither appropriated nor to which it had given any particular meaning, and we have to arrive at its meaning by taking the whole context and looking at the subject-matter, and thus seeing what the words do mean."

But technical words, if used, to be construed in technical or legal sense.

But, as Kent observes (Commentaries, vol. i. p. 462), "if technical words are used in a statute, they are to be taken in a technical sense,(*h*) unless it clearly appears from the context, or other parts of the instrument, that the words were intended to be applied differently from their ordinary or their legal acceptation."(*i*) The term "technical" can only mean term of the particular art or subject-matter to which they relate. In *Income Tax Commissioners* v. *Pemsel* (1891), A. C. 531, at p. 542, Lord Halsbury, in construing the word "charitable" in the Income Tax Act demurred to the phrase "technical," and said, "The alternative, to my mind, may be more accurately stated as lying between the popular and ordinary interpretation of the word 'charitable' and (not the technical meaning, but) the interpretation given by the Court of Chancery to the use of the word in the statute of 43 Eliz." c. 2 (Poor Law).

"Indictment."

A word which has a well-known legal meaning will, in a statute, be held to have that meaning unless a contrary intention appears. In *R.* v. *Slater* (1881), 8 Q. B. D. 267, it was argued, upon the Corrupt Practices Prevention Act, 1863 (26 & 27 Vict. c. 29, s. 7), that the term "indictment" there meant "criminal proceeding." The Court rejected the contention, Denman, J., saying (at p. 272), "It always requires the strong compulsion of other words in an Act (*k*) to induce the Court

---

(*h*) See per Jessel, M.R., in *Laird* v. *Briggs* (1881), 19 Ch. D. 22, at p. 34.

(*i*) See *Att.-Gen.* v. *Mitchell* (1881), 6 Q. B. D. 555, where Lindley, J., said, "S. 2 of the Succession Duty Act (16 & 17 Vict. c. 51), is capable of two modes of construction. One is the popular construction . . . . but that construction has never been applied to it. The other is a conveyancer's construction . . . ."

(*k*) *E.g.*, in 14 & 15 Vict. c. 100, s. 30.

to alter the well-known meaning of a legal term." And Bowen, J., added (at p. 274), "The whole of the argument fails if it is not shown that there is a popular use of the term 'indictment' as including 'information.' There is certainly no such popular use of the term among lawyers, and if there is among persons ignorant of the law, it is an incorrect use of the term."

"Proctor." 54 Geo. 3, c. 68, s. 10, enacted that "in case any person shall do any act, matter, or thing whatsoever, in any way appertaining to the office, functions, or practice as a proctor, without being admitted and enrolled, he shall be liable to a penalty." In *Stephenson* v. *Higginson* (1852), 3 H. L. C. 638, at p. 686, Lord Truro said, as to this enactment, "In construing an Act of Parliament every [legal] word must be understood according to the legal meaning, unless it shall appear from the context that the Legislature has used it in a popular or more enlarged sense," and consequently it was held that the acts intended to be prohibited were those only which were legally incident to the office of a proctor, and not those which, though usually performed by him, were not of right incident to his office.

"Debt." Similarly, in *Rawley* v. *Rawley* (1876), 1 Q. B. D. 460, it was held that the word "debt" as used in 9 Geo. 4, c. 14, s. 5, which enacts that "no action shall be maintained whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy . . . . unless such promise shall be made by some writing signed by the party to be charged therewith," means *actionable debt*, and that consequently a set-off cannot be maintained of a debt contracted during infancy, and not ratified in writing after full age.(*l*)

In Acts relating to the whole of the United Kingdom legal terms are occasionally used in a sense belonging to the legal system of one only. Thus, in *Income Tax Commissioners* v. *Pemsel* (1891), A. C. 532, 580, charitable

(*l*) This rule is equally applicable to Scotland: Bell, Dict. Law of Scotland, tit. Statute.

purposes in the Income Tax Act were construed in the sense given by the Court of Chancery to prior English Acts, although the Act extends to Scotland.(*m*)

Use of same word in different senses in same Act.

"It is a sound rule of construction," said Cleasby, B., in *Courtauld* v. *Legh* (1869), L. R. 4 Ex. 130, "to give the same meaning to the same words occurring in different parts of an Act of Parliament." It is quite possible, however, as Turner, L.J., said in *Re National Savings Bank* (1866), 1 Ch. App. 550, "if sufficient reason can be assigned, to construe a word in one part of an Act in a different sense from that which it bears in another part of an Act." For instance, if, as Fry, L.J., said in *Re Moody and Yates' Contract* (1885), 30 Ch. D. 344, 349, "a word is used inaccurately in one section of a statute, it must not be assumed to have been used inaccurately when it occurs in another section of the same statute." And, in fact, a word may be used in two different senses in the same section of an Act. "It is obvious," said North, J., in *Green* v. *Smith* (1883), 24 Ch. D. 678, "that the word 'property' is used in s. 54 of 32 & 33 Vict. c. 71, in two totally different senses." The Court said in *Doe d. Angell* v. *Angell* (1846), 9 Q. B. 355, "Considerable difficulty arises in the construction of 3 & 4 Will. 4, c. 27, by reason of the word 'rent' being used in two different senses throughout—viz., in the sense of a rent charged upon land, and of a rent reserved under a lease." Similarly, in *R.* v. *Allen* (1872), 1 C. C. R. 367, 374, the Court held, as to the word "marry" in 24 & 25 Vict. c. 100, s. 57, which enacted that "whosoever, being married, shall marry any other person during the life of the former husband or wife . . . . shall be guilty of felony," that "it is at once self-evident that the proposition, that the same effect must be given to the term 'marry' in both parts of the sentence, cannot possibly hold good."

And in *Ex parte County Council of Kent* v. *Council of Dover* (1891), 1 Q. B. 389, at p. 393, Vaughan Williams,

(*m*) See also *Stephenson* v. *Higginson* (1852), 3 H. L. C. 631, 686.

J., said, "It is contrary to the general rules of construction to give a different meaning to the word 'borough' in different portions of the same section; but this may be done where the sense of the section clearly requires it, and we think that the sense of the Act does require it in the present case." The question for decision was whether the Local Government Act, 1888, imposed upon the liberties of the Cinque Ports a liability to contribute, not only to the costs of quarter sessions of the county of Kent, but also to those of the port to which they were attached. To avoid imposing a double burden of taxation, it was necessary either to adopt the mode of interpretation of the word "borough" above indicated, or to treat the liberties as severed by the Act from the Cinque Port to which they had hitherto been attached.(*n*) 51 & 52 Vict. c. 41.

This rule of construction is clearly recognised by Parliament, since it is now usual, in the interpretation clause of every Act, to insert the words, "unless a contrary intention appears," or "unless the context otherwise requires," or other similar words cutting down the general application of the definition.

"Except in mathematics," said Grove, J., in *Wakefield* v. *Lee* (1876), 1 Ex. D. 343, "it is difficult to frame exhaustive definitions of words;" consequently, as the Court said in *R.* v. *Hall* (1822), 1 B. & C. 123, 136, "the meaning of ordinary words, when used in Acts of Parliament, is to be found, not so much in a strict etymological propriety of language, nor even in popular use, as in the subject or occasion on which they are used, and the object which is intended to be attained." Similarly, Brett, M.R., said in *The Dunelm* (1884), 9 P. D. 171, "My view of an Act of Parliament which is made applicable to a large trade or business is that it should be construed, if possible, not according to the strictest and nicest interpretation of language, but according to a reasonable and business interpretation of it with regard to the trade or business

Subject and occasion on which words are used may affect meaning.

(*n*) In *R.* v. *Tonbridge Overseers* (1883), 11 Q. B. D. 134, the judges construed a term in such a way as to impose a double rate on certain persons.

with which it is dealing." For, as Lord Blackburn said in *Edinburgh Street Tramways Co.* v. *Torbain* (1877), 3 App. Cas. 68, "Words used with reference to one set of circumstances may convey an intention quite different from what the self-same set of words used in reference to another set of circumstances would or might have produced," and therefore it sometimes happens that, as Best, C.J., said in *Wynne* v. *Griffith* (1825), 3 Bing. 196, "the same words receive a very different construction in different statutes."(*o*) In *R.* v. *Hall* (1822), 1 B. & C. 123, 136, it was argued that the word "householder" as used in 26 Geo. 3, c. 8 (defining the qualification necessary for a commissioner of the Court of Requests at Bristol), meant nothing more than (as Johnson's dictionary defined it) "a master of a family," and that it must therefore be taken as synonymous with "resident householder." On the other hand, it was said that the word must not receive so strict a construction, and that a man might be a householder without being resident. The Court decided in favour of the less restricted meaning of the word, on the ground that the object of the statute was to unite respectability of character and circumstances in the place wherein the office of commissioner was to be exercised with a habit of access and resort to that place, and that this object was attained by excluding, on the one hand, mere lodgers, who had no permanent interest in the place, and, on the other hand, persons having neither residence in the place nor such connection with it as might induce a habit of access and resort to it. A decision was arrived at on similar grounds in the case of *The Lion* (1869), L. R. 2 P. C. 531, as to the meaning of the word

"Passenger."

(*o*) Thus, the word "apprentice" as used in 6 Geo. 4, c. 16, s. 49, was held in *Ex parte Prideaux* (1837), 3 Myl. & Cr. 332, not to include an attorney's articled clerk; but in *St. Pancras* v. *Clapham* (1860), 2 E. & E. 742, the same word as used in 3 & 4 W. & M. c. 11, s. 8, was held to include an attorney's articled clerk. So, "bicycle" is a carriage within the meaning of 5 & 6 Will. 4, c. 50, s. 78 (*Taylor* v. *Goodwin* (1879), 4 Q. B. D. 228), but not a carriage within the meaning of 3 Will. 4, c. lv. (*Williams* v. *Ellis* (1880), 5 Q. B. D. 176).

"passenger." After citing the above-mentioned *dictum* of Abbott, C.J., the Judicial Committee held that, deducing the meaning of the word from a consideration of "the subject or occasion on which it was used," the word "passenger" would not include the wife and father of the captain of the ship, who had both been invited by the captain to travel in the ship without the privity of the owners of the ship, and without paying any fare. So, in *Bird* v. *Bird* (1866), L. R. 1 P. & M. 231, where the Legislature, in 22 & 23 Vict. c. 61, s. 5, gave power to the Court to make orders as to the application of settled property "for the benefit of the children of the marriage or of their respective *parents*," it was held that the word "parents" meant the parents of children living at the suit, and not merely persons who had once been parents and whose children were dead, on the ground that "the governing object of the Legislature was to enable the Court to make a provision for the children of the marriage, and only as subsidiary to that object to make provision for the parents."(*p*) Similarly, in *R.* v. *Bridgewater* (1837), 6 A. & E. 339, it appeared that by 5 & 6 Will. 4, c. 76, s. 66, any person holding an office of profit in a borough was entitled to compensation if the office was abolished, and the question arose whether the office held by one Trevor was such an office or not. "We are not," said Lord Denman, "to put too close a construction on the word 'office,'" but, as Williams, J., added, "a reasonable interpretation is to be given, and the word 'office' must be understood in a greater latitude than an office strictly legal." Similarly, in *R.* v. *Local Government Board* (1874), L. R. 9 Q. B. 151, the Court said, as to the same word, "We agree that the word 'office' in its strict legal meaning would not include such an employment as this . . . . but to give the word this strict legal sense would be to render the Act nugatory. We think that we must construe the words of the Act with reference to the subject-

"Parent."

"Office of profit."

"Banker."

(*p*) This was the reason given by Montague Smith, J., in *Corrance* v. *Corrance* (1868), L. R. 1 P. & M. 498, for following the decision come to in *Bird* v. *Bird*.

matter and the context." In *Davies* v. *Kennedy* (1869), Ir. R. 3 Eq. 691, Christian, L.J., proceeded in a very similar way to arrive at the meaning which was to be put upon the word "banker" in 33 Geo. 2, c. 14 (Irish Act). The question in that case was whether the word was confined to persons who issued notes, or whether it was intended to include all persons who carried on the ordinary business of banking. "'Banker,'" said he, "is a word which has no legal meaning, or, indeed, any fixed meaning at all. Consequently, when you have to do with a piece of legislation, the very first question raised on which is, what is the class of persons who are within its scope? you cannot stop at such a word as 'banker;' you must regard it as an incomplete expression, you must look carefully into the context, the previous state of the law, the circumstances under pressure of which the Legislature acted, the mischief intended to be remedied, in order thus to find out what particular phase of the many-faced thing called banking is the one that the Act was really conversant with. I think it of much importance to start with a clear conception of that." Although this judgment was overruled by the House of Lords,(*q*) this dictum was in no way excepted to, and it is here quoted as setting forth in able language the way in which the meaning of any particular word in a statute should be arrived at. So, in *Shaw* v. *Ruddin* (1858), 9 Ir. C. L. R. 214, the question was whether 16 & 17 Vict. c. 112, s. 25, which enacted that "it shall not be lawful for any person to use or let to hire any hackney carriage, job carriage, stage carriage, *cart*, or job horse, at any place within the limits of this Act," without having a licence for the same, applied to carts used for private purposes only. It was held that it did not. "In the interpretation of this Act," said Lefroy, C.J., "we have to aid us the long-established rule of construction—namely, that we must look to the associate terms in connection with which we find the word 'carts.' We find, then, that,

"Cart."

(*q*) *Copland* v. *Davies* (1872), L. R. 5 H. L. 358, at p. 389.

in the several sections in which that word occurs, it is associated with carriages and vehicles, none other than those let or used for hire." Similarly, in *Scales* v. *Pickering* (1828), 4 Bing. 448, the question was what was the meaning of the word "footway" when used in a private Act which empowered a water company to "break up the soil and pavement of roads, highways, *footways*, commons, streets, lanes, alleys, passages, and public places," provided they did not enter upon any private lands without the consent of the owner. It was contended that this authorized the company to break up the soil of a private field in which there was a public footway, but it was held otherwise. "Construing the word 'footway,'" said Best, C.J., "from the company in which it is found, the Legislature appears to have meant those paved footways in large towns which are too narrow to admit of horses and carriages." And Park, J., added, "The word 'footway' here *noscitur a sociis.*" "Footway."

There is a special rule with regard to the construction of words which confer the franchise which must be noticed; this is, that such words must be construed "in their largest ordinary sense." "That is the rule," said Willes, J., in *Piercy* v. *Maclean* (1870), L. R. 5 C. P. 261, "which has been constantly(*r*) acted upon by this Court in construing the statutes which relate to the franchise." In that case, therefore, it was held that the word "'counting-house,' in the absence of anything in the subject-matter or in the context to restrain it to any particular sort of counting-house, included anything that is a counting-house in the largest ordinary sense." Rules as to words in statutes conferring the franchise.

There is also a special rule with regard to the construction of words used in statutes which regulate the distribution of personal property. As these statutes apply universally to persons of all countries, races, and religions, whatsoever, who die intestate and domiciled in England, Words in Statute of Distributions, how construed.

(*r*) *E.g.*, in *Hughes* v. *Chatham Overseers* (1843), 5 M. & G. 75, 80, the Court said, "Upon an Act of Parliament conferring the franchise the largest ordinary sense is that in which the words ought to be construed."

it appears that the proper law for determining the kindred under such statutes is the international law adopted by the comity of States. In *Goodman's Trusts* (1880), 14 Ch. D. 619, it was held by Jessel, M.R., that the word "children" as used in the Statute of Distributions (22 & 23 Car. 2, c. 10, s. 7), means "children according to the law of England," that is to say, children born in wedlock, and does not include children born of foreign parents before wedlock and legitimated in a foreign country by the subsequent marriage of the parents; or, in other words, as Lush, L.J., put it in his judgment in the case in the Court of Appeal (1881), 17 Ch. D. 290, "that this statute, like any other, must be construed in the sense which the common law puts upon its words, and that 'children' means such, and such only, as are recognised in our table of consanguinity." But in the Court of Appeal the decision of Jessel, M.R., was overruled ((1881) 17 Ch. D. 266),(*s*) on the ground that questions of legitimacy are to be decided exclusively by the law of the domicil of origin of the person claiming, and that, therefore, a child, born before wedlock, of parents who were at her birth domiciled in Holland, being by the subsequent intermarriage of her parents legitimated according to the Dutch law, must, for the purpose of the Statute of Distributions, be considered as legitimate in England.

Words in a statute once judicially interpreted to be understood in that meaning in a subsequent statute.

It is, however, a general rule, notwithstanding the fact that (as we have just seen (*t*)) the meaning of ordinary words will vary according to the subject or occasion on which they are used, that if, as Lord Coleridge said in *Barlow* v. *Teal* (1884), 15 Q. B. D. 405, "Acts of Parliament use forms of words which have received judicial construction, in the absence of anything in the Acts showing that the Legislature did not mean to use the words in the sense attributed to them by the Courts, the presumption is that Parliament did so use them."

This rule is especially applicable to terms used in

(*s*) See Westlake, Priv. Int. Law (3rd ed.), § 126.
(*t*) *Ante*, p. 187.

consolidation Acts. In *Mitchell* v. *Simpson* (1890), 25 Q. B. D. 188, Lord Esher, in speaking of the Sheriffs Act, 1887, said, "The Act of 1887 is a consolidation Act, and the provision in question is in substantially the same terms as that of the Act of Geo. 2, and therefore, in order to determine the meaning of the provision we must consider to what the Act of Geo. 2 was applicable." This was a strong instance, as the arrest on mesne process, to which the Act of Geo. 2 solely applied, was by 1869 almost, if not wholly, abolished. But the rule must be adopted with caution, for it is almost impossible in the process of consolidation to avoid some dislocation and change in the effect of the consolidated enactments.

50 & 51 Vict. c. 55.

32 Geo. 2, c. 28.

The true effect of such Acts is to combine in a consecutive form the provisions scattered about the Statute-book, to avoid repetitions, and remove inconsistencies.

In *Rhodes* v. *Airedale Commissioners* (1876), 1 C. P. D. 391, Lord Coleridge said, with regard to the word "damage," as follows: "The Legislature, in using the word 'damage,' used a word to which a legal meaning had already been affixed by judicial decisions, it must be taken to have used it in the sense ascertained by those decisions, *i.e.*, actionable damage."(*u*) Again, in *Monk* v. *Whittenbury* (1831), 2 B. & Ad. 484, it appeared that in s. 2 of 6 Geo. 4, c. 94, the expression "*person* entrusted" is used, but that in s. 4 of that Act the expression used is "*agent* entrusted," and that this latter expression has been substituted advisedly for the expression "*person* entrusted" because a different meaning was intended to be conveyed. Subsequently, in the repealed Factors Act, 5 & 6 Vict. c. 39, the expression "agent entrusted" was again employed; consequently, in *Cole* v. *N. W. Bank* (1875), L. R. 10 C. P. 371, the

"Damage."

"Agent entrusted."

(*u*) It has been held in an American case, *Ex parte Vincent* (1856), 26 Alabama 145, that, "When words are used by the Legislature in reference to a matter or subject which, when used in relation to the same subject at the common law, have obtained a fixed and definite meaning, the inference is irresistible that they were intended to be used in the common law sense." It is submitted that the Courts would so hold in England, were the occasion to arise.

Court held that the employment of the expression "agent entrusted" in preference to the expression "person entrusted" was for the express purpose of conveying the meaning put upon that expression in *Monk* v. *Whittenbury*.

"Lands." So, in *Edinburgh Water Co.* v. *Hay* (1854), 1 Macq. H. L. (Sc.) 682, 687, where the question was, whether a certain water company were such occupiers of the land through which their pipes passed as to be liable to be rated under the Scotch Poor Law Act of 8 & 9 Vict. c. 83, the Lord Chancellor (Lord Cranworth), said in his judgment, after pointing out that the same question had already been decided with regard to the liability of water companies in England under the Act of 43 Eliz. c. 2, "It is impossible to believe that the Legislature could intend that the word 'lands' should mean one thing in an Act with reference to Scotland and another thing in an Act with reference to England, more particularly as the object of the Scotch Act was to introduce into Scotland enactments very analogous to those already existing in England. The Legislature must be supposed to have had the result of the decisions as to the English statute present to its mind when it passed this

Banker." Act relating to Scotland." In *Davies* v. *Kennedy* (1869), Ir. R. 3 Eq. 691, Christian, L.J., relied upon this principle in arriving at the meaning of the word "banker" as used in 33 Geo. 2, c. 14 (Irish Act). This Act had been passed to extend the enactments contained in 8 Geo. 1, c. 14, and the question was, whether this later Act applied to all bankers or only to those who issued notes. "All are agreed," said the Lord Justice, "that to a right understanding of this later Act, its parent Act, the 8 Geo. 1, c. 14, must first be understood. If the earlier Act cannot in construction be confined to banks of issue, it is admitted that neither can the later one, whilst, on the other hand, if the former can be so confined, an important, though not conclusive, step will have been made towards a similar restriction upon the later." Having given his reasons for holding that the earlier Act applied only to bankers issuing notes, he continued as follows: "I have

now, I think, attained the proper point of view from which to approach the task of construing the Act of Geo. 2, that is to say, the point of view from which the Legislature of the day must have viewed the measure when they were framing it." He ultimately, after arguing the matter at considerable length, came to the conclusion that the Legislature advisedly used the same word in the later Act which they had employed in the earlier Act.(*x*)

Legislature assumed to remember its own distinctions.

Again, if we find that in previous legislation two different words have been designedly used to express two distinct things, we may assume that in subsequent statutes the Legislature has not lost sight of the distinction uniformly observed in the preceding statutes. Thus, in *Smith* v. *Brown* (1871), L. R. 6 Q. B. 729, the question was whether the Legislature in enacting in 24 Vict. c. 10, s. 7, "that the High Court of Admiralty shall have jurisdiction over any claim for *damage* done by any ship," intended to give the Court jurisdiction in cases where personal injuries and death were caused by collisions at sea. It was argued, on the one hand, that the word "damage" was a general word, and that, according to the rule elsewhere (*y*) laid down as to limiting the effect of general words, the word ought to be held to include personal injuries. On the other hand, it was pointed out that in previous enactments on this subject the word "injury" was always used when it was intended to legislate as to personal injuries and loss of life, and that the word "damage" was confined to harm done to property and inanimate things. This latter argument prevailed.(*z*) "That this distinction," said Cockburn, C.J., "is of a substantial character and necessary to be attended to is apparent from the fact that the Legislature in two

(*x*) Although this judgment was overruled by the House of Lords in *Copland* v. *Davies* (1872), L. R. 5 H. L. 358, 397, this particular argument was not questioned.

(*y*) *Infra*, p. 201.

(*z*) The *dicta* of Baggallay, L.J., in *The Franconia* (1877), 2 P. D. 174, as to this case of *Smith* v. *Brown* may be considered as dissented from by the House of Lords in *Seward* v. *Vera Cruz* (1884), 10 App. Cas. 59.

recent Acts, both having reference to the liability of shipowners in respect to 'injury' and 'damage,' has in a series of sections carefully observed this distinctive phraseology, speaking in distinct terms in the same section of loss of life and personal injury on the one hand, and loss and damage done to ships, goods, or other property on the other. In those Acts the term 'damage' is nowhere used as applicable to injury done to the person, but is applied only to property and inanimate things, and we see no reason to suppose that the Legislature in using the term in the enactments we are considering had lost sight of the distinction uniformly observed in the preceding statutes."

Construction in accordance with public policy.

4. If there is a general tendency of decision, whether at common law or under statute, to a particular legal result, it may fairly be said to be the policy of the law to effect that result.

In construing statutes, however, this policy can only be taken into account when the statute being dealt with is not explicit. To adopt any other method of construction is to impose upon the subject the political, moral, social, or religious views of the judges, instead of construing and ascertaining the definite intention of the Legislature.

It has been sometimes said that a statute may be construed in accordance with public policy.

It was argued by Serjeant Stephen in *Hine* v. *Reynolds* (1840), 2 Scott N. R. 419, that "it is a sound general principle in the exposition of statutes that less regard is to be paid to the words that are used than to the policy which dictates the Act;" and in *R.* v. *Hipswell* (1828), 8 B. & C. 471, Bayley, J., held that the word "void" as used in 28 Geo. 3, c. 48, s. 4, "should receive its full force and effect," because it had been introduced into the statute "for public purposes." The cases, however, cited by Serjeant Stephen in support of his proposition do not bear it out, and on several occasions this principle of construction has been called in question. In *R.* v. *St. Gregory* (1834), 2 A. & E. 99,

107, Taunton, J., said, with regard to the *dictum* of Bayley, J., in *R.* v. *Hipswell*, "In that case the judgment was rested partly on the consideration of public policy, a very questionable and unsatisfactory ground, because men's minds differ much on the nature and extent of public policy."

If public policy is taken as meaning general considerations of State or of opinion apart from the statute under discussion, the existence of the rule is open to serious question, and its application is difficult, if not mischievous.

If the term merely indicates the policy (*a*) of the Legislature as indicated in the statute or group of statutes under consideration, it is merely an alternative confession to "the intention," "the evil" or "the mischief" (*b*) of the statute.

Objections to the rule.

Many judges have pointed out the dangers of resorting to considerations of public policy in the first sense as an aid to the construction of contracts in terms which are equally applicable to statutes.

In *Hardy* v. *Fothergill* (1888), 13 App. Cas. at p. 358, Lord Selborne thus stated the proper course to be adopted:—"It is not, I conceive, for your lordships or for any other Court to decide such questions as this under the influence of considerations of policy, except so far as that policy may be apparent from, or at least consistent with, the language of the Legislature in the statute or statutes upon which the question depends."

"Public policy," said Burroughs, J., in *Fauntleroy's case*,(*c*) "is a restive horse, and when you get astride of it there is no knowing where it will carry you."(*d*)

The question arose in *Re Mirams* (1891), 1 Q. B.

(*a*) For discussion of the policy of a colonial Act, see *Alison* v. *Burns* (1889), 15 App. Cas. 50.

(*b*) "It is a settled principle that the Court should so construe an Act of Parliament as to apply the statutory remedy to the evil or mischief which it is the intention of the statute to meet." Per Lord Shand, *Glasgow* v. *Hillhead* (1885), 12 Rettie (Sc.) 872.

(*c*) *Amicable* v. *Bolland* (1830), 4 Bligh N. S. 194, 2 Dow & Cl. 1.

(*d*) Approved by Lord Bramwell, in *Mogul Co.* v. *McGregor* (1892), A. C. 45. See *Cleaver* v. *Mutual Reserve Fund* (1892), 1 Q. B. 147.

594, whether a charge given by a bankrupt on his salary as chaplain of the Birmingham workhouse was void on the ground of public policy. Cave, J., said (at p. 595), "As we all know, certain kinds of contracts have been held void at common law on this ground—a branch of the law, however, which certainly should not be extended, as judges are more to be trusted as interpreters of the law than as expounders of what is called public policy."(*e*)

Public policy appears to be available only as a ground for holding a will or contract void, (*f*) and not to be of any appreciable value in the construction of a statute. No need arises for its invocation except in case of uncertainty as to the existence of a positive and definite rule of law, for where a statute is clearly contrary to a rule of the common law the latter must give way.

Limitation of meaning.

5. Words of limitation are not to be read into a statute if it can be avoided. This cardinal point is thus stated by Bowen, L.J., in *R.* v. *Liverpool Justices* (1883), 11 Q. B. D. 649: "One objection which, to my mind, is almost conclusive against it [the decision in *Ex parte Todd* (1878), 3 Q. B. D. 407] is this, that so to construe the section [s. 14 of 9 Geo. 4, c. 61] is reading into it words which limit its *primâ facie* operation, and make it something different from, and smaller than, what its terms express. Now, certainly we should not readily acquiesce in a non-natural construction which limits the operation of the section so as to make the remedy given by it not commensurate with the mischief which it was intended to cure."

How to ascertain need of limitation.

But in some cases a limitation may be put on the construction of the wide terms of a statute. Lord Herschell said in *Cox* v. *Hakes* (1890), 15 App. Cas. 526: "It cannot, I think, be denied that, for the

(*e*) See *Parsons* v. *Brand* (1890), 25 Q. B. D. 110, as to the view of the Court of Appeal of the provisions of the Bills of Sale Acts.

(*f*) See *Ram Coomar* v. *Chunder Canto* (1876), 2 App. Cas. 186, at p. 210, C. P., per Montague Smith (champerty); *Collins* v. *Locke* (1879), 4 App. Cas. 674, at p. 686; Pollock on Contracts (5th ed.), pp. 298 *et sqq.*; *Ex parte Huggins* (1882), 21 Ch. D. 85.

purpose of construing any enactment, it is right to look, not only at the provision immediately under construction, but at any others found in connection with it which may throw light upon it, and afford an indication that general words employed in it were not intended to be applied without some limitation."(*g*)

And a similar canon has been laid down in the Privy Council in *Blackwood* v. *R.* (1882), 8 App. Cas. 94: "One of the safest guides to the construction of sweeping general words which it is 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. If it is found that a number of such expressions have to be subjected to limitations or qualifications, and that such limitations or qualifications are of the same nature, that forms a strong argument for subjecting the expression in dispute to a like limitation or qualification."

The point raised in the case was whether, in the colonial Act "personal estate" subject to duty under the Act did or did not include personalty situate outside the limits of the colony, and to which a colonial probate did not give title to administer.

This question might have been solved by reference to the constitutional rule that a colony cannot legislate in respect of anything outside its local limits, but it is the settled policy of the Privy Council not to decide that colonial Acts are *ultra vires* if it can avoid that conclusion, but rather to read wide general words as subject to some limitation in the same way as terms in English Acts sometimes receive limitation to avoid what is assumed to have been an undesigned conflict with international law.(*h*)

General words limited by the *ejusdem generis* rule.

"As a matter of ordinary construction," said Lord Bramwell in *Great Western Railway Co.* v. *Swindon, &c.*,

(*g*) And see also the speech of Lord Bramwell in that case, and Maxwell on Statutes, p. 242, therein cited.

(*h*) See *Macleod* v. *Att.-Gen. for New South Wales* (1891), A. C. 455, 458.

Railway Co. (1884), 9 App. Cas. 808, "where several words are followed by a general expression which is as much applicable to the first and other words as to the last, that expression is not limited to the last, but applies to all. For instance, 'horses, oxen, pigs, and sheep, from whatever country they may come'—the latter words would apply to horses as much as to sheep."(*i*) But, speaking generally, there must be some kind of limitation to the meaning of general words in a statute. Lord Bacon's maxim on this subject is, *Verba generalia restringuntur adhabilitatem rei vel personæ.*(*j*) This rule of law, generally known as the *ejusdem generis* rule, was enunciated by Lord Campbell in *R.* v. *Edmundson* (1859), 28 L. J. M. C. 213, at p. 215. "I accede," said he, "to the principle laid down in all the cases which have been cited, that, where there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified." Thus, it was held in *R.* v. *Payne* (1866), 1 C. C. R. 28, that a crowbar was included under the words "any other article or thing" as used in the Prison Act, 1865, s. 37, which makes it indictable to convey into a prison, with intent to facilitate the escape of a prisoner, "any mask, dress, or other disguise, or any letter, or any other article or thing." A bankrupt worked in a colliery, and was paid according to the work he did from twenty-five to thirty shillings a week. It was sought to make a part of these earnings available for creditors under s. 53 of the Bankruptcy Act, 1883, as being "salary or income other than as aforesaid." But the Queen's Bench Division held, in *Re Jones, Ex parte Lloyd* (1891), 2 Q. B. 231, that the earnings in question were not *ejusdem generis*

28 & 29 Vict. c. 126.

45 & 46 Vict. c. 52.

(*i*) In *Fletcher* v. *Lord Sondes* (1826), 3 Bing. 501 (H. L.), at p. 580, Best, C.J., said, "By 14 Geo. 2, c. 1, persons who should steal sheep or *any other cattle* were deprived of the benefit of clergy, but until the Legislature distinctly specified what cattle were meant to be included, the judges felt that they could not apply the statute to any other cattle but sheep."

(*j*) See Lord Bacon's Works, by Spedding, vol. vii. p. 356. This maxim is frequently cited in courts of law; *e.g.*, *Gunnestad* v. *Price* (1874), L. R. 10 Ex. 69; *Washer* v. *Elliott* (1876) 1 C. P. D. 174.

with the "salary" mentioned in the preceding part of the section, following the decision of the Court of Appeal, in *Re Hutton, Ex parte Benwell* (1884), 14 Q. B. D. 301, that the income received by a bone-setter from the fees of patients was not in the nature of salary. So, in *Ashbury Carriage Co.* v. *Riche* (1875), L. R. 7 H. L. 653, a question arose as to the meaning of the words "general contractors." It appeared that the memorandum of association of the company stated that the company was formed for the purpose (among others) "of carrying on the business of mechanical engineers and *general contractors*." "Upon all ordinary principles of construction," said Lord Cairns, "these words must be referred to the part of the sentence which immediately precedes them . . . . therefore . . . . the term 'general contractors' would be referred to that which goes immediately before, and would indicate the making generally of contracts connected with the business of mechanical engineers. . . . . If these words were not to be interpreted as I have suggested, the consequence would be that they would stand absolutely without any limit of any kind . . . . and would authorize the making of contracts of any and every description, and the memorandum of association, in place of specifying a particular kind of business, would virtually point to the carrying on of business of any kind whatever, and would therefore be altogether unmeaning."

General words will not include anything of a class superior to the particular words they follow.

In accordance with this principle of construction, it has always been held that general words following particular words will not include anything of a class superior to that to which the particular words belong. This was pointed out by Lord Coke in *Archbishop of Canterbury's case* (1596), 2 Rep. 46 a. He there says, as to the statute of 31 Hen. 8, c. 43, which discharged from payment of tithes all lands which came to the Crown by dissolution, renouncing, relinquishing, forfeiture, giving up, or by *any other means*, that this statute only discharged from tithes lands which came to the Crown by these or by any other *inferior* means, but did not dis-

charge from tithe land which came to the Crown by virtue of an Act of Parliament, "which is the highest manner of conveyance that can be." So also in 2 Inst. 457, Lord Coke, in commenting upon the Stat. West. 2, c. 41, said, "Seeing this Act beginneth with abbots and concludeth with other religious houses, bishops are not comprehended within this Act, for they are superior to abbots, and these words [other religious houses] shall extend to houses inferior to them that were mentioned before." Thus, in *Casher* v. *Holmes* (1831), 2 B. & Ad. 592, it was held that the general words "all other metals" following the particular words "copper, brass, pewter, and tin," in the local Act of 6 Geo. 4, c. clxx., did not include silver or gold, those latter metals being of a superior kind to the particular metals mentioned in the Act.

Meaning of general words not following particular words, how limited.

The question whether, when the Legislature have used general words in a statute, not following particular or specific words, those words are to receive any (and, if so, what) limitation, is one which may sometimes be answered by considering whether the intention of the Legislature on this point can be gathered from other parts of the statute. "It is a sound maxim of law," said the Judicial Committee in *Att.-Gen.* v. *Mercer* (1883), 8 App. Cas. 778, "that every word [in a statute] ought *primâ facie* to be construed in its primary and natural sense, unless a secondary or more limited sense is required by the subject or the context." This was so held in *Hawkins* v. *Gathercole* (1855), 24 L. J. Ch. 338, on the construction of 1 & 2 Vict. c. 110, where it was held that the word "tithes," in the Act, must be confined to lay tithes. This doctrine is clear from a long list of authorities which appear all to be founded on the case of *Stradling* v. *Morgan* (1560), Plowd. 204. In that case it is said as follows:—"The judges of the law, in all times past, have so far pursued the intent of the makers of statutes, that they have expounded Acts which are general in words to be but particular where the intent was particular. . . . . The sages of the law heretofore

have construed statutes quite contrary to the letter in some appearance, and those statutes which comprehend all things in the letter they have expounded to extend but to some things, and those which generally prohibit all people from doing such an act they have interpreted to permit some people to do it, and those which include every person in the letter they have adjudged to reach to some persons only, which expositions have always been founded upon the intent of the Legislature, which they have collected, sometimes by considering the cause and necessity of making the Act, sometimes by comparing one part of the Act with another, and sometimes by foreign circumstances. So that they have ever been guided by the intent of the Legislature, which they have always taken according to the necessity of the matter, and according to that which is consonant to reason and good discretion." This rule is well illustrated by the decision arrived at in *The Dowse* (1870), L. R. 3 Ad. & E. 135, with regard to 31 & 32 Vict. c. 71, s. 3, which enacts that certain county courts shall have jurisdiction as to "any claim for . . . . necessaries . . . ." It was contended that the words "any claim" ought not in any way to be limited, and that although the High Court of Admiralty would have no jurisdiction in the particular matter in question, still, that it was intended by this Act to give county courts jurisdiction as to all claims for necessaries, whether the High Court of Admiralty had jurisdiction over such claims or not. This argument was not acceded to, and the Court held that the words used in the Act would be satisfied if the county court jurisdiction was confined to cases where the High Court of Admiralty would have jurisdiction.

Difficulty of laying down general rule.

Although it often happens that the words used in a statute are, as Coleridge, J., observed in *Clayton* v. *Fenwick* (1856), 6 E. & B. 131, "so general that they must receive *some* limitation," it is difficult, as the following cases will show, to lay down any general rule for arriving at the intention of the Legislature as to the precise limitation which must be put upon the meaning of general words

used in a statute. In *Cargo ex Argos* (1872), L. R. 5 P. C. 145, a similar question arose to that decided in *The Dowse*,(*k*) namely, what, if any, limitation was to be put upon the meaning of the words "any claim," as used in 32 & 33 Vict. c. 51, s. 2, and although in *The Dowse* those words, as used in a statute *in pari materiâ* with this Act, were held to be used in a limited sense, the Court overruled a case in which a limitation had been put upon their meaning, and declined in this case to put any limitation whatever upon them. So also in *Giovanni Dapueto* v. *Wyllie* (1874), L. R. 5 P. C. 492, the same Court declined to limit the meaning of the words "carried into," and, following the decision of Dr. Lushington in *The Bahia* (1863), Br. & Lush. 61, they held that the words were advisedly used instead of "imported," in order to give to the Court the utmost jurisdiction. So, in *Duke of Newcastle* v. *Morris* (1870), L. R. 4 H. L. 661, it was held that the words "all debtors" as used in the Bankruptcy Act, 1861, s. 69, included persons of every description, and that peers could not claim exemption from the operation of the Act on the ground that they had the privilege of Parliament. But, on the other hand, it was held in *Lord Colchester* v. *Kewney* (1866), L. R. 1 Ex. 380, that the 38 Geo. 3, c. 5, s. 25, which exempted "any hospital" from land tax, only applied to hospitals existing at the time the Act was passed. So also in *Beckford* v. *Wade* (1805), 17 Ves. 91, Sir W. Grant pointed out that the Legislature evidently considered that the general words of 32 Hen. 8, c. 1, which declared that "all and every person or persons" may devise their lands by will, would enable infants or insane persons to devise by will, because they subsequently passed 34 Hen. 8, c. 5, expressly to prohibit this. So in *O'Shanassy* v. *Joachim* (1875), 1 App. Cas. 90, it was held that the word "person"(*l*) in a colonial Act was not necessarily restricted to persons

24 & 25 Vict. c. 134.

(*k*) (1870) L. R. 3 Ad. & E. 135, cited *ante*, p. 203.

(*l*) As to what the word "person" will or will not include, *vide supra*, p. 176, and Appendix A., *s.v.* "Person."

above twenty-one, but might include infants, especially as the Act enlarged the power which infants previously had before the passing of the Act. And in *Morant* v. *Taylor* (1876), 1 Ex. D. 188, it was held that the words "order for the payment of money *or otherwise*," used in 11 & 12 Vict. c. 43, s. 1, included orders of every kind, and that the rule as to *ejusdem generis* did not here apply. And in *R.* v. *White* (1867), L. R. 2 Q. B. 563, it was held that the words "or otherwise incapable of acting," following the words "dead or absent," were not to be confined merely to physical incapacity analogous to death or absence, but applied to any kind of incapacity, whatever might be the cause.

General words in statute apply only to English and not to foreign persons or things.

"General words in a statute," said Brett, L.J., in *Niboyet* v. *Niboyet* (1878), 4 P. D. 19, "have never, so far as I am aware, been interpreted so as to extend the action of the statute beyond the territorial authority of the Legislature." Said Lord Esher, M.R., in *Colquhoun* v. *Heddon* (1890), 25 Q. B. D. at p. 135: "Unless Parliament expressly declares otherwise, in which case, even if it should go beyond its rights as regards the comity of nations, the Courts of this country must obey the enactment. The proper construction to be put upon general words used in an English Act of Parliament is that Parliament was dealing only with such persons or things as are within the general words and also within its proper jurisdiction, and that we ought to assume that Parliament (unless it expressly declares otherwise), when it uses general words, is only dealing with persons or things over which it has properly jurisdiction."(*m*) Fry,

(*m*) In *Ex parte Blain* (1879), 12 Ch. D. 533, Cotton, L.J., went a step further, and said that "we must not give to general words an interpretation which would violate the principles of law admitted and recognised in all countries." This is in accordance with what was said by Sir W. Scott in *Le Louis* (1826), 2 Dods. 210, at p. 239: "No British Act of Parliament can affect any right or interest of foreigners unless it imposes regulations consistent with the law of nations . . . . and the generality of any terms employed in an Act of Parliament must be narrowed in construction by a religious adherence thereto." But this doctrine is too widely stated in so far as it attempts to put any fetter on the supreme power of the Legislature: *vide infra*, Part II. ch. vii.

L.J., was disposed (p. 140) to take the general words in their full and literal meaning, however startling the anomalies which might result from so doing. "*Primâ facie*," said Lord Cranworth, in *Jefferys* v. *Boosey* (1854), 4 H. L. C. 815, at p. 955, "the Legislature of this country must be taken to make laws for its own subjects exclusively," and, however general the wording of an Act may be, "it is not to be presumed," as Turner, L.J., observed in *Cope* v. *Doherty* (1858), 27 L. J. Ch. 609, "that the British Parliament could intend to legislate as to the rights and liabilities of foreigners." Therefore, as Cockburn, C.J., said in *R.* v. *Keyn* (1876), 2 Ex. D. 63, at p. 210, "where the language of a statute is general, and *may* include foreigners or not, the true canon of construction is to assume that the Legislature has not so enacted as to violate the rights of other nations." In *Thomson* v. *Att.-Gen.* (1845), 12 Cl. & F. 1, the question arose whether, under 55 Geo. 3, c. 184, sch. pt. 3, which enacted that duty should be payable upon "every legacy . . . . given by any will or testamentary instrument of any person," legacy duty was payable upon legacies bequeathed by a testator who died domiciled abroad, and it was decided that the word "person" did not apply to such a case. "The very general words of the statute," said Tindal, C.J., in delivering the opinion of the judges, "must of necessity receive some limitation in their application, for they cannot in reason extend to every person everywhere, whether subjects of this kingdom or foreigners, and whether, at the time of their death, domiciled within the realm or abroad. We think such necessary limitation is that the statute does not extend to the will of any person who at his death was domiciled out of Great Britain." (*n*) So, in *Jefferys* v. *Boosey* (1854), 4 H. L. C. 815, it was held that the

(*n*) In *Wallace* v. *Att.-Gen.* (1865), 1 Ch. App. 1, it was decided on similar grounds that succession duty is not payable upon lands in England devised by a person domiciled in a foreign country. See, however, *Colquhoun* v. *Brooks* (1889), 14 App. Cas. 506.

word "author" as used in 8 Anne, c. 19, which enacts that "the author of any book shall have the sole liberty of printing such for 14 years," referred to British authors only and not to authors of other nationalities.(*o*) Similarly in *Wells* v. *Porter* (1836), 3 Scott 141, it was held that Sir John Barnard's Act (7 Geo. 2, c. 8) was confined in its operation to the stock of this country, and did not apply to foreign funds; in *Cope* v. *Doherty* (1858), 27 L. J. Ch. 600, it was held that the words "any seagoing ship" as used in the Merchant Shipping Act, 1854, applied only to British ships, and had no operation in the case of foreign ships; in *Niboyet* v. *Niboyet* (1877), 3 P. D. 58, it was held that the word "husband" as used in 20 & 21 Vict. c. 85, s. 27, means a husband who is "either an English subject or domiciled in England;"(*p*) in *Ex parte Blain* (1879), 12 Ch. D. 532, Cotton, L.J., said that "the true interpretation of the word 'debtor' in the Bankruptcy Act, 1869 [32 & 33 Vict. c. 71], is a debtor subject to the English bankruptcy law;" and in *Re Blanc* (1883), 13 Q. B. 769, it was held that the word "bastard" in 7 & 8 Vict. c. 101, means a bastard born in this country. In *Price* v. *Bradley* (1885), 16 Q. B. D. 151, it was held that "any fresh-water fish" exposed for sale contrary to the provisions of 41 & 42 Vict. c. 39, s. 11 (1), (4), meant any fish wherever caught. But Parliament declared the construction erroneous by 49 & 50 Vict. c. 2.

Meaning of general words to be limited so as not to alter the common law.

Again, it is a rule, as to the limitation of the meaning of general words used in a statute, that they are to be, if possible, construed so as not to alter the common law. "The general rule in exposition," said the Court of Com-

(*o*) But the decision of the House of Lords in *Routledge* v. *Low* (1868), L. R. 3 H. L. 100, as to the meaning of the word "author" as used in 5 & 6 Vict. c. 45, somewhat qualifies their previous decision in *Jefferys* v. *Boosey*. See this question further discussed under "Territorial Effect of Statutes," *infra*, Part II. ch. vii.

(*p*) This decision was overruled by James and Cotton, L.JJ. (*dissentiente* Brett, L.J.) (1878), 4 P. D. 1, on the ground that the Court has jurisdiction to grant a divorce against a foreigner "where and while the matrimonial home is in England," if the adultery is committed in England. Hereon see Westlake, Private Int. Law (3rd ed.), pp. 76, 79, 81, 82.

mon Pleas in *Arthur* v. *Bokenham* (1708), 11 Mod. 150, "is this, that in all doubtful matters, and where the expression is in general terms, the words are to receive such a construction as may be agreeable to the rules of common law in cases of that nature, for statutes are not presumed to make any alteration in the common law further or otherwise than the Act does expressly declare." Again, in *Minet* v. *Leman* (1855), 20 Beav. 278, Romilly, M.R., said: "The general words of an Act are not to be so construed as to alter the previous policy of the law, unless no sense or meaning can be applied to those words consistently with the intention of preserving the existing policy untouched. This principle of construction as a general proposition cannot be disputed." A right to demand a poll is a common law incident of all popular elections,(*q*) and, as such, "cannot be taken away by mere implication which is not necessary for the reasonable construction of a statute," said Brett, L.J., in *R.* v. *Wimbledon L. B.* (1882), 8 Q. B. D. 459,(*r*) where it was contended that the Public Libraries Acts, 1855, 1866, and 1877, had abolished the common law rule. In *Hawkins* v. *Gathercole* (1855), 24 L. J. Ch. 334, the question was what meaning was to be attached to the words "rectories and tithes" in 1 & 2 Vict. c. 110, s. 13, which enacted that "a judgment already entered up shall operate as a charge upon all lands, tenements, rectories, advowsons, tithes . . . ." On the part of the plaintiff it was contended that the words extended to all rectories and tithes, both lay and ecclesiastical, and that consequently a charge which he had upon the tithes receivable by the defendant as rector of a parish was a valid one. For the defendant it was contended that the statute of 13 Eliz. c. 20, s. 1, which was merely declaratory of what had always been the common law on the subject, and which

(*q*) *Anthony* v. *Seger* (1789), 1 Hagg. Consistory Rep. 13 (Stowell); *Campbell* v. *Maund* (1836), 5 A. & E. 865 (Ex. Ch.).
(*r*) See *R.* v. *Bethnal Green Vestry* (1875), 32 L. T. N. S. 558.

enacted that "all chargings of benefices with cure . . . . shall be utterly void," rendered the plaintiff's charge invalid, and that the words "rectories and tithes" only applied to lay rectories and tithes. The Court of Appeal decided in favour of the defendant; and Turner, L.J., in giving judgment, said: "It is one of the privileges of the clergy, secured to them by Magna Charta, that distresses shall not be taken by sheriffs in the inheritance of the church wherewith it was antiently endowed. . . . . These privileges remained intact down to the time of the passing of this Act, and looking to the cases referred to, I am very much disposed to think that the general words used in this section ought not in any event to be held to have abrogated these privileges, there being ample room for them to operate otherwise." Another decision which illustrates this principle is that of *R.* v. *Harrald* (1872), L. R. 7 Q. B. 361.(*s*) In that case it was contended that the 32 & 33 Vict. c. 55, s. 9, which enacts that, "whenever words occur which import the masculine gender the same shall be held to include females for all purposes connected with the right to vote at elections," enfranchised not only single, but also married women. But it was held that it did not. "Marriage," said Mellor, J., "is at common law a total disqualification, and a married woman therefore could not vote, her existence for such a purpose being merged in that of her husband." The 32 & 33 Vict. c. 55, was passed because, as Cockburn, C.J., observed, "it was thought to be a hardship that when women bore their share of the public burthens in respect of the occupation of property, they should not also share the rights to the municipal franchise and be represented; and it was thought that unmarried women ought to be allowed to exercise these rights. . . . . But it seems quite clear that this statute had not married women in its contemplation."

(*s*) See *Beresford-Hope* v. *Lady Sandhurst* (1889), 24 Q. B. D. 79.

CHAPTER VI.

EFFECT OF ONE PART OF A STATUTE UPON THE CONSTRUCTION OF THE OTHER PARTS.

PAGE

1. Parts of a statute . . 211
2. Effect of title, marginal notes, and punctuation. 212
   Full title, marginal notes, and punctuation, form no part of an Act . . 212
   Curious mistake in 31 & 32 Vict. c. 89 . . . 212
   Short titles part of an Act 213
   Full title sometimes considered in construing obscure enactment . 213
   Marginal notes rarely considered in construing enactment . . . 216
   Punctuation throws no light on meaning of enactment . . . 218
   Consequent difficulty of deciding whether words are to be construed *reddendo singula singulis* 218
3. Effect of preamble . . 219
   Object of preamble . . 219
   Preamble is integral part of statute . . . 220
   If language of enactment is clear, preamble must be disregarded . . 221
   If language is not clear, preamble may be resorted to to throw light on meaning . . 223
   If very general language is used, preamble may indicate in what particular instances enactment is to apply . . 223
   But it will always be a question for the Court whether an Act is sufficiently explicit by itself 225
4. Effect of headings . . 226
   The "headings" found in certain Acts are part of the Act 226
   But are not to be taken into account if the enactment is clear . 228
   Sub-headings . . . 229
5. Effect of Interpretation clauses 231
   Usually extend meaning of word interpreted . 232
   But do not in that case take away the natural and ordinary meaning of words interpreted . . 233
   Sometimes inserted merely *ex abundanti cautelâ* . 235
   Do not necessarily apply on every occasion when word interpreted is used in Act 236
6. Effect of schedules . . 236
   Schedule is integral part of an Act . . . 236
   Form given in schedule cannot control operation of Act 237
7. Effect of enacting clauses immaterial whether an

	PAGE
enactment is contained in separate sections or not	237
Construction of repugnant clauses	239
Construction of repugnant proviso	240
Construction of repugnant saving clause	240
Former rule as to pleading proviso or saving clause	241
Implied savings	242
Construction of general and specific enactments if repugnant	242
Rule applies if one Act is incorporated into another	244

1. An Act of Parliament at the present day (*a*) consists of the following parts, viz. :— Division of statute into parts.

1. The title.
2. Marginal notes.
3. The preamble.
4. Headings.
5. The interpretation clauses.
6. The schedules.
7. The enacting clauses.
8. The day of its receiving the royal assent.(*b*)

It is, of course, often the case that an Act of Parliament consists merely of one or more enacting clauses, and has no headings, interpretation clause, schedules, or even preamble.

"In the fifth year of Henry VIII. it first became the custom to put a distinct title to every particular chapter of a statute. The subdivison of statutes into chapters must be understood to have been perfectly arbitrary. The same may be predicated of the titles prefixed to the chapters, which have often been the mere invention of modern editors."(*c*) In Bacon's Abr. tit. Statute (A), it is said that the custom of prefixing titles began about the eleventh year of Henry VII.

2. "Every Act of Parliament," says Sir Henry Thring in his pamphlet on Practical Legislation, p. 37, "should Title, marginal notes, and punctuation form no part of an Act.

(*a*) As to when the present form of statute was first adopted, see May, Parl. Pract. (9th ed.), pp. 519 *et sqq.*; *ante*, p. 21.

(*b*) This is made part of the Act by 33 Geo. 3, c. 13; see this discussed in chapter on "Commencement and Duration of Effect of Statutes," Part II. ch. v.

(*c*) Dwarris on Statutes (2nd ed.), p. 462.

have a short title, ending with the date of the year in which it is passed. . . . . For although Lord Brougham's Act, 13 & 14 Vict. c. 21, enables reference to be made to a particular statute without mentioning its title, it is very inexpedient to do so, as the mere mention of a particular chapter fails to convey to the mind of the reader any idea of the Act referred to, and mistakes often arise from a misprint in the number of a chapter." It is, however, quite clear that, speaking strictly, neither the full title, the marginal notes, nor the punctuation form any part of an Act, and that they ought not to be allowed in any way to affect its construction. This was clearly pointed out by Willes, J., in *Claydon* v. *Green* (1868), L. R. 3 C. P. 511, 522. He there, after complaining how Bills were formerly engrossed upon one or more rolls of Parliament, a practice discontinued since 1849,(*d*) goes on to say as follows:—"I desire to record my conviction that this change in the mode of recording them cannot affect the rule which treated the title of the Act, the marginal notes, and the punctuation, not as forming part of the Act, but merely as a *contemporanea expositio*. The Act when passed must be looked to just as if it were still entered upon a roll, which it may be again if Parliament should be pleased so to order, in which case it would be without these appendages, which, though useful as a guide to a hasty inquirer, ought not to be relied upon in construing an Act of Parliament."(*e*) It may be noticed, however, that there is one Act of Parliament, 31 & 32

Curious mistake in 31 & 32 Vict. c. 89.

(*d*) The Bills, as soon as they are passed, are now printed on vellum by the Queen's printer. May, Parl. Pract. (9th ed.), p. 598.

(*e*) In *Powlter's case* (1611), 11 Rep. 33, Lord Coke said: "As to the style or title of the Act, that is no parcel of the Act, and ancient statutes were without any title, and many Acts are of greater extent than the titles are." And Lord Hardwicke in *Att.-Gen.* v. *Lord Weymouth* (1743), Ambler 23, expressly said: "The title is no part of the Act." See also per Lord Holt in *Mills* v. *Wilkins* (1704), 6 Mod. 62; per Lord Mansfield in *R.* v. *Williams* (1791), 1 W. Bl. 95; per Pollock, C.B., in *Salkeld* v. *Johnson* (1848), 2 Ex. 283; and per Cottenham, L.C., in *Hunter* v. *Nockolds* (1849), 1 Macn. & G. 640. In *Jeffries* v. *Alexander* (1860), 8 H. L. C. 603, *note* (*h*), Lord Cranworth said that, though the question as to the title of an Act was put from the chair in the House of Commons, it was never put in the House of Lords.

Vict. c. 89, in which, unless the title be taken as an integral portion of the Act, the first section will be unintelligible. The title of the Act is "An Act to alter certain provisions in the Acts for the commutation of tithes, the Copyhold Acts, and the Acts for the inclosure, exchange, and improvement of land. . . . ." The Act then goes on thus: "Be it enacted, &c., 1. That notwithstanding any provisions in the *said* Acts contained, &c." This is, of course, the result of an oversight, and is a good illustration of the hasty way in which Acts of Parliament are drawn.(*f*) Whether it would be held that the first section of this Act is inoperative as being altogether unintelligible according to the ordinary rules for construing statutes remains to be seen, should the question ever be raised; but it is obvious that, unless the title be treated as part of the Act, the first section will have no meaning at all. Where Acts contain a section enacting that the Act may be cited by some short title, such a section may be cited as proof of the intention of the Legislature, so as "to make that short title a good general description of all that was done by the Act." (Per Lord Selborne in *Middlesex Justices* v. *R.* (1884), 9 App. Cas. 772.) (*g*)

Short titles part of an Act.

But although the full title is no part of the Act, it "is," as Jessel, M.R., pointed out in *Sutton* v. *Sutton* (1883), 22 Ch. D. 513, "always on the roll," and may, like the preamble,(*h*) be "looked at," as Huddleston, B., said in *Coomber* v. *Berks* (1882), 9 Q. B. D. 33, "in order to remove any ambiguity in the words of the Act." Thus, in *Brett* v. *Brett* (1826), 3 Addams 210, the question was whether the expression "any will or codicil," when used in 25 Geo. 2, c. 6, related to all wills and codicils, or only to those of real estate. The title of

Full title sometimes considered in construing obscure enactment.

(*f*) This Act underwent no alteration whatever during its passage through Parliament; the first print of the Act, which has on the back of it the names of Mr. Gathorne Hardy and Mr. Sclater Booth, may be seen in the library of the House of Commons.

(*g*) For popular and short titles see App. B. A Bill for conferring short titles on about 800 Acts is before Parliament in the session of 1892.

(*h*) *Post*, p. 220.

that Act is "An Act for putting an end to certain doubts relating to the attestation of wills and codicils of real estate," and Sir John Nicholl held that the title might be taken into consideration in deciding the question raised, and that since the Act professed by its title to relate only to wills and codicils of real estate, it must be held to be confined to such, and not to affect wills or codicils of personal estate. "If that had been the true construction," said he, "the title of the Act should at least, not to say must, have been different. But the title of an Act of Parliament is settled with some solemnity; (*i*) and this, too, after it becomes an Act—that is, after the question put, whether the Bill shall pass, and that question carried in the affirmative. This seems to imply that, in whatever sense the phrase was understood by the framer of the Bill, the sense in which it was understood by the Legislature, and in which the Court consequently is bound to construe it, is that of a will or codicil of real estate" only. According to Blackstone's Commentaries, vol. i. p. 183, before the first year of Henry VIII. each chapter had not a distinct title; (*j*) therefore, as Tindal, C.J., said in *Birtwhistle* v. *Vardell* (1840), 7 Cl. & F. 895, at p. 929, in the case of ancient statutes, "no more argument can be justly built upon the title prefixed to the statute in some of the modern editions of the statutes than upon the marginal notes against its different sections." The two following cases are good examples of the way in which the title of an Act is allowed to operate upon its construction. In *Shaw* v. *Ruddin* (1859), 9 Ir. C. L. R. 214, the question was whether 16 & 17 Vict. c. 112, s. 25, which imposes a penalty upon persons using or letting to hire at any place within the police district of Dublin any . . . . cart . . . . without having a licence for the same,

(*i*) "The last question to be determined in the House of Commons is, 'that this be the title of the Bill,' which is accordingly read by the Speaker. Amendments may then be offered to the title": May's Parl. Pract. (9th ed.) p. 583. In the House of Lords the title may be amended at any stage in the progress of the Bill. And see *ante*, p. 214, *note* (*e*).

(*j*) See, however, 3 Hen. 7, 1 Rev. Statt. (2nd ed.) 228.

applies to carts used for private purposes only. The title of the Act was "An Act to consolidate and amend the laws relating to hackney and stage carriages, also job carriages and horses and carts let for hire within the police district of Dublin." Lefroy, C.J., said in his judgment: "Now, the title of the Act shows that the Legislature intended to make regulations with respect to carriages and other vehicles let for hire. It is quite true that, although the title of an Act cannot be made use of to control the express provisions of the Act, yet if there be in these provisions anything admitting of a doubt, the title of the Act is a matter proper to be considered, in order to assist in the interpretation of the Act, and thereby to give to the doubtful language in the body of the Act a meaning consistent rather than at variance with the clear title of the Act." Similarly, in *Ex parte Steavenson* (1823), 2 B. & C. 34, a *quo warranto* was moved for against certain municipal officers, who, having been elected in September 1822, had neglected to take the oaths of allegiance, &c., as required by the Tests and Corporation Acts, within six months. By the Annual Indemnity Act, which was passed in February 1823, it was enacted that "all and every person and persons who at or before the passing of this Act hath or shall have omitted to take the oaths within such time as is by the said Act required, and who, on or before March 25, 1824, shall take the said oaths, shall be and are hereby indemnified." It was contended that this Act only applied to persons who, "at or before the passing of the Act," had incurred penalties, and that as these persons were only elected in September 1822, they had not incurred any penalties by February 1823, when the Act passed, and consequently could not be protected by it. But on behalf of these persons it was urged that from the title of the Act it was clear that it was the intention of the Legislature that the indemnity should extend to them. And so it was held by the Court, who said: "There may, perhaps, be some obscurity in the words of the statute, but there is none in the title, and, this being a remedial statute, we should

construe it so as to give full effect to the intention of the Legislature."

In a recent case on the Copyright (Works of Art) Act, 1882,(*k*) which has a statutory short title, Wills, J., referred to the full title to elucidate an ambiguity. He said: "The title of a statute does not go for much in construing it, but I do not know that it is to be absolutely disregarded. The cases on the subject are collected and their effect stated in Master Wilberforce's very careful and able treatise on Statute Law, at pp. 272–276. The title of Lord Campbell's Act (9 & 10 Vict. c. 93) was certainly referred to as not without significance in the Court of Queen's Bench in *Blake* v. *Midland Railway Company*.(*l*) As far as it goes the title would certainly seem to point to the notion that it is the product of the artistic faculty which is the primary thing to be protected. And although it might not be right on that account to cut down the generality of the expression 'every drawing,' yet it may serve to point to the character of the production."

Marginal notes rarely considered in construing enactment.

It is not usual to allow the marginal notes of a statute to be referred to for the purpose of throwing light upon the meaning of an obscure enactment, and there appear to be only two instances in the reports of this being done. In *R.* v. *Milverton* (1836), 5 A. & E. 854, it was held that a marginal note to a form in the schedule of 13 Geo. 3, c. 78, "which is not merely found in the printed Act, but in the Parliament Roll," was part of the Act and should receive its full effect. In *Sheffield Waterworks* v. *Bennett* (1872), L. R. 7 Ex. 421, Cleasby, B., said that "one may refer to the marginal reference in considering the general sense in which words are used in Acts of Parliament." And in *Venour* v. *Sellon* (1876), 2 Ch. D. 524, Jessel, M.R., referred to the marginal note of 19 & 20 Vict. c. 120, s. 14, in support of the view which he took of the meaning of the section. "This

(*k*) *Kenrick* v. *Lawrence* (1890), 25 Q. B. D. 99, at p. 104.
(*l*) (1852) 18 Q. B. 93, 109.

view," said he, "is borne out by the marginal note, and I may mention that the marginal notes of Acts of Parliament now appear on the Rolls of Parliament, and consequently form part of the Acts, and in fact are so clearly so that I have known them to be the subject of motion and amendment in Parliament."(*m*) But Baggallay, L.J., in *Att.-Gen.* v. *G. E. Rail. Co.* (1879), 11 Ch. D. 460, at p. 461, said: "I never knew an amendment set down or discussed upon the marginal notes to a clause. The House of Commons never has anything to do with a marginal note." And James, L.J., at p. 465, said: "Is it not a mere abstract of the clause intended to catch the eye?" But the statement is perfectly correct as to modern Acts, the copies printed on vellum and deposited with the Clerk of the Parliaments, and at the Rolls House containing the marginal notes which appear in the ordinary printed copies. But it may be oberved, that on July 20, 1875,(*n*) Mr. Raikes, the Chairman of Committees, ruled that the marginal notes of an Act could not be amended in committee, and this ruling was supported by Mr. Dodson, a former Chairman; and, acting apparently on this view of the law, the editor of the Revised Edition of the Statutes has (as he states in the Preface to vol. xi.) revised the marginal notes throughout the edition, and the same process is adopted in Chitty's Statutes and their annual continuation.(*o*)

It is not uncommon for the marginal note to an Act to refer to matters struck out of the Bill in its passage through Parliament. Thus, the Married Women (Maintenance in Case of Desertion) Act, 1886 (49 & 50 Vict. c. 52), s. 1 (2), has a marginal note as to the custody of children, though the text is silent on the subject.

With reference to the Railways Clauses Act, 1845

(*m*) As to this *dictum* Jessel, M.R., said in *Sutton* v. *Sutton* (1882), L. R. Ch. D. at p. 513. "The *dictum* in that case is not strictly correct. I have since ascertained that the practice is so uncertain as to the marginal notes that it cannot be laid down that they are always on the roll."

(*n*) 225 Hansard (3rd series), p. 1759.

(*o*) They differ from the Queen's printer's copies. *Vide* Lumley, Public Health Act (3rd ed.), Preface, p. vi.

(8 & 9 Vict. c. 20), Bramwell, L.J., said in *Att.-Gen.* v. *G. E. Rail. Co.* (1879), 11 Ch. D. 460, at p. 405: "What would happen if the marginal note differed from the section, which is a possibility, as is shown in s. 112 of this Act? Does the marginal note repeal the clause, or the clause the marginal note?"

Punctuation can throw no light on meaning of enactment.

Cockburn, C.J., said, in *Stephenson* v. *Taylor* (1861), 1 B. & S. 101, at p. 106: "On the Parliament Roll there is no punctuation, and we therefore are not bound by that in the printed copies." This statement seems to be also applicable to the vellum prints. The copies printed on vellum since 1850 are certainly in some cases punctuated, but punctuation is discouraged by the parliamentary officials owing to the difficulties which arise when the punctuation is not altered to give effect to amendments made in committee. Punctuation when it occurs in the vellum copies is, it is submitted, to be regarded, to some extent at least, as *contemporanea expositio*.(*p*)

In *Barrow* v. *Wadkin* (1857), 24 Beav. 330, the question arose whether the words in 13 Geo. 3, c. 21, s. 3, are to read "aliens' duties, customs and impositions," "or aliens, duties, customs and impositions." "I supposed," said Romilly, M.R., "I should not learn much on the subject from the inspection of the Roll of Parliament,(*q*) but, as it was in my custody, I have examined it. It seems that in the Rolls of Parliament the words are never punctuated, and accordingly, very little is to be learnt from this document." One of the effects of the original statutes not being punctuated is that it is often difficult to decide whether words apply only to a particular branch of a sentence, and are to be read distributively, *reddendo singula singulis*, as it is called, or whether they govern the whole sentence. It does not appear that any definite rule can be laid down as to this; but, as Dwarris says as to this point, ed. 2, p. 601, "the intention must

Consequent difficulty of deciding whether words are to be construed *reddendo singula singulis*.

(*p*) *Vide ante*, pp. 94 *et sqq.*

(*q*) The document referred to by Lord Romilly seems to be the Chancery Roll, and not the Parliament Roll of the statutes: *vide ante*, p. 51.

be collected from the context to which the words relate." Thus it was held in *Badger* v. *South Yorkshire Rail. Co.* (1858), 1 E. & E. 359, at p. 364, that the word "purchase," as used in 12 Geo. 1, c. 38, s. 2, "may be applicable, *reddendo singula singulis*, to the other purposes for which the acquisition of the soil is certainly necessary;" and in *Phillips* v. *Highland Railway* (1883), 8 App. Cas. 366, it was held that The Merchant Shipping Act, 1854, s. 189, must be so read. 17 & 18 Vict. c. 104.

3. Preambles, especially in the earlier Acts, have been regarded as of great importance as guides to construction. Effect of preamble.

Coke (1 Litt. 11 b) says: "From statutes his [Littleton's] arguments and proofs are drawn first from the rehearsal or preamble of the statute." "The proper function of a preamble," says Sir Henry Thring,(*r*) "is to explain certain facts which are necessary to be explained before the enactments contained in the Act can be understood; for example, the Courts of Justice Building Act, 1865, proposes to apply certain funds to the payment of the expenses of constructing new Courts of Justice.(*s*) Accordingly, a long preamble is prefixed to the Act, explaining the origin of these funds, for without such a preamble it would have been impossible for Parliament to have understood the subject-matter of the Act." Object of preamble. 28 & 29 Vict. c. 48.

The preamble of a public bill is usually considered last in committee, and amended to correspond with the clauses as settled in committee.(*t*)

All Acts which fall within the parliamentary description of private Bills are required by the standing orders to have preambles, and the petitioners are required to prove the preamble, which is required to explain the reasons for the exception sought to be made to the general law. and to justify Parliament in granting the exceptional powers sought for.

It is the duty of a select committee on a private Bill

(*r*) Practical Legislation, p. 36.
(*s*) The preamble to 5 Geo. 3, c. 26, recites the title to the Isle of Man during 300 years, and extends over eighteen pages.
(*t*) 1 Cliff. 865; *vide ante*, p. 214, (*i*).

to report (*u*) that the allegations of the Bill (*i.e.*, the contents of the preamble) have been examined,(*x*) and also as to any alterations made by the committee in the preamble, and the ground of making them.(*y*)

It may fairly be contended that, in view of the standing orders, the recitals of the preamble of a private Act should be treated by the Courts as conclusive, inasmuch as they are not adopted without examination of witnesses, and in many cases after prolonged opposition and argument, before a select committee (*vide ante*, p. 46; *post*, Part IV.).

Judicial inquiry into preambles of Bills.

Evidence in proof of the preambles of private Bills in the Lords used to be taken by the judges, to whom petitioners for private Bills were referred to hear the parties and report to the House the state of the case and their opinion thereon. The witnesses heard before the judges were sworn at the bar of the House of Lords if the Bill related to landed estate, but by 41 Geo. 3, c. 105, Scotch and Irish judges have power to administer an oath on the reference of a Bill to them.(*z*)

Since 1843 the judges do not take evidence, and the only Bills referred to the judges are estates Bills, which always originate in the House of Lords, and of those, only such as have not been previously approved by the High Court of Justice (Chancery Division).(*a*)

Preamble is integral part of statute.

Lord Holt is reported to have said, in *Mills* v. *Wilkins* (1704), 6 Mod. 62, that "the preamble of a statute is no part thereof, but contains generally the motives or inducements thereof"; but this *dictum* is not in accordance with the opinion held at the present day. "The preamble," said Pollock, C.B., in *Salkeld* v. *Johnson* (1848), 2 Ex. 283, "is undoubtedly part of the Act." So also, in *Davies* v. *Kennedy* (1869), Ir. R. 3 Eq. 697, Christian, L.J., said: "The preamble, which of course is a most

(*u*) Standing Orders H. C. 1891, 148, Private Business.
(*x*) *Ibid.* 149.
(*y*) May, Parl. Pr. (9th ed.) p. 857.
(*z*) 2 Cliff. 768.
(*a*) *Ibid.* 770; S. O. (H. L.) 153–6 (1887).

important part of the statute . . . ." Whether the preamble be considered as an integral part of the statute or not, the general rule with regard to its effect upon the enacting part of the statute has always been that if the meaning of the enactment is clear and unequivocal without the preamble, the preamble can have no effect whatever. The extent to which the preamble is an aid in construing a statute was thus laid down by Lord Blackburn in deciding upon the meaning of Sturges Bourne's Act, as to the rating of small tenements, in *Overseers of West Ham* v. *Iles* (1883), 8 App. Cas. at p. 388 : " I quite agree with the argument which has been addressed to your lordships, that in construing an Act of Parliament, where the intention of the Legislature is declared by the preamble, we are to give effect to the preamble to this extent, namely, that it shows us what the Legislature are intending, and if the words of enactment have a meaning which does not go beyond that preamble, or which may come up to the preamble, in either case we prefer that meaning to one showing an intention of the Legislature which would not answer to the purposes of the preamble or which would go beyond them. To that extent only is the preamble material." In the case it was contended that the construction adopted by the Court would " baffle the preamble." In *Richards* v. *Scarborough Market Co.* (1854), 23 L. J. Ch. 110, Knight Bruce, L.J., said : " As to the recital [to a local market Act], the enactments are not so limited, and here there is no necessity to refer to the recital to explain the general intentions. Unless such a course is necessary, it is not warranted. Here the true construction of the Act needs no such aid, and the Act cannot be restricted by the recital." In *Hughes* v. *Chester Railway* (1862), 31 L. J. Ch. 100, Channell, B., said : " It is a well-established rule that effect is to be given to the clear words of an enacting clause, though they may go far beyond the language of the preamble ; that is, that where the words of an enacting clause are clear and explicit, then their natural and obvious meaning shall not be restricted or cut down by

59 Geo. 3, c. 12, s. 19.

If language of enactment is clear, preamble must be disregarded.

the use of language of less extensive import in the preamble. If, then, the words of the enacting clauses taken together are words admitting, according to their natural import, but of one meaning, that meaning must prevail, notwithstanding an argument to the contrary otherwise derivable from the preamble." The case of *Wilson* v. *Knubley* (1806), 7 East 128, gives a good illustration of the operation of this rule. The preamble of 3 Will. & Mary, c. 14, recites that "it hath often happened that several persons, having by bonds and other specialities bound themselves and their heirs, have to the defrauding of such their creditors devised their lands;" then by s. 2 it is enacted that all such devises against creditors shall be absolutely void; and by s. 3 it is further enacted that "all such creditors shall have their *actions of debts* upon such bonds against the devisees." The plaintiff in the action in question had by virtue of this statute sued the defendant, who was a devisee, but the action was of covenant and not of debt, wherefore it was contended by the defendant that the action would not lie. Lord Ellenborough, C.J., in deciding in accordance with the defendant's contention, said: "I agree with the plaintiff's counsel, that the grievance recited in the preamble would have led one to suppose that the Legislature meant to have given a larger remedy than the action of debt. . . . . If it had only said that they should have their actions without more, there would have been ground for going the length of the argument of the plaintiff's counsel; but the Legislature have expressly limited the means of recovery by such creditors to actions of debt. . . . . To extend it, therefore, to the action of covenant would be to legislate and not to construe the Act of the Legislature."

In *Dean of York* v. *Middeburgh* (1827), 2 Y. & J. (Ex.) 196, Alexander, C.B., said, "What right have I to say that where the Legislature has enacted a prohibition in general terms more extensive than the preamble, that it did not mean that these terms should have their full and natural effect?" This rule applies even

in criminal cases. It is stated by Lord Hardwicke in *Kinaston* v. *Clarke* (1741), 2 Atk. 205, that the Offences at Sea Act, 1531 (23 Hen. 8, c. 23), extends to trials in the West Indies.

But if language is not clear, preamble may be resorted to to throw light on meaning.

If the object or meaning of an enactment is not clear, "the preamble," as Buller, J., said in *Crespigny* v. *Wittenoom* (1792), 4 T. R. 793, "may be resorted to, to explain it." "The preamble of the statute," said Lord Coke, in 1 Inst. 79 a, "is a good meane to find out the meaning of the statute, and as it were a key to open the understanding thereof." In the *Sussex Peerage case* (1844), 11 Cl. & F. 143, the judges enunciated the rule as follows:—"If any doubt arises from the terms employed by the Legislature, it has always been held a safe mean of collecting the intention to call in aid the ground and cause of making the statute, and to have recourse to the preamble, which, according to Chief Justice Dyer, is 'a key to open the minds of the makers of the Act, and the mischiefs which they intended to redress.'"(*b*) So, in *Crowder* v. *Stewart* (1880), 16 Ch. D. 368, Malins, V.C., held that the recitals of Hinde Palmer's Act (32 & 33 Vict. c. 46) limited the generality enacting part to abolition of the distinction between specialty and simple contract debts, and did not affect the executor's right of retainer.

If very general language is used, preamble may indicate in what particular instances enactment is to apply.

If very general language is used in an enactment, which it is clear must have been intended to have some limitation put upon it, the preamble may be used to indicate to what particular instances the enactment is intended to apply. The case of *L'Apostre* v. *Le Plaistrier* (1708), cited in *Copeman* v. *Gallant* (1716), 1 P. Wms. 318, turned upon 21 Jas. 1, c. 19, ss. 10, 11, which enacts that: "And for that bankrupts frequently convey over *their* goods and yet continue in possession and dispose of them, be it enacted that if at any time hereafter any person shall become bankrupt and at such time shall by

(*b*) Quoted and approved by Halsbury, L.C., in *Income Tax Commissioners* v. *Pemsel* (1891), A. C. 532, at p. 542.

the consent and permission of the true owner have in their possession, order, and disposition, *any* goods or chattels . . . . that in every such case the commissioners shall have power to sell and dispose of the same for the benefit of the creditors. . . . ." The plaintiff had delivered to one Levi (who afterwards became bankrupt) a parcel of diamonds to sell for him, and these diamonds were at Levi's bankruptcy seized by the defendants for the creditors, by virtue of this statute, as being goods in the possession of the bankrupt at the time of his bankruptcy. But it was held by Lord Holt that these diamonds were not liable to be seized as the property of the bankrupt, and that the general words of the clause ought to be explained and limited by the words of the preamble, "their goods." This decision, though not acquiesced in by Lord Cowper, was subsequently approved by Parker, C.B., in *Ryall* v. *Rolle* (1736), 1 Atk. at p. 174, when he said as follows: "It has been laid down on the construction of 13 Eliz. c. 5, that the preamble shall not restrain the enacting clause. But I take it to be agreed that if the non-restraining the generality of the enacting clause will be attended with an inconvenience the preamble shall restrain it, and this is the case here, for otherwise merchants could not correspond or carry on their business without great danger and difficulty." And Lord Hardwicke added (at p. 182): "I am strongly inclined to be of opinion, with Lord Chief Justice Holt and my Lord Chief Baron Parker, that this clause is to be restrained by the preamble, and differ from Lord Cowper in the case of *Copeman* v. *Gallant*." So also in *Brett* v. *Brett* (1823), 3 Addams 219, Sir John Nicholl is reported to have held that, inasmuch as it clearly appeared from the preamble that 25 Geo. 2, c. 6, only professed to deal with wills and codicils devising real estate, the expression "any will or codicil," whenever used in the Act, meant only a will or codicil which devised real estate, and in no way affected any will or codicil which bequeathed personalty. If the enacting words can take it in (the mischief which the statute was intended to

remedy) they shall be extended for that purpose though the preamble does not warrant it."(*c*)

Court must decide whether an Act is sufficiently explicit by itself.

But it must always be a question of some nicety for the Court to determine whether an Act is sufficiently explicit by itself or whether the preamble should be looked to for aid in explanation of it. Thus, in *Davis* v. *Kennedy* (1869), Ir. R. 3 Eq. 697, Christian, L.J., put a particular meaning upon the word "banker" as used in 33 Geo. 2, c. 14 (Irish), and in support of his view of the meaning of the word he relied largely upon the preamble of the Act. The House of Lords, however, in *Copland* v. *Davies* (1870), L. R. 5 H. L. 389, without in any way taking exception to the method by which he had arrived at his opinion, declined to adopt that method in this particular case, being apparently of opinion that the enactment in question was sufficiently explicit of itself.

In *Winn* v. *Mossman* (1869), L. R. 4 Ex. 299, a question arose upon the meaning of 24 & 25 Vict. c. 75, s. 4, by which it is enacted that, "in the construction of the 9 Geo. 4, c. 61, the words 'town corporate' shall include every borough having a separate commission of peace, although it may not have a separate court of quarter sessions." The Act of 9 Geo. 4 dealt with two different matters—namely, the application of penalties recovered under the Act, and the granting of licences, and, inasmuch as it is stated in the preamble of the Act of Victoria that doubts have arisen whether the boroughs in question come within the Act of 9 Geo. 4, "so as to give the justices of such boroughs control over the granting of licences," but no allusion is made in the preamble to the other subject dealt with in the Act—namely, the application of the penalties—it was held that the Act affected only the granting of licences, because that matter alone was mentioned in the preamble. "The words of the section,"

(*c*) Per Hardwicke, L.C., *Bassett* v. *Bassett* (1744), 3 Atk. 203; and see *Dean of York* v. *Middleburgh* (1827), 2 Y. & J. (Ex.) 196.

said Kelly, C.B., "are no doubt large enough by themselves to give the penalties levied under the Act to the treasurer of the borough, but when we see from the preamble that the single object of the section was to provide for the one special case of granting licences, the effect of the preamble is to control the enacting part of the section, and limit it to providing a remedy for the difficulty referred to as to the power to grant licences."

Effect of repealing preambles.

The practice of repealing the preambles of Acts which are still in force has been adopted by the Statute Law Revision Committee in deference to the desire expressed by Parliament to have a cheap edition of the existing statute law. But, as pointed out by Sir F. Pollock,(*d*) the omission of preambles, unless used with consummate discretion, is likely to obscure the history and meaning of legislation out of proportion to any saving of extent and bulk. Consequently, the latest edition of the Revised Statutes, although it may become popular reading, will not be of great professional value, as it will be almost invariably necessary, when any question of construction arises, to refer to the unabbreviated statute or the Statutes at Large.

Effect of headings.

4. The practice of grouping sections of an Act under different headings was first introduced in 1845 in the Clauses Consolidation Acts. Headings are divisible into those which can and those which cannot be grammatically read into the following sections of the statute (per Sir R. Collier, *Union Steamship Company of New Zealand* v. *Melbourne Harbour Trust Commissioners* (1884), 9 App. Cas. at p. 369). The first class is not now used in the more recent statutes. They constitute a sort of preamble prefixed to a class of clauses for the purpose of connecting those clauses with other classes of clauses. The effect of the headings used in the Clauses Consolidation Acts of 1845 has been discussed twice in the House of Lords. "These various headings,"

Certain headings part of the Act.

(*d*) 6 Law Quarterly Review, 472.

said Channell, B., in *Eastern Counties Railway* v. *Marriage* (1861), 9 H. L. C. 41, "are not to be treated as if they were marginal notes, or were introduced into the Act merely for the purpose of classifying the enactments. They constitute an important part of the Act itself, and may be read not only as explaining the sections which immediately follow them, as a preamble to a statute may be looked to to explain its enactments, but as affording a better key to the construction of the sections which follow them than might be afforded by a mere preamble." The case last referred to turned upon the 93rd and 94th sections of the Lands Clauses Consolidation Act, 1845, which are preceded by the following heading: "And with respect to small portions of intersected land, be it enacted as follows." The 93rd section then begins thus, "If any land not being situated in a town," &c., and the 94th section begins, "If any *such* land shall be so cut through and divided," &c. "The only question," said Lord Campbell, "in this case, is whether the word 'such' in s. 94 refers to the words in s. 93—viz., 'lands not being situate in a town or built upon,' or refers to the heading which is prefixed to these two sections—viz., 'and with respect to small portions of intersected land.' The question does not depend upon any general principle of law, but on the meaning of the Legislature in the use of the language. . . . ." The House of Lords ultimately decided that the word "such" referred to the words used in the heading. 8 & 9 Vict. c. 18.

In *Hammersmith Railway* v. *Brand* (1869), L. R. 4 H. L. 171, the question in dispute turned on the 6th and 16th sections of the Railways Clauses Act, 1845. Ss. 6–30 are preceded by a heading in these terms: "And with respect to the construction of the railways and the works connected therewith, be it enacted as follows." These words were held by Lord Chelmsford (at p. 203) and by Lord Colonsay (at p. 209) to be part of the Act, and usefully referred to to determine the sense of any doubtful expression in any particular section ranged under a particular heading. Lord Cairns dissented from the judg- 8 & 9 Vict. c. 20.

ment of the House of Lords, and laid down (at p. 217) a rule which, though perhaps inapplicable in the case, seems to be a proper limitation of the occasions for reference to headings: "I think that the headings of these clauses are not to be relied on—and many other instances of the same kind inside the clauses themselves—showing just in the same way that an Act of Parliament often goes beyond the preamble, that provisions have been introduced in the progress of the clauses going somewhat beyond the short and summary definition in the heading of the clauses. In fact, one of these Acts of Parliament shows that these short headings were introduced merely to earmark a set of clauses, and to afford a short and summary way by which they might be introduced by reference as enactments into other Acts of Parliament."

12 & 13 Vict. c. 106.

The same method of drafting was adopted in the Bankruptcy Act, 1849, and in *Bryan* v. *Child* (1850), 5 Ex. 368, it was held that the heading to ss. 133–138, "with respect to transactions with the bankrupt and executions against his property, or within a limited period previous thereto, be it enacted," must be read as embodied in each of those clauses, although in some (ss. 136, 137) the words of enactment were repeated. Pollock, C.B. (p. 374), described the heading as an introductory preamble to the set of clauses; Alderson, B., spoke of the clauses as being within the ambit of the preamble; and Rolfe, B. (Lord Cranworth), said that the preamble must be read with ss. 133–35 as a matter of grammar, and that the repetition of the words of enactment in ss. 136, 137, was a mere matter of style, but added that the latter sections, being *in pari materiâ*, must be read in the same way, which seems to beg the question at issue.

Headings do not affect construction where clear.

But the same general rule which regulates the effect of the preamble (*e*) applies also to these headings—namely, that they are not to be taken into consideration if the language of the enactment is clear.

(*e*) See this general rule discussed, *ante*, p. 221.

Sub-headings.

The practice of division into parts now usual in all lengthy Acts, and of grouping or classifying the enactments under headings or titles, was introduced in the Merchant Shipping Act, 1854, and is said to have been derived from the Code of the State of New York.(*f*) This second class of heading is frequently used in statutes passed since 1861, and the use increases, as it facilitates reference, and gives a key to the governing intention of each part of a complicated Act.

17 & 18 Vict. c. 104.

The Merchant Shipping Act, 1854, and the Companies Act, 1862, contain sections enacting and specifying the subsequent divisions, and in Acts so constructed it is beyond controversy that the headings are part of the Act. In the absence of such specific provision, any controversy as to whether such headings were before Parliament or inserted by the printers can only be settled, if at all, by reference to the vellum print of the Act in the custody of the Clerk of the Parliaments.

25 & 26 Vict. c. 89.

The headings are sometimes in Roman and sometimes in italic letters, but the former are usually confined to stating the part of the Act, and the latter state the subdivision of the part.

It was at one time supposed that courts of law would not recognise the division into parts or the headings as substantive parts of the Act. But they are gradually winning recognition as a kind of preamble to the enactments which they precede.

They are, however, often inserted, as was said in *Union Steamship Co.* v. *Melbourne Harbour Commissioners* (1884), 9 App. Cas. 369, merely "for the purpose of convenience of reference, and are not intended to control the interpretation of the clauses which follow. But the Court there added, "It may be, indeed, that the fact of a clause being found in a certain group may in some cases possibly throw some light on its meaning."

"Although," said Kelly, C.B., in *Latham* v. *Lafone*

(*f*) See Thring on Practical Legislation, pp. 18, 19, where the effect of these headings is considered from a draftsman's point of view.

(1867), L. R. 2 Ex. 119, in discussing s. 192 of the Bankruptcy Act, 1861, "we may refer to the introductory words of the section to put a construction on a doubtful part of the statute, yet if the language of the enactment is clear, and includes in express terms such a document as this [a letter of licence], we should not be justified in limiting that sense by the introductory words."

29 & 30 Vict. c. cclxxiii.

The Glasgow Police Act, 1866, is divided into thirty-three parts, numbered separately in Roman numerals, and preceded by headings in Roman letters; and some of the divisions (*e.g.*, xx.) are subdivided, each subdivision being preceded by sub-headings in italics. It contains no separate section providing for or recognising that this division is part of the Act, but some references in sections to the headings. Moreover, some of the sections under the sub-heading (*e.g.*, s. 251) refer in terms to the heading under which they are classed. The words of enactment are inserted only at the beginning of the Act, and are not repeated before any of the headings. Part xxvii. ss. 364–386, is headed BUILDINGS—THEIR ERECTION, ALTERATION, AND USE. A controversy arose upon the construction of s. 384, with reference to the obligation of the owner of a land or heritage to fence the same, as to whether the section obliged a riparian owner to fence the side of his land next to the river Clyde. And the interpretation of the section turned upon whether the heading above cited could be considered, or governed the section in question. The House of Lords, in *Lang* v. *Kerr* (1878), 3 App. Cas. 529, decided that the heading could be considered, and limited the generality of the terms used in s. 384. As Lord Cairns said, at p. 536, "These headings in this Act are not to be looked upon as marginal notes inserted, perhaps, not by Parliament, but by the printer, because they are referred to in the body of the Act itself." Lord Hatherley, in the same case, took the same view, saying (p. 542) that the parts or divisions of the Act were parts of the body of the Act itself, and not marginal notes.

The Public Health Act, 1875, is divided into parts, each preceded by a heading in Roman letters. The parts and these headings are made part of the Act by s. 3. Besides the headings so recognised there are also before each part sub-headings in smaller capitals, and further sub-divisions in italics, to which s. 3 makes no reference. In *R.* v. *Local Government Board* (1882), 10 Q. B. D. 309, a question arose as to the meaning of s. 268, which is one of two sections under the italic sub-heading *Appeal* in part vii., headed LEGAL PROCEEDINGS. Brett, L.J. (at p. 321), said of the sub-heading, "I cannot come to the conclusion that the heading of a series of sections introduced into an Act of Parliament is not to be considered as part of the Act. I think that that word 'Appeal' at the head of the section may properly be considered as part, and used for the purpose of construing any doubtful matter in the sections under that very heading." 38 & 39 Vict. c. 55.

The Scotch view of these general headings was thus stated in *Nelson* v. *McShee* (1889), 17 Rettie (Justiciary) 1, at p. 2, by Lord McLaren: "There are five sections in the statute under the general heading of 'Unwholesome and Adulterated Food.' I rather think that more importance has been attached by the Court to a general heading such as this than has ever been given to the side readings [marginal notes] of individual sections. Side readings are not part of the Act, but a heading such as this occurring in the text is held to be part of the Act." In the case in question, by reference to the general heading, Lord McLaren was led to the conclusion that possession of unsound meat was not an offence against the statute in question (the Glasgow Police Act, 1866, 29 & 30 Vict. c. cclxxiii.) unless it was intended to be sold for human food; and his view of the statute was adopted by the Court of Justiciary in *Scott* v. *Alexander* (1890), 17 Rettie (Justiciary) 35. Scotch construction.

5. In some, perhaps in the majority, of modern Acts of Parliament, there is what is called an "interpretation clause." By such clauses it is enacted that certain words Interpretation clauses.

when found in the Act(*g*) are to be understood in a certain sense, and are to include certain things which, but for the interpretation clause, they would not include. Thus, in *Cother* v. *Midland Railway* (1847), 2 Phill. 469, the word "railway" was interpreted by s. 3 of 8 & 9 Vict. c. 20, to mean "the railway and works by the special Act authorized to be constructed;" and it was held by Lord Cottenham that, by virtue of this interpretation clause, the company had power to take land compulsorily under the Act for the purpose of building a railway station upon.

Usually extend meaning of word interpreted.

Interpretation clauses frequently fall under severe judicial criticism from failure to observe the valuable rule never to enact under the guise of definition. In *R.* v. *Commissioners under the Boilers Explosion Act*, 1882 (1891), 1 Q. B. 703, the question arose whether a steam pipe conducting steam to a pumping engine in a mine from a boiler on the surface was a boiler within the meaning of the Act above mentioned, *i.e.*, "a closed vessel for generating steam, &c." (s. 3). The Court went somewhat far in deciding that it was, and Lord Esher, M.R., said (at p. 716): "The draftsman has gone upon what, in my mind, is a dangerous method of drawing Acts of Parliament. He has put in a section which says that a boiler shall mean something which is in reality not a boiler. This 3rd section of the Act is a peculiarly bad specimen of the method of drafting which enacts that a word shall mean something which in fact it does not mean." And the same judge said in *Bradley* v. *Baylis* (1881), 8 Q. B. D. at p. 230, with reference to the Franchise and Registration of Electors Acts: "It seems to me that nothing could be more difficult, nothing more involved, than these statutes, and that that difficulty

45 & 46 Vict. c. 22.

(*g*) "I cannot call to mind," said Grove, J., in *Budge* v. *Andrews* (1868), L. R. 3 C. P. D. 521, "any case in which an interpretation clause *in a previous Act* has been allowed to control or limit the effect of provisions *in a subsequent Act*." This must depend on whether the Acts are or are not to be read as one. The Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 31, specifically provides that terms used in Rules made under an Act are to have the same meaning as in the Act, unless a contrary intention appears.

arises from the fact of Parliament insisting upon saying that things are what they are not" by saying that "a dwelling-house" shall mean a part of a dwelling-house.(*h*)

But an interpretation clause which extends the meaning of a word does not take away its ordinary meaning.(*i*) In discussing the meaning of the term "street" as used in the Public Health Act, 1875, s. 157, and interpreted in s. 4, Lord Selborne said in *Robinson* v. *Barton Eccles L. B.* (1883), 8 App. Cas. 798, at p. 801, "An interpretation clause of this kind is not meant to prevent the word receiving its ordinary, popular, and natural sense whenever that would be properly applicable, but to enable the word as used in the Act, when there is nothing in the context or the subject-matter to the contrary, to be applied to some things to which it would not ordinarily be applicable. I look upon this portion of the interpretation clause as meaning neither more nor less than this, that the provisions contained in the Act as to streets, whether new streets or old streets, shall, unless there be something in the subject-matter or the context to the contrary, be read as applicable to these different things. It is perfectly consistent with that that they should be read as applicable, and should be applied,

But interpretation clauses do not in that case take away natural and ordinary meaning of words interpreted. 38 & 39 Vict. c. 55.

(*h*) This was pointed out by Lord St. Leonards in *Dean of Ely* v. *Bliss* (1852), 2 De G. M. & G. 471. He there said, "It has been much doubted, and I concur in that doubt, whether these interpretation clauses, which are of modern origin, have not introduced more mischief than they have avoided, for they have attempted to put a general construction upon words which do not admit of such a construction." See also per Jessel, M.R., in Parl. Pap. 1875, No. 208, p. 86. In *Lindsay* v. *Cundy* (1876), 1 Q. B. D. 358, Blackburn, J., said, "An interpretation clause is a modern innovation, and frequently does a great deal of harm;" and in *Wakefield* v. *West Riding, &c., Rail. Co.* (1865), 6 B. & S. 801, Cockburn, C.J., said, "I hope the time will come when we shall see no more of interpretation clauses, for they generally lead to confusion." Nevertheless, Blackburn, J., in *R.* v. *Ingham* (1864), 5 B. & S. 277, remarks that, "as a doubt existed [as to the meaning of the word "indictment"], Lord Campbell thought it worth while, in framing 14 & 15 Vict. c. 100, to introduce an interpretation clause, and it would have been better if the framer of 24 & 25 Vict. c. 100, had used the same precaution." But in (1885) 10 App. Cas. 374 (twenty years afterwards), Lord Blackburn speaks of "the soundness of the objection of the old school of draftsmen to the introduction of interpretation clauses."

(*i*) *Cf. Midland Rail. Co.* v. *Ambergate Rail. Co.* (1853), 10 Hare 359.

to those things to which they in their natural sense apply, and which do not require any interpretation clause to bring them in." "An interpretation clause," said Lush, J., in *R.* v. *Pearce* (1880), 5 Q. B. D. 389, "should be used for the purpose of interpreting words which are ambiguous or equivocal, and not so as to disturb the meaning of such as are plain," or, as Lord Coleridge said in *London School Board* v. *Jackson* (1881), 7 Q. B. D. 502, so as "to prevent the operation of a word in its primary and obvious sense."(*j*) "The interpretation clause," said Cotton, L.J., in *Nutter* v. *Accrington* (1879), 4 Q. B. D. 384, "is not restrictive. It does not say that the word 'street' shall be confined to any highway not being a turnpike road, but that it shall 'apply to and include any highway not being a turnpike road.' That is enlarging, not restricting, the meaning of 'street,' that is to say, that which, independently of the Act of Parliament, in ordinary language, is properly a street does not cease to be so because it is part of a turnpike road." In *Ex parte Ferguson* (1871), L. R. 6 Q. B. 291, a question arose as to the meaning of the enactment in 17 & 18 Vict. c. 104, s. 2, that the word "ship" shall include "every description of vessel used in navigation not propelled by oars." It was consequently contended that a fishing-boat 24 feet long, partially decked over and fitted with two masts and a rudder, and also with four oars, which were sometimes used to propel it along, was not a ship within the meaning of the Act, because it was propellable by oars. In deciding against this argument, Blackburn, J., said: "The argument against the proposition that this is a ship is one which I have heard very frequently, viz., that, when an Act says that certain words shall include certain things, the words must apply exclusively to that which they are to include.

(*j*) From a draftsman's point of view, an interpretation clause is objectionable which enacts under the guise of definition or alters the natural and ordinary meaning of the term defined. Parliament, in adopting such clauses, encroaches on the functions of popular usage, *Quem penes est arbitrium et jus et norma loquendi.*

That is not so; the definition given of a ship is in order that the word 'ship' may have a more extensive meaning, and the words 'not propelled by oars' are not intended to exclude all vessels that are ever propelled by oars." And this *dictum* of Blackburn, J., was cited with approval by Sir R. Phillimore shortly after it was pronounced. In *The Gauntlet* (1871), L. R. 3 Ad. & E. 381,(*k*) it was contended that a ship which had been employed as a steam-tug by a French ship of war to tow a Prussian prize, was not liable to be forfeited under the Foreign Enlistment Act, 1870, which enacts in s. 8 "that if any person . . . . despatches any ship with intent . . . . that the same shall be employed in the *naval service* of any foreign State at war with any friendly State," such ship shall be forfeited; and in s. 30, that "*naval service* shall include any user of a ship as a transport, store-ship, privateer, or ship under letters of marque." The Court held that the user of a ship as a steam-tug was included in the expression "naval service," on the ground that the interpretation clause was not of a restrictive, but an enlarging character, and "I am glad," added Sir R. Phillimore, "to be forfeited in this conclusion by the opinion of Blackburn, J., upon a similar interpretation clause."

Interpretation clauses sometimes inserted merely *ex abundanti cautelâ*.

Sometimes a term is defined in an interpretation clause merely *ex abundanti cautelâ*—that is to say, to prevent the possibility of some common law incident relating to that term escaping notice. Thus, in *Wakefield* v. *West Riding Railway* (1865), L. R. 1 Q. B. 84, it appeared that by s. 3 of the Railways Clauses Act, 1845 (8 Vict. c. 20), the term "justice of the peace" is defined as "a justice of the peace acting for the . . . . place where the matter requiring the cognizance of a justice shall arise, *and who shall not be interested in the matter.*" It was therefore argued that by this definition jurisdiction was altogether taken away from a justice who was interested in the matter, and that this

(*k*) Although this case was overruled by the Judicial Committee (1872), L. R. 4 P. C. 184, this part of Sir R. Phillimore's judgment was approved.

objection could not be waived. But it was held that the latter words of the definition were merely declaratory of the common law, and were only added *ex abundanti cautelâ*; (*l*) "in the apprehension," as Cockburn, C.J., said, "that justices, if not warned of what the law is, might act although interested. Had it been intended to render an interested justice absolutely incompetent, notwithstanding that both parties might waive the objection, a positive enactment to this effect would have been inserted."

Interpretation clause does not necessarily apply on every occasion when word interpreted is used in Act.

Another important rule with regard to the effect of an interpretation clause is, that an interpretation clause, as the Court said in *R.* v. *Cambridgeshire* (1838), 7 A. & E. 491, is not to be taken as substituting one set of words for another, or as strictly defining what the meaning of a term must be under *all* circumstances, but rather as declaring what may be comprehended within the term where the circumstances require that it should be so comprehended. If, therefore, an interpretation clause gives an extended meaning to a word, it does not follow as a matter of course that, if that word is used more than once in the Act, it is on each occasion used in the extended meaning, and it may be always a matter for argument whether or not the interpretation clause is to apply to the word as used in the particular clause of the Act which is under consideration. "It appears to me," said Lord Selborne in *Meux* v. *Jacobs* (1875), L. R. 7 H. L. 493, "that the interpretation clause does no more than say that, where you find these words in the Act, they shall, unless there be something repugnant in the context or in the sense, include fixtures." And in *Ex parte Kent County Council* (1891), 1 Q. B. 389, the word "borough" was given a different meaning in different parts of the same section (35) of the Local Government Act, 1888, on the ground that the sense of the section clearly required it.

Schedule is integral part of an Act.

6. To some Acts of Parliament schedules are attached.

(*l*) "*Abundans cautela non nocet* is an old maxim of the law," per Lord Fitzgerald in *West Riding Justices* v. *R.* (1883), 8 App. Cas. 796.

One of the earliest is that of 1765 (5 Geo. 3, c. 26), relating to the purchase of the Isle of Man. "A schedule," as Brett, L.J.,(*m*) said in *Att.-Gen.* v. *Lamplough* (1878), 3 Ex. D. 229, "in an Act is a mere question of drafting, a mere question of words. The schedule is as much a part of the statute, and is as much an enactment, as any other part."

Form in schedule does not control operation of statute.

"Forms in schedules," as the Court said in *Bartlett* v. *Gibbs* (1843), 5 M. & G. 96, "are inserted merely as examples, and are only to be followed implicitly so far as the circumstances of each case may admit;" consequently, it may sometimes happen that there is a contradiction between the enactment and the form in the schedule. In such a case "it would be," as Lord Penzance said in *Dean* v. *Green* (1882), 8 P. D. 89, "quite contrary to the recognised principles upon which courts of law construe Acts of Parliament to . . . . restrain the operation of an enactment by any reference to the words of a mere form given for convenience' sake in a schedule." This was well put by Lord Denman, C.J., in *R.* v. *Baines* (1840), 12 A. & E. 226. "It was argued," said he, "that the form of the *significavit* itself, as given in the schedule, proves that the Judge, *i.e.*, the bishop, is the only person who ought to certify, as 'by divine providence' is a form that can only apply to a bishop. . . . . Such form, although embodied in the Act, cannot be deemed conclusive of a question of this nature; we have also to consider the language of the section to which the schedule is appended, and if there be any contradiction between the two . . . . upon ordinary principles, the form, which is made to suit rather the generality of cases than all cases, must give way."(*n*)

Immaterial whether an enactment is contained in separate section or not.

7. Prior to 1850 it was usual to preface each distinct portion of an Act by words of enactment, and division into sections had no legislative authority. By 13 & 14 Vict.

(*m*) See also *Dale's case* (1881), 6 Q. B. D. 456.

(*n*) In construing a private Act it was held in Scotland that the schedule could not be construed to enlarge the Act: *Laird* v. *Clyde Trustees* (1879), 6 Rettie (Sc.) 756.

c. 21, s. 2, it was enacted that "*all Acts shall be divided into sections if there be more enactments than one*, which sections shall be deemed to be substantive enactments without any introductory words." The portion in italics has been repealed without re-enactment by the Interpretation Act, 1889 (see ss. 8, 41), but without any real change in the law. It was, at most, a mere direction to draftsmen and parliamentary officials without any sanction. There is not, however, any rule as to how many different sentences, each containing a substantive enactment, may be comprised in one "section," and it is clear, whether an enactment "be printed as part of one section, or made in another section, can make," said Holroyd, J., in *R.* v. *Newark-upon-Trent* (1824), 3 B. & C. 71, "no difference in the construction of the statute." Thus, in *Cohen* v. *South-Eastern Railway* (1877), 2 Ex. D. 260, it appeared that at the end of s. 16 of 31 & 32 Vict. c. 119, was the following enactment:—"The provisions of the Railway Act, 1854, so far as the same are applicable, shall extend to the steam vessels and to the traffic carried on thereby." It was argued that, as these words stood at the end of and formed part of s. 16, and were not contained in a separate section, they only applied to the subject-matter to which the previous parts of s. 16 related, and that consequently s. 7 of the Act of 1854 (which related to something quite different from the subject-matter of this s. 16) was not incorporated into the Act of 31 & 32 Vict. c. 119. "I am not aware," said Mellish, L.J., "that there is any such rule of construction of an Act of Parliament. If some absurdity or inconvenience followed from holding it to apply to the whole Act, it might be reasonable to confine the incorporation to clauses relating to some particular subject-matter, but if there is no inconvenience from holding that the incorporation includes s. 7 as well as the other sections, we ought to hold that it does."

It is usual now to distinguish the term "clause" (*o*)

(*o*) A clause of a will was defined by Lord Cairns in *Swinton* v. *Bailey*

from the term "section" by using the former to denote the paragraph when in a Bill, the latter to denote it in an Act. But "clause" is often used for "section" in decisions on construction.

Construction of provisoes.

The effect of an excepting proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment something which but for the proviso would be within it; and such a proviso cannot be construed as enlarging the class of contracts falling within the scope of an enactment when it can be fairly and properly construed without attributing to it that effect.(*p*)

Rule as to construction of repugnant clauses.

"It is a cardinal principle," said James, L.J., in *Ebbs* v. *Boulnois* (1875), 10 Ch. App. 484, "in the interpretation of a statute, that if there are two inconsistent enactments, it must be seen if one cannot be read as a qualification of the other." If the two inconsistent enactments cannot be so treated, then "the known rule," said Keating, J., in *Wood* v. *Riley* (1867), L. R. 3 C. P. 27, "is that the last must prevail." But besides the actual enacting clauses, there are in many Acts provisoes and saving clauses, and it sometimes happens that there is a repugnancy between the enacting clauses and the provisoes and saving clauses. The question then arises, How is the Act, taken as a whole, to be construed? "A proviso," said the Court in *Ex parte Partington* (1844), 6 Q. B. 653, "must be construed with reference to the preceding parts of the clause to which it is appended," and "as subordinate to the main clauses of the Act."(*q*) "It is a well-known rule," said Bovill, C.J., in *Horsnail* v. *Bruce* (1873), L. R. 8 C. P. 385, "in the construction of statutes, that if a substantive enactment is repealed, that which comes by way of proviso upon it is

(1878), 4 App. Cas. 77, to be any "collocation of words in a will which, when removed out of a will, will leave the rest of the will intelligible." "The word 'clause,'" said Lord O'Hagan (at p. 84), "has various operations and is used in various ways; there may be a clause of a Bill in Parliament. . . ."

(*p*) See *Duncan* v. *Dixon* (1890), 44 Ch. D. at p. 215 (Kekewich, J.).

(*q*) Per Martin, B., in *Stourbridge Navigation Co.* v. *Earl of Dudley* (1860), 3 E. & E. 427, following *Dudley Canal* v. *Grazebrook* (1830), 1 B. & Ad. 59.

impliedly repealed also." "When one finds a proviso to a section," said Lush, J., in *Mullins* v. *Treasurer of Surrey* (1880), 5 Q. B. D. 173, "the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso."

Construction of repugnant proviso.

The generally accepted rule with regard to the construction of a proviso in an Act which is repugnant to the purview of the Act is that laid down in *Att.-Gen.* v. *Chelsea Waterworks* (1728), Fitzg. 195, namely, "that where the proviso of an Act of Parliament is directly repugnant to the purview, the proviso shall stand and be a repeal of the purview, as it speaks the last intention of the makers."

Construction of a repugnant saving clause.

But it has been usually laid down in the books that this rule only holds good with regard to a proviso if repugnant, and that if the repugnant clause is in the form of a saving clause, then this rule holds good no longer, for it is said that a saving clause which is repugnant to the purview of the Act is to be rejected and treated as void. In the *Case of Alton Woods* (1595), 1 Rep. 472, Lord Coke gives the following illustration of this: "If it be recited by an Act of Parliament that, whereas J. S. is seised of certain land in fee, this land by the same Act is given to the King in fee, saving the estates, rights, &c., of all persons, the estate of J. S. is not saved thereby, for that would be repugnant and make the express grant void." It appears very doubtful whether this distinction between the effect of a saving clause and a proviso would now be upheld, the reason of the distinction being, as Kent says in his Commentaries,(*r*) by no means apparent, and contrary, as he tells us, to the rules of American law. The same view has been taken in the Irish case of *Clelland* v. *Ker* (1843), 6 Ir. Eq. R. 35, where it was held that a saving, if co-extensive with the enactment, is repugnant, and must give way to the enactment; and in the Scotch case of *Lord Advocate* v. *Hamilton* (1852), 1 Macq. H. L. (Sc.) 46, where it is said by Lord Brougham that, as a general

(*r*) 1 Kent, Comm. (10th ed.), p. 522.

rule, a salvo cannot *create* any affirmative or positive right. In the American case of *Savings Institution* v. *Makin* (1845), 23 Maine 360, it was held that a saving clause in a statute in the form of a proviso, restricting in certain cases the operation of the general language of the enacting clause, was not void, though the saving clause was repugnant to the general language of the enacting clause. "The true principle," say the editors of the last edition of Kent's Commentaries, "undoubtedly is, that the sound interpretation and meaning of the statute on a view of the enacting clause, saving clause, and proviso, taken and construed together, are to prevail. If the principal object of the Act can be accomplished and stand under the restriction of the saving clause or proviso, the same is not to be held void for repugnancy."(*s*) This, it is submitted, would be held by our English Courts at the present day to be good law.(*t*)

Former rule as to pleading proviso or saving clause.

There is another difference between the effect of a saving clause and a proviso, which it may perhaps be as well to notice here, although it has no longer any practical existence. This is, that, as Lord Abinger said in *Thibault* v. *Gibson* (1843), 12 M. & W. 94, "it is a well-established principle that in all cases where proceedings are taken for the recovery of a penalty under a statute if there is any *exception* in the clause which gives the penalty, exempting certain cases from its operation, the declaration or information must show that the particular case is not within the exception. But where the exception comes by way of *proviso* in a subsequent part of the Act, it is not necessary to notice it in the declaration or information, but it is a matter which the defendant must allege as a ground of defence." But it is clear that this former rule of pleading is now abrogated,(*u*) as now, by the Rules of the Supreme Court, 1883,

(*s*) 12th ed. by Holmes, vol. i. p. 463, note (*b*).

(*t*) But see the argument of A. J. Stephens, Q.C., as reported in *Hibbert* v. *Purchas* (1870), L. R. 3 P. C. 617; and per Macdonald, C.B., in *Riddell* v. *White* (1793), 1 Anstr. 294.

(*u*) See Annual Practice, 1892, p. 432.

Ord. 19, r. 15, "the defendant or plaintiff, as the case may be, must raise by his pleading all matters which show the action or counter-claim not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence or reply as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the previous pleadings."

Implied savings.

The Interpretation Act, 1889, s. 38, contains the following rules as to implied savings.

In case of repeal by that Act, or any Act passed after 1889, of any enactment which is re-enacted with or without modification by the repealing Act, references in unrepealed Acts to the repealed Act are to be construed as referring to the corresponding portion of the repealing Act, unless a contrary intention appears.

The repeal after 1889 of any enactment, unless a contrary intention appears, does not—

(a) revive anything (an Act or law) not in force or existing at the time at which the repeal takes effect;

(b) affect the previous operation of the repealed enactment, or anything done or suffered thereunder;

(c) affect rights, privileges, obligations, or liabilities acquired, accrued, or incurred under the repealed enactment;

(d) affect penalties, forfeitures, or punishments incurred in respect of an offence against the repealed enactment; or,

(e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment, or the power instituting, continuing, or enforcing the investigation, legal proceeding, or remedy, or of imposing the penalty, forfeiture, or punishment, as if the repealed Act had not been passed.

Construction of general and

Besides provisoes and saving clauses, Acts of Parliament sometimes contain general enactments relating to

the whole subject-matter of the statute, and also specific and particular enactments relating to certain special matters, and if the general and specific enactments prove to be in any way repugnant to one another, the question will arise, which is to control the other. In *Pretty* v. *Solly* (1859), 26 Beav. 606, at p. 610, Romilly, M.R., stated as follows what he considered to be the rule of construction under such circumstances:—"The general rules," said he, "which are applicable to particular and general enactments in statutes [if they are repugnant] are very clear; the only difficulty is in their application. The rule is, that whenever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply." "For instance," said the same judge in *De Winton* v. *Brecon* (1859), 28 L. J. Ch. 604, "if there is an authority in an Act of Parliament to a corporation to sell a particular piece of land, and there is also a general clause in the Act to the effect that nothing in the Act contained shall authorize the corporation to sell any land at all, the general clause would not control the particular enactment, and the particular enactment would take effect, notwithstanding the prior exception was not clearly expressed in the general clause. If the Court finds a positive inconsistency and repugnancy, it may be difficult to deal with it, but, so far as it can, it must give effect to the whole of the Act of Parliament." So, in *Churchill* v. *Crease* (1828), 5 Bing. 180, the question was whether a payment made by a bankrupt before the issuing of the commission against him was protected by s. 82 of 6 Geo. 4, c. 16, which enacted that "all payments really and *bonâ fide* made, or which hereafter shall be made, to any creditor by a bankrupt, before the issuing of the commission against him, shall be deemed valid." It was argued that, as by s. 136 the Act was not to come into force until the September then next, and the

specific enactments if repugnant.

payment in question was made before the September, the Act would not apply to that payment so as to protect it. The Court, however, held that it was protected. "I should have thought," said Best, C.J., "that s. 136 was conclusive if there had been no conflicting intention to be collected from the Act, but the rule is that where a general intention is expressed [as here, that the Act should not come into force until September], and the Act expresses also a particular intention incompatible with the general intention [as here, that all payments *bonâ fide* made—*i.e.*, *heretofore* made—shall be protected], the particular intention is to be considered in the nature of an exception."

Same rule applies if one Act is incorporated into another.

Where the later of two Acts provides that the two are to be read together, every part of each Act must be construed as if the two Acts had been one, unless there is some manifest discrepancy making it necessary to hold that the later Act has to some extent modified the provisions of the earlier Act.(*x*) In other words, such a provision means that the earlier Act, so far as not expressly or impliedly repealed by the later Act, must be read with it, and does not exclude the possibility of implied repeal.

The effect of bringing into a later Act, *by reference*, sections of an earlier Act is just the same as if they had been actually written into it or printed into it, and in their construction the earlier Act need not be referred to at all.

The mere fact of bringing clauses from an anterior Act into a subsequent Act cannot on any legal principle prevent the subsequent Act from being treated entirely as a subsequent Act, and cannot, it would seem, prevent the Lands Clauses Acts from being applied to the subsequent Act,(*y*) so far as it contains any powers as to the taking of lands.

The effect of s. 1 of the Lands Clauses Act, 1845

(*x*) J. C., per Lord Selborne in *Canada Southern Railway Co.* v. *International Bridge Co.* (1883), 8 App. Cas. 723, 727.

(*y*) *Re Wood's Estate* (1886), 31 Ch. D. 615 (Esher, M.R.); see, however, *Re Mills' Estate* (1886), 34 Ch. D. 14, and *Re Cherry's Settled Estates* (1862), 4 D. F. & J. 332.

(apart from any question whether it binds the Crown or any persons representing the Crown), is, that every part of that Act is to be considered to be incorporated with every subsequent Act which authorizes the purchase or taking of lands for the purposes of any undertaking, save so far as its provisions are expressly varied or excepted by the subsequent Act, whether the Act be a public Act or local and personal only.(z)

And the same rule applies if an Act which lays down a general rule upon a subject is incorporated into another Act which gives a particular rule on the same subject—that is to say, in this case also the particular rule will abrogate the general rule. "If the incorporating Act," said Lord Westbury in *Ex parte St. Sepulchre's* (1864), 33 L. J. Ch. 372, "gives itself a complete rule on the subject, the expression of that rule will undoubtedly amount to an exception of the subject-matter of the general rule contained in the incorporated Act." Thus, in *London, Chatham, and Dover Railway* v. *Wandsworth* (1873), L. R. 8 C. P. 185, it appeared that the Railways Clauses Act, 1845, was to be treated as incorporated into the special Act, except in so far as its provisions were expressly varied by the special Act. Now, the Railways Clauses Act contained provisions as to how railway companies might be proceeded against in case they allowed any of their bridges to remain out of repair; but the special Act also contained provisions on this subject different from those in the Railways Clauses Act; therefore the question arose which procedure was to be adopted, and it was held, in accordance with the rule above stated, that the fact of the special Act containing provisions on the subject was to be taken as expressly varying the provisions contained in the Railways Clauses Act. And so in *Att.-Gen.* v. *Great Eastern Rail. Co.* (1872), 7 Ch. App. 481, it was held by the Lords Justices (reversing the decision of Bacon, V.C.) that the general enactment of 8 & 9 Vict. c. 20, s. 13,

(z) *Re Wood's Estate* (1886), 31 Ch. D. 607 (C. A.).

which provided that "where it is intended to carry the railway on an arch as marked on the said plan, the same shall be made accordingly," was abrogated by the special enactment of the company's special Act (into which the 8 & 9 Vict. c. 20, had been incorporated), which enabled the company to "stop up all streets within the area hereinbefore described." It was admitted that upon the "said plan" the street in question which the company claimed to be entitled to stop up (Sun Street) was not marked as to be closed, and it was therefore argued that the company were bound by their plan. "But," said Mellish, L.J., "looking at the private Act, it is difficult to say how plainer words could have been used for the purpose of showing that the company were entitled to stop up this street. . . . . The real question to be decided in this case is this, Does the recital in the special Act amount to an express varying of the enactment in the general Act, which says that the arch is to be constructed as delineated on the plan? I am clearly of opinion that it does."

Incorporation by reference.

The system of incorporation by reference which is in these days adopted in the Statute-book produces some curious results.(*a*) In *Gaslight and Coke Company* v. *Hardy* (1886), 17 Q. B. D. 619, the Court of Appeal was called upon to construe a repealed section. The question in the case was whether a gas stove let for hire was a "fitting for gas" within s. 14 of the Gas Works Clauses Act, 1847. That Act is incorporated with, and forms part of, the Metropolis Gas Act, 1860, and is also incorporated with the special Act (31 & 32 Vict. c. cvi.) of the plaintiff company. Several of the sections of the Act of 1847, including s. 14, are included in the Statute Law Revision Act, 1875, and are thereby "repealed except so far as incorporated with special Acts to which 34 & 35 Vict. c. 41, does not apply." The last-named Act, s. 3, did not apply to the company's private Act above referred to.(*b*)

10 & 11 Vict. c. 15.

23 & 24 Vict. c. 125.

38 & 39 Vict. c. 66.

(*a*) See 3 Law Quart. Rev. 114. (*b*) *Vide supra*, "Savings," p. 242.

PART II.

EFFECT AND OPERATION OF STATUTES.

CHAPTER I.

EFFECT OF STATUTES CREATING DUTIES.

PAGE

1. General liabilities for neglect of statutory duty . 247
   (a) When indictment will lie . . . 248
   (b) When mandamus will lie . . . 250
   (c) Equitable remedies 251
   (d) When action will lie 252
   Actions against corporations for neglect of statutory duty . . . 254
   Action will lie for neglect of ministerial, but not of judicial duty . 254
   Damage sustained must be such as statute was intended to prevent 255
   Usually good defence that reasonable care was taken to perform the duty . . 257
   When performance of statutory duty is excused by act of God . . 257
2. A specific remedy given by statute for neglect of statutory duty is usually sole remedy . . . 259
3. Rules as to statutes creating duties being directory only 261
4. Contracts avoided if in contravention of statute creating duty . . . 263
   Statutory rules as to contract may not be waived 266
   Illegality may be set up after part performance . 266
   Contract how far void if against the policy of statute 267
   Illegal term in contract does not necessarily vitiate whole contract . . 268

1. VERY many statutes are passed to create duties performable either by certain particular individuals indicated by

Liability incurred by neglect to

perform statutory duties.

the statute, or by any persons who bring themselves within the operation of the statute; and questions often arise as to what liability is incurred by neglect to perform statutory duties.

When a statute creates a duty, one of the first questions for judicial consideration is what is the sanction for breach, or the mode for compelling the performance, of the duty. This question usually resolves itself into the inquiry whether the Act is mandatory or directory. If it be directory, the Courts cannot interfere to compel performance or punish breach of the duty, and disobedience to the Act does not entail any invalidity.(*a*) If the Act be mandatory, disobedience entails legal consequences, which may fall under the heads of public and private remedies in courts of justice, or the avoidance of some contract, instrument, or document without the intervention of any Court.

Where, in a statute creating a duty, no special remedy is prescribed for compelling performance of the duty or punishing its neglect, the Courts will, as a general rule, presume that the appropriate common law remedy by indictment, mandamus, or action was intended to apply.

Even where the statute creating the duty also provides a special remedy for its enforcement, the common law remedies (of indictment, mandamus, or action according to the subject-matter) are in many cases available cumulatively or alternatively to the special remedy contained in the statute. Whether they are so or not is upon each statute a question of construction.

Liability to indictment.

As a general rule, a person who neglects to perform a statutory duty is liable to be proceeded against by indictment if the duty is public. Charles, J., in the recent case of *R.* v. *Hall* (1891), 1 Q. B. 747, at p. 743,(*b*) adopted, as the principle which should govern a case of this description, the rule stated in Hawkins' Pleas of the Crown, book 2, ch. 25, s. 4. The passage is as follows:—"It seems to be a good general ground,

(*a*) *Vide infra*, p. 261.
(*b*) Most of the earlier cases are discussed in that judgment, at pp. 762–69.

that wherever a statute prohibits a matter of public grievance to the liberties and security of a subject, or commands a matter of public convenience, as the repairing of the common streets of a town, an offender against such statute is punishable, not only at the suit of the party aggrieved, but also by way of indictment for his contempt of the statute, *unless such method of proceeding do manifestly appear to be excluded by it.*" "Yet, if the party offending have been fined to the King in the action brought by the party, as it is said that he may in every action for doing things prohibited by statute, it seems questionable whether he may be afterwards indicted, because that would be to make him liable to a second fine for the same offence. Also where a statute makes a new offence which was in no way prohibited by the common law, and appoints a peculiar manner of proceeding against the offender, as by commitment, or action of debt, or information, &c., without mentioning an indictment, it seems to be settled to this day that it would not maintain an indictment, because the mentioning the other methods of proceeding seems impliedly to exclude that of indictment. Yet it hath been adjudged that if such statute give a recovery by action of debt, bill, plaint, or information, *or otherwise*, it authorizes a proceeding by way of indictment. Also, where a statute adds a further penalty for an offence prohibited by the common law, there can be no doubt but that the offender may still be indicted, if the prosecutor think fit, at the common law. And if the indictment for such offence conclude *contra formam statuti*, and cannot be made good as an indictment upon the statute, it seems to be now settled that it may be maintained as an indictment at common law."

The principle laid down in the latter part of this passage has been adopted by Parliament in the Interpretation Act, 1889, s. 33, which provides that where an act or omission constitutes an offence under two or more Acts, or both under an Act and at common law, the offender, unless the contrary intention appears, is liable

52 & 53 Vict. c. 63.

O.J.A.A.11.

to be prosecuted and punished under either or any of the Acts or at common law, but is not liable to be punished twice for the same offence. This provision applies to all Acts, public, local, personal, and private. By the contrary intention seems to be meant some repugnancy between the two or more laws or express repeal of the prior law. "Where new created offences are only prohibited by the general prohibitory clause of an Act of Parliament, an indictment will lie; but where there is a prohibitory particular clause specifying only particular remedies, then such particular remedy must be pursued, for otherwise the defendant would be liable to a double prosecution: one upon the general prohibition, and the other upon the particular specific remedy."(*c*)

The fact that the penalty is annexed to the offence in the clause of the Act creating it, as a general rule excludes any remedy other than the special penalty for the mere breach of the duty created by the Act.(*d*) But it is not essential for the application of this rule that the offence and penalty should be contained in the same clause. "All that the authorities establish is, that where there is a substantive general prohibition (or command) in one clause, and there is a subsequent clause which prescribes a specific remedy, the remedy by indictment is not excluded."(*e*)

Mandamus.

Whenever a person, whether filling an office under the Crown or not, has a statutory duty of a public nature, such as to do an act or to make an order,(*f*) towards another person, a mandamus will lie to compel him to perform it. This rule does not apply to duties created by charter or royal warrants,(*g*) and the writ of mandamus is not granted if there is any other legal or equitable remedy equally convenient, beneficial, and effec-

---

(*c*) Lord Mansfield in *R.* v. *Wright* (1758), 1 Burr. 543. The Int. Act, s. 33, does not affect this opinion.

(*d*) Per Lord Campbell in *Couch* v. *Steel* (1854), 3 E. & B. 402.

(*e*) Per Charles, J., in *R.* v. *Hall* (1891), 1 Q. B. at p. 770.

(*f*) *R.* v. *Income Tax Commissioners* (1888), 21 Q. B. D. 313, 322. See *R.* v. *Commissioners of Woods and Forests* (1850), 15 Q. B. 761.

(*g*) *R.* v. *Sec. State for War* (1891), 1 Q. B. 326.

tual.(*h*) Thus, in *R.* v. *Registrar of Joint Stock Companies* (1888), 21 Q. B. D. 131, an attempt was made to compel the Registrar to file a contract under s. 25 of the Companies Act, 1867, which he had refused to file on the ground that it was insufficiently stamped, but the application was refused, on the ground that another appropriate, convenient, and effectual remedy existed for questioning the legality of the refusal, under the Stamp Act, 1870, ss. 18, 19, 20. Consequently, when the statute creating the duty, or any other statute contains a specific and adequate remedy for the breach, the remedy by mandamus is not available, it being not an ordinary alternative, but a last resort to the prerogative. And it is always necessary, on applications for a mandamus, to ascertain whether the Legislature has in a statute given a command to which it is the business of the Courts to enforce obedience, or simply a direction, discretion, or counsel of perfection with which no judicial interference is permissible.(*i*)

30 & 31 Vict. c. 131.

33 & 34 Vict. c. 97.

Equitable remedies.

The High Court of Justice, in the exercise of its equitable jurisdiction, will in some cases interfere, by mandatory or other injunction, to restrain the breach or compel the performance of a statutory duty. The willingness of the Court to intervene depends upon the nature of the duty to be performed,(*k*) and, as a rule, the Court will prefer to confine the exercise of this jurisdiction to cases where there is a legal wrong done, as distinct from a neglect to perform the statutory duties.(*l*) But the mere fact that the duty is the creature of a statute, and does not arise from an ordinary contract, will make no difference. "I wholly disclaim," said Bacon, V.C., in *Greene* v. *West Cheshire Railway* (1871), L. R. 13 Eq. 49,

---

(*h*) See *R.* v. *Lambourn Valley Rail. Co.* (1888), 22 Q. B. D. 467, and cases there cited.

(*i*) *In re Nathan* (1884), 12 Q. B. D. 461, 478.

(*k*) "Where, from the nature of the relief asked, specific performance will alone answer the justice of the case, there it is granted": per Wigram, *arguendo*, in *Storer* v. *Great Western Ry.* (1842), 2 Y. & Coll. Ch. 50. On the other hand, it appears, from *Powell* v. *Taff Vale Ry.* (1874), 9 Ch. App. 331, that the Court will not order specific performance of a continuous act involving labour and care.

(*l*) James, L.J., in *Glossop* v. *Heston L. B.* (1879), 12 Ch. D. at p. 116.

"the notion that a railway company is to be dealt with in this court upon any other principles than those which would and ought to be applied to individuals. Their contracts are to be considered as any other contract. . . . . It is an imperative duty to take care that the powers with which the Legislature has entrusted them are not so exercised as to protect them in escaping from the fulfilment of their lawful engagements."

The High Court has often granted injunctions against local authorities in respect of their acts and defaults in carrying out drainage works, but, as a rule, the proper remedy is by mandamus or *ex-officio* information, instead of private remedy by action and injunction.(*m*) In such a case, as was pointed out by Jessel, M.R., in *Att.-Gen.* v. *Cockermouth* (1874), 18 Eq. 172, at p. 178, "it is not necessary for the Attorney-General to show any injury at all. If the Legislature is of opinion that certain acts will produce injury, that is enough." In cases where notice of action is necessary to entitle an individual to damages for neglect by a corporation of a statutory duty, he may, by application for an injunction in a proper case, get rid of the necessity of giving the notice, both shaking off the statutory fetter and utilising a remedy not specified in the statute.(*n*)

When action lies for neglect of statutory duty.

Whether an action will lie for the non-performance of a statutory duty "must," as Lord Cairns said in *Atkinson* v. *Newcastle Waterworks* (1877), 2 Ex. D. 441, at p. 448, "to a great extent depend on the purview of the Legislature in the particular statute, and upon the language which they have there employed."(*o*) The Statute of Westminster (13 Edw. 1), c. 50, gives a remedy by action on the case to all who are aggrieved by the neglect of any duty created by statute, and it is laid down in Comyns (Digest, tit. Action upon Statute, F.), "that in

(*m*) See *Glossop* v. *Heston L. B.* (1879), 12 Ch. D. 102, at p. 115, per James, L.J.

(*n*) *Chapman* v. *Auckland Union* (*Guardians of*) (1889), 23 Q. B. D. 294; *Rendall* v. *Blair* (1890), 45 Ch. D. 157.

(*o*) Approved by the Jud. Comm. in *Bathurst* (*Borough of*) v. *Macpherson* (1879), 4 App. Cas. 268.

every case where a statute enacts or prohibits a thing for the benefit of a person, he shall have a remedy upon the same statute for the thing enacted for his advantage, or for the recompense of a wrong done to him contrary to the said law." Upon these authorities it was stated in *Couch* v. *Steel* (1854), 23 L. J. Q. B. 125, as a broad general proposition, that, wherever a statutory duty is created, any person, who can show that he has sustained injuries from the non-performance of that duty, can bring an action for damages against the person on whom the duty is imposed. But this proposition was not accepted as good law by the Court of Appeal in *Atkinson* v. *Newcastle* (1877), 2 Ex. D. 441. In the latter case the defendants by their private Act had engaged to keep the pipes to which fire-plugs were fixed charged with water at a certain fixed pressure. In consequence of their neglecting to do this, a fire which had broken out upon the premises of the plaintiff could not be extinguished, and the premises were burnt down. S. 43 of the Waterworks Clauses Act, 1847, which was incorporated with the private Act of the defendants, provides that for neglecting to keep the fire-plugs properly charged with water the defendants shall be liable to a penalty, part of which is to go to the person aggrieved by the neglect. "It was no part of the scheme of this Act," said Lord Cairns (at p. 446), "to create any duty which was to become the subject of an action at the suit of individuals, to create any right in individuals with a power of enforcing that right by action, but its scheme was, having laid down certain duties, to provide guarantees for the due fulfilment of them, and in certain cases to give the penalties, or some of them, to the persons injured." Consequently, it was held, as Cockburn, C.J., put it (at p. 449), that "this particular Act did not by implication give to persons who have been injured by the breach of the duties thereby imposed, any remedy over and above those which it gives in express terms," and that a person so injured could not maintain an action for damages.

Actions against public bodies in respect of statutory duties.

Where an Act imposes a duty on a public body, in case of misfeasance of the duty, they are liable to an action, but not in the case of nonfeasance except at the instance of a person who can show that the statute imposed a duty towards himself which the corporation has negligently failed to perform. The proper canon of construction "is that, in the absence of something to show a contrary intention, the Legislature intends that the body, the creature of statute, shall have the same duties, and that its funds shall be subject to the same liabilities, as the general law would impose on a private person doing the same thing."(*p*)

Action will lie for neglect of ministerial but not of judicial duty.

In deciding whether an action will lie for the breach of a duty imposed by statute, it is necessary to consider whether the duty is merely a ministerial one, or is of a discretionary or quasi-judicial nature. It is clear that an action will lie for the neglect of a duty of the former kind, but the question often arises as to which class a duty belongs. Thus, in *Schinotti* v. *Bumsted* (1796), 6 T. R. 646, it was held that a commissioner of a lottery was a mere ministerial officer, and that, consequently, an action would lie against him for not adjudging the lottery prize to the person entitled to receive it. Similarly, in *Barry* v. *Arnaud* (1839), 10 A. & E. 646, a collector of customs was held to be a public officer whose functions were ministerial, and that he was therefore liable in an action for nonfeasance in the exercise of his duty. On the other hand, if the duty to be performed is judicial or even quasi-judicial, it is clear that no action will lie for the breach of it, unless the breach is shown to be wilful and malicious. Thus, in *Tozer* v. *Child* (1857), 26 L. J. Q. B. 151, it appeared that the defendants, who were acting as returning officers, had refused to receive the plaintiff's vote for four candidates for the office of vestrymen. "The defendants," said the

(*p*) Per Blackburn, J., in *The Mersey Docks case* (1865), L. R. 1 H. L. 93, at p. 110, approved by the J. C. in *Orfila* v. *Gibraltar Sanitary Commissioners* (1890), 15 App. Cas. 400, at p. 412.

Court, "are quasi-judges. They had to exercise an opinion upon the matter whether the plaintiff was entitled to vote or not. Having decided against the plaintiff, without malice or any improper motive, it would be monstrous to subject them to an action."

Damage sustained must be such as statute was intended to prevent.

But if it appears from the language of the enactment that it is the intention of the Legislature that an action should lie for damage sustained by reason of neglect to perform some duty created by the statute in question, it will still, in order to maintain an action, be necessary to prove that the damage or loss was of such a character as it was the direct object of the statute to prevent. Thus, in *Gorris* v. *Scott* (1874), L. R. 9 Ex. 125, an action was brought by an owner of sheep against a shipowner who had undertaken to carry the plaintiff's sheep from a foreign port to England, because the defendant had neglected to do certain things enjoined by a Privy Council order made under the authority of the Contagious Diseases (Animals) Act, 1869, s. 75, in consequence of which neglect some of the sheep were washed overboard. It appeared that the object of the Act was to prevent the spread of disease among animals, and not to protect them against the perils of the sea; consequently, the Court held that no action could be maintained. "The Act," said Pollock, B., "was passed *alio intuitu* . . . . the precaution directed may be useful and advantageous for preventing animals from being washed overboard, but they were never intended for that purpose, and a loss of that kind caused by their neglect cannot give a cause of action." So, in *Buxton* v. *North-Eastern Rail. Co.* (1868), L. R. 3 Q. B. 549, it appeared that in consequence of the neglect of the railway company to keep up their fence in accordance with the provisions of 8 Vict. c. 20, s. 68, a bullock got on to the line and caused an accident in which the plaintiff sustained damage; but it was held that he had no right of action on account of this neglect on the part of the defendants to perform their statutory duty, because the statutory

32 & 33 Vict. c. 70.

obligation was created solely with regard to, and for the benefit of, the owners and occupiers of the adjoining lands, and therefore that "the obligation, as to their passengers, to fence, is not imposed upon the company by that enactment."

Omission to perform a statutory duty not only exposes the offender to the specific penalty, if any, imposed by the Act which creates the duty, but also, as a rule, renders him liable, as for negligence, to any person injured in consequence of the omission.(*q*)

Even in those cases in which indictment is, without express provision, the remedy for a breach of the statutory duty, it will not lie for the mere breach of the statutory command or prohibition. There must be some improper conduct—something constituting a *mens rea*.(*r*) Thus, in *Blamires* v. *Lancashire Rail. Co.* (1873), L. R. 8 Ex. 283, at p. 285, it appeared that by 31 & 32 Vict. c. 119, s. 22, it is enacted that "every railway company shall provide in every train which carries passengers and travels more than twenty miles without stopping" a means of communication between the passengers and the guard. The plaintiff in this case was suing the company for injuries received in a railway accident, which (as he alleged) arose from the negligence of the company, and in proof of the charge of negligence it was given in evidence that the company had not complied with the provisions of the Act as to supplying a communication between the passengers and the guard. Kelly, C.B., told the jury that "it is not every disobedience to an Act of Parliament that will constitute negligence . . . . it is only if the duty(*s*) imposed by the Act be such that the neglect of it was likely to conduce to an accident such as that which

(*q*) See hereon, Beven on Negligence, pp. 208 *et sqq.*

(*r*) *Shoppee* v. *Nathan* (1892), 1 Q. B. 245 (Collins, J.).

(*s*) Where an Act merely empowers a railway company to do something which it is entirely within their discretion whether they do or not, as, for instance, when a company are empowered by Act of Parliament to discontinue a local occupation road, the non-performance of this may *not* be used as evidence against the company to prove that an accident which occurred at the level crossing arose from their negligence. *Cliff* v. *Midland Rail. Co.* (1870), L. R. 5 Q. B. 258.

had occurred." This ruling was upheld by the Exchequer Chamber, and in giving his judgment, Brett, J., said as follows : " It is right to use the Act as some evidence of what is due and ordinary care under the circumstances of the case, and that is the way the Chief Baron directed the jury to use it."

Usually good defence that reasonable care has been taken to perform duty.

If a duty is imposed by the Legislature upon a public body, it has been held that, if they exercise due and reasonable care as to the performance of the duty, they will not be held liable if for some reason or other it becomes impossible for them to discharge the duty; for, as Cockburn, C.J., said in *Re Bristol, &c., Railway Company* (1877), 3 Q. B. D. 10, at p. 13, "it would be contrary to the elementary principles of justice to enforce by mandamus a [statutory] order which imposes a duty which it is impossible to discharge." Thus, in *Hammond* v. *St. Pancras* (1874), L. R. 9 C. P. 316, the vestry of St. Pancras had the duty cast upon them by 18 & 19 Vict. c. 120, s. 72, of properly cleaning the sewers vested in them by the Act. One of these sewers overflowed into the plaintiff's cellar in consequence of an obstruction in the sewer which was unknown to the defendants, and could not by the exercise of reasonable care or inquiry have been known to them. The question then arose as to whether the defendants were liable for the damage done by the overflow of the sewer, and it was held that they were not liable. "It would seem to me," said Brett, J., "to be contrary to natural justice to say that Parliament intended to impose upon a public body a liability for a thing which no reasonable care or skill could obviate. The duty, notwithstanding, may be absolute, but, if so, it ought to be imposed in the clearest possible terms." And Denman, J., added, "Under s. 72 it clearly was not intended to render them liable to an action if, in the exercise of their duties, they are guilty of no negligence."

When statutory duty is excused by act of God.

As a general rule, if a duty is cast upon a person by statutory enactment, "he is excused," said the Court in *R.* v. *Leicestershire* (1850), 15 Q. B. 92, "from

performing that duty by its becoming impossible by the act of God." But, if a statutory duty arises out of a particular state of circumstances which have been brought about by the act of God, the fact that that state of circumstances was so brought about will not be an answer to an action for the non-performance of the statutory duty. This question was considerably discussed in *River Wear Commissioners* v. *Adamson* (1877), 2 App. Cas. 743. "The Court of Appeal," said Lord Cairns, "has been of opinion that the damage was occasioned by a *vis major*, namely, by the act of God in the violence of the tempest. Founding himself on this, the Master of the Rolls states that it is a familiar maxim of law that where there is a duty imposed . . . . as a general rule there is no such duty required to be performed where the event happens through the act of God or the Queen's enemies, and his opinion is that the Court may well come to the conclusion that the act of God and the Queen's enemies were not meant to be comprised within the first words of 10 Vict. c. 27, s. 74 [which enacts that "the owner of every vessel shall be answerable . . . . for any damage done by such vessel to the harbour, dock, or pier"]. The Lord Chief Baron states that no man can be answerable, unless by express contract, for any mischief or injury occasioned by the act of God. Lord Justice Mellish states that the act of God does not impose any liability on anybody. Mr. Justice Denman states that in every Act of Parliament words are not to be construed to impose a liability for an act done, if the act be substantially caused by a superior power, such as the law calls the act of God. In my opinion," continued Lord Cairns, "these expressions are broader than is warranted by any authorities of which I am aware. If a duty is cast upon an individual by common law, the act of God will excuse him from the performance of that duty. No man is compelled to do that which is impossible. . . . . If, however, an Act of Parliament declares that a man shall be liable for the damage occasioned by a particular state of circumstances, I know of no reason why a

man should not be liable for the damage occasioned by that state of circumstances, whether the state of circumstances is brought about by the act of man or by the act of God."

If specific remedy given for neglect of new statutory duty, no other remedy available.

2. If a statute creates a new duty or imposes a new liability, and prescribes a specific remedy (*t*) in case of neglect to perform the duty or discharge the liability, the general rule (*u*) is, as Denison, J., said in *Stevens* v. *Evans* (1761), 2 Burr. 1152, at p. 1157, "that no remedy can be taken but the particular remedy prescribed by the statute." "Where an Act creates an obligation," said the Court in *Doe dem. Bishop of Rochester* v. *Bridges* (1831), 1 B. & Ad. 847, at p. 859, "and enforces the performance in a specific manner, we take it to be a general rule that performance cannot be enforced in any other manner." And in *Stevens* v. *Jeacocke* (1848), 11 Q. B. 731, at p. 741, the same Court said, "It is a rule of law that an action will not lie for the infringement of a right created by statute, where another specific remedy for infringement is provided by the same statute." And in *R.* v. *County Court Judge of Essex* (1887), 18 Q. B. D. 704, Lord Esher, M.R. (at p. 707), said, with reference to the question whether a county court judgment debt carried interest under 1 & 2 Vict. c. 110, s. 17, "The ordinary rule of construction applies to this case, that where the Legislature has passed a new statute giving a new remedy, that remedy is the only one which can be pursued."

The true rule for ascertaining whether the special remedy does or does not include a right of action is laid down in *Vallance* v. *Falle* (1884), 12 Q. B. D. 109. In that case the question was whether an action would lie for refusing to give the discharge directed by s. 172 of the Merchant Shipping Act, 1854, to be given by the master of a ship to his seamen. The section in question imposes a penalty of £10 for withholding the certificate. Stephen, J., said, at p. 110: "The case has been argued with great

17 & 18 Vict. c. 104.

(*t*) As to criminal remedies, *vide ante*, p. 248.
(*u*) See *Wake* v. *Mayor of Sheffield* (1884), 12 Q. B. D. 145.

care, and various authorities on the subject have been cited. The general rule to be deduced from them seems in substance to be, that the provisions and object of the particular enactment must be looked at in order to discover whether it was intended to confer a general right which might be the subject of an action, or to create a duty sanctioned only by a particular penalty, in which case the only remedy for breach of the duty would be by proceedings for the penalty." And later in his judgment he added (at p. 112), "I do not wish to say anything against the general rules that have been laid down for the construction of statutes in relation to the question whether a penalty is intended to be the only remedy for breach of statutory duty, but I always think that, after all, the best way of finding out the meaning of a statute is to read it, and see what it means."

But right to sue for a penalty does not take away right to bring action for neglect of duty.

But if a statute, which creates a duty, enacts that an action may be brought by a common informer in case of neglect to perform the statutory duty, this power of suing for a penalty is not to be treated as taking away the right which a person may otherwise have to bring an action for any special damage which he may have sustained by reason of the neglect to perform the statutory duty. And one reason for this is, as was pointed out by Lord Chelmsford in *Wilson* v. *Merry* (1868), L. R. 1 H. L. (Sc.) 326, at p. 341, that "the two proceedings [viz., for the penalty, and by action for civil remedy] have totally different objects, the one to punish an offence, the other to remedy an injury." Thus, in *Couch* v. *Steel* (1854), 23 L. J. Q. B. 121, it appeared that 7 & 8 Vict. c. 112, s. 18, enacts that every ship shall have and keep constantly on board a sufficient supply of medicines, and in case any default is made in providing and keeping such medicines the owner of the ship should incur a penalty of £20, which penalty may, by s. 62, be recovered by a *qui tam* action. The plaintiff, who was a seaman on board the defendant's ship, brought an action against the defendant for neglecting this statutory duty of keeping medicines on board his ship, and it was contended by the defendant

that an action on the case would not lie, as the statute had expressly provided that a *qui tam* action might be brought in case the statutory duty was neglected. But the Court held that this was no defence. "No authority," said they, "has been cited to us, nor are we aware of any, in which it has been held that in such a case as the present the right to maintain an action at common law in respect of a special damage resulting from the breach of a public duty (whether such duty exists at common law or is created by statute) is taken away by reason of a penalty recoverable by a common informer being annexed as a punishment for the non-performance of the public duty." But Brett, L.J., in *Atkinson* v. *Newcastle Waterworks* (1877), 2 Ex. D. 449, pointed out that it makes no difference whether the penalty imposed for the breach of the statutory duty is or is not to go to the person aggrieved. "I entertain," said he, "the strongest doubt whether the broad rule can be maintained that, where a new duty is created by statute, and a penalty is imposed for its breach, which penalty is to go to the person injured by such breach, the penalty, however small and inadequate a compensation it may be, is in such a case to be regarded as indicating an intention on the part of the Legislature that there should be *no* action by such person for damages, but that where a similar duty is created, and a similar penalty imposed, which is *not* to go to the person injured, then the intention is that he *is* to have a right of action."

Rule as to statutes creating duties being directory only.

3. "There is a numerous class of cases in which it has been held that certain provisions in Acts of Parliament are directory in the sense that they were not meant to be a condition precedent to the grant, or whatever it may be, but a condition subsequent: a condition as to which the responsible persons may be blameable and punishable if they do not act upon it, but their not acting upon it shall not invalidate what they have done, these persons having nothing to do with that."(*y*)

(*y*) Per Lord Blackburn in *Middlesex Justices* v. *R.* (1884), 9 App. Cas. 778

"It is stated," said Denman, J., in *Caldow* v. *Pixell* (1877), 2 C. P. D. 562, at p. 566, "that in general the provisions of statutes creating duties are directory." By this is meant, not that it is optional on the part of a public functionary whether he will perform duties imposed upon him by statute,(*z*) but that if a public functionary neglects to perform a statutory duty, that neglect on his part will not necessarily invalidate the whole operation with regard to which the statutory duty had to be performed. The case last cited turned upon 34 & 35 Vict. c. 43, s. 29, by which it is enacted that "within three months after the avoidance of any benefice . . . . the bishop shall direct the surveyor, who shall inspect the buildings of such benefice, and report to the bishop what sum, if any, is required to make good the dilapidations." The bishop neglected to give the necessary directions for inspection and report until after the expiration of three months from the avoidance of the benefice, and it was therefore argued that, as the statute had not been complied with, the order, when made, was invalid, and that dilapidations could not be sued for by the new incumbent. The Court, however, held otherwise. "The statute," said the Court, "imposes a public duty upon the bishop; it does not create a power or privilege for the benefit of the new incumbent as a private person. The bishop, probably from inadvertence, failed to give the direction within the specified time, but, as this was an omission to perform a public duty, we think we ought to hold this statute to be directory." At the same time it must be borne in mind that it is not a universal rule that statutes which create public duties are merely directory. "In the absence of an express provision, the intention of the Legislature is to be ascertained by weighing the consequences of holding a statute to be directory or imperative."(*a*) It is enacted by 6 Vict. c. 18, s. 100,

(*z*) *Vide ante*, p. 74; and *R.* v. *Mayor of Rochester* (1858), 27 L. J. Q. B. 47, per Lord Campbell.

(*a*) Per Denman, J., case cited, p. 566.

that any one who objects to a person's name being retained upon the list of voters must send his notice of objection by post directed to the person objected to "at his place of abode as described in the said list of voters." In *Noseworthy* v. *Buckland* (1873), L. R. 9 C. P. 233, it appeared that the overseers, finding an incorrect address in "the said list of voters," altered it by substituting the true address, and so published it; consequently, the objector, who copied from the published list the address of the person he objected to, directed his notice of objection to the substituted address. It was argued that the enactment was imperative, and that, as the notice of objection had not been sent to the address specified in the statute, the notice was invalid, and it was so held by the Court. "It is the duty of the overseers," said Keating, J., "to publish the list in its integrity just as they receive it, and . . . . if instead of publishing the copy as they receive it, the overseers take upon themselves to alter it, a person acting upon it does so at his peril. . . . . The words of the Act are express."

Contract void if in contravention of statute creating duty.

4. One of the most important effects of statutes which create duties or impose obligations (whether it be an obligation to do or to refrain from doing some particular thing), is that a contract which involves in its performance, either directly or collaterally,(*b*) the doing of something which would be in contravention of a statute of this kind is held to be invalid and unenforceable.(*c*) This is expressed by the legal maxim, *Pactis privatorum publico juri non derogatur*,(*d*) and also in the following rule:

(*b*) Thus, a policy on an illegal voyage cannot be enforced, "for," said Tindal, C.J., in *Redmond* v. *Smith* (1844), 7 M. & G. 457, at p. 474, "it would be singular if, the original contract being invalid, and therefore incapable of being enforced, a collateral contract founded upon it could be enforced."

(*c*) The general principle that "illegality may be pleaded as a defence to an action," whether that illegality arise either from the breach of some statutory provision or of a common law principle, was laid down in the leading case of *Collins* v. *Blantern* (1767), 1 Smith L. C. (9th ed.) 406, and is fully discussed in the notes to that case. See also Williams' notes to Saunders (ed. 1871), vol. i. p. 517, *note* (*c*).

(*d*) In commenting upon this maxim Dr. Lushington, *arguendo*, said in *Phillips* v. *Innes* (1837), 4 Cl. & F. at p. 241, as follows:—"It is impossible

"Where a contract, express or implied, is expressly or by implication forbidden by statute, no Court will lend its assistance to give it effect."(*e*) "What is done," said Lord Ellenborough in *Langton* v. *Hughes* (1813), 1 M. & S. 593, at p. 596, "in contravention of the provisions of an Act of Parliament cannot be made the subject of an action." This principle has been acted upon in many cases. It was held in *Clugas* v. *Penaluna* (1791), 4 T. R. 466, that a smuggling contract cannot be sued upon, because of the obligation created by statute to pay import duty on certain articles. So, also, it being required by 10 Geo. 2, c. 28,(*f*) that proprietors of theatres should obtain a licence, it was held in *Gallini* v. *Laborie* (1793), 5 T. R. 242, that no action could be maintained for breach of an agreement to dance at an unlicensed theatre. Similarly, it being a duty created by 39 & 40 Geo. 3, c. 99, s. 23, that any persons who carry on the trade of a pawnbroker shall cause their name to be painted over their place of business, it was held in *Gordon* v. *Howden* (1845), 12 Cl. & F. 243, that an agreement constituting a secret partnership between pawnbrokers was void as being in contravention of that statute. And again, it being a duty created by 7 & 8 Will. 3, c. 4, to abstain from treating electors after the teste of the writ for the election, it was held in *Ribbans* v. *Crickett* (1798), 1 B. & P. 264, that an innkeeper could not recover against a candidate at an election for provisions supplied at his request after the time mentioned in the statute.

It is equally clear that a contract is void if prohibited by a statute, though the statute inflicts a penalty only, because such a penalty implies a prohibition.(*g*) The sole question in either case is whether the statute means to

---

to compel one who is unwilling to disobey the law to contravene it. He is entitled to plead freedom from a compact in which he should never have entered, and to be protected in maintaining an obedience to the law, which the law itself would have interposed to enforce if the act had come otherwise within its cognizance."

(*e*) *Mellish* v. *Shirley L. B.* (1885), 16 Q. B. D. 446.

(*f*) See, now, 6 & 7 Vict. c. 68, s. 1.

(*g*) *Cope* v. *Rowlands* (1836), 2 M. & W. 149, at p. 157 (Parke, B.).

prohibit the contract. "If it does so, whether it be for purposes of revenue or otherwise, then the doing of the act is a breach of the law, and no right of action can arise out of it."(*h*)

In *Melliss* v. *Shirley L. B.* (1885), 16 Q. B. D. 446, the surveyor of a local board was sued, jointly with another person, for a sum alleged to be due under a contract between them and the board for the execution of certain drainage works. The action was held not to be maintainable, on the ground that s. 193 of the Public Health Act of 1875 had the effect of making the contract illegal. Bowen, L.J., at p. 454, said: "In the end we have to find out, upon the construction of the Act, whether it was intended by the Legislature to prohibit the doing of a certain act altogether, or whether it was only intended to say that, if the act was done, certain penalties should follow as a consequence. If you can find out that the act is prohibited, then the principle is that no man can recover in an action founded on that which is a breach of the provisions of the statute. It seems to me plain, from the language of s. 193, that there is a prohibition on what has been done. I think no language could be plainer, and the mere fact that certain consequences are, by the latter part of the section, attached to the illegal act does not, in my opinion, render the previous language less clear."

It appears to be a settled rule of interpretation, "that although a statute contains no express words making void a contract which it prohibits, yet when it inflicts a penalty for the breach of the prohibition you must consider the whole Act as well as the particular enactment in question, and come to a decision, either from the context or the subject-matter, whether the penalty is imposed with intent merely to deter persons from entering into the contract, or for the purposes of revenue, or whether it is intended that the contract shall not be entered into so as

(*h*) *Smith* v. *Mawhood* (1845), 14 M. & W. 452, at p. 464 (Alderson, B.).

to be valid in law."(*i*) And in such cases, even if the consequences of such a construction may be harsh, it is the duty of the Court only to construe the Act.(*k*) The same conclusion was reached by the Judicial Committee in *Musgrave* v. *Chun Teeong Toy* (1891), A. C. 272, where it was held that the infliction of a penalty for bringing by sea more than a certain number of Chinese involved a prohibition, not only upon the shipowner, but upon the immigrants.

Statutory rules as to contract may not be waived.

Where a statute prescribes that a contract shall be in a particular form, or shall or shall not contain certain terms, the statutory form must be followed,(*l*) and the statutory terms may not be waived by the parties to the contract.

In *Netherseal Co.* v. *Bourne* (1889), 14 App. Cas. 228, a case on the Coal Mines Regulation Act, 1872, Lord Halsbury said, at p. 235, "The statute discloses the view that the mine-owner and the persons employed in the mine were not, in the contemplation of the Legislature, fit to be trusted to make their own bargains;" and he went on to decide that a protective stipulation in the Act in favour of the miners could not be waived by them, and that the principle, *Quilibet renunciare potest juri pro se introducto*, was inapplicable in such a case.

Illegality may be set up after part performance.

Even where one party has had the full benefit of a contract void for non-compliance with a statute, he may set up the non-compliance as an answer to any claim to make him perform his part of the bargain. This rule is laid down in *Young* v. *Leamington* (1883), 8 App. Cas. 517, where a sanitary authority set up the want of a seal as an answer to the claim for the cost of constructing some public works of which they had taken the benefit. In Canada, in the case of *London Life Insurance Co.* v. *Wright* (1873), 5 Canada 466, the Supreme Court, by a majority, restrained an insurance company from setting up a similar

(*i*) Per Lord Esher, M.R., *loc. cit.* at p. 451.
(*k*) Per Cotton, L.J., at p. 453.
(*l*) The innumerable cases on the Bills of Sale Act, 1882, proceed on the admission of this rule, and are devoted to discussion of the modes of evading the terms or limiting the application of the commands of that Act.

defence to an action on a policy. In this case very many English and American decisions were discussed, and the equitable American rule seems to have been adopted.

This rule is, in America, however, subject to the equitable exception, that if a contractor has had the benefit of his contract he will not be permitted, in an action against him founded upon that contract, to question its validity upon the ground that it was made in violation of a statute.(*m*) The merits and equity of this decision and rule may be admitted, but it is not recognised by English law or equity.

Contracts contrary to policy of statute are void.

And not only is a contract invalidated which involves in its performance the direct contravention of the statute, but it is also a well-recognised principle of law(*n*) that any contract will be held void, "although not in contravention of the specific directions of a statute, if it be opposed to the general policy and interest thereof." Thus, in *Elliot* v. *Richardson* (1869), L. R. 5 C. P. 749, it was held that an agreement, made between two persons who were creditors of a company which was being wound up, whereby one of them undertook for a money consideration to delay the proceedings of the winding up to the prejudice of the other shareholders and creditors, was void, "as being against the clear intention of the Legislature under the Winding-up Acts." But, as has already been pointed out,(*o*) questions of policy are difficult to solve, and it is safer to keep to the manifest intention, express or implied, without turning aside to vague and delusive generalities as to the policy of the law or of any particular Act.

The Courts will not be astute to construe an Act so as to avoid a contract, or a contract so as to bring it within the prohibition of a statute. Speaking of the Bills of Sale Act (1878) Amendment Act, 1882 (45 & 46 Vict. c. 43),

(*m*) Sedgwick on Statutory Law (2nd ed.), pp. 72, 73.

(*n*) See notes to *Collins* v. *Blantern* (1767), 1 Smith L. C. (9th ed.) 406. On similar grounds a will is held void if it contravenes the policy of law: *Re Wilcock's Settlement* (1875), 1 Ch. D. 230.

(*o*) *Ante*, pp. 94, 196.

Cave, J., said in *Hammond* v. *Hocking* (1884), 12 Q. B. D. 291, at p. 292: "The question arises on s. 7 of the Act, which was passed for the protection of the borrower from oppression, and, while we construe the Act so as to produce the effect intended by the Legislature, we ought not, in construing it, to give way *to needless technicalities*, because, if we do so, we shall run the risk of interfering with honest transactions, and also, by rendering bills of sale doubtful and bad securities, make the position of the borrower worse than it was before the Act was passed." It is doubtful whether the last consideration is for the Courts, except so far as it is adopted to carry out the intention of the Legislature; and it may be plausibly argued that the inevitable result of the Act was to raise the rate of interest and increase the difficulty of borrowing on the security of chattels.

Illegal term in contract does not necessarily vitiate the whole contract.

But if the contract in question is not merely for the performance of a single act, but involves the doing of several things, some of which are legal and some prohibited by statute, the question has been raised as to whether the whole contract would be void, or merely that part of it the performance of which the statute prohibits. It appears to have been laid down in some early cases that if "*any* of the covenants be void by statute, then the bond is void *in toto*,"(*p*) but it seems that the true rule is that if the contract is for the performance of several things, one of which is prohibited by statute, it is not void *in toto*, unless the prohibiting statute expressly enacts that all instruments containing any matter contrary thereto shall be void, provided the good part be separable from, and not dependent upon, the bad part.(*q*) This view is supported by the recent decision of the House of Lords in *Netherseal Co.* v. *Bourne* (1889), 14 App. Cas. 228, where it was held that a contract, not illegal as a whole, but containing a stipulation for illegal deductions

(*p*) See notes to *Collins* v. *Blantern* (1767), 1 Smith L. C. (9th ed.) at p. 416.
(*q*) *Ibid.* at p. 417; and see *Mouys* v. *Leake* (1799), 8 T. R. 411, and *Kerrison* v. *Cole* (1807), 8 East 231.

from wages, is not void as a whole, but that the illegal stipulations are unenforceable. If, however, a contract be made on several considerations, one of which is prohibited by statute, the whole will be void, because *every* part of a contract is affected by the illegality of *any* part of its consideration.(*r*)

In *Valentini* v. *Canali* (1889), 24 Q. B. D. 166, a man claimed cancellation of a contract and repayment of the sum paid by him on the contract, which was for his benefit, on the ground that he was an infant when he entered into the contract, and it was contended that, inasmuch as the Infants' Relief Act, 1874, s. 1, made certain contracts by infants void, the infant was entitled to recover all sums paid by him under the contract as if the consideration for the contract had wholly failed. But the Court rejected the argument, and Lord Coleridge said: "No doubt the words of s. 1 of the Infants' Relief Act are strong and general, but a reasonable construction ought to be put upon them. The construction which has been contended for on behalf of the plaintiff would involve a violation of natural justice. . . . . The object of the statute would seem to have been to restore the law for the protection of infants, upon which judicial decisions were considered to have imposed qualifications. The Legislature never intended, in making provisions for this purpose, to sanction a cruel injustice."

37 & 38 Vict. c. 62.

(*r*) Per Tindal, C.J., in *Shackell* v. *Rosier* (1836), 2 Bing. N. C. 634, at p. 646.

CHAPTER II.

ENABLING ACTS.

PAGE

1. Classification . . . 271
2. Acts prescribing or regulating mode of doing something . . . 271
   (a) Grant of right involves grant of means necessary for its exercise 271
   (b) *Expressio unius est exclusio alterius* . 272
   (c) Difference between absolute and directory enactments . 273
   (d) No general rule as to when an enactment falls into either class 275
   (e) Inference from negative or affirmative words . . . 276
   (f) Acts giving jurisdiction construed as absolute . . . 281
   (g) Absolute and directory provisions in same Act . . . 281
   (h) Excuses for non-compliance with absolute provisions . 284
   (i) Exercise of powers given by statute . 287
3. Acts authorizing individuals to execute public works 290
   (a) Rule as to *ultra vires* 292
   (b) Infraction of private rights . . 293
   (c) Considering object for which powers granted 295

PAGE

   (d) Time for exercising powers . . . 299
   (e) Powers not assignable 299
4. Subordinate legislation . 300
   (a) Classification . 301
   (b) Conformity to statute 302
   (c) Time for making . 302
   (d) Revocation . . 303
   (e) Rules made by administrative departments . . . 303
   (f) Rules made by judges . . . 304
   Forms annexed to rules . . . 305
   Repeal of statutes by rules . . . 305
   (g) Bylaws . . . 306
   Must conform to general law . . 307
   Must not be *ultra vires* nor repugnant to Act by which they are authorized . . 307
   Must be reasonable 309
   Must be read so as to avoid conflict with statute . . . 312
5. Statutory authority given to the Crown . . . 314
6. Obligatory and permissive Acts 315
   (a) Criteria . . . 316
   (b) Work begun under permissive enactment need not be completed 319

Classification of enabling Acts.

1. MANY statutes have been passed to enable something to be done which was previously forbidden or not distinctly authorized by law, with or without prescribing the way in which it is to be done. Such statutes are passed for a variety of purposes. In order to discuss the rules which regulate the effect of statutes of this class, we may conveniently consider the question under the following heads, viz.:—

(1) Effect of statutes which prescribe or regulate the way in which something is to be done.

(2) Effect of statutes which grant to private individuals the powers for carrying out some public work.

(3) Effect of statutes which enable bylaws and rules to be made.

(4) Effect of statutes which empower the Crown to do something, not comprised within the prerogative.

(5) Effect of enabling Acts, when obligatory and when permissive.

Grant of a right involves grant of the means necessary for its exercise.

2. One of the first principles of law with regard to the effect of an enabling Act is that, if the Legislature enables something to be done, it gives power at the same time, by necessary implication, to do everything which is absolutely indispensable for the purpose of carrying out the purpose in view, "on the principle," as Parke, B., said in *Clarence Rail. Co.* v. *Great North. Rail. Co.* (1845), 13 M. & W. 706, at p. 721, "that *ubi aliquid conceditur, conceditur etiam id sine quo res ipsa non esse potest.*" "The general rule under this head of law is,(*a*) that where the Legislature gives power to a public body to do anything of a public character, the Legislature means also to give to the public body all rights without which the power would be wholly unavailable, although such a meaning cannot be implied in relation to circumstances arising accidentally only." This rule was applied in the case cited by holding that a sanitary authority, which by statute had authority as against landowners to construct

(*a*) Per Brett, L.J., in *Re Dudley Corporation* (1882), 8 Q. B. D. at p. 93.

sewers, and a duty in favour of landowners to maintain them, were impliedly entitled to subjacent (but not to lateral) support to the sewers from lands, without purchasing the subjacent soil or any easement of support, but subject to the obligation of making compensation under s. 308 of the Public Health Act, 1875. Therefore, as Fry, J., said in *Mayor, &c., of Yarmouth* v. *Simmons* (1879), 10 Ch. D. 527, "when the Legislature clearly and distinctly authorize the doing of a thing which is physically inconsistent with the continuance of an existing right, the right is gone,(*b*) because the thing cannot be done without abrogating the right." Thus, the power to make bylaws involves the power of enforcing them.(*c*) In *Doyle* v. *Falconer* (1866), 4 Moore P. C. N. S. 203, it appeared that the Legislative Assembly of the island of Dominica was constituted by a royal proclamation (which was there equivalent to an Act of Parliament), but had no special power given to it to punish members for contempt. It was argued, however, that, in accordance with the above-mentioned maxim, such a power was indispensable to its existence, but the Court held that it was not. "It is necessary," said the Judicial Committee (p. 219), "to distinguish between a power to punish for a contempt and a power to remove any obstruction offered to the deliberations of a legislative body, which last power is necessary for self-preservation. . . . . The right to remove for self-security is one thing, the right to inflict punishment is another. The former is all that is warranted by the legal maxim which has been cited, but the latter is not its legitimate consequence."

38 & 39 Vict. c. 55.

Trading corporations such as railway, canal, and dock companies are not treated as public bodies within the meaning of this rule, at any rate so far as refers to their compulsory powers of taking land.(*d*)

Expressio unius est exclusio alterius.

Another general rule with regard to the effect of an

(*b*) As to rights being taken away by implication, *vide ante*, p. 135.
(*c*) *Vide post*, pp. 306 *et sqq.*
(*d*) *Post*, Part IV. ch. i.

enabling Act is expressed in the maxim, *Expressio unius est exclusio alterius.* "If there be any one rule of law clearer than another," said the Judicial Committee in *Blackburn* v. *Flavelle* (1882), 7 App. Cas. 634, "it is this, that, where the Legislature have expressly authorized one or more particular modes of dealing with property, such expression always excludes any other mode, except as specifically authorized." Upon a discussion as to whether s. 191 of the Merchant Shipping Act, 1854, gave a maritime lien to the master of a British ship for disbursements made during a voyage, Lord Watson said, "When a variety of personal and unsecured claims are dealt with in a single clause, and it is expressly declared that one of them shall bear a lien, there arises a strong presumption that a similar privilege is *not* to attach to the rest; and that presumption cannot be overcome except by very plain implication."(*e*)

17 & 18 Vict. c. 104.

Difference between *absolute* and *directory* enactments.

When a statute is passed for the purpose of enabling something to be done, and prescribes the way in which it is to be done, it may be either what is called an *absolute* enactment or a *directory* enactment, the difference being, as was explained by the Court in *Woodward* v. *Sarsons* (1875), L. R. 10 C. P. 733, 746, that "an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially;" *i.e.*, that the act permitted by an absolute enactment is lawful only if done in accordance with the conditions annexed to the statutory permission. If an absolute enactment is neglected or contravened, a court of law will treat the thing which is being done as invalid and altogether void, but if an enactment is merely directory it is immaterial, so far as relates to the validity of the thing which is being done, whether it is complied with or not. Thus, in *Bowman* v. *Blyth* (1856), 7 E. & B. 26, it appeared that by 26 Geo. 2, c. 14, s. 1, the justices in quarter sessions are empowered to alter the table of fees, and, "after the same shall have been approved by the

(*e*) *Hamilton* v. *Baker* (1889), 14 App. Cas. at p. 217.

justices at the next succeeding general quarter sessions," it shall be valid and binding on all parties. The justices of Norfolk accordingly made a new table of fees at the June quarter sessions, and submitted it for approval at the next (*i.e.*, October) quarter sessions, but at the October quarter sessions the question of approving it was adjourned to the Epiphany sessions. Consequently, it was held that the table of fees was invalid. "The Legislature," said the Court (p. 45), "have given a limited power of approval to one particular sessions only, viz., that next holden after the making of the table of fees. . . . . This table was not so approved, and therefore we think that it is not in force." So, in *R.* v. *Loxdale* (1758), 1 Burr. 445, it appeared that five overseers had been appointed to act for a certain parish, whereas by 43 Eliz. c. 2, it was enacted that only four, three, or two overseers may be appointed. The Court accordingly declared the appointment invalid. "Justices," said Lord Mansfield, "have no power to appoint overseers but by the special authority given them by Act of Parliament. Therefore, this special authority must be strictly pursued, and cannot be exceeded by them."(*f*) So, with regard to the creation of a highway, it was pointed out by Brett J., in *Cubitt* v. *Maxse* (1874), L. R. 8 C. P. 704, at p. 715, that, if an Act of Parliament is passed for that purpose, the provisions of such an Act must be strictly followed, or the creation will not take place." And in *Thwaites* v. *Wilding* (1883), 12 Q. B. D. 4, at p. 5, Brett, M.R., said of the Lodgers' Goods Protection Act, 1871 (34 & 35 Vict. c. 79): "The words of the statute are imperative. It is said that the construction in favour of the defendants will render the statute ineffectual to protect lodgers. I do not think so; the Legislature has imposed conditions, and these conditions must be rigidly complied with in order to deprive the landlord of his remedy at common law and to bring the lodger within

(*f*) Similarly, in *R.* v. *Cousins* (1864), 4 B. & S. 849, it was held that the appointment of *one* overseer (instead of four, three, or two) was invalid.

the protection of the statute." But, on the other hand, if a statute is merely directory, it is, as we have said, immaterial, so far as relates to the validity of the thing to be done, whether the provisions of the statute are accurately followed out or not. Thus, in *R.* v. *Lofthouse* (1866), L. R. 1 Q. B. 443, it appeared that by 11 & 12 Vict. c. 63, s. 24, it is enacted that, for the purpose of electing a local board of health, "the chairman shall cause voting papers in the form in schedule A." to be distributed among the persons entitled to vote. Voting papers, however, were distributed which were not precisely in the form given in schedule A., as the column for the number of votes was left in blank. It was argued that this omission vitiated the voting papers and made the election void, but it was held that it did not. The validity of the election, said Blackburn, J., "depends upon whether the insertion of the number of votes is a condition precedent to the validity of a voting paper, or, in other words, whether the requirement of the statute on this head is obligatory. I think the omission does not vitiate the voting paper."

No general rule as to when enabling Acts are absolute and when directory.

It being, then, well settled that the neglect of the requirements of an Act which prescribes how something is to be done will invalidate the thing which is being done, if the enactment be absolute, but not if it be merely directory, we have now to consider whether there is any general rule as to when an enactment is to be considered absolute and when merely directory, with the exception of "provisions with respect to time" (which, said Grove, J., in *Barker* v. *Palmer* (1881), 8 Q. B. D. 10, "are always obligatory, unless a power of extending the time is given to the Court"). There is no general rule as to this, for while on the one hand we find that enactments expressed in negative and prohibitory language are not universally considered as being absolute, on the other hand enactments expressed in merely affirmative language have sometimes been held to be so. This was plainly stated by Lord Campbell in *Liverpool Bank* v. *Turner* (1861), 30 L. J. Ch. 380, with regard to enactments expressed

in merely affirmative language. "No universal rule," said he, "can be laid down as to whether mandatory enactments shall be considered directory only or obligatory . . . . but it is the duty of courts of justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed." In *Howard* v. *Bodington* (1877), 2 P. D. 203, at p. 211, Lord Penzance, after citing this *dictum* of Lord Campbell, added as follows: "I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject-matter, consider the importance of the provision [in question], and the relation of that provision to the general object intended to be secured by the Act, and upon a review of the case in that aspect decide whether the enactment is what is called imperative or only directory. . . . . I have been very carefully through all the principal cases [in which the question has been raised], but upon reading them all the conclusion at which I am constrained to arrive at is this, that you cannot glean a great deal that is very decisive from a perusal of these cases. They are on all sorts of subjects. It is very difficult to group them together, and the tendency of my mind, after reading them, is to come to the conclusion [above cited] which was expressed by Lord Campbell in the case of *Liverpool Bank* v. *Turner*."(*g*)

Inferences to be drawn from negative language.

If the requirements of a statute which prescribes the manner in which something is to be done be expressed in negative language, that is to say, if the statute enact that it shall be done in such a manner and *in no other manner*, it has been laid down that those requirements are in all

(*g*) Sedgwick (Statutory Law, 2nd ed. pp. 318–24) considers that "the practice of sanctioning the evasion or disregard of statutes" by treating them as merely directory "has been carried beyond the line of sound discretion." He excuses it, however, on the ground that "strict compliance with all the minute details which modern statutes contain" is impossible, owing to the practical inconveniences likely to result from it, and consequently "sagacious and practical men who desire to free the law from the reproach of harshness or absurdity" are tempted not to enforce strictly all provisions contained in statutes, but to treat them as being merely directory.

cases absolute, and that neglect to attend to them will invalidate the whole proceeding. In *R.* v. *Leicester* (1827), 7 B. & C. 6, it appeared that it was enacted by 54 Geo. 3, c. 84, that the Michaelmas quarter sessions shall be held in the week next after October 11. The question was whether this statutory enactment as to the time when they were to be held was absolute or merely directory, and it was held to be merely directory. "It has been asked," said Lord Tenterden, "what language will make a statute imperative if 54 Geo. 3, c. 84, be not so. Negative words would have given it that effect, but those used are in the affirmative only." But it does not appear that this can be laid down as an universal rule.(*h*) At all events, it has been held on several occasions that enactments prescribing the formalities which are to be observed in solemnising a marriage are not absolute, although expressed in negative and prohibitory language, and that neglect of these formalities does not invalidate the marriage. Thus, in *Catterall* v. *Sweetman* (1845), 9 Jur. 951, it appeared that it was enacted by a colonial Act, "that no such marriage as aforesaid shall be had and solemnised until one or both of such persons [*i.e.*, Presbyterians or Catholics], as the case may be, shall have signed a declaration in writing," and the question was whether a marriage solemnised without the declaration in writing being signed was valid or not. "The words in this section," said Dr. Lushington, "are negative words, and are clearly prohibitory of the marriage being had without the prescribed requisites, but whether the marriage itself is void . . . . is a question of very great difficulty. It is to be recollected that there are no words in the Act rendering the marriage void, and I have sought in vain for any case in which a marriage has been declared null and void unless there were words in the statute

(*h*) In *Mayor of London* v. *R.* (1848), 13 Q. B. 33, *note* (*d*), Alderson, B., said, "The words 'negative' and 'affirmative' statutes mean nothing. The question is whether they are repugnant or not to that which before existed. That may be more easily shown when the statute is negative than when it is affirmative; but the question is the same."

expressly so declaring it." After discussing the various English Acts on the subject of marriage, he continues as follows: "From this examination of these Acts I draw two conclusions. First, that there never appears to have been a decision where words in a statute relating to marriage, though prohibitory and negative, have been held to infer a nullity, unless such nullity was declared in the Act. Secondly, that, viewing the successive marriage Acts, it appears that prohibitory words, without a declaration of nullity, were not considered by the Legislature to create a nullity." On these grounds, therefore, he held the marriage to be valid. A similar(*i*) decision to this had been previously given by Sir John Nicholl in *Smallwood* v. *Tredger* (1815), 2 Phillimore 287, a case turning upon Lord Hardwicke's Marriage Act (26 Geo. 2, c. 33), s. 1, which enacted that, "in all cases where banns have been published, the marriage shall be solemnised in one of the parish churches where such banns have been published, and in no other place whatever." Sir John Nicholl there decided in favour of the validity of a marriage which had been solemnised at a church different from that at which the banns were published, but, as he said, he took the question on narrow grounds, and on its own particular circumstances, without committing himself to the general proposition that in no case would a marriage be void which had been solemnised elsewhere than in the church where the banns were published. His decision was confirmed by the Court of Delegates, but without reasons being stated.

Inferences from affirmative language.

Statutory enactments, although expressed in affirmative language, are sometimes treated as having a negative implied, and that their provisions, "though," as Lord O'Hagan said in *R.* v. *All Saints, Wigan* (1876), 1 App. Cas. 629, "affirmative in words, are not necessarily so, if

(*i*) See also *R.* v. *Birmingham* (1828), 8 B. & C. 29, where the Court declined to hold a marriage void which had not been consented to in the manner required by the Act of 4 Geo. 4, c. 75, s. 16; and *Wing* v. *Taylor* (1861), 30 L. J. P. & M. 263, where s. 28 of the last-mentioned Act (as to the presence of witnesses) had not been complied with.

they are absolute, explicit, and peremptory." In Viner's Abr. tit. Negative, A. pl. 2, the following rule is laid down: "Every statute limiting anything to be in one form, although it be spoke in the affirmative, yet includes in itself a negative;" and in Bacon's Abr. tit. Statute, G., the rule given is, that "if an affirmative statute which is introductive of a new law direct a thing to be done in a certain way, that thing shall not, even if there be no negative words, be done in any other way." This rule is borne out by the following cases. In *Stradling* v. *Morgan* (1560), Plowd. 198, at p. 206, the question was whether an action founded upon a statute could be commenced elsewhere than before the justices of Glamorgan at their sessions, for by 34 & 35 Hen. 8, c. 26, it was enacted that "all actions founded upon any statutes shall be sued by original writ, to be obtained and sealed with the said original seal returnable before the justices, at their sessions, within the limits of their authorities, in manner and form before declared." It was contended that these words had a negative meaning, that is to say, that the statute appoints the place, order, and form of such suits, and that they cannot sue in any other place or form, and therefore that this action, founded upon a statute, which is appointed to be returned before the justice of Glamorgan, at his sessions, cannot be sued or returned elsewhere or before any other justice. And so it was decided by the Court, and a verdict which had been found for the plaintiff was set aside. In *Amy Townsend's case* (1554), Plowd. 110 a, the question was whether the Statute of Uses, ss. 1, 2, which is expressed affirmatively, contained an implied negative. By this statute it is enacted that persons entitled to a use of lands shall have the same estate, both according to quantity and quality, in the lands as they had in the use. It was argued that these words contained in themselves a negative, *i.e.*, that the *cestui que use* had an estate in no other quantity or quality than they had in the use, and the reason given was that there is a diversity between a statute which makes an ordinance by affirmative words

27 Hen. 8, c. 10.

touching a thing which *was* before at the common law, and a statute which makes an ordinance by affirmative words touching a thing which *was not* before at the common law, and that where, as here, a statute appoints the manner of a thing which *was not* before at the common law, then, although it be expressed in the affirmative, it implies a negative. This argument the Court adopted, and decided that the enactment must be strictly adhered to. In *Trott* v. *Hughes* (1850), 16 L. T. O. S. 260, Lord Cranworth held that where rules, framed by virtue of a statute for the regulation of benefit building societies, provided that any dispute which might arise between the society and any of its members should be referred to and decided by the directors of the society, the provision was equivalent to enacting that no such dispute was to be made the subject of litigation in a court of law, and consequently he dismissed a suit which arose out of such a dispute.(*j*) In *Ex parte Stephens* (1876), 3 Ch. D. 659, the question was whether a mere word or distinctive combination of letters was a trade-mark within the meaning of 38 & 39 Vict. c. 91.(*k*) By s. 10 of this Act it is enacted that a trade-mark may consist of (among other things) "any special and distinctive word or combination of letters used as a trade-mark *before* the passing of this Act." It was accordingly held that a word which had not been used as a trade-mark *before* the passing of the Act could not be used as a trade-mark *after* the passing of the Act. "Otherwise," said Jessel, M.R., "it would be contravening the well-known rule, that when there is a special affirmative power given which would not be required because there is a general power, it is always read to import the negative, and that nothing else can be done. Therefore the power to use as a trade-mark a word used *before* the passing of the Act clearly negatives the conclusion that a distinctive word can be so used if the word was not so used before the passing of the Act."

(*j*) This view was adopted in *Municipal Permanent Investment Co.* v. *Kent* (1884), 9 App. Cas. 260.
(*k*) Repealed by the Patents, &c., Act, 1883.

Statutes giving jurisdiction to Courts are usually absolute.

As a general rule, statutes which enable persons to take legal proceedings under certain specified circumstances must be accurately obeyed notwithstanding the fact that their provisions may be expressed in mere affirmative language. Thus, in *Edwards* v. *Roberts* (1891), 1 Q. B. 302, it appeared that it is enacted by 20 & 21 Vict. c. 43, s. 2, that "after the hearing by a justice of the peace of any summary information, either party may, if dissatisfied . . . . apply in writing within three days . . . . to the said justice to state and sign a case setting forth the facts." The appellant neglected to get the case stated within the three days prescribed, and it was held, in consequence, that the Court had no jurisdiction to hear the appeal.(*l*) This rule may also be expressed thus—that when a statute confers jurisdiction upon a tribunal of limited authority and statutory origin, the conditions and qualifications annexed to the grant must be strictly complied with. It has frequently been decided, even on Acts by which the writ of *certiorari* is taken away, that no justice of the peace can increase his limited jurisdiction by finding facts which do not exist.(*m*)

Of the provisions of enabling Acts some may be absolute and others not.

Where a statute does not consist merely of one enactment, but contains a number of different provisions regulating the manner in which something is to be done, it often happens that some of these provisions are to be treated as being directory only, while others are to be considered absolute and essential; that is to say, some of the provisions may be disregarded without rendering invalid the thing to be done, but others not. For "there is a known distinction," as Lord Mansfield said in *R.* v. *Loxdale* (1758), 1 Burr. 445, at p. 447, "between circumstances which are of the essence of a thing required to be done by an Act of Parliament and clauses merely directory." In *Pearse* v. *Morrice* (1834), 2 A. & E. 84, at p. 96, Taunton, J., said that he understood "the distinction to be, that a clause is directory where the

(*l*) See also *Peacock* v. *R.* (1858), 27 L. J. Q. B. 224.
(*m*) See Short & Mellor, Crown Practice, pp. 117–119.

provisions contain mere matter of direction and nothing more, but not so where they are followed by such words as, 'that anything done contrary to these provisions shall be null and void to all intents.'" The Act 34 Geo. 3, c. 68, ss. 15, 16, regulated the method of transferring the property in a ship, enacting that "whereas upon any alteration of property in any ship an indorsement upon the certificate of registry is required to be made, such indorsement shall be signed by the person transferring the property, and a copy of such indorsement shall be delivered to the person authorized to make registry, otherwise such sale or contract shall be utterly null and void, and such person so authorized to make registry is hereby required to cause an entry thereof to be indorsed on the affidavit upon which the original certificate of the registry of such ship was obtained, and shall also make a memorandum of the same in the book of registry, and shall forthwith give notice thereof to the Commissioners of Customs in England." It was argued in *Heath* v. *Hubbard* (1803), 4 East 110, that, although all the other provisions of this statute had been complied with, a transfer of the property in a ship was rendered invalid if the port officer neglected to give notice of the transfer to the Commissioners of Customs in London. But, said the Court (at p. 127), s. 16 "can only be considered as directory, so far as respects the entry and memorandum to be made and the notice to be given to the Commissioners of Customs by the persons authorized to make registry: the vacating provisions being confined to the commission of such acts only as are required to be done by the immediate parties to the sale or transfer, and not extending (as it would be most unreasonable that they should extend) to the acts or omissions of third persons or strangers." Similarly, the Royal Marriage Act (12 Geo. 3, c. 11), which came into question in the *Sussex Peerage case* (1844), 11 Cl. & F. 148, enacts that no descendant of George II. shall be capable of contracting matrimony without the previous consent of the King, "which consent," the Act says, "is hereby directed to be set out in the licence and

register of marriage." With regard to these words, Tindal, C.J., in delivering the opinion of the judges in the House of Lords, said that "the only words in that section that are essential to make the marriage a valid marriage are those which require the previous consent of his Majesty, and the words which follow, directing such consent to be set out in the licence and register of marriage, are, as the very words import, directory only, and not essential, and are applicable to those cases only where they can be applied, namely, to the case of a marriage celebrated in England by licence." This question also received a considerable discussion in *Woodward* v. *Sarsons* (1875), L. R. 10 C. P. 733. The Ballot Act (33 & 34 Vict. c. 33) contains very elaborate and precise directions as to the way in which voters are to mark their ballot papers, and the question arose in that case as to whether all or any of these directions were imperative or merely directory, for, if they were to be treated as imperative, it was admitted that, in accordance with the general rule,(*n*) any ballot papers not marked precisely in accordance with these directions would have to be rejected as invalid. The Ballot Act is divided into two parts—the principal part, that is to say, the body of the Act, which is divided into sections in the ordinary way; and two schedules, which contain rules and forms, which rules and forms are in s. 28 spoken of as "directions," although it is enacted by the same section that they are to be "construed and have effect as part of the Act." This use of the epithet "directions," as applied to the rules and forms, led the Court to the conclusion that the enactments in the two schedules were to be treated as merely directory, but that those contained in the principal part of the Act were to be considered as imperative and absolute. Consequently, it was held that if the provisions contained in the body of the Act were fulfilled exactly, notwithstanding that the provisions contained in the schedules were not precisely followed, the vote would be

(*n*) *Ante*, p. 273.

valid. The principles of this decision were also applied in *Phillips* v. *Goff* (1886), 17 Q. B. D. 805, to a General Order relating to the election of a school board, which is subject to the provisions of the Ballot Act.

Compliance with provisions of enabling Act excused if performance of prescribed conditions impossible.

Under certain circumstances, compliance with the provisions of statutes which prescribe how something is to be done will be excused. Thus, in accordance with the maxim of law, *Lex non cogit ad impossibilia*, if it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like the act of God or the Queen's enemies, these circumstances will be taken as a valid excuse. The Act 10 Geo. 3, c. 51, s. 12, provided that "the proprietor of any entailed estate, who lays out money in making improvements upon his entailed estate, shall annually, during the making of such improvements, within four months after Martinmas, lodge with the sheriff an account, subscribed by him, of the money expended by him," and then, after the death of such proprietor, his representatives would be entitled to claim the amount so expended from the succeeding tenant in tail. The meaning of the Act came into question in *Campbell* v. *Dalhousie* (1868), L. R. 1 H. L. (Sc.) 259. Lord Breadalbane had expended certain sums of money under the Act, but was prevented from accounting to the sheriff in the manner prescribed by the Act in consequence of his death four days before Martinmas. The question then arose as to whether the succeeding tenant in tail was liable to pay these sums of money to the representatives of Lord Breadalbane. The House of Lords held that he was liable, and that, compliance with the provisions of the Act having been rendered impossible by the death of Lord Breadalbane, the omission was to be excused. "If by the act of God," said the Lord Chancellor, "it becomes impossible that the claim can be signed, it appears to me that it would be construing the Act of Parliament in a way in which no clause of the kind has ever been construed, if we held that, where the act of God thus prevented a compliance

with the words of a statute, the proprietor or his representatives should thereby be prevented from making a claim for improvements."

Also performance of prescribed conditions may be dispensed with if inserted merely for benefit of particular class of persons.

If the object of a statute is not one of general policy, or if the thing which is being done will benefit only a particular person or class of persons, then the conditions prescribed by the statute are not considered as being indispensable. This rule is expressed by the maxim of law, *Quilibet renunciare potest juri pro se* (*o*) *introducto.* As a general rule (*p*) the conditions imposed by statutes which authorize legal proceedings to be taken are treated as being indispensable to giving the Court jurisdiction. But if it appears that the statutory conditions were inserted by the Legislature simply for the security or benefit of the parties to the action themselves, and that no public interests are involved, such conditions will not be considered as indispensable, and either party may waive them without affecting the jurisdiction of the Court. *Park Gate Iron Company* v. *Coates* (1870), L. R. 5 C. P. 634, turned upon the enactment of 13 & 14 Vict. c. 61, s. 14, "that if either party in a [county court] cause shall be dissatisfied . . . . such party may appeal . . . . provided that such party give notice of appeal and security for costs within ten days," and the question was raised whether these prescribed conditions might be waived by the other party to the cause, and it was held that they might. "The provisions of s. 14," said Bovill, C.J., "that there shall be notice of appeal and security, seem to me to have been intended for the benefit of the respondent. It is not a matter with which the public are concerned. If this is so, it falls within the rule that either party may waive provisions which are for his own benefit." So also, if a statute simply enables a particular class of persons to do or refrain from doing some par-

(*o*) It was pointed out by Lord Westbury in *Hunt* v. *Hunt* (1862), 31 L. J. Ch. 161, at p. 175, that the words "*pro se*" were "introduced into the maxim to show that no man can renounce a right which his duty to the public, which the claims of society, forbid the renunciation of."

(*p*) *Ante*, p. 281.

ticular thing under certain circumstances, it is optional with those persons whether they avail themselves of the privilege afforded them by the statute, or whether they waive their right of doing so. Thus in *Hemblethwaite* v. *Hemblethwaite* (1869), L. R. 2 P. & M. 29, the respondent objected to a witness being asked whether she had committed adultery with him, on the ground that it is enacted by 32 & 33 Vict. c. 68, s. 3, that "the parties in any proceedings instituted in consequence of adultery shall be competent to give evidence . . . . provided that no witness shall be *liable to be asked* or bound to answer any question tending to show that he or she has been guilty of adultery." It was argued by the respondent that in consequence of this enactment such a question could not be put. But the Judge Ordinary held that, as the general intention of the statute was to protect the witness, no objection could be taken to the question by any one else, if the witness herself did not object to answer it. "The provision," said he, "was not intended to apply to the evidence by which the case of either side was supported independent of the evidence of the parties; it was not intended to narrow the sources of evidence, but to protect the witness."(*q*) So, if a company is incorporated by Act of Parliament for some particular purpose, any one shareholder, as Blackburn, J., said in *Taylor* v. *Chichester Rail. Co.* (1867), L. R. 2 Ex. 356, at p. 379,(*r*) "has a right to object to the making or enforcing of any contract to do any unauthorized act which would affect his individual interest.(*s*) But the shareholder may waive [this right,

(*q*) A similar rule exists with regard to the protection given to a witness by the common law, whereby a witness may refuse to answer a question on the ground that it tends to criminate him, but if he does not avail himself of this right of refusal, his evidence cannot be objected to as having been improperly received: *R.* v. *Kinglake* (1870), 22 L. T. 335.

(*r*) This judgment was not acquiesced in by the House of Lords in *Ashbury Carriage Co.* v. *Riche* (1875), L. R. 7 H. L. 653, but it does not appear that the proposition of law here stated by Blackburn, J., was called in question or in any way overruled.

(*s*) "The doctrine of estoppel," said Bacon, V.C., in *Barrow's case* (1880), 14 Ch. D. 441, cannot be applied to an Act of Parliament. . . . . There is no estoppel if parties contract to do a thing which . . . . it is unlawful to do."

it being] a right which is given him for his own protection only, and, if no shareholders choose to raise this objection for themselves, neither a stranger, nor the body corporate itself, can raise such an objection to a contract made by the company."

Conditions in enabling Act prescribed for public benefit cannot be dispensed with.

But the conditions in an enabling Act which have been prescribed for the purpose of protecting or benefiting the public cannot be dispensed with. By 9 Geo. 4, c. 83, ss. 3, 4, a Supreme Court in New South Wales was constituted with the same jurisdiction as the Courts in England. It was therefore held in *R.* v. *Bertrand* (1867), L. R. 1 P. C. 520, that the principle of English law that a prisoner can waive nothing bound the Court in New South Wales. Consequently, when, upon the disagreement of a jury in a criminal trial, a second trial took place, at which the evidence of some of the witnesses was, with the prisoner's consent, read over to the jury instead of being given afresh, the trial was held to be void for irregularity, notwithstanding that the prisoner had consented to what had taken place.

Power to incur debts strictly construed.

Power to borrow money must be exercised in exact accordance with the restrictions imposed by the Act conferring the power.(*t*) Powers to do all things necessary to carry out the object of a (local) Act do not authorize the donees of the power to pay as expenses of the earlier Act the costs of a Bill in Parliament for its amendment.(*u*) But this rule does not apply so as to exempt statutory bodies from liability for negligence in the execution of their statutory powers. Where an Act authorizes the levying of a rate to pay for work to be done under the Act, it impliedly authorizes a rate to pay for damage done by negligent exercise of the statutory powers.(*v*)

Discretionary power given by enabling Act.

Sometimes a statute, passed for the purpose of enabling something to be done, gives a discretionary power to the

(*t*) *R.* v. *Wigan* (*Churchwardens of All Saints*) (1876), 1 App. Cas. 611.
(*u*) *Att.-Gen.* v. *West Hartlepool* (1870), L. R. 10 Eq. 152.
(*v*) *Gallsworthy* v. *Selby Dam Drainage Commissioners* (1892), 1 Q. B. 348.

persons who are to carry out the purpose of the statute. Thus in *Bell* v. *Crane* (1873), L. R. 8 Q. B. 481, it appeared that by 32 & 33 Vict. c. 40, s. 1, "every authority having power to levy rates upon the occupier of any building used exclusively as a Sunday school or ragged school *may exempt* such building from any rate." Upon this enactment the Court held that "it was not the intention that the exemption under the Act should be absolute," and that it was clear "that the use of the phrase 'may exempt' was intended to give a discretion."

Judicial discretion how to be used.

If a Court of Justice is invested by Act of Parliament with a discretion, "that discretion," said Bowen, L.J., in *Gardner* v. *Jay* (1885), 29 Ch. D. 50, at p. 58, "like other judicial discretions, must be exercised according to common-sense and according to justice, and if there is no indication in the Act of the ground upon which the discretion is to be exercised, it is a mistake to lay down any rules with a view of indicating the particular grooves in which the discretion should run."(*x*) But, as Lord Blackburn said as to the exercise of discretionary power by a Court of Equity in *Doherty* v. *Allman* (1878), 3 App. Cas. 728, "the discretion is not to be exercised according to the fancy of whoever is to exercise the jurisdiction of equity, but is a discretion to be exercised according to the rules which have been established by a long series of decisions." Therefore, as Willes, J., said in *Lee* v. *Bude Rail. Co.* (1871), L. R. 6 C. P. 576, at p. 580, if it is intended by the Legislature that a discretion should be exercised, what is meant is "a judicial discretion regulated according to the known rules of law, and not the mere whim or caprice of the person to whom it is entrusted on the assumption that he is discreet."(*y*) "Discretion," said Lord Mansfield in *R.* v. *Wilkes* (1770), 4 Burr. 2527, at p. 2539, "when

(*x*) See also per Jessel, M.R., in *Emma Silver Mining Co.* v. *Grant* (1879), 11 Ch. D. 926, and in *Ex parte Merchant Banking Co.* (1881), 16 Ch. D. 635.

(*y*) "I do not suppose it will ever be held to mean that the Court of its own will and pleasure or at its own mere caprice will substitute. . . . ." Per Pearson, J., in *Holland* v. *Worley* (1884), 26 Ch. D. 584.

applied to a Court of justice, means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague, and fanciful, but legal and regular." "Discretion," said Lord Coke in 2 Inst. 56, "*est discernere per legem quid sit justum*;" in *Rooke's case* (1598), 5 Rep. 100a, "Discretion is a science or understanding to discern between falsity and truth, between wrong and right, between shadows and substance, between equity and colourable glosses and pretences, and not to do according to their wills and private affections;" and again, in *Keighley's case* (1610), 10 Rep. 140a, he said, "Discretion is *scire per legem quid sit justum*."

In discussing the Matrimonial Causes Act, 1857, s. 31, Lord Penzance said in *Morgan* v. *Morgan* (1869), L. R. 1 P. & D. 644, 647: "A loose and unfettered discretion is a dangerous weapon to entrust to any Court, still more so to a single judge. Its exercise is likely to be the refuge of vagueness in decision and the harbour of half-formed thought. Under cover of the word 'discretion' a conclusion is apt to be formed upon a general impression of facts too numerous and minute to be perfectly brought together and weighed, and sometimes not perfectly proved, while the result is apt to be coloured with the general prejudices favourable or otherwise to the person whose conduct is under review, which the course of the evidence has evoked. Upon such materials, so used, two minds will hardly form a judgment alike, and the same mind may appear to others to form contradictory judgments on what seem to be similar facts. This invites public criticism, and shakes public confidence in the justice of the tribunal. I hold, therefore, that the discretion to be exercised by the 31st section of the statute should be a regulated discretion, and not a free option subjected to no rules. It was probably reposed in the Court because the Legislature found it impossible to foresee and specify the classes of cases fit for its application which might arise under the new law. The duty of reducing its exercise to method devolves on the Court."

20 & 21 Vict. c. 85.

In the modern statutes relating to Church discipline

and the regulation of public worship the discretion given appears to be general and absolute, provided that it is exercised *bonâ fide*.(*z*)

When and by whom power to be exercised.

Where an Act passed after 1889 confers a power, then, unless the contrary intention appears, the power may be exercised from time to time as occasion requires, and if given to the holder of an office may be exercised by the holder for the time being of an office.(*a*) It is doubtful whether this applies to powers of making bylaws, at any rate so far as they are given to corporations, inasmuch as corporations cannot be described as holders of office, although individual corporators may hold corporate office. The substantial effect of the provision is to rebut the presumption that the power is exhausted by a single exercise, and to declare powers given to an official exercisable *virtute officii* by him and his successors, and not to be personal to him. And the presumption created by this enactment is usually excluded with reference to compulsory powers of interference with private property which are usually exercisable only within a limited time after the passing of the Act.(*b*)

Power to carry out public work, if exercised, must be confined to purposes specified by the Legislature.

3. With regard to the effect of statutes which give power to carry out some object which it is assumed will benefit the public at large, like making a railway, one of the most important rules is, that although it is not obligatory upon persons, who have obtained an Act of Parliament enabling them to form themselves either into an incorporated company(*c*) or a statutory corporation(*d*) for some specific purpose, to carry out that purpose, still, if they do proceed to exercise the powers conferred upon

---

(*z*) *Julius* v. *Oxford* (*Bishop of*) (1880), 5 App. Cas. 214; and see *Allcroft* v. *London* (*Bishop of*) (1891), A. C. 666.

(*a*) Int. Act, 1889, s. 31 (1), (2).

(*b*) *Vide post*, Part IV., "Private Acts."

(*c*) In his treatise on Partnership (2nd ed.), vol. i. p. 262, Lord Justice Lindley points out "the important difference between incorporated and unincorporated companies."

(*d*) A corporation created by statute for a particular purpose is called a statutory corporation to distinguish it from a corporation at common law. Per Lord Selborne in *Ashbury Carriage Company* v. *Riche* (1875), L. R. 7 H. L. at p. 693; *cf.* judgment of Blackburn, J., in same case (1874), L. R. 9 Ex. at p. 263.

them by the Act which they have obtained, "it is their bounden duty," as Turner, L.J., said in *Tinkler* v. *Wandsworth* (1858), 2 De G. & J. 261, at p. 274, "to keep strictly within these powers, and not to be guided by any fanciful view of the spirit of the Act which confers them." The doctrine of *ultra vires*, which looms large in modern text-books (*e*) and cases, turns upon the proper mode of applying this principle to the ramifications of modern joint-stock enterprise. "One of the best established objects," said Lord Cairns in *Richmond* v. *North London Railway* (1868), 3 Ch. App. at p. 681, "of the jurisdiction of the Court of Chancery is to take care that companies exercising powers under their Acts shall not exercise them otherwise than for the purposes of the Act, and when there is any ground for supposing that the powers are to be exercised for any other purpose the Court should see whether the company is really misusing its powers." Thus, in *Bright* v. *North* (1847), 2 Phill. 216, where commissioners where authorized by statute to levy a rate "for putting the bank of a river into and maintaining the same in a permanent state of stability," it was held by Lord Cottenham that they were justified in applying the money raised by rate in opposing a private Bill which was being brought before Parliament to authorize the construction of works which in their opinion would be injurious to the maintenance of the banks of that river. But, as Brett, M.R., said in *R.* v. *White* (1885), 14 Q. B. D. 362, such persons would not be allowed to "originate litigation." Thus, in *Att.-Gen.* v. *Andrews* (1850), 2 Mac. & G. 225, where a local Act authorized commissioners to raise funds by rate for the purpose of supplying the town of S. with water, and "in otherwise carrying the Act into execution," it was held that they were not authorized thereby to apply their funds in promoting a fresh Act of Parliament which was to give them more extensive powers, although it was admitted that [as in the last case] they might have applied

(*e*) See Lindley on Companies (5th ed.), pp. 162 *et sqq.*; Brice on *Ultra Vires* (2nd ed.), pp. 50 *et sqq.*

them in opposing a Bill which they considered would be injurious to their interests. And this principle holds good also with regard to powers conferred upon all public bodies, like local boards or commissioners of public works. This was pointed out by Lord Hatherley in *Campbell's Trustees* v. *Leith Police Commissioners* (1870), L. R. 2 H. L. (Sc.) 1. "In all matters," said he, "regarding their jurisdiction they are of course allowed to exercise the powers given to them according to their judgment and discretion; but where they exceed those powers they are immediately restrained by the Courts of law, who hold a strict hand over those to whom the Legislature has entrusted large powers and take care that no injury is done by an extravagant assertion of them."(*f*)

Contracts *ultra vires* are in all cases invalid.

And if incorporated companies make contracts which are *ultra vires*, and consequently invalid, such contracts cannot be made valid by any action on the part of the shareholders, even if such action be unanimous. "The privilege of contracting as a corporation," said Archibald, J., in *Riche* v. *Ashbury Carriage Co.* (1874), L. R. 9 Ex. 291, "is conferred only subject to the express directions of the Act, of which it seems to me to be the policy as well as the true construction to ignore (so to speak) the existence of the corporation and the power of the shareholders, even when unanimous, to contract or act in its name for any purpose substantially beyond or in excess of its objects as defined by the memorandum of association." This question was discussed at great length in *Ashbury Carriage Co.* v. *Riche* (1875), L. R. 7 H. L. 653.(*g*) In that case it appeared that a company had been incorporated for a

(*f*) See also *Mountcashell (Earl of)* v. *O'Neill (Viscount)* (1854), 5 H. L. C. 937, 2 Jur. N. S. 1030, a decision on the Irish Act, 23 & 24 Geo. 3, c. 39.

(*g*) As to the principles enunciated in this case, Lord Selborne said in *Att.-Gen.* v. *Great Eastern Ry.* (1880), 5 App. Cas. 478: "It appears to me to be important that the doctrine of *ultra vires*, as it was explained in that case, should be maintained. But this doctrine ought to be reasonably, and not unreasonably, understood and applied, and that whatever may be fairly regarded as incidental to, or consequential upon, those things which the Legislature has authorized ought not (unless expressly prohibited) to be held, by judicial construction, to be *ultra vires*." *Vide* also *dicta* of Lord Blackburn at p. 481.

certain purpose which was specified in their memorandum of association, but they had entered into certain contracts which were *ultra vires*. It was argued, however, that inasmuch as these contracts had been ratified and adopted by the whole body of the shareholders they had become binding on the company. But it was held by the House of Lords that the Act under which they had been incorporated had been passed, not only for the benefit of the shareholders, but also for the protection of the public. The Act only permitted the company to make contracts of a particular kind, but if they disregarded the Act of Parliament and went beyond the powers given them by it, as Lord Hatherley said, "no amount of ratification or confirmation by individual shareholders could give validity to the contract in question." "This contract," said Lord Cairns, "was entirely beyond the objects in the memorandum of association; it is not, therefore, a question whether the contract ever was ratified or not. It was a contract void at the beginning because the company could not make the contract. If every shareholder of the company had said, 'This is a contract which we authorize the directors to make,' the case would not have stood in any different position from that in which it stands now, for the shareholders would thereby, by unanimous consent, have been attempting to do the very thing which, by the Act of Parliament, they were prohibited from doing."

Rights of private persons may be infringed in exercising statutory powers, but only so far as is absolutely necessary.

There is no doubt that "if on the true construction of a statute it appears to be the intention of the Legislature that powers should be exercised, the *proper* exercise of which may occasion a nuisance to the owners of neighbouring land, and that this should be free from liability to an action for damages, or an injunction to prevent the continued proper exercise of the powers, effect must be(*h*) given to the intention of the Legislature." But to lead to this result there must be some element of com-

(*h*) Lord Blackburn in *L. B. & S. C. R.* v. *Truman* (1885), 11 App. Cas. 45, at p. 60.

pulsion or indication of an intention to interfere with private rights.(*i*) On this principle the House of Lords decided that a nuisance caused by a cattle station, though a nuisance at common law, was not actionable, as the station was properly constructed and managed, and nothing had been done which was not incidental and necessary to the carrying of the cattle traffic on the railway. "While it is thoroughly well established that no action will lie for doing that which the Legislature has authorized, if it be done without negligence, although it does occasion damage to some one . . . . an action does lie for doing that which the Legislature has authorized, if it be done negligently. And if by a reasonable exercise of the [statutory] powers the damage could be prevented, it is 'negligence' not to make such reasonable exercise of the powers."(*j*) And not only will an action lie for negligence in the exercise of statutory powers, but also, inasmuch as in the exercise of statutory powers both public and private rights may be and are infringed, the persons to whom these powers are granted may not only be restrained from exceeding those powers, but also from infringing upon the rights of other persons in a greater degree than is absolutely necessary for the purpose of effectuating the object for which the powers have been entrusted to them. Thus, in *R.* v. *Kerrison* (1815), 3 M. & S. 526, certain commissioners were authorized by statute to make a river navigable, and for that purpose to cut the soil of any persons in order to make a new channel. By virtue of this power they cut through a highway and rendered it impassable; consequently, it became necessary to build a bridge over the cut, and the question arose whether these commissioners were liable or not to keep this bridge in repair. The Court held that they were liable. "The Legislature," said Lord Ellenborough, "intended that, so far as regards making

(*i*) Per Bowen, L.J., approved by Lord Blackburn in case last cited, at p. 63.

(*j*) Per Lord Blackburn in *Geddes* v. *Proprietors of Bann* (1878), 3 App. Cas. 455.

the river navigable and cutting new channels for that purpose, neither public nor private rights should stand in their way; but still they must make good to the public in another shape the means of passage over such ways as they were empowered to cut through."(*k*) This principle was also acted upon in *Oliver* v. *North-Eastern Railway* (1874), L. R. 9 Q. B. 409. In that case the question was whether or not the railway company were bound to keep a level crossing in a proper state for the passage of traffic over it. The Court held that they were. "Where persons," said Blackburn, J., "are authorized by statute to create what would otherwise amount to an indictable nuisance, they are bound, without any express enactment, to put and keep up for the public a proper substitute for the old way," and this view is confirmed by the House of Lords, so far as the creation of the nuisance is necessarily involved in doing what is authorized.(*l*) "When statutory powers are conferred," said Cockburn, C.J., in *R.* v. *Bradford Navigation Co.* (1865), 6 B. & S. 631, at p. 648, "under circumstances in which they may be exercised with a result not causing any nuisance, and new and unforeseen circumstances arise which render the exercise of them impossible without causing one, and so contravening the law of the land, the persons exercising them are liable to indictment." And where interference with private property is authorized by statute, the person authorized to interfere must strictly adhere to the powers conferred, do no more than the statutes have sanctioned, and proceed by the mode (if any) indicated by the Act. But no one, except through the Attorney-General, can interfere in case of breach of the statutory terms of the sanction unless he can show a private damage.(*m*)

Objects for which powers

In deciding what may be done under statutory powers

(*k*) *Cf. Lancashire and Yorkshire Rail. Co.* v. *Mayor, &c., of Bury* (1889), 14 App. Cas. 417.

(*l*) *Metropolitan Asylum (Managers of)* v. *Hill* (1881), 6 App. Cas. 193, as explained in *L. B. & S. C. R.* v. *Truman* (1885), 11 App. Cas. 45, at p. 57, by Lord Selborne.

(*m*) *Liverpool (Mayor of)* v. *Chorley Waterworks Co.* (1849), 2 D. M. & G. 852.

are conferred to be considered in deciding whether they have been exceeded or not.

Courts of law will always take into consideration the objects for which the statutory powers have been conferred. If the powers are conferred in order to enable a body of adventurers like a railway company to construct works which, although of public utility, will or ought to yield to the constructors a lucrative return, those adventurers will always be compelled to confine their operations strictly to the purposes contemplated by the enabling statute, whereas if the powers are granted to some public body, like a corporation or vestry, solely to enable them to carry out some work of public utility or necessity, like making a new street or constructing a sewer, more latitude will be allowed in the exercise of the powers which have been granted. This distinction was clearly pointed out in *Galloway* v. *Mayor, &c., of London* (1866), L. R. 1 H. L. 34.(*n*) In that case the Corporation of London had been entrusted with powers to take land compulsorily in order to make certain public improvements in the City. Under these powers they were proposing to take more land than they absolutely required, whereupon the plaintiff filed a bill for an injunction to restrain them from so doing, on the ground that they were exceeding the powers which had been granted to them. "The case of the appellant, Mr. Galloway," said Lord Cranworth, "rested on a principle well recognised, and founded on the soundest principles of justice. The principle is this, that when persons embark in great undertakings for the accomplishment of which those engaged in them have received authority from the Legislature to take compulsorily the land of others, making to the latter proper compensation, the persons so authorized cannot be allowed to exercise the powers conferred on them for any collateral object, that is, for any purposes except those for which the Legislature has invested them with extraordinary powers. The necessity for strictly enforcing this principle became apparent when it became an ordinary occurrence that associations should be formed of large numbers of persons

(*n*) Followed in *Lyon* v. *Fishmongers' Co.* (1876), 1 App. Cas. 669.

possessing enormous pecuniary resources, and to whom are given powers of interfering for certain purposes with the rights of private property. In such a state of things it was very important that means should be devised whereby the Courts, consistently with the ordinary principles on which they act, should be able to keep such associations or companies strictly within the powers, and should prevent them, when the Legislature has given them power to interfere with private property for one purpose, from using that power for another purpose. Lord Cottenham in numerous instances (*o*) interfered in such cases; and the principle has been cordially approved of and acted on in all the courts of law (*p*) and equity, and has been frequently recognised and confirmed in this House. It has become a well-settled head of equity that any company authorized by the Legislature to take compulsorily the land of another for a definite object, will, if attempting to take it for any other object, be restrained by the injunction of the Court of Chancery from so doing. . . . . But the Legislature in providing for such an object as that of improving the metropolis has to deal with a subject totally different from that of enabling a body of adventurers to form a railway. . . . . A railway would become the property of the speculators, and would itself repay them by the tolls levied on it. . . . . But in undertaking improvements in the metropolis the matter is totally different. . . . . The corporation will necessarily have incurred a very great expense for which they can get no return. The new and improved street is dedicated to the public, and, unlike the railway, yields no profit to those by whom it has been made. Consequently, the Legislature trusted the respondents to deal with the whole property in the manner which should be considered most conducive to the public interest, and it does not seem to me to be unreasonable to suppose that the Legislature

---

(*o*) *E.g.*, *Webb* v. *Manchester and Leeds Rail. Co.* (1839), 1 Rail. Cas. 576, 599.

(*p*) See per Lord Kenyon, C.J., in *Davison* v. *Gill* (1800), 1 East 63

left it to the respondents to judge of the best means of carrying into effect the duties entrusted to them."

Statutory corporation must show that powers to be exercised are within the statute.

If the Legislature gives a public company power to take certain lands, which are specially described in their Act, for the purpose of their undertaking, it is true that, as Lord Cranworth said in *Stockton Rail. Co.* v. *Brown* (1860), 9 H. L. C. 246, at p. 256, "it constitutes them the sole judges as to whether they will or will not take these lands, provided only that they take them *bonâ fide*, with the object of using them for the purposes authorized by the Legislature, and not for any sinister or collateral purpose." But it is not sufficient for the company to make a mere statement that the purposes for which they are about to exercise their power of taking lands are within the contemplation of the Act; they must do more than this, they must be prepared with satisfactory evidence to prove this to a Court of justice if they are called upon to do so. Thus, in *Flower* v. *London and Brighton Rail. Co.* (1865), 2 Dr. & Sm. 330, Kindersley, V.C., held that the mere affidavit of the company's engineer that the land about to be compulsorily taken from the plaintiff was required for the purposes of the railway was not sufficient, but the purposes for which the company desired to take the land must be fully and particularly set out so that a Court of justice may be in a position to try the question whether the lands are fairly and *bonâ fide* wanted for the purposes of the railway.(*q*)

Powers not to be curtailed.

But, although if powers are given by Act of Parliament they must be exercised strictly and not extended, still they are not to be curtailed. Thus, in *R.* v. *South-Eastern Rail. Co.* (1853), 4 H. L. C. 471, where the company's Act gave them an option, a mandamus, ordering them to do one of the two things without showing that it had become impossible for them to do the other, was quashed. So, in *London and Blackwall Rail. Co.* v. *Limehouse Board of Works* (1857), 26 L. J. Ch. 164, where the company's

(*q*) On this point see also Cripps on Compensation (3rd ed.), ch. ii. part i.; Hodges on Railways (7th ed.), vol. i. p. 163.

Act, after reciting that "plans, &c., describing the land intended to be taken for the purpose of widenings, enlargements, and for stations, works, and conveniences to be connected therewith . . . . had been deposited with the clerks of the peace," empowered the company to widen and enlarge their railway and other works in and upon the lands delineated on the plans, it was held that this power authorized the building of a station upon the lands described, and not only such works as were necessary for merely widening the railway, the station being necessary for the public convenience.

Statutory powers of interference with property must be exercised within a reasonable time.

Powers conferred by Act of Parliament must, as a general rule, be exercised within a reasonable time after notice has been given to the persons whose property will be affected by their exercise, otherwise the notice will be liable to be treated as being no longer efficacious. Where powers are given to take lands compulsorily for the execution of works, the exercise of powers must be *bonâ fide* commenced within the time limited for the completion of the works.

In *Tiverton Rail. Co.* v. *Loosemore* (1884), 9 App. Cas. 480, Earl Cairns said (at p. 489): "I am disposed to think, as I was disposed to think in *Richmond* v. *North London Rail. Co.* (1868, 3 Ch. App. 680), that if nothing more was done [within the time for completing the works, than giving the notice to treat], and the company have slept on their rights, and certainly if the delay cannot be explained, they should be held to be disabled from going on with any compulsory purchase, and in such case the landowner should, as I think, be held to be disabled also."

This question becomes, in substance, a question of the duration of the powers of the Act in question.

Statutory powers not assignable without statutory permission.

Another peculiarity with regard to powers conferred by statute may be here noticed, viz., that such powers cannot be assigned without express statutory permission to do so. This question has often arisen in disputes between railway companies. Thus, in *Great Northern Rail. Co.* v. *East Central Railway* (1851), 9 Hare 306, 311, Turner, V.C., declined to enforce an agreement

which had been made between these two companies, on the ground that it was void as being "an entire delegation of all the powers conferred by Parliament on the defendants," and "an attempt to carry into effect without the intervention of Parliament what cannot lawfully be done except by Parliament in the exercise of its discretion with reference to the interests of the public."(*r*) Upon this principle Lord Chelmsford in *London and Brighton Rail. Co.* v. *London and S. W. Rail. Co.* (1859), 4 De G. & J. 362, at p. 388, described certain agreements made between the parties to the suit as "ingeniously and carefully worded with the object of evading the objection, which must be well known to exist, to the transfer by one railway company to another of the rights and powers conferred by the Legislature."

Power given by statute to make and enforce bylaws or rules subject to certain conditions.

4. "It is no uncommon thing," said the Judicial Committee in *R.* v. *Burah* (1878), 3 App. Cas. 906, to find "legislation, conditional on the use of particular powers, or on the exercise of a limited discretion, entrusted by the Legislature to persons in whom it places confidence." Thus, power is frequently granted by statute to enable rules,(*s*) regulations, or bylaws (*t*) to be made by some authority other than the Sovereign and Parliament in respect of some particular matter which is not provided for by the general law of the land."

And at the present time it seems to be the settled policy of the Legislature to confine its efforts to the task of laying down general principles of law, and to delegate

---

(*r*) See also per Malins, V.C., in *Re Richmond Waterworks* (1876), 3 Ch. D. 99.

(*s*) There appears to be no essential difference between bylaws made under an Act and rules or regulations made under an Act. In 38 & 39 Vict. c. 55. s. 188, "a distinction" (as Mr. Lumley points out in his essay on Bylaws, p. 3) "is drawn between regulations which sanitary authorities may make and bylaws, but the distinction is only made for the purposes of the Act." In *De Morgan* v. *Metropolitan Board of Works* (1880), 5 Q. B. D. 155, 158, Lush, J., said that "bylaws are a code of restrictions," *i.e.*, restrictions on the liberty of residents in the locality to which they apply.

(*t*) In this treatise "the ancient and legal orthography of Bylaw instead of Bye-law" (as Mr. Lumley calls it in his essay on Bylaws, Introd. p. xi.) has been adopted. "Modern usage is," as Mr. Lumley observes, "divided upon the point."

to a subordinate authority the power of making rules and orders for the purposes of settling the details of the procedure for giving effect to the general principles.

This subordinate legislation falls under three main heads :— Classification.

(*a*) Orders and regulations made by the executive and administrative departments of State;

(*b*) Rules made by judicial officers; and

(*c*) Bylaws made by authorities concerned with local government or quasi-public enterprises of a more or less local character.

And the amount of deference paid by the Courts to this class of legislation depends on the character of the authority of the delegated lawgiver, and the intention expressed or to be implied from the language of the Legislature as to the extent of authority or respect to be attached to the instrument in question.

From another point of view these rules, &c., fall into two classes—(1) those which form part of the general law, and are to be regarded as legislative acts, although they are the acts of a subordinate and delegated authority; and (2) those which are confessedly subordinate, and are subject to review as well as to interpretation by the Courts.

Of the former class the most salient instances are the Rules of the Supreme Court (*u*) (including the Crown Office Rules), the County Court Rules,(*x*) the Summary Jurisdiction Rules, the Regulations to prevent Collisions at Sea,(*y*) and many, if not most, Orders in Council.

To the latter class belong municipal bylaws, and also those of companies, friendly societies, building societies, railways, and other like bodies, constituted under legislative authority.(*z*)

(*u*) *Vide infra*, p. 304.
(*x*) *Vide infra*, p. 306.
(*y*) See *The Duke of Buccleuch* (1891), A. C. 310.
(*z*) *Re West Riding Permanent Benefit Building Society* (1890), 43 Ch. D. 407; *Tosh* v. *North British Building Society* (1886), 11 App. Cas. 489.

But the difference between the two classes is of degree only, except with regard to those rules in the first class, as to which Parliament has expressly or impliedly provided that their validity shall in no case be questioned by the Courts.

In the absence of express statutory provision to the contrary, the Courts may inquire whether the rule-making power has been exercised in accordance with the provisions of the statute by which it is created, whether with respect to procedure adopted, or the form or substance of the regulation, or the sanction, if any, attached to the regulation, and it follows that the Court may reject as invalid and *ultra vires* a regulation which fails to comply with the statutory essentials. In *Crichton* v. *Duncan* (March 11, 1892) the Court of Session in Scotland decided an order of the Lords of Council on Education regulating elections to school boards to be *ultra vires* and void. But the Courts may be, and often are, precluded by the express or implied terms of the statute authorizing the making of the orders, rules, or bylaws from inquiring into their validity or reasonableness.(*a*)

Conformity to statute.

Rules and bylaws must, unless a contrary intention appears, be made in conformity with the directions of the Act under which they are made—*i.e.*, at the prescribed time, in the prescribed manner, and in the prescribed form, if any.

Unless the conditions precedent imposed by the statute are complied with, the rule or bylaw, however reasonable, is invalid.

Time for exercising power.

Where an Act (public, local and personal, or private) passed after 1889 is not to come into operation immediately on the passing thereof, and confers power to make any appointment (or to make, grant, or issue any instruments—that is to say, any Order in Council, order, warrant, scheme, letters patent), rules, regulations, or

(*a*) See *Slattery* v. *Naylor* (1888), 13 App. Cas. 452; *cf.* Extradition Act, 1870 (33 & 34 Vict. c. 52), s. 5.

bylaws, to give notices, to prescribe forms, or to do any other thing for the purposes of the Act, that power may, unless the contrary intention appears, be exercised at any time after the passing of the Act, so far as may be necessary or expedient for the purpose of bringing the Act into operation at the date of the commencement of the Act, subject to this restriction, that any instrument made under the power shall not come into operation until the Act comes into operation, unless a contrary intention appears in the Act, or the contrary is necessary for bringing the Act into operation.(*b*)

Revocation.

These rules, regulations, or bylaws are frequently revocable without reference to Parliament, and the Courts have in most, if not all, cases the right to inquire and determine whether any particular rule, regulation, or bylaw is made in accordance with the statutory powers—whether as to the time when it is made, the form in which it is made, or its substantial contents.

In Acts prior to 1890 which empower the making of rules, regulations, or bylaws, a power of rescission or variation must, it would seem, be given expressly or by necessary implication in order to authorize any alteration of the rules, &c., when once made; and without such power the rule-making authority is *functus officio* on the first exercise of the power.

"But where an Act passed after 1889 confers a power to make any rules, regulations, or bylaws, the power shall, unless the contrary intention appears, be construed as including a power, exercisable in the like manner, and subject to the like consent and conditions, if any, to rescind, revoke, amend, or vary the rules, regulations, or bylaws."(*c*) This rule does not extend to Orders in Council, orders, warrants, schemes, or letters patent.(*d*)

Rules by administrative departments.

The validity of regulations, orders, and rules made by departments of State depends on the due observance

(*b*) Int. Act. 1889, ss. 37, 39.
(*c*) *Ibid.* s. 32 (3).
(*d*) This appears from the deliberately different wording of ss. 31, 32 (3), and 37 of the Int. Act, 1889.

of the conditions imposed by any statute as to the making and publication; and in case of failure to comply with the statutory conditions, unless they are directory only, or the statute forbids inquiry, the Courts will invalidate such regulations, &c.

Rules made by judges.

Rules made by judges, when equivalent to statutes, are to be construed in the same way—*i.e.*, the meaning of the rule must be gathered from the language used. "We cannot act upon intention either in the case of a statute or in the case of a rule; we must have the intention carried into effect, and if the intention is stated to have been such that the terms either of the rule or of the statute contravene it, or are in any way inconsistent with it, we cannot have regard to that intention. We can only say, either in the case of the judges or in the case of the Legislature, what the judges or the Legislature have actually done. It is manifestly impossible to enter on such an inquiry without confusion and serious risk of defeating the ends of justice. In the case of the judges it may be more easy to find out exactly what they felt and wished than in the case of the Legislature, but still the difficulty would be enormous. We cannot act upon intention."(*e*) Lord O'Hagan went on to say that there was strong testimony as to the purpose for which the rule in question (R. S. C. 1875, Ord. 19, r. 15, as to pleading in ejectment) was framed, which was put forward as being in a sense a contemporaneous exposition of the rule, and seemed to justify the inference of an agreement of the judges on the point, but that even this agreement would not prevail if opposed to the express terms of the rule. In dealing with a new rule it is, as in the case of a statute, necessary to consider the state of the law at the time, and the object of the change, if any, effected by the rule.(*f*)

Where a question arose on R. S. C. 1883, Ord. 50, r. 8, as to the meaning of the words "the amount of money in respect of which the lien or security is

(*e*) Per Lord O'Hagan in *Danford* v. *McAnulty* (1882), 8 App. Cas. at p. 460. See also per Lord Blackburn, *loc. cit.* at p. 461.
(*f*) *Loc. cit.* p. 460.

claimed," Lord Esher said, in *Gebruder Naf* v. *Ploton* (1890), 25 Q. B. D. at p. 15: "They must be construed according to the ordinary meaning of the English language, unless there is something in the context which shows that it ought not to be so construed. The words have no idiomatic meaning, and they must therefore be construed according to their grammatical meaning."

Forms annexed to rules.

Forms prescribed by rules of court are not construed as limiting or derogating from the rules or Act under which they are prescribed.(*g*) They bear the same relation to rules as schedules do to Acts.(*h*)

Repeal of statutes by rules.

The Rules of the Supreme Court cannot repeal the Judicature Acts, but apparently may repeal any prior Act falling within the scope of the rule-making authority created by the Judicature Acts, it being presumed with reference to these rules that Parliament delegates its functions with reference to judicial procedure to a more competent authority. Like rules made under any other Act, if they have a force and meaning inconsistent with the Act, they are clearly *ultra vires*, and may be disregarded,(*i*) and it is doubtful whether even the wide rule-making authority under the Judicature Acts can alter procedure so as to affect substantive rights, even though it has been said that there is no vested right in procedure.

The so-called Practice Rules made by the subordinate officers of the Supreme Court have slight, if any, independent validity,(*j*) except so far as they are adopted by the judges as embodying the *cursus curiæ*.

In the case of inconsistency between prior Acts and rules which have legislative authority, to the extent above stated the rules prevail.(*k*) Many enactments have been

---

(*g*) *In re A Solicitor* (1890), 25 Q. B. D. 26 (Esher, M.R.).
(*h*) *Vide ante*, p. 236.
(*i*) *In re A Solicitor* (1890), 25 Q. B. D. 17, at p. 23 (Lord Coleridge, C.J.); *Hartmont* v. *Foster* (1881), 8 Q. B. D. at p. 86 (Lindley, J.).
(*j*) *Hume* v. *Somerton* (1890), 25 Q. B. D. 239, at p. 243 (Charles, J.).
(*k*) *Garnett* v. *Bradley* (1876), 3 App. Cas. 950.

expurgated from the Statute-book on this ground. But special enactments as to the incidence and amount of costs have in some cases been held not to be repealed by the general provision of the rules.(*l*)

Where an Act passed subsequently to the making of rules is inconsistent with them, the Act must prevail unless it was so clearly passed *alio intuitu* that the two may be allowed to stand together.(*m*)

Similar principles of construction appear to be applied to the County Court Rules, having regard always to the rule that the jurisdiction of the Superior Courts can only be ousted by specific words.(*n*) "The answer to this question," said Lord Esher, M.R., "depends upon the construction of ss. 118 and 119 of the County Courts Act, 1888, and the rules governing the scales of costs given in the Appendix to the County Court Rules, 1889. Those rules were made by a committee of county court judges, and allowed by the Lord Chancellor, under the authority conferred by s. 164 of the Act, and they have, I assume, a statutory force. We must therefore construe the Act and rules together as one enactment, and we must endeavour to ascertain the meaning of each part of them from a consideration of the whole."(*o*) And at p. 357 he spoke of the rule as having the force of a statute.

Bylaws.

The term "bylaw," as now understood, applies to regulations made by municipal and trading corporations, whether constituted by charter or statute, including guilds, trade unions, and friendly and industrial societies.(*p*)

(*l*) *Vide post*, p. 358, and *Reeve* v. *Gibson* (1891), 1 Q. B. 652.

(*m*) See *King* v. *Charing Cross Bank* (1890), 24 Q. B. D. 27, where the question arose whether the County Courts Act, 1888, s. 127, as to procedure in prohibition, was inconsistent with R. S. C. 1883, Ord. 59, rr. 1, 8a; *vide infra*, ch. iv. p. 358.

(*n*) *Vide ante*, pp. 139–141.

(*o*) *Re Langlois* v. *Biden* (1891), 1 Q. B. 349, 355.

(*p*) The bulk of the original legislation of the American colonies was effected by bylaws passed by the freemen acting under the colonial charters, and the whole legislation of the British colonies, so far as relates to the question of *ultra vires*, may be dealt with by the Privy Council as consisting of bylaws under the colonial Constitution.

A bylaw to be valid, says Sir John Comyns (Digest, tit. Bylaw, B. 1), must be *legi fidei rationi consona.* This is in accordance with the proposition stated in 5 Rep. 63 a, namely, that "all bylaws are allowed by the law, which are made for the true and due execution of the laws or statutes of the realm, or for the well government and order of the body incorporate. And all others which are contrary or repugnant to the laws or statutes of the realm are void and of no effect."(*q*) Therefore, as Lush, J., observed in *Hall* v. *Nixon* (1875), L. R. 10 Q. B. 159, "obedience to a bylaw cannot be enforced by the imprisonment of the offender or by the forfeiture of his goods, because these are both against Magna Charta." It is necessary, however, to bear in mind the distinction between bylaws made by corporations existing under charter,(*r*) or regulations made by courts baron or court leet,(*s*) and regulations made in assumed execution of statutory authority,(*t*) for most of the older decisions relate to bylaws of the first two classes; and with respect to the third class, as the Court observed in *Edmonds* v. *Waterman's Company* (1855), 24 L. J. M. C. 128, "a bylaw cannot be said to be inconsistent with the laws of this kingdom merely because it forbids the doing of something which might lawfully have been done before, or requires something to be done which there was no previous obligation to do, otherwise a nominal power of making bylaws would be utterly nugatory."

Bylaw must conform to general law.

A rule, regulation, or bylaw must not be *ultra vires,* that is to say, if a power exists by statute or charter or custom

Bylaw must not be *ultra vires.*

(*q*) It was usual to insert in statutes which give power to make bylaws a proviso that "no bylaw shall be of any effect if repugnant to the laws of England." This is, however, an unnecessary precaution, if the above proposition, as stated by Sir John Comyns, be part of the common law of the land.

(*r*) *Vide infra,* p. 310.

(*s*) These are bylaws whose validity depends on the common law rules as to the validity of local customs.

(*t*) See *Smith* v. *Butler* (1889), 16 Q. B. D. 349, where it was held that a borough corporation could make and enforce a bylaw under s. 48 of the Tramways Act, 1870, regulating the number of passengers to be carried on a tramcar, even without the assent of the lessee of the tram line—*i.e.*, although the bylaw might interfere with the profits of the line.

to make bylaws, that power must be exercised strictly in accordance with the provisions of the statute, charter, or usage which confers the power, for a bylaw, if *ultra vires*, will be held to be invalid and incapable of being enforced. Thus, in *Brown* v. *Holyhead Local Board* (1862), 32 L. J. Ex. 25, it appeared that the local board was authorized by 21 & 22 Vict. c. 98, s. 29, to make bylaws with respect, among other things, "to the level, width, and construction of new streets." The board made a bylaw empowering them "to cause any works in new or existing buildings," of which they did not approve, "to be pulled down or otherwise dealt with as the case may require." "We are all of opinion," said Pollock, C.B., "that the bylaw is not valid, as it is not in pursuance of the authority." But a bylaw is not held *ultra vires* merely because it intereferes with private property, nor because it prohibits where empowered to regulate, as regulation often involves prohibition.(*u*)

nor repugnant to statute under which it is made.

A bylaw must not be repugnant to the statute or charter which empowered it to be made. Thus, in *Dearden* v. *Townsend* (1865), L. R. 1 Q. B. 10, it appeared that a railway company were authorized by their Act to make bylaws in order to carry out the provisions of the Act. One of these provisions was that it was an offence for any one to travel without having paid his fare "with intent to evade payment of it." The company made a bylaw that "any passenger not producing his ticket," when required to do so, "will be required to pay the fare from the place whence the train originally started." A passenger, who had intended only to travel from a certain station and back, went farther on owing to accidental circumstances, and not "with intent to evade payment of his fare." The company, however, insisted that under their bylaw the passenger was bound to pay for the whole distance the train had travelled. But it was held otherwise. "The statute," said Cockburn, C.J., "expressly provides for the case of persons intending to evade the payment of their fares, making that

8 & 9 Vict. c. 20.

(*u*) *Slattery* v. *Naylor* (1888), 13 App. Cas. at p. 450.

fraudulent intention the gist and essential ingredient of the offence. Then s. 109 authorizes the company to make bylaws not repugnant to the provisions of the statute. Therefore, if the company thus alone authorized to make bylaws were by a bylaw to constitute the same facts an offence, striking out the ingredient of intention to defraud, they would be altering the enactment of the statute and legislating in a sense repugnant to its provisions." It is sometimes (as in the last-mentioned statute, 8 & 9 Vict. c. 20, s. 109) expressly stated in the statute that the bylaws made under it must not be repugnant to its provisions, but whether it is so stated or not, it is clear that any bylaw or part (*x*) of a bylaw, which is not confined to the particular circumstances contemplated by the statute, is invalid and cannot be enforced.(*y*) There is some difference of judicial opinion as to whether a bylaw is severable. In *Clark* v. *Denton* (1830), 1 B. & Ad. 92, 95, Bayley, J., said that a bylaw can be good in part and bad in part, and in *Dyson* v. *L. & N. W. Rail. Co.* (1881), 7 Q. B. D. 32, Lindley and Mathew, JJ., treated the bylaw there in question as severable.

Statutory bylaw must be reasonable.

But Cockburn, C.J., said, in *Saunders* v. *South-Eastern Railway* (1880), 5 Q. B. D. 463, "that not only is it essential to the validity of a bylaw that it be reasonable, but also that a bylaw being entire, if it be unreasonable in any particular, shall be void for the whole."(*z*) When breach of a bylaw is punishable as an offence it is difficult to divide the bylaw so as to leave the valid and quash the invalid portion, but there seems no insuperable obstacle to doing so in a proper sense.

(*x*) See per Quain, J., in *Hall* v. *Nixon* (1875), L. R. 10 Q. B. 161; and *R.* v. *Lundie* (1863), 32 L. J. Q. B. 345 (Willes, J.).

(*y*) The difficulties created by the Act in question have, to some extent, been removed by the Regulation of Railways Act of 1889 (52 & 53 Vict. c. 57), s. 5.

(*z*) An example of a bylaw which was held to be unreasonable may be found in *Heap* v. *Burnley* (1884), 12 Q. B. D. 618, where Lord Coleridge said, "It is impossible to attempt to lay down what, under all the circumstances, would be a reasonable bylaw, but it seems to me to be unreasonable to say that in country districts, in the present state of things, nobody shall keep a pig within fifty feet of his dwelling-house."

The power to quash as unreasonable bylaws made by corporations appears to have arisen, or to have been first authoritatively declared, by 15 Hen. 6, c. 6, an Act which expired, but was revived and confirmed in 1503, by 19 Hen. 7, c. 7,(*a*) which is directed against masters, wardens, and fellowships of crafts or mysteries (*i.e.*, mediæval trades unions), and rulers of guilds and fraternities, described in the preamble as private bodies corporate in cities, towns, and boroughs. It has been continuously exercised with reference to all bylaws for many centuries, and the Courts have been active to restrain the encroachments alike of the royal prerogative and local option upon the general law of the realm. And the jurisdiction of the High Court to decide upon the validity of bylaws can be ousted only by express enactment.(*b*) But at the present time there is a growing disinclination among judges to invalidate bylaws for unreasonableness if it can be avoided, and the tendency of the Courts is well exemplified in the recent case of *Slattery* v. *Naylor* (1888), 13 App. Cas. p. 452. "The jurisdiction of testing bylaws by their reasonableness was originally applied (*c*) in such cases as those of manorial bodies, towns, or corporations having inherent powers or general powers conferred by charter of making such laws. As new corporations, or other local administrative bodies have arisen, the same jurisdiction has been exercised over them. But in determining whether or no a bylaw is reasonable, it is material to consider the relation of its framers to the locality affected by it, and the authority by which it is sanctioned. . . . . Every precaution has been taken by the Legislature to ensure: (1) That the council shall represent the feelings and interests of the community for which it makes laws. (2) That if it is mistaken, its composition may promptly be altered. (3) That its bylaws shall be under the control of the

(*a*) Unrepealed. See 1 Rev. Statt. (2nd ed.) p. 237.
(*b*) *Bentham* v. *Hoyle* (1878), 3 Q. B. D. at p. 292 (Cockburn, C.J.).
(*c*) Manorial bylaws rest on custom, and could always be rejected as unreasonable.

supreme executive authority. And (4) that ample opportunity shall be given to criticise them in either House of Parliament. Their lordships feel strong reluctance to question the reasonable character of bylaws made under such circumstances, and doubt whether they ought to be set aside as unreasonable by a court of law, unless it be in some very extreme case."(*d*) In considering whether a bylaw is reasonable it is not for the Courts to determine whether it would have been wiser or more prudent to make it less absolute, or to determine that it should be held unreasonable because considerations which the Court would itself have regarded in framing such a bylaw have been overlooked or rejected by its framers.(*e*) And where a statute gives power to any person or body of persons to make rules for a certain specific purpose, the reasonableness of such rules, provided they are strictly confined to the purpose for which they are authorized to be made, is not examinable by the judges, and the rules will be binding whether they are reasonable and proper rules or not. Thus, in *Bailey* v. *Williamson* (1872), L. R. 8 Q. B. 118, it appeared that 35 & 36 Vict. c. 15, gave power to the Ranger and the Commissioners of Works to make rules as to the way in which the parks were to be used by the public, and enacted that any person acting in contravention of those rules should on conviction be liable to a penalty. The appellant was summoned for acting in contravention of these rules, and in his defence he urged (among other points) that the rules which had been made in pursuance of the power given by the Act were not proper rules, inasmuch as they went beyond the scope of the authority intended to be conferred by the Act. As to this Cockburn, C.J., in pronouncing judgment, said that, as it was clearly within the jurisdiction of the Ranger to make the rules, the Court "had no authority to look into the rules to see whether they were reasonable and proper or not. Parlia-

Exception to this.

(*d*) *Slattery* v. *Naylor* (1888), 13 App. Cas. at p. 453.
(*e*) *Ibid.* at p. 452.

ment," said he, "has reserved that power to either House, but it has not conferred it upon us. If the rule made is within the scope of the authority given by the Legislature, there is an end of the matter so far as we are concerned."

Meaning of terms used in bylaws.

Any particular term or word used in a bylaw should *primâ facie* receive the same interpretation as would be applied to that word or term when used in the Act, under the powers of which the bylaw is framed; but there may be occasions when it is obvious that the words are used in the bylaw in a different sense to that in which they are used in the Act (per Grove, J., in *Blashill* v. *Chambers* (1885), 14 Q. B. D. 485). And this rule has received legislative approval in the Interpretation Act, 1889, s. 31, which provides that "where any Act passed before or after 1889 confers power to make, grant, or issue any instrument—that is to say, any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or bylaws—expressions used in the instrument, if it is made after 1889, shall, unless the contrary intention appears, have the same respective meanings as in the Act conferring the power."

Bylaws must be construed so as not to override statute under which they are made.

A further important rule with regard to bylaws or rules made in pursuance of a statutory power is that they must not be construed so as to override the enactment under which they are made. "If a rule," said Hannen, J., in *Irving* v. *Askew* (1869), L. R. 5 Q. B. 211, "were really repugnant to the provisions of the Act, I should think that the rule, though made under the powers of the Act, would not override its enactments." Again, in *Ex parte Davis* (1872), 7 Ch. App. 529, James, L.J., said: "If the Act of Parliament is plain the rule must be interpreted so as to be reconciled with it, or, if it cannot be reconciled, the rule must give way to the plain terms of the Act." So, also, in *Richards* v. *Attorney-General of Jamaica* (1848), 6 Moore P. C. 381, 398, the Court said as follows with regard to certain rules which had been made under 3 & 4 Will. 4, c. 73: "It has been argued that these rules having been approved by the King in Council have under the provisions of this statute the force of an Act of

Parliament. . . . . The words of these rules are no doubt very large, but, as they are made under the power of the Act and to provide for cases mentioned in the Act, we must look to the Act itself in order to construe them."

In some few cases, however, an order made under an Act may override the Act to some extent. Thus, Orders in Council under the Extradition Acts, 1870 and 1873 (by ss. 2, 5, of the earlier Act), may modify the application of the Acts to existing treaties, and the validity of the orders cannot be questioned in any legal proceedings whatever.

Difference between rules made under statutory and under common law power.

An important distinction is drawn between rules made under a statutory power and rules made under a general common law power—viz., that when "authority is given to certain persons by statute to draw up rules and orders, and it is provided that they shall be laid before Parliament for a certain time, and, if not objected to, shall then be binding, such rules and orders, if not objected to by Parliament, become part of the statute,"(*f*) whereas the latter kind of rules have no operation to alter any statute. For instance, the Common Law Procedure Act, 1852, s. 223, authorized the common law judges "to make from time to time all such general rules and orders, for the effectual execution of the Act, as in their judgment shall be necessary or proper." The rules made in pursuance of this statutory power are, it seems,(*g*) in all respects similar to an Act of Parliament, but the rules of Hilary term, 1853, which were made under the general power to make rules regulating the procedure of the Courts, which the judges possess, have no operation to alter any statute.(*h*) Thus, in *R.* v. *Paulett*

15 & 16 Vict. c. 76.

(*f*) Per Brett, L.J., in *Dale's case* (1881), 6 Q. B. D. 455.

(*g*) This was so stated by Willes *arguendo* in *Rowberry* v. *Morgan* (1854), 9 Ex. 730, and was assented to by the judges in their judgments on the case.

(*h*) In *Brown* v. *Shaw* (1876), 1 Ex. D. 427, Bramwell, B., said, "I doubt whether under any circumstances the judges have power to enlarge a period of time fixed by a statute for doing an act."

(1873), L. R. 8 Q. B. 491, it appeared that although all the preliminaries required by 9 Geo. 4, c. 61, s. 27 (the Act which gave the right to appeal), had been duly observed, the Court of Quarter Sessions to whom the appeal was made had refused to hear it, on the ground that a certain rule, which they had made with regard to giving notice of appeal, had not been complied with. With regard to the making of rules by quarter sessions, although they have no statutory authority to do so, yet, as Blackburn, J., said, "it has been established by numerous cases that it is incident to a Court of Quarter Sessions to regulate its own practice." But as they had in this instance made a rule, which was not a mere rule of practice, but one which imposed upon appellants an additional condition to those which were imposed by statute, it was clear that they had acted beyond the scope of their power, and that the rule made by them was illegal, and could not be enforced. The effect of the rules under the Judicature Acts has admittedly been to repeal or supersede many provisions of former statutes.

Rule as to exercise of statutory power granted to the Crown.

5. If a power is given to the Crown by statute for the purpose of enabling something to be done which is beyond the scope of the royal prerogative, it is said to be an important constitutional principle that such a power, having been once exercised, is exhausted and cannot be exercised again. For it would be inconsistent with the regard we have for our liberties to allow unfulfilled powers to hang over us, or to allow the Ministers of the Crown to exercise part of a statutory power and to neglect the rest.(*i*) Thus, the Act of Union between Great Britain and Ireland, 39 & 40 Geo. 3, c. 67, art. 1, empowered the Crown to assume "such royal style and titles as his Majesty by his royal proclamation shall be pleased to appoint." This power was exercised immediately after the passing of that Act of Union, and, having been once exercised, the power was exhausted. Therefore, when it was again in 1876 thought expedient to alter the royal style it was necessary

(*i*) Times, April 29, 1876.

to pass another Act of Parliament in order to enable this alteration to be made, and such an Act, 39 & 40 Vict. c. 10, was accordingly passed.(*j*) But this rule seems to have been to some extent, if not wholly, abrogated by the Interpretation Act, 1889, s. 32, which provides that where an Act passed after 1889 confers a power, then, unless a contrary intention appears, the power may be exercised from time to time as occasion requires, and that where the power is conferred on the holder of an office, it, unless a contrary intention appears, may be exercised by the holder for the time being of the office.

Obligatory and permissive Acts.

6. When statutes are passed for the purpose of enabling something to be done, they are usually expressed in permissive language, that is to say, it is enacted that "it shall be lawful," &c., or that "such and such a thing *may* be done." "*Primâ facie*," as Crompton, J., said in *Re Newport Bridge* (1859), 2 E. & E. 377, 380, "these words import a discretion, and they must be construed as discretionary unless there be anything in the subject-matter to which they are applied, or in any other part of the statute, to show that they are meant to be imperative." "The words 'it shall be lawful' are words," said Lord Cairns in *Julius* v. *Bishop of Oxford* (1879), 5 App. Cas. 222, "making that legal and possible which there would otherwise be no right or authority to do. They confer a faculty or power, and they do not of themselves do more than confer a faculty or power. 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

(*j*) It was argued at the time by several of the newspapers that the proclamation which was then issued (see *London Gazette*, April 28, 1876) contravened this principle, inasmuch as at the end of the proclamation it was stated that money coined after the proclamation should be deemed to be lawful money notwithstanding such addition, "until our pleasure shall be *further declared thereupon*," as though it assumed that a further proclamation might be issued on the subject at some future date.

whom the power is reposed, to exercise that power when called upon to do so. These words being, according to their natural meaning, permissive or enabling words only, it lies upon those, who contend that an obligation exists to exercise this power, to show in the circumstances of the case something which, according to the principles I have mentioned, creates this obligation."

Permissive language in statutes under certain circumstances held obligatory.

It is, however, a well-recognised canon of construction that, as Lord Cairns further said in *Julius* v. *Bishop of Oxford* (1879), 5 App. Cas. 225, "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." "So long ago," said the Court in *R.* v. *Bishop of Oxford* (1879), 4 Q. B. D. 245, 258, "as the year 1693, it was decided in the case of *R.* v. *Barlow* (1693), 2 Salk. 609, that when a statute authorizes the doing a thing for the sake of justice or the public (*k*) good, the word 'may' means 'shall,' and that rule has been acted upon to the present time . . . . and of course the same rule will apply to the words 'it shall be lawful.'" "That," said James, L.J., in *Re Neath and Brecon Railway* (1874), 9 Ch. App. 264, "is the usual courtesy of the Legislature in dealing with the judicature." But, when so employed, this expression "'it shall be lawful,'" as James, L.J., went on to say, "means in substance that it shall not be lawful to do otherwise." Thus, in *McDougal* v. *Paterson* (1851), 6 Ex. 337, *note*, it appeared that the 13 & 14 Vict. c. 61, s. 13, enacted that, with regard to certain actions, the Court in which the

(*k*) In *Julius* v. *Bishop of Oxford* (1879), 5 App. Cas. 244, Lord Blackburn takes exception to the word "public." "If by that," said he, "it is to be understood, either that enabling words are always compulsory where the public are concerned, or are never compulsory except where the public are concerned, I do not think either was meant . . . . in fact, in every case cited (where it has been held that the power must be exercised) it has been on the application of those whose private rights required the exercise of the power."

action is brought "*may* direct that the plaintiff shall recover his costs." The Court decided that this enactment was not permissive, but obligatory. "When," said they, "a statute confers an authority to do a judicial act in a certain case, it is imperative on those so authorized to exercise the authority, when the case arises and its exercise is duly applied for by a party interested and having the right to make the application. For this reason we are of opinion that the word 'may' is not used to give a discretion, but to confer a power upon the Court and judges, and that the exercise of such power depends, not upon the discretion of the Court or judges, but upon the proof of the particular case out of which such power arises."(*l*) So, also, in *Morisse* v. *Royal British Bank* (1856), 1 C. B. N. S. 67, the question was whether 7 & 8 Vict. c. 113, s. 13, gave the Court any discretion. The words of the section are, "In cases provided by this Act for execution on any judgment . . . . such execution *may be issued by leave* of the Court or of a judge . . . . upon motion or summons for a rule to show cause . . . . and *it shall be lawful* for such Court or judge to make absolute or discharge such rule . . . . or to make such order therein as to such Court or judge shall seem fit." As to these words Cockburn, C.J., said in his judgment, "I was at first disposed to doubt whether the Court did not possess some discretionary power under this section . . . . but I reluctantly yield to the weight of authority." And Willes, J., added: "The 13th section only defines the mode of enforcing the right. The words in the section 'It shall be lawful,' &c., are a mere expression of the power that is inherent in the Court, *Expressio eorum quæ tacite insunt nihil operatur*. The meaning is that the Court shall make an order, not according to attributive justice, but according to the usage and practice of the Court."

Language *primâ facie* permissive may not only makeit imperative upon the Court to do the thing which the

---

(*l*) Adopted by the Queen's Bench in *Crake* v. *Powell* (1852), 2 E. & B. 210; *cf. Re Eyre and Corporation of Leicester* (1892), 1 Q. B. 136, 141.

enactment states that it *may* do, but it also prohibits that particular thing from being done by the Court in any other way. This was pointed out by Jessel, M.R., in *Taylor* v. *Taylor* (1876), 1 Ch. D. 431. In that case it appeared that by 19 & 20 Vict. c. 120, s. 16, "any person entitled to the possession of the rents and profits of any settled estates for a term of years . . . . *may* apply to the Court by petition in a summary manner to exercise the powers conferred by the Act." "When," said Jessel, M.R., "a statutory power is conferred for the first time upon a Court, and the mode of exercising it is pointed out, it means that no other mode is to be adopted. This section says that the proceeding is to be by petition. It is *enabling*, I know, in form that the application may be by petition, but *no other* process can be adopted. . . . . In the same way when a statute says who is the person to petition, that person, *and no others*, shall be entitled."

"It has been clearly settled," said Lord Wensleydale in *Edinburgh, Perth, &c., Rail. Co.* v. *Philip* (1857), 2 Macq. H. L. (Sc.) 526, "though in the first instance there was some doubt about it, that enabling Acts are not compulsory;" in other words, permissive language, when used in an Act of Parliament, passed for the purpose of enabling works, such as railways, to be carried out, is not held to be obligatory. This question was decided by the Exchequer Chamber in the case of *R.* v. *York and North Midland Rail. Co.* (1853), 1 E. & B. 858. In that case the Exchequer Chamber laid it down distinctly for the first time (reversing the decision of the majority of the judges in the Queen's Bench), that a statute, enacting that "it shall be lawful" for a company to make a railway, did not render it compulsory for the company forthwith to make the railway, but left it optional with them to do so or not at any time as they pleased. Such Acts usually contain both permissive language and imperative language, and it is important to observe the distinction. "The language," said Erle, J., "in respect of making the railway is permissive, not imperative, the distinction between permissive and imperative language being maintained throughout the

statutes on this subject. Imperative language is used when a clear duty is to be executed, and permissive language in common understanding would express that the matter is to be optional. Thus, the company are permitted at their option to take lands, turn roads, alter streams, and exercise other powers, and these matters are made lawful for them, but they are commanded to make compensation for lands taken, to substitute new roads for those they turn, and to perform other conditions relative to the exercise of the powers, and these matters are required from them."

If a work is once begun under a permissive Act not obligatory to finish it.

In the same case, another point was raised, which, although it was not expressly decided, it may be well to advert to here. It was argued in that case that, if an Act of Parliament gives to a person or a number of persons permission to do some work, such as taking land compulsorily and making a railway, it may very well be that, if they once commence to exercise those compulsory powers for the purpose of making their railway, they are bound to continue the work until they have completed their railway; in other words, as Jervis, C.J., said (at p. 860), "that a work, which in its inception is permissive only, becomes obligatory by part performance." This doctrine was partly recognised by Erle, J., in his judgment in the Court below, but the Court of error said as to it as follows: "It is unnecessary here to determine the abstract proposition that a work, which before it is begun is permissive, is, after it is begun, obligatory. We desire not to be understood as assenting to the proposition of Erle, J., that 'many cases may occur where the exercise of some of the compulsory powers may create a duty to be enforced by mandamus,' and, on the other hand, we do not say that such may not be the law." This point seems not to have been mooted since the decision in that case.(*m*)

(*m*) In *Ex parte A Clergyman* (1873), L. R. 15 Eq. 154, it was held that a clergyman who had taken certain steps towards relinquishing his office under 33 & 34 Vict. c. 91, may change his mind and cancel the steps he has taken; and in *R.* v. *French* (1878), 3 Q. B. D. 187, it was held that a certain Act which empowered a turnpike road to be made and tolls to be charged did not make it a condition precedent that the roads should be entirely completed before any tolls were levied.

CHAPTER III.

EFFECT OF STATUTES ON COMMON LAW AND EQUITY.

	PAGE
1. Present relations of common law and equity.	320
Case-law and statute law	320
Where common law and a statute conflict, the latter prevails	321
Cases in which common law right of action is taken away by statute	323
2. Effect of affirmative statutes on the common law.	324
(a) New remedy given by statute for infringing common law right does not oust common law remedy	324
Unless the remedies are inconsistent	326
(b) New statutory penalty cumulative if offence previously punishable at common law	326
In absence of specific statutory remedy, common law or equitable remedies may apply to enforce statutes	328
(c) Common law incidents attach in certain cases to corporations created by statute	329

Present relations of common law and equity.

1. REFERENCES to the common law in this chapter must be taken as also applying to equity, inasmuch as the fusion of the courts of law and equity and the recognition that equity is to be administered in preference to law where their rules conflict, has in effect constituted a new *lex non scripta*.

Case-law and statute law.

It frequently becomes important to decide whether a statute has altered or affected law or equity as declared by judicial opinion.(*a*) Thus, in *Moore* v. *Knight* (1891),

(*a*) But see hereon *Vagliano* v. *Bank of England* (1891), A. C. 107, 144, per Lord Herschell.

1 Ch. 547, Stirling, J., had to determine whether the decision in *Blair* v. *Bromley* (1848), 2 Ph. 354, 5 Hare 542, was affected by s. 8 of the Trustee Act, 1888 (51 & 52 Vict. c. 59), extending the Statute of Limitations to certain breaches of trust. In case of conflict case-law must of course yield to statute law. Many enactments are aimed at particular judicial decisions, either declaring them to have been erroneous, or repealing the law as laid down in them. And it is matter of every-day occurrence for the Courts to consider whether the wording of enactments shows an intent to get rid of some rule of case-law.(*b*) Thus, Lindley, L.J., in *Handley* v. *Handley* (1891), P. 124, at p. 127, said: "The statute 22 & 23 Vict. c. 61, s. 35, enacts that the Court may make such provision as it may deem just and proper with respect to the custody, maintenance, and education of the children the marriage of whose parents is the subject of the suit. The language is express and unmistakable, and clearly gives to the judge of the Divorce Court a wide discretion as to the custody of the children, though not a discretion which cannot be the subject of an appeal. This discretion, in my opinion, overrules both the Common Law rules and the Chancery rules as to the custody of children which were in force when the Act was passed. The judge is not bound to follow any of these rules, though he will have regard to them in exercising his discretion; but he will be mainly guided by the particular circumstances of the case before him."

Where common law and a statute conflict, the latter prevails.

"The common law," says Lord Coke in 1 Inst. 115 b, "has no controler in any part of it but the High Court of Parliament, and if it be not abrogated or altered by Parliament it remains still." If it is clear that it was the intention of the Legislature, in passing a new statute, to abrogate the previous common law on the subject, the common law must give way and the statute must pre-

(*b*) *E.g.*, the enactments making a defendant and his wife competent witnesses in criminal cases.

vail; (c) but if, as Coleridge, J., said in *R.* v. *Scott* (1856), 25 L. J. M. C. 133, there is "a *seeming* conflict between the common law and the provisions of a statute," it is not right to begin "by assuming at once that there is a *real* conflict, and sacrificing the common law;" we ought rather to proceed in the first place "by carefully examining whether the two may not be reconciled, and full effect given to both." "It is a sound rule," said Byles, J., in *R.* v. *Morris* (1867), L. R. 1 C. C. R. 90, at p. 95, "to construe a statute in conformity with the common law rather than against it, except where and so far as the statute is plainly intended to alter the course of the common law." Thus, in *Warden of St. Paul's* v. *The Dean* (1817), 4 Price 65, it appeared that 37 Hen. 8, c. 12, enacted that "the citizens and inhabitants of London should pay tithes yearly." Upon an action being brought against the Dean of St. Paul's for non-payment of tithes, it was argued that, being an ecclesiastical person, he was exempt from paying tithes in accordance with the common law maxim, *Ecclesia ecclesiæ decimas solvere non debet.* It was held, however, that as there was an express Act of Parliament charging every house generally in the parish, except certain houses which are expressly exempted . . . . therefore, the Act of Parliament not having expressly discharged him, the Dean was liable . . . . because the maxim was contravened by the express words of an Act of Parliament. As a general proposition of common law the sheriff is entitled to poundage on money obtained by the execution creditor by operation of law, whether by sale of the goods of the judgment debtor, or by being paid out. By s. 46 of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), "the costs of the execution" are made a charge on any property delivered over to the official receiver in bankruptcy under the section. Cave, J., held in *Re Ludmore* (1884), 13 Q. B. D. at p. 417, that the expression "costs of the

(c) The *dictum* of Coke that an Act of Parliament cannot overrule the principles of the common law is no longer true, if it ever was. See Maine, Early Hist. Inst. p. 381; Dicey, Law of Constitution (3rd ed.), p. 59, *note*; and as to colonial laws, 28 & 29 Vict. c. 63.

execution" must be governed and construed by the general rule above stated, and that, consequently, the sheriff was not entitled to poundage unless he had sold the goods seized or had been paid out before the intervention of the official receiver.

Cases in which common law rights of action are taken away by statute.

"Where the Legislature directs that a thing shall at all events be done, the doing of which, if not authorized by the Legislature, would entitle any one to an action, the right of action is taken away,"(*d*) for if, as the Court said in *Vaughan* v. *Taff Vale Rail. Co.* (1860), 29 L. J. Ex. 247, "the Legislature sanctions the use of a particular means for a given purpose, that sanction carries with it this consequence, namely, that the use of the means itself for that purpose is not a proceeding for which an action will lie independent of negligence." And in *R.* v. *Pease* (1832), 4 B. & Ad. 30, an action was brought against the Stockton and Darlington Railway by a person whose horse, while passing along a public road near the railway, had been frightened by the noise of the locomotive engines. It appeared that the railway had been made in pursuance of powers given to the defendants by an Act of Parliament, but the plaintiff contended that although the Act in question gave the defendants power to use locomotive engines, it did not follow that the common law rights of the public in general were taken away by the Act so as to prevent an action at common law from lying if the power granted by the Act were used so as to create an annoyance. But the Court held that when the Legislature gave to the defendants unqualified authority to use the locomotives, they must be presumed to have known that the railway would be adjacent to the public highway, and that the part of the public which would use the highway would sustain some inconvenience, which inconvenience there was nothing unreasonable in supposing that the Legislature intended

(*d*) Per Lord Blackburn in *Metropolitan Asylums Board* v. *Hill* (1881), 6 App. Cas. 203.

the public to sustain for the sake of the greater good to be obtained by other parts of the public from the railway, and, consequently, that the common law right of action on account of the annoyance was taken away. This case was not for some time admitted by all judges to have been rightly decided; (*e*) but its authority is established by the recent decisions of *L. B. & S. C. Rail. Co.* v. *Truman* (1885), 11 App. Cas. 50,(*f*) and *Cowper Essex* v. *Acton L. B.* (1889), 14 App. Cas. 444, the latter being with reference to the effect of sewage works on an owner of land near, but not physically next to, the lands taken by a local authority under compulsory powers. It must not, however, be forgotten that where persons are authorized by statute to create what would otherwise amount to an indictable nuisance, they are bound without any express enactment to mitigate the nuisance and diminish the annoyance arising therefrom by every means in their power.(*g*)

Effect of affirmative statute on common law.

2. "It is a maxime in the common law," says Lord Coke, 2 Inst. 200, "that a statute made in the affirmative (*h*) without any negative expressed or implied doth not take away the common law."(*i*) Thus, if a statute provides a new remedy for infringing a common law right,(*k*) and the new remedy is not at variance with the previous

New remedy given by statute for infringing common law right does not oust common law remedy.

(*e*) *Vide* per Bramwell, L.J. (1880), 5 Q. B. D. 601.

(*f*) *Vide ante*, p. 293.

(*g*) *Vide ante*, p. 294.

(*h*) In *Mayor of London* v. *R.* (1848), 13 Q. B. 33, *note* (*d*), Alderson, B., is reported to have said in the course of the argument: "The words 'negative' and 'affirmative' statutes mean nothing. The question is whether they are repugnant or not to that [common law] which before existed. That may be more easily shown when the statute is negative than when it is affirmative, but the question is the same."

(*i*) There is a very lengthy and learned discussion in Coke upon Littleton by Hargrave and Butler, 115 a, *note* (15), ed. 1832, upon the effect of a statute upon a custom, leading to the conclusion that a statute which is in the affirmative does not take away a custom, but it seems doubtful whether even a statute expressed in negative language can do so if it is merely declaratory of the existing law. As to this, see the cases of *Mayor of London* v. *Gatford* (1677), 2 Mod. 39, and *R.* v. *Pugh* (1779), 1 Dougl. 188; also *R.* v. *Chart and others* (1870), 1 C. C. R. 240, as to the effect of affirmative words in a statute upon a liability which has immemorially existed. A local custom cannot be set up against a statute; thus, a custom in Southampton that every pound of butter should weigh 18 ounces was held bad, as being contrary to 13 & 14 Chas. 2, c. 26: *Noble* v. *Durell* (1789), 3 T. R. 271. See also *Truscott* v. *Merchant Taylors' Co.* (1856), 11 Ex. 855, 863.

(*k*) As to the rule applicable to Acts creating offences, *vide infra*, p. 328.

common law remedy, a person may elect whether to proceed in the way pointed out by the statute or at common law. Thus, in *Dr. Foster's case* (1615), 11 Rep. 64, it was held that "in a writ of mesne the process at common law was distress infinite, and although the Statute of West. 2 (13 Edw. 1), c. 9, gives more speedy process, and in the end forejudger, yet the plaintiff may take which process he will, either at the common law or upon the said statute." So, also, in *Blewitt* v. *Gordon* (1842), 1 Dowl. P. C. N. S. 815, it appeared that it was enacted by 3 & 4 Vict. c. xxvi. s. 1 (after reciting that "it would be convenient that persons having demands against the said company should be entitled to sue the secretary"), that "all actions to be commenced against the said company *shall and lawfully may* be commenced against the secretary," and it was held that this enactment did not make it imperative to sue the secretary of the company, and that the common law right of bringing an action against any member of the company was not thereby taken away.

In *Great Northern Fishery Co.* v. *Edgehill* (1883), 11 Q. B. D. 225, the question arose whether the Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), s. 4, gave any remedy against a seaman for breach of his contract in the face of the provisions of the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), s. 243. Field, J., said: "The duty under consideration in this case is an ordinary obligation to perform an ordinary contract of service, to the breach of which has been annexed the general remedy by action in favour of the employer ever since the contract of service itself. In order, therefore, to hold that the employer is deprived of that remedy, the mere annexation of a new specific remedy would not be enough of itself; it must also appear from the statute to have been the intention of the Legislature that the general remedy should not co-exist, otherwise the new remedy will be merely cumulative and in aid of the general one."(*l*)

(*l*) He cited *Mayor, &c., of Lichfield* v. *Simpson* (1845), 8 Q. B. 65.

Unless the remedies are inconsistent.

But if, as Lord Cranworth said in *O'Flaherty* v. *M'Dowell* (1857), 6 H. L. C. 142, at p. 158, it appears "that the statutory right could not, without very great inconvenience, co-exist with the ordinary common law right, and so must have been intended as a substitutional, not an additional, remedy," the common law remedy will be held to have been taken away. Thus, in *Steward* v. *Greaves* (1842), 10 M. & W. 711, it appeared that it was enacted by 7 Geo. 4, c. 46, s. 9, that "all actions against a co-partnership shall and lawfully may be commenced against one or more of the public officers nominated as before mentioned," and the question was whether this new statutory remedy annulled the common law right of suing an individual member of a company established under that Act. "The liability created by the statute," said the Court, "is very different from that which would exist without it, and it cannot be supposed that the Legislature meant to leave it to the option of any creditor whether the members of the company should be subject to one species of liability or the other. . . . . The framers of the Act had in view the convenience of the public, and thereby provided a remedy more convenient to creditors than that at common law."

New statutory penalty for offence previously punishable at common law cumulative.

If a new penalty is imposed by a statute for an offence which was previously punishable at common law (*m*) the statutory penalty is usually treated as cumulative,(*n*) and not as taking away the former penalty at common law. "It is a clear and established principle," said Ashhurst, J., in *R.* v. *Harris* (1791), 4 T. R. 202, at p. 205, "that when a new offence is created by an Act of Parliament,

---

(*m*) Where a statute inflicts a penalty for some offence which was before the passing of the statute punishable in the spiritual courts, the jurisdiction of the spiritual court is taken away by the statute if the penalty is inflicted directly *eo nomine* for punishment of the same offence as the ecclesiastical censure: *Cory* v. *Pepper* (1679), 2 Lev. 222. But if the ecclesiastical censure and the temporal penalty are *diverso intuitu*, the jurisdiction of the ecclesiastical court is not taken away: *Middleton* v. *Crofts* (1736), 2 Atk. 650.

(*n*) It is more accurate to call it alternative, as no man could, at common law, be twice punished for the same offence. See *R.* v. *Miles* (1890), 24 Q. B. D. 423, 431; and see Int. Act, 1889, s. 33.

and a penalty is annexed to it by a separate and substantive clause, it is not necessary for the prosecutor to sue for the penalty, but he may proceed on the prior clause on the ground of its being a misdemeanour."(*o*) Thus, in *R.* v. *Robinson* (1759), 2 Burr. 800, 804, the defendant was indicted at common law for refusing to obey an order of quarter sessions made upon him to keep and maintain his grandchildren. It was objected on his behalf that, since the Poor Relief Act, 1601, s. 11, 43 Eliz. c. 2. prescribed a particular penalty for this offence, the offence was no longer indictable at common law. But this objection did not prevail, for "although the rule is certain that where a statute creates a new offence by prohibiting something that was lawful before, and appoints a specific remedy against such new offence by a particular method of proceeding, that particular method of proceeding must be pursued and no other, yet nevertheless if an offence was antecedently punishable at common law, and a statute is passed which prescribes a particular remedy by a summary proceeding, either method of proceeding may be pursued, because there the method of proceeding is cumulative, and does not exclude the common law punishment."(*p*)

In the absence of a special statutory remedy, common law and equitable remedies apply to enforce statutory rights or liabilities. This rule is well stated by Lord Eldon in *Weale* v. *West Middlesex Waterworks* (1820), 1 Jac. & Walk. 358, at p. 371: "Where an Act of Parliament as this [46 Geo. 3, c. 11] directs things to be done, or to be foreborne to be done, the Legislature either provides the means for compelling such acts to be done, or restraints to prevent these being done which are to be foreborne to be done, or if the Act contains no provision of either kind, the Legislature acts upon the supposition that the enactments are complete so far as they go, and that the laws of the courts of common law and equity

(*o*) *Vide ante*, p. 248; *infra*, p. 350.
(*p*) *Vide ante*, p. 324.

are sufficient to enforce the rights which the King's subjects have under the Act. But if it turns out that the courts of law can give nothing but damages and that the courts of equity cannot interfere to compel a specific performance . . . . it is a defect which, whether it proceeded from a mistake of the Legislature, or, if I may say so, from its negligent inattention, no Court can supply." The Legislature has not said that the Courts can legislate, but that the Act is to be carried into execution by the known rules of law and equity; and the Courts are bound to try to find out, if possible, from the enactments or from the said rules, the means of enforcing the intention of the Legislature.

In *Booth* v. *Traill* (1883), 12 Q. B. D. 8, an application was made to attach as a debt money which had accrued due to a retired police constable under 11 & 12 Vict. c. 14. In opposition it was contended that the money was not a debt, and could not therefore be attached. Lord Coleridge, C.J., said (*loc. cit.* p. 11): "It appears to me to be none the less a debt because no particular mode of enforcing the payment is given by the statute. When there is a statutory obligation to pay money, and no other remedy is expressly given, there would be a remedy by action."

Common law incidents attach to certain statutory offences

If a statute creates a new variety of something which previously existed at common law (for instance, if a new kind of felony is created by statute), all common law incidents will attach to that new variety. "It is a general rule," says Hawkins in his Pleas of the Crown, bk. ii. p. 444, "that where a statute makes an offence felony, it gives it the like incidents that belong to a felony by the common law." And again in bk. i. p. 107, he says that it "is incidentally implied in every statute making an offence felony, that every such statute does by necessary consequence subject the offender to the like attainder and forfeiture, &c., and also does require the like construction to all intents and purposes as is incident to a felony at common law." So, in *The Coalheaver's case* (1768), 1 Leach C. C. (2nd ed.) 61, it was

held that a "newly created felony necessarily possessed all the incidents which appertain to felony by the rules and principles of the common law," and therefore that persons aiding and abetting in the commission of a felony created by statute were equally guilty as principals. And on this ground it was held in *Gray* v. *R.* (1844), 11 Cl. & F. 427, that the common law right of peremptory challenge of jurors attached where the prisoner was tried for a new kind of felony created by 1 Vict. c. 85. "It is submitted," said Mr. Napier, the prisoner's counsel, "that a right to a peremptory challenge is incident to a felony of every kind, whether at common law or by statute, for that the simple creation of a felony by statute gives it all the incidents which attend an existing felony." So, also, in *Levinger* v. *R.* (1870), L. R. 3 P. C. 282, it appeared that by an Act passed in 1865 the common law right of peremptorily challenging at least twenty jurymen in a criminal trial was extended to the colony of Victoria. Subsequently an Act was passed allowing a mixed jury in the case of an alien, and the question then arose whether the right of peremptory challenge extended to the case of a mixed jury. It was held by the Judicial Committee that it did so extend, on the ground that the common law relating to juries, in the absence of any positive statutory enactment to the contrary, was not affected by the statute of 1865 (as that statute merely prescribed the composition of a mixed jury), and was applicable to the denizen as well as to the alien portion of a jury. "The statute," said the Court, "being in the affirmative, leaves the common law as to this unaffected . . . . so that the right of peremptory challenge is not in any way prejudiced." On this ground also it was held by several judges in the Exchequer Chamber in *Riche* v. *Ashbury Carriage Co.* (1874), L. R. 9 Ex. 263, that when a corporation had been once created by statute it would possess all the attributes of a corporation at common law, unless any of those attributes were expressly taken away by the statute which created it. And in *Ashbury Carriage Co.* v. *Riche* (1875), L. R. 7 H. L. 685,

and in the case of corporations created by statute.

Lord Hatherley enunciated this proposition as follows. "When once," said he, "you have given being to such a body as this, you must be taken to have given to it all the consequences of its being called into existence, unless by express negative words in the statute you have restricted the operation of the acts of the being you have so created, for it is a maxim in the common law that 'a statute made in the affirmative without any negative, express or implied, doth not take away the common law.'"

CHAPTER IV.

EFFECT ON PRIOR ENACTMENTS.

	PAGE
1. General rule	331
2. Express repeals	332
Methods as to	332
Implied savings	334
Qualifications	335
Repeal does not revive dead law	335
Construction of repeal clauses	335
3. Statute law revision	336
History	336
Method	337
Saving clauses	339
Effect	339
Repeal of preambles	340
4. Incorporation of one Act with another	341
5. Explanatory Acts	342
6. Consolidation Acts	343
7. Codification Acts	344
8. Implied repeal	345
9. Effect of affirmative enactments on each other	346
What Acts are affirmative	348
When remedies under different statutes are alternative	349
10. Rules as to contrariety between statutes	351
(a) Repeal of general by special Act	353
(b) Curtailment of prior Act without repeal	354
(c) Repeal not implied from recitals or scheduled forms	356
(d) Intention to be regarded rather than grammar	356
(e) Repeal of special by general enactment	357
Effect on estate Acts	361

General rule.

1. PARLIAMENT, in the exercise of its supreme legislative capacity, can extend, modify, vary, or repeal Acts passed in the same or previous sessions.(*a*) It is, consequently, a matter of daily business for the Courts to consider the exact effect of later upon earlier enactments, in order to see whether they can wholly or in part stand together. The rule of law on the subject is thus stated by North, J., in *Re Williams* (1887), 36 Ch. D. 573, at p. 578: "The

(*a*) *Vide ante*, p. 81.

provisions of an earlier Act may be revoked or abrogated in particular cases by a subsequent Act, either from the express language used being addressed to the particular point, or from implication or inference from the language used." The particular rules of construction applicable for the enforcement of this rule are stated in the rest of this chapter, mainly with reference to repeal, as modification of prior enactments is in substance either a partial repeal, or imposing some condition or fetter upon the operation of the earlier law.(*b*)

Express repeals.

2. With reference to the subject of express repeal, statutes fall into two classes—those passed before and those passed since 1793. Acts prior to that year, unless a contrary intention appeared, all came into force as of the first day of the session in which they were passed.(*c*) But since that date they presumably come into force on the day when they receive the royal assent.(*d*) It was therefore deemed needful to insert in all Acts a section empowering the amendment, alteration, or repeal of any enactment in the session in which it was passed.(*e*) This provision was probably superfluous, inasmuch as Parliament is not fettered by any restrictions in its supreme legislative authority such as are imposed upon the Legislatures of the United States—*e.g.*, as to passing *ex post facto* laws.(*f*) And it appears to be a constitutional necessity as well as an established rule of construction that the last utterances of the Legislature should prevail over prior statutes inconsistent with it;(*g*) but it continued usual till 1850, when it was inserted in Brougham's Act. It is now incorporated in the Interpretation Act, 1889, s. 10.

Methods of express repeal.

It is now usual to annex a repeal schedule to all Acts

(*b*) As to enabling Acts, see *ante*, pp. 71 *et sqq.*, 271 *et sqq.*

(*c*) *Vide ante*, p. 60.

(*d*) 33 Geo. 3, c. 13. *Vide post*, p. 365.

(*e*) Thus, in 1889, s. 18 of the Customs and Inland Revenue Act (52 & 53 Vict. c. 7) was repealed by s. 15 of the Revenue Act (52 & 53 Vict. c. 42) in consequence of the decision of the Court of Appeal in *Commissioners of Inland Revenue* v. *Angus* (1889), 23 Q. B. D. 579.

(*f*) *E.g.*, the Act of 1886 (49 Vict. c. 11) to provide for the Piccadilly riots.

(*g*) Cave, J., in *Derbyshire* v. *Staffordshire* (1890), Times, June 4.

which considerably alter the statute law, by which means many doubts as to the inconsistency of enactments are settled by Parliament. In some cases a provision is inserted to the effect that "all provisions inconsistent with the Act are repealed," by which lawyers are simply put on inquiry as to inconsistency, or left to wait till, by a Statute Law Revision Act, the virtually repealed enactments are expurgated.

An Act repealing all enactments inconsistent with itself really goes no further than the general law.(*h*)

Usually the sole questions arising upon express repeal are the extent of the terms employed, and the qualifications, if any, stated or implied in the repealing enactment. The former question is dealt with in the chapter on "Mistake" (*infra*, Part II. ch. viii.).

To constitute express repeal there must be not only reference to the prior Act, but also the use of words apt to effect its repeal. Thus, in a recent Canadian case the reference contained in a subsequent Act to a prior Act as being effete was held insufficient as not amounting to legislation.(*i*)

Difficulties sometimes arise as to the extent of a repeal owing to the mode of reference to the earlier enactment.(*k*) But these are removed as to Acts passed after 1889 by s. 35 (3) of the Interpretation Act, 1889, which provides that "a description or citation of a portion

---

(*h*) *Garnett* v. *Bradley* (1878), 3 App. Cas. 950, at p. 965 (Lord Blackburn). Mr. Greaves pointed out in 1861, as to the Statute-book, as he knew it, that "there are many instances in which even direct repeals which refer to the enactment intended to be repealed are so worded that it is impossible to ascertain how much of the old statutes are repealed. Here there must be actual legislation to fix what is and what is not repealed." A second class of repeals is one that has been adopted of late years. It is the repealing in express terms every enactment inconsistent with the Act in which the repeal is found, without referring to any Act at all; so that doubt is thrown on every previous enactment, and it must be compared with the whole and every part of the repealing Act to ascertain whether it is repealed or not. Such repealing clauses are nearly as bad as implied repeals, which abound in the Statute-book, and are the most difficult of all to ascertain: Greaves, Criminal Law Consolidation Acts (2nd ed.), Intr. p. xvii.

(*i*) *Scottish American Investment Co.* v. *Elora* (1881), 6 Upp. Can. App. 637.

(*k*) *Vide ante*, p. 244.

of another Act shall, unless the contrary intention appears, be construed as including the word section or other part mentioned as forming the beginning and as forming the end of the portion comprised in the citation."(*l*)

Implied savings.

Certain savings are implied by law even in express repeals. In Acts passed after 1889 certain savings are implied by statute in all cases of express repeal, unless a contrary intention appears in the repealing Act. They are as follows (*m*):—

The mere repeal does not—

Revive anything not in force or existing at the time when the repeal takes effect; nor

Affect the operation (previous to the time when the repeal takes effect) of any enactment expressly repealed, or anything done or suffered under it; nor

Affect any right, privilege, obligation, or liability acquired, accrued, or incurred under the repealed enactment; nor

Affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against the repealed enactment; nor

Affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment incurred under the repealed enactment, nor the right to institute or continue the investigation or legal proceeding, or enforce the remedy, or to impose the penalty, forfeiture, or punishment as if the repeal had not been effected.

It had been usual for some years to insert provisions to the effect above stated in all Acts by which express repeals were effected. The result of this new enactment is to make a general rule out of what had been a common statutory form, and to substitute a general statutory presumption as to the effect of an express repeal for the canons of construction hitherto adopted.

(*l*) This was a common form inserted of late years in the schedule to Acts containing many repeals.

(*m*) Int. Act, 1889, s. 38 (2).

In some cases an amending Act has been held, by necessary implication, to continue certain essential provisions in a repealed Act. In *Wigram* v. *Fryer* (1887), 36 Ch. D. 87, a local Act incorporating the Lands Clauses Acts was subsequently amended by an Act repealing s. 33 of the prior Act, which contained provisions as to selling or letting. But North, J., held that the repealing Act by implication continued the powers given by s. 33 for the execution of the purposes of the amending Act.

Qualified repeals.

The saving clause is sometimes inserted, that a repeal is not to affect any jurisdiction established by an enactment repealed. With reference to the Rules of the Supreme Court relating to service of English process abroad, it was said in *Re Busfield* (1886), 32 Ch. D. 132, that, inasmuch as the Rules amounted to a code, with reference to the subject-matter in dispute it would be wrong to hold that, by virtue of a saving clause of this kind, a further jurisdiction existed under a repealed Act.

Repeals do not revive dead law.

Where an Act passed after 1850 contains a clause repealing a repealing enactment, this does not revive any enactment previously repealed, unless words are added reviving the last-mentioned enactment.(*n*) This provision supersedes the canon of construction previously adopted, and shifts the presumption as to the intention to revive a defunct law. Where an Act altering the common law is repealed by an Act passed after 1889, repeal of the statute seems not to revive the common law unless a contrary intention appears.(*o*)

Construing repeal clauses.

The general rule as to the way in which repealing sections are to be regarded by the Courts is well expressed in *Hough* v. *Windus* (1884), 12 Q. B. D. 224. In that case a question arose as to the effect of the Bankruptcy Act, 1883 (45 & 46 Vict. c. 52), upon the Statute of Westminster the Second (13 Edw. 1, c. 18) and writs of *elegit*. Bowen, L.J., said, at p. 227: "It appears to me that the answer to this somewhat formidable argument [upon ss. 146 and 169 of

(*n*) Int. Act, 1889, s. 11 (1).
(*o*) *Ibid.* s. 38 (2).

the Act of 1883] is to be found in a study of the framework of the Bankruptcy Act, 1883, so far as it works a repeal of previous legislation. It does not seem to me to be possible, without misunderstanding the scheme of drafting which the Legislature has adopted, to treat the repealing section (169) as an independent section, or one intended to do more than, for sake of symmetry, to repeal expressly, in a group, those portions of previous statutes which had already been repealed by implication in the body of the Act. I have examined schedule 5 in detail, which contains the list of previous Acts of Parliament all or part of which is to be repealed by s. 169, and I have come to the conclusion that the idea upon which the Bankruptcy Act, 1883, has been framed was to enact, in the first place specifically, a complete code of provisions which, so far as they are inconsistent with any previous legislation, would repeal it by implication, and then over again, at the very last, to clear the Statute-book, so to speak, by s. 169, and to sweep into one compendious repeal section all the statutes and sections of statutes which in the earlier part of the Act had been impliedly done away with already, the Bankruptcy Act, 1869, being itself among the number."

Statute Law Revision Acts.

3. The first proposals for the revision of the statute law were made by Lord Bacon,(*p*) but the process of statute law revision began in 1856 with the repeal in that year of a series of obsolete Acts.(*q*) Since the establishment of the Statute Law Committee, Statute Law Revision Acts are of almost yearly recurrence. They have been applied to the Acts of the Irish, but not to those of the Scottish Parliament.(*r*) It has already been pointed out (*s*) that, theoretically, no English Act grows obsolete. The result of this doctrine was that, in the absence of an authoritative expurgation of the Statute-book, there was always some danger of being brought

(*p*) *Vide* Ruffhead, Statutes, vol. i. Pref. p. xx.
(*q*) *Vide* Law Journal Legal News, vol. xxiii. (1888), p. 413.
(*r* They are left to grow obsolete: *vide ante*, p. 6; *post*, p. 385.
(*s*) *Ante*, p. 6.

within the four corners of some forgotten Act or the alternative of a lengthy and puzzling inquiry into the exact amount of inconsistency between older and newer Acts.

Mr. R. S. Wright pointed out in 1878 (*t*) that many Acts are retained in the Statutes Revised (and this is so even in the second edition) which, although unrepealed as regards England, are yet for all practical purposes obsolete. And his view was in 1890 indorsed by a select committee of the House of Commons (*u*) on the first Statute Law Revision Bill of that year: "Your committee have been struck, in the course of their examination of the Statute-book, by the large number of statutes of little or no practical utility which still remain unrepealed. This remark applies with special force to imperial Acts now operative in Scotland or Ireland only, as well as to many Acts of the Parliament of Ireland before the Union. Modern repealing Acts have frequently been expressed to apply to England only where we find no reason to think that, in point of fact, the Act or part of an Act repealed for England has any practical application at the present day to the circumstances of Scotland or Ireland, as the case may be." This expression of opinion has resulted in increased and emboldened activity in the expurgation of dead law, and the principles upon which the selection of enactments for inclusion is made are thus stated in the memoranda to these Bills when introduced:—"The first schedule is intended to comprise (as the preamble to the Bill states), besides superfluous words of enactment, enactments which have *ceased to be in force* otherwise than by express specific repeal, or have by lapse of time or otherwise become *unnecessary*. Method.

"I. For the purposes of the first schedule, six different classes of enactments are considered as having *ceased to be in force*, although not expressly and specifically repealed; namely, such enactments as are—

(*t*) Report relating to Criminal Law and Procedure, 1878 (H. L.), No. 178.
(*u*) Parl. Rep. 1890—C—110, p. iii.

"1. *Expired*—that is, enactments which, having been originally limited to endure only for a specified period, by a distinct provision, have not been either perpetuated or kept in force by continuance, or which have merely had for their object the continuance of previous temporary enactments for periods now gone by effluxion of time;

"2. *Spent*(*x*)—that is, enactments spent or exhausted in operation by the accomplishment of the purposes for which they were passed, either at the moment of their first taking effect or on the happening of some event or on the doing of some act authorized or required;

"3. *Repealed in general terms*—that is, repealed by the operation of an enactment expressed only in general terms as distinguished from an enactment specifying the Acts on which it is to operate;

"4. *Virtually repealed*—where an earlier enactment is inconsistent with, or is rendered nugatory by, a later one;

"5. *Superseded*—where a later enactment effects the same purposes as an earlier one by repetition of its terms or otherwise;

"6. *Obsolete*—where the state of things contemplated by the enactment has ceased to exist, or the enactment is of such a nature as to be no longer capable of being put in force, regard being had to the alteration of political or social circumstances.

"II. For the purpose of the schedules, enactments are considered *unnecessary* where the provisions are of such a nature as not to require at the present day statutory authority.

"Where any enactment is comprised in the schedules on any ground not above explained, the ground of repeal sufficiently appears from the expression used in the third

---

(*x*) As to the use of the term "spent," see 1 Bl. Comm. (14th ed.), p. 44; Second Report of the late Statute Law Commissioners, p. 7; and *Warren* v. *Windle* (1803), 3 East 205.

column of the schedule to the Bill, which is, however, not matter for consideration by the Courts."(*y*)

The saving clauses in Statute Law Revision Acts are drawn with great care.

(1) They usually confine the effect of the repeal to the United Kingdom, leaving it open for colonial Legislatures to deal with Acts operating as part of the colonial law.(*z*)

(2) They also contain (in addition to the savings referred to *ante*, p. 334) the following savings :—

(a) Enactments not comprised in the schedule (*i.e.*, Acts incorporated with enactments repealed) are unaffected by the inclusion in the schedule of Acts by which the excluded Acts have been repealed,(*a*) confirmed, revived, or perpetuated. Temporary Acts subsequently made perpetual are dealt with by excision of the clause as to duration and the Act making them perpetual, thus destroying their history to some extent.

(b) Enactments in which a repealed enactment has been applied, incorporated, or referred to are unaffected by its repeal.(*b*)

Effect.

The effect of Statute Law Revision Acts is, in the main, literary only. They excise dead matter, prune off superfluities, and reject clearly inconsistent enactments. Farther than this they do not profess to go. And it is rare for any serious error to be made in any of them. In one or two cases the wrong Act has been repealed by a misprint,(*c*) and in one or two other cases it has been thought advisable to re-enact or revive an enactment not in the Statute Law Revision Acts.(*d*)

In the Statute Law Revision Act, 1890, earlier Acts have been abbreviated by excision of any words made unnecessary by the Interpretation Act, 1889.

(*y*) *Vide ante*, p. 145.
(*z*) *Vide infra*, ch. vii.; 28 & 29 Vict. c. 63.
(*a*) This is covered by the Int. Act, s. 38 (2).
(*b*) *Vide* Int. Act, s. 38 (1); Law Journal Legal News, vol. xxv. (1890), p. 413.
(*c*) *Vide* the Statute Law Revision Act, 1889.
(*d*) *E.g.*, 10 Geo. 4, c. 44, s. 9.

In dealing with Acts prior to the seventeenth century, their effect appears to be, not to alter the law, but to leave outstanding as common law what has by long establishment become hardly distinguishable from it. And it must not be hastily assumed that an Act or a clause is repealed because it is specified in the schedule to a Statute Law Revision Act. In *Northam Bridge Co.* v. *R.* (1886), 55 L. T. 759, an Act repealed, among many others, by the old General Turnpike Act was found to be so far revived by an obscurely framed exception in a later Act as to exempt the Postmaster-General from payment of toll for use of a bridge made under special statutory authority, and preclude what might have been an interesting argument on the question of exemption by prerogative.(*e*)

Repeal of preambles.

The repeal of preambles effected by recent Statute Law Revision Acts (*f*) is intended to carry out the recommendations of the select committee of the House of Commons,(*g*) which in 1890 came to the conclusion that the process of (statute law) revision might be safely made much more extensive and valuable by the repeal of such of the preambles of scheduled Acts as are not required for the purpose of explaining or interpreting the Acts to which they are prefixed, and were not of any such historical interest as to make it desirable that they should be reprinted in future and revised editions of the statutes.

(*e*) Sir F. Pollock, 3 L. Q. R. 114. See also *Gas Light and Coke Co.* v. *Hardy* (1886), 17 Q. B. D. 619.

(*f*) Ruffhead and the Statute Law Revision Committee differ as to the value of a preamble. Ruffhead says (Statt. at Large, 1769, vol. i. Pref. p. xxii): "By having the statute at large before him, he has the benefit of the preamble, which, as Lord Coke observes, is a good guide to discover the meaning of the Act, or, rather, a key which opens to the knowledge of it; and it is a rule of the law that the Preamble must be taken for Truth. The preamble generally sets forth the mischief intended to be remedied, and by having the chain of Acts under his eye the reader may perceive how the remedy operated and how it was counteracted, by which means he will be better able to judge of the full end and scope of the Legislature with respect to the subject of his inquiry." The omission of the preambles in the Revised Statutes detracts from their value to lawyers, who, if an Act is obscure, can never feel safe without recourse to the full text, which is, for purposes of construction, as fully in force as if the Statute Law Revision Act had not touched its contents.

(*g*) Parl. Rep. 1890—C—110, p. iii.

This procedure undoubtedly saves a great deal of printing, but is open to somewhat serious objection.

(1) It is difficult for a draftsman to decide offhand what light the Courts would derive from a preamble in construing a statute;

(2) The omission makes it necessary for Courts and lawyers, out of caution, to use, not the revised statute, but the full text, when a question of construction arises; and

(3) The opinion of a parliamentary committee on the effect of a preamble cannot be taken into account in the construction of a statute.

It seems to be safe to deal with preambles in this way only when the sections to which the repealed part clearly refers are also repealed, or where the Courts have definitely decided on the relation of the preamble to the enacting part.

The effect of incorporating one Act with another is presumably to make them parts of the same code.(*h*)

Incorporated Acts.

4. Where an Act is to be construed as one with a prior Act, *primâ facie* the later Act is not of wider application than the earlier Act.

Thus, it was held in *Cox* v. *Andrews* (1883), 12 Q. B. D. 126, that the Betting Act, 1874 (37 Vict. c. 15), was confined to bets mentioned in the Betting Act, 1853 (16 & 17 Vict. c. 119)—*i.e.*, to bets and wagers made in a house, office, room, or other place kept for the purpose of betting.

The Parliamentary Oaths Act, 1866, prescribed a form of oath, and a penalty for not taking it. The Promissory Oaths Act, 1868, altered the form of oath and re-enacted the Act of 1866. The Statute Law Revision Act, 1875, repealed the Act of 1866 so far as related to the form of oath. In *Clarke* v. *Bradlaugh* (1881), 8 Q. B. D. 63, the extent of this repeal came into question, and Brett, L.J., at p. 69, described the last Act as an Act of supererogation, and said that the contention laid before the Court, that

(*h*) *Vide ante*, p. 244.

the penalty of the Act of 1866 was taken away by the Act of 1875, obtained its colour only from the form in which the amendments had been made in 1868; and added, at p. 69, "There is a rule of construction that where a statute is incorporated by reference into a second statute, the repeal of the first statute by a third does not affect the second." This rule is now included in the Interpretation Act, 1889, s. 38 (1), with a further provision that, in the case of consolidation Acts, the unrepealed enactment is to be read as referring to the provision in the repealing Act corresponding wholly or with modifications to the enactment to which reference was originally made.

Explanatory Acts.

5. Where an Act is expressed to be enacted for the explanation of a prior enactment, *primâ facie* it is confined to the same subject-matter as the prior enactment. 1 Will. & Mar. c. 30, was passed to encourage mining for the base metals therein mentioned. 5 & 6 Will. & Mar. c. 6, was enacted for the better explanation of the earlier Act. And in *Att.-Gen.* v. *Morgan* (1891), 1 Ch. 432, it was held that the latter enactment did not apply to mines worked for gold, although the rock in which the gold was found contained the baser metals mentioned in the earlier Act.

Consolidation Acts.

6. Consolidation is the reduction into a systematic form of the whole of the statute law relating to a given subject, as illustrated or explained by judicial decisions.(*i*)

Numerous consolidation Acts have been passed in the last thirty years, beginning with the Criminal Law Consolidation Acts of 1861, and the process has gone on with growing rapidity (*k*) since the constitution of the Statute Law Committee in 1868 *pari passu* with revision.(*l*)

The effect of these Acts may be described as purely

(*i*) Thring, Practical Legislation, p. v.

(*k*) *E.g.*, the Customs Laws Consolidation Act, 1876; the Sheriffs Act, 1887; the Coroners Act, 1887; the Stamp Act, 1891; the Stamp Duties Management Act, 1891; the Municipal Corporations Act, 1882; the County Courts Act, 1888.

(*l*) A joint committee of both Houses is now (1892) sitting to consider the work of the committee.

literary. In so far as the Act is purely a consolidation Act, although it may repeal the reproduced enactments, the repeal is merely for the purpose of re-arrangement, and there is no moment at which the substance of the older enactments ceases to be in force, although it is true that its ancient form is destroyed by the process of reproduction and repeal. The consolidation merely places together in a later volume of the Statute-book enactments previously scattered over many volumes.(*m*)

The consequences which flow from these facts may be briefly stated thus:—

(1) Decisions on the older enactments are accepted as conclusive(*n*) in the construction of the substituted section in the later Act, even, it would seem, although the words would, if used for the first time in the substituted section of the later Act, presumably bear another sense. Thus, the duty of every man to be ready and apparelled to follow the sheriff and take felons at the cry of the county would, it is submitted, be read by the construction, if any, put on it in past times. This rule may also be equally well expressed by saying that the repealed enactments are to be dealt with as being *in pari materiâ* with the corresponding section of the later Act. It is recognised in the Interpretation Act, 1889, s. 38 (1), by the provision that, unless a contrary intention appears, when an Act passed after 1889 repeals and reproduces, with or without modification, any provisions of a former Act, references in any other Act to the provisions thus repealed are to be read as references to the provisions thus re-enacted. 50 & 51 Vict. c. 55, s. 8.

(2) Statutes not expressly repealed continue in force without modification, except so far as stated in the provision last set forth.

7. Acts codifying the law, so far as they embody statute law, are subject to the same rules as consolidation Codification Acts.

(*m*) Of this the Coroners and Sheriffs Acts of 1887 are notable instances.

(*n*) *Vide ante*, p. 155. See also *Clarkson* v. *Musgrave* (1881), 9 Q. B. D. 386; approved in *Smith* v. *Baker* (1891), A. C. 325, at p. 349. The Consolidated Statutes of Canada are read as one great Act: *Boston* v. *Lelièvre* (1870), L. R. 3 P. C. 162.

Acts. So far as they embody the rules of equity, common law, or the law merchant, they must be construed with reference to the rules laid down in the last chapter, subject to the observations of Lord Herschell in *Vagliano's case*,(o) which turned upon the Bills of Exchange Act, 1882, the first modern Act which can be said to have the qualities of a code. The learned lord, in discussing the opinions of the Court of Appeal, said, at p. 144: "The conclusion thus expressed was founded upon an examination of the state of the law at the time the Bills of Exchange Act was passed. The prior authorities were subjected by the learned judges who concurred in this conclusion to an elaborate review, with the result that it was established to their satisfaction that a bill made payable to a fictitious person or his order was, as against the acceptor, in effect a bill payable to bearer only when the acceptor was aware of the circumstance that the payee was a fictitious person, and, further, that his liability in that case depended upon an application of the law of estoppel. It appeared to those learned judges that if the exception was to be further extended it would rest upon no principle, and that they might well pause before holding that s. 7, sub-s. 3, of the statute was 'intended, not merely to codify the existing law, but to alter it, and to introduce so remarkable and unintelligible a change.' With sincere respect for the learned judges who have taken this view, I cannot bring myself to think that this is the proper way to deal with such a statute as the Bills of Exchange Act, which was intended to be a code of the law relating to negotiable instruments. I think the proper course is, in the first instance, to examine the language of the statute, and to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of the law, and not to start with inquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view. If a

(o) (1891) A. C. 107.

statute intended to embody in a code a particular branch of the law is to be treated in this fashion, it appears to me that its utility will be almost entirely destroyed, and the very object with which it was enacted will be frustrated. The purpose of such a statute surely was that on any point specifically dealt with by it, the law should be ascertained by interpreting the language used, instead of, as before, by roaming over a vast number of authorities in order to discover what the law was, extracting it by a minute critical examination of the prior decisions, dependent upon a knowledge of the exact effect even of an obsolete proceeding such as a demurrer to evidence. I am, of course, far from asserting that resort may never be had to the previous state of the law for the purpose of aiding in the construction of the provisions of the code. If, for example, a provision be of doubtful import, such resort would be perfectly legitimate. Or, again, if in a code of the law of negotiable instruments words be found which have previously acquired a technical meaning, or been used in a sense other than their ordinary one, in relation to such instruments, the same interpretation might well be put upon them in the code. I give these as examples merely; they, of course, do not exhaust the category. What, however, I am venturing to insist upon is, that the first step taken should be to interpret the language of the statute, and that an appeal to earlier decisions can only be justified on some special ground. One further remark I have to make before I proceed to consider the language of the statute. The Bills of Exchange Act was certainly not intended to be merely a code of the existing law. It is not open to question that it was intended to alter, and did alter, it in certain respects. And I do not think that it is to be presumed that any particular provision was intended to be a statement of the existing law, rather than a substituted enactment."

Implied repeal.

8. Where two Acts are inconsistent, the later will be read as having impliedly repealed the earlier.(*p*) It does not

(*p*) *Paine* v. *Slater* (1883), 11 Q. B. D. 120.

matter whether the earlier or the later enactment is public, local and personal, or private; (*q*) and the rule is equally applicable to rules of court if they have statutory force.(*r*) The Court must be satisfied that the two enactments are inconsistent before they can, from the language of the later, imply the repeal of an express prior enactment—*i.e.*, the repeal must, if not express, flow from necessary implication.(*s*) But where the terms of a later enactment, taken in their primary meaning, are wide enough to abrogate a prior enactment, they will be read as repealing it, unless some contrary intention is clearly manifested to cut down or restrict such primary meaning.

To determine whether a later statute repeals by implication an earlier, it is necessary to scrutinise the terms and consider the true meaning and effect of the earlier Act. Until this is done, it is impossible to ascertain whether any inconsistency exists between the two enactments. 32 Hen. 8, c. 9, s. 2, imposed a penalty on the sale of pretenced titles. 8 & 9 Vict. c. 106, s. 6, permitted the sale of rights of entry. The Court of Appeal held in *Jenkins* v. *Jones* (1882), 9 Q. B. D. 128, that until 8 & 9 Vict. c. 106, s. 6, a right of entry fell within the meaning of a pretenced title in the earlier Act, and that the effect of the subsequent Act was, not to repeal the earlier, but to restrict its application, a distinction which might have been better expressed by saying that the earlier Act was repealed in part.

Effect of new affirmative enactment.

9. Where a new Act is couched in general affirmative language, and the previous law can well stand with it, and if the language used in the later Act is all in the affirmative, there is nothing to say that the previous law shall be repealed, and, therefore, the old and the new laws may stand together. There the general affirmative

(*q*) *Vide post*, pp. 353, 360; and *Re West Devon Consols Co.* (1888), 38 Ch. D. 51.

(*r*) Thus, the County Courts (Admiralty Jurisdiction) Act, 1868 (31 & 32 Vict. c. 71), s. 9, was held to have been impliedly repealed by R. S. C. Ord. 54, r. 1; *cf. Rockett* v. *Clippingdale* (1891), 2 Q. B. 293.

(*s*) *Thames Conservators* v. *Hall* (1868), L. R. 3 C. P. 415, per Byles and Keating, JJ.

words of the new law would not of themselves repeal the old.(*t*) As Lord Clare said in *Haydon* v. *Carroll* (1796), 3 Ridg. Parl. Cas. 545, "the two statutes will be considered as forming two distinct codes, and certainly may stand together."(*u*) This rule was fully discussed in *Dr. Foster's case* (1615), 11 Rep. 61. In that case a *qui tam* action was brought against Dr. Foster under the 23 Eliz. c. 1, ss. 5, 11, for not attending divine service. To this Dr. Foster pleaded that the Act sued on was virtually repealed either by 29 Eliz. c. 6, or, if not by that, at any rate by 35 Eliz. c. 1. These two later statutes gave further and additional penalties for non-attendance at church, to be recovered by indictment, without expressly taking away the *qui tam* action. As to this plea, the Court said, first, that the later Act was passed, as its title explained, for the purpose of giving more speedy remedy to the Crown; consequently, the purpose of the Act was not to oust the former statute, but to oust delay. Secondly, that the later Act was all in the affirmative, and therefore would not repeal or abrogate a previous affirmative law; "forasmuch as Acts of Parliament are established with such gravity, wisdom, and universal consent of the whole realm for the advancement of the commonwealth, they ought not, by any constrained construction out of the general and ambiguous words of a subsequent Act, to be abrogated: *Sed hujusmodi statuta tantâ solemnitate et prudentiâ edita* (as Fortescue said cap. 18, fol. 21) ought to be maintained and supported with a benign and favourable construction."

But where affirmative words in a later Act are, as was said in *Stradling* v. *Morgan* (1560), Plowd. 112, such as necessarily import a contradiction—that is to say, where it is clear that it must have been intended that the earlier and later enactments should be in conflict—the two cannot stand together, and the second repeals the first.(*x*) And

(*t*) Lord Blackburn in *Garnett* v. *Bradley* (1878), 3 App. Cas. 944, at p. 965, where are collected and discussed the chief cases on this subject.

(*u*) Approved in *O'Flaherty* v. *M'Dowell* (1857), 6 H. L. C. 149, 162.

(*x*) Lord Blackburn in *Garnett* v. *Bradley* (1878), 3 App. Cas. 944, 965.

in construing affirmative words, as was said by Grove, J., in *Ryhope* v. *Foyer* (1880), 7 Q. B. D. 492, it is difficult to say what canon of construction should be applied to the phrase, when included in the later Act, "as far as these words are consistent with." "Such words are easily written, but whether they conduce to clearness and the facility of administering justice may perhaps be open to argument."

A negative statute may be affirmative with regard to another negative statute.

Even where a statute is expressed in negative language, it may be affirmative with regard to some preceding statute which is also expressed in negative language if both the statutes have been expressed in negative language for the purpose of limiting the operation of some third statute which is prior to them both. Thus, in *Ex parte Warrington* (1853), 22 L. J. Bank. 33, it appeared that by 3 & 4 Will. 4, c. 98, s. 7, it was enacted that "no bill of exchange not having more than three months to run shall be void by reason of any statute in force for the prevention of usury." By the subsequent Act 2 & 3 Vict. c. 37, s. 1, it was enacted that "no bill of exchange not having more than twelve months to run shall be void by reason of any statute in force for the prevention of usury." As to these two statutes, Turner, L.J., said, at p. 39: "It was argued that the statute [of William] was repealed, or, as it is termed in some of the cases, 'absorbed,' by the statute of Victoria, and it is true that the latter statute, extending to all bills payable within three months, includes within its provisions the bills payable within three months which are mentioned in the former statute; but it does not, in my opinion, follow that the former statute is repealed or absorbed by the latter. . . . . These statutes, though expressed in the negative, are so expressed only on account of the proviso in the statute of [12] Anne [stat. 2, c. 16, against usury]. They are in the negative as to that statute, but *inter se* they are affirmative statutes, and I take the rule of law to be that an affirmative statute is not, without express words, repealed by a subsequent affirmative statute unless the two statutes cannot stand together."

New statutory remedies, when exclusive.

It has been laid down by Lord Esher, M.R., in *R.* v. *Judge of Essex County Court* (1887), 18 Q. B. D. 704, as an ordinary rule of construction, that "where the Legislature has passed a new statute giving a new remedy, that remedy alone can be followed."

But the phrase "new" as applied to a statute is either needless or ambiguous. The old distinction between *vetera* and *nova statuta* (*y*) is obsolete; and "new" is insensible unless applied to statutes creating rights or remedies unknown to the common law or previous enactments. And for modern use the rule could perhaps be more accurately laid down thus: In the case of an Act which creates a new jurisdiction, a new procedure, new forms, or new remedies, the procedure, forms, or remedies there prescribed, and no others, must be followed until altered by subsequent legislation.(*z*)

With this must be contrasted the rule embodied in many statutes, and now made general by the Interpretation Act, s. 33, and applied to all statutes, whether general, local, or personal, whether public or private (s. 39), that when an act or omission constitutes an offence under two or more Acts, or both under an Act and at common law, whether such Act was passed before or after the 1st of January 1890, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of those Acts or at common law, but shall not be liable to be punished twice for the same offence.(*a*)

This enactment makes the penalty imposed by any statute presumably alternative, but not, as sometimes described, cumulative, inasmuch as the offender cannot be made to suffer the penalties imposed by common law *and* the statute, and would be entitled to pleaded *autrefois acquit* or *convict* if tried at separate times under the common law and the statute or two statutes.

(*y*) *Ante*, p. 64.
(*z*) Per Lopes, L.J., *R.* v. *Judge of Essex County Court* (1887), 18 Q. B. D. at p. 708.
(*a*) *Vide ante*, p. 326.

The intention of the section was, by laying down a general rule, to avoid the necessity of inserting a particular provision to take effect in each new statute dealing with offences. But its effect is rather to relieve the draftsman than the interpreter of the statute, for the judge will still in each case have to consider the whole statute in search of any appearance of the contrary intention.

Many statutes contain clauses similar in effect to the general rule, but without the confusing words as to contrary intention. These statutes, of which, so far as possible, a list is given below, seem unaffected by the above rule, save so far as it enables the revisers of the Statute-book to dispense with the particular clauses.(*b*)

New statutory penalties, when cumulative.

In accordance with this rule, penalties imposed by statute for offences which were already punishable under a prior statute are regarded as cumulative, and not as repealing the penalty to which the offender was previously liable. "Subsequent Acts of Parliament," said Lord Hardwicke in *Middleton* v. *Crofts* (1736), 2 Atk. 650, at p. 674, "in the affirmative giving new penalties and instituting new modes of proceeding do not repeal former methods and penalties ordained by preceding Acts without negative words." "If, however," as Lord Campbell said in *Mitchell* v. *Brown* (1859), 28 L. J. M. C. 55, "a later statute again describes an offence which had been previously created by a former statute, and affixes a different punishment to it, and varies the procedure, or if the later enactment expressly altered the quality of the offence, as by making it a misdemeanour instead of a felony, or a felony instead of a misdemeanour, the later enactment must be taken as operating by way of substitution and not cumulatively." "If," said Lord Abinger in *Henderson* v. *Sherborne* (1837), 2 M. & W. 236, at p. 239, 'a crime be created by

(*b*) 11 Geo. 2, c. 22, s. 4; 18 Geo. 2, c. 30, ss. 2, 3; 30 Geo. 3, c. 7, s. 6; 30 Geo. 3, c. 9, s. 3; 36 Geo. 3, c. 9, s. 6; 37 Geo. 3, c. 70, s. 3; *ib.* c. 123, s. 7; 52 Geo. 3, c. 104, s. 8; *ib.* c. 156, s. 4; 57 Geo. 3, c. 6, s. 5; 60 Geo. 3 & 1 Geo. 4, c. 1, s. 4; 32 & 33 Vict. c. 62, s. 23; 52 & 53 Vict. c. 44, s. 15; *ib.* c. 52, s. 9.

statute with a given penalty, and be afterwards repeated in another statute with a lesser penalty attached to it, a person ought not to be held liable to both. There may no doubt be two remedies for the same act, but they must be of a different nature," and "when the same offence is re-enacted with a different punishment [the subsequent enactment] repeals the former law."(*c*) This view was adopted after full consideration in *Fortescue* v. *Bethnal Green* (1891), 2 Q. B. 170, at p. 178.

With reference to Acts not creating offences the rule seems somewhat different. It is suggested by Lord Bramwell in *Mews* v. *R.* (1882), 8 App. Cas. 339, at p. 350, that where a prior Act provides for one mode of paying an expense, and a subsequent Act provides a different mode of paying the same expense, the later abrogates the earlier Act, and the Courts will not hold the two Acts as alternative. But this cannot be adopted without qualification. If the later Act puts the expense upon a different public fund from that selected by the earlier Act, an inconsistency may be justly inferred; but when one Act saddles an individual and another a public fund, the two Acts can stand together; *e.g.*, in the case of costs. A felon can now be ordered to pay costs(*d*) incurred in prosecuting him, and the same costs are also imposed on the county rate.(*e*) But it has never been, and could not, even in the absence of the provisions of the Felony Act, be contended that the private liability excluded recourse to the public fund in a proper case.

Contrariety between statutes.

10. As already stated,(*f*) when two statutes,(*g*) although both are expressed in affirmative language, are contrary in matter, the latter abrogates the former. "The said

(*c*) Per Lord Abinger in *Att.-Gen.* v. *Lockwood* (1842), 9 M. & W. 39.
(*d*) By the Felony Act, 1870.
(*e*) 7 Geo. 4, c. 64, ss. 22, 24.
(*f*) *Ante*, p. 348.
(*g*) But not so with regard to two sections of the same statute. "How can we say," said Jervis, C.J., in *Castrique* v. *Page* (1853), 13 C. B. 461, that the "one provision is repealed by the other when both received the royal assent at the same moment?" *Contra* per Wilberforce on Statute Law, p. 293.

rule," says Lord Coke, "that *leges posteriores priores abrogant*, was well agreed, but as to this purpose *contrarium est multiplex, scil.* if one is an express and material negative, and the last is an express and material affirmative, or if the first affirmative and the latter negative. In matter, although both are affirmative, as by the statute of 33 Hen. 8, c. 23, it is enacted that if any person being examined before the King's Council . . . . shall confess any treason . . . . he shall be tried in any county where the King pleases, by his commission;' and afterwards another law was made, 1 & 2 Ph. & Mar. c. 10, in these words: 'That all trials hereafter to be had for any treason, shall be had according to the course of the common law, and not otherwise:' this latter Act (although the latter words had not been) hath abrogated the former, because they are contrary in matter: but it doth not abrogate the statute of 35 Hen. 8, c. 2, of trial of treason beyond the seas, notwithstanding the negative words, because it was not contrary in matter, for that was not triable by the common law." This passage was quoted and approved by Lord Blackburn in *Garnett* v. *Bradley* (1878), 3 App. Cas. 950, at p. 965.

This rule is often difficult to apply, because the question always arises whether the two statutes are actually or only apparently inconsistent with one another. "I do not think," said Grove, J., in *Hill* v. *Hall* (1876), 1 Ex. D. 414, "that a mere accidental inconsistency between two statutes amounts to a total repeal of the earlier; such a doctrine might be pushed to a mischievous extent." "What words," said Dr. Lushington in *The India* (1864), 33 L. J. Adm. 193, "will establish a repeal by implication it is impossible to say from authority or decided cases. If, on the one hand, the general presumption must be against such a repeal, on the ground that the intention to repeal, if any had existed, would have been declared in express terms, so, on the other hand, it is not necessary that any express reference be made to the statute which it is intended to

repeal. The prior statute would, I conceive, be repealed by implication if its provisions were wholly incompatible with a subsequent one; or if the two statutes together would lead to wholly absurd consequences; or if the entire subject-matter were taken away by the subsequent statute. Perhaps the most difficult case for consideration is where the subject-matter has been so dealt with in subsequent statutes that, according to all ordinary reasoning, the particular provision in the prior statutes could not have been intended to subsist, and yet, if it were left subsisting, no palpable absurdity would have been occasioned." It must therefore always be a question for the Court to decide whether this second rule is applicable or not, and in coming to a decision on this point repeal by implication is never to be favoured.(*h*) "We ought not to hold a sufficient Act repealed, not expressly, as it might have been, but by implication, without some strong reason."(*i*) Moreover, "every Act must be considered with reference to the state of the law when it came into operation. Every Act is made either for the purpose of making a change in the law or for the purpose of better declaring the law, and its operation is not to be impeded by the mere fact that it is inconsistent with some previous enactment."(*k*)

Repeal by special enactment of previous general enactment.

From this rule it follows that if one statute enacts something in general terms, and afterwards another statute is passed on the same subject, which, although expressed in affirmative language, introduces special conditions or restrictions, the subsequent statute will usually be considered as repealing by implication the former, for "affirmative statutes introductive of a new law do imply a negative."(*l*) Thus, in *Ex parte Carruthers* (1807), 9 East 44, it appeared that 13 Geo. 2,

(*h*) *Dobbs* v. *Grand Junction Waterworks* (1882), 9 Q. B. D. 158. The same view is taken in the United States: *Cope* v. *Cope* (1890), 137 U. S. 682, at p. 686.

(*i*) Per Lord Bramwell in *G. W. R.* v. *Swindon Rail. Co.* (1884), 9 App. Cas. 809.

(*k*) Per Lord Langdale in *Ely* (*Dean of*) v. *Bliss* (1852), 5 Beav. 314.

(*l*) Per Eyres, J., in *Harcourt* v. *Fox* (1693), 1 Show. 520.

c. 28, s. 5, exempted from the impress service any harpooner or seaman in the Greenland trade, but 26 Geo. 3, c. 41, s. 17, enacted that "no harpooner *whose name shall be inserted in a list* shall be impressed," and it was held that this subsequent statute repealed by implication the general provisions of the former statute by requiring something special to be done." So, in *R.* v. *Justices of Worcester* (1816), 5 M. & S. 457, it was held that 43 Eliz. c. 2, s. 6, which gave an appeal generally to quarter sessions as to overseers' accounts, was virtually repealed by 17 Geo. 2, c. 38, s. 4, which required the appeal to be made to the next quarter sessions after the accounts had been audited. And in *Owen* v. *Saunders* (1696), 1 Lord Raymond 159, it was held that 37 Hen. 8, c. 1, s. 3, by which the *custos rotulorum* might grant the clerkship of the peace *durante bene placito*, was virtually repealed by 1 Will. & Mar. sess. 1, c. 21, s. 5, by which it was enacted that it must be granted for life, because a grant *quamdiu se bene gesserit* was contrary to a grant *durante bene placito*.

In certain cases "special" Acts are held to repeal impliedly the general law. Thus, an authority to place a railway station on a particular site has been held to override the enactments relating to the general line of buildings in a public Act.(*m*)

Curtailment without repeal.

If, however, a subsequent statute constitutes an exemption or exception from the operation of a previous statute, or "modifies its operation by the annexation of a condition,"(*n*) the previous statute is not necessarily held to be repealed. And prior enactments may be rendered inoperative without being actually repealed. Thus, the priority given by the Savings Bank Act, 1863 (26 & 27 Vict. c. 87), s. 14, is taken away by s. 40 of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), although the

(*m*) *City and South London Subway Co.* v. *London County Council* (1891), 2 Q. B. 513.

(*n*) Per Montague Smith, J., in *Mount* v. *Taylor* (1868), L. R. 3 C. P. 654.

prior Act is not repealed, inasmuch as subsequent legislation has rendered the prior enactment inapplicable in cases where the estate of an officer of a savings bank within the earlier Act is being administered in bankruptcy, or in an administration action in the High Court,(*o*) or, in other words, is *pro tanto* avoided by express enactment entirely inconsistent with it. In *Pilkington* v. *Cooke* (1847), 16 M. & W. 615, it appeared that by 29 Eliz. c. 4, certain penalties were imposed upon sheriffs who took larger fees for executing a *fi. fa.* than were allowed by statute, but that by 1 Vict. c. 55, it was enacted that certain larger fees might in future be taken by sheriffs if those fees were sanctioned by the judges. Consequently, it was argued that the subsequent Act of 1 Vict. c. 55, repealed the previous Act as being contrariant to it. It was held, however, that as the subsequent statute only gave a power to the judges of allowing, and thereby rendering lawful, an additional payment for executing a *fi. fa.*, which power the judges might never exercise, it was wholly contingent in each case which arose whether the previous statute would be altered or abrogated in pursuance of the subsequent one. Consequently, the operation of the subsequent statute was not to repeal the previous one, but merely to constitute an exemption from the previous statute in those cases in which the judges exercised the power given to them. So, in *Mount* v. *Taylor* (1868), L. R. 3 C. P. 645, it was argued that the Statute of Gloucester (6 Edw. 1, c. 1), which gives to the plaintiff a right to recover costs if he obtains any damages, was impliedly repealed by the County Court Acts, which enact that under certain circumstances a successful plaintiff shall not recover costs. "But," said Bovill, C.J., "it seems to me that these County Court Acts do not amount to a repeal of the Statute of Gloucester. This statute is the foundation of the plaintiff's right to costs, and the

(*o*) *Re Williams* (1887), 36 Ch. D. 577 (North, J.).

County Court Acts merely superadd conditions to the plaintiff's right to them in certain cases." And in commenting on this case, Hannen, J., in *Mirfin* v. *Attwood* (1869), L. R. 4 Q. B. 340,(*p*) put the rule of law as follows:—"To impose a condition on a class of plaintiffs before they shall be entitled to the benefit of a statute is not a repeal of that statute as to them, and it is only by a figure of speech that it can be so described; it merely in specified cases intercepts the operation of the statute, which statute remains in existence and unrepealed notwithstanding."

Repeal not implied from bare recitals or scheduled forms.

If a subsequent statute contains nothing else contrariant to a previous bare recital in the later Act, this "is not sufficient to repeal the positive provisions of a former statute without a clause of repeal."(*q*) And "it would be giving too much effect to the loose words in a schedule if we were to decide that they had repealed the positive directions of a previous Act."(*r*)

Intention to be regarded rather than grammar.

Even if a subsequent statute taken strictly and grammatically is contrariant to a previous statute, yet if at the same time the intention of the Legislature is apparent that the previous statute should not be repealed, it has been in several cases held that the previous statute is to remain unaffected by the subsequent one. Thus, in Bro. Abr. tit. Parliament, 52, is this passage: "Where a statute is that the merchant shall import bullion of two marks for every sack of wool exported, and then another statute was made that the merchant should not be charged unless for the ancient custom only, this does not repeal the first statute." So, in *Williams* v. *Pritchard* (1790), 4 T. R. 2, where houses built on land embanked from the Thames in pursuance of 7 Geo. 3, c. 37, were by that Act declared

---

(*p*) Hannen, J., differed from the majority of the Court, Lush and Hayes, JJ., who held that in certain cases the Statute of Gloucester was repealed by the County Court Acts, and that having been once repealed by those Acts it remained repealed by virtue of Lord Brougham's Act (13 & 14 Vict. c. 21), s. 5, notwithstanding the repeal of the repealing Acts. It is now wholly repealed.

(*q*) Ashhurst, J., in *Dore* v. *Gray* (1788), 2 T. R. 365.

(*r*) Per Patteson, J., in *Allen* v. *Flicker* (1839), 10 A. & E. 640, at p. 642.

to be vested in the owners of the adjoining ground *free from all taxes and assessments whatsoever*, the question arose whether that enactment exempted such houses from a land-tax imposed by a subsequent Act of 27 Geo. 3. The Court, in holding that such houses were exempted by virtue of the previous Act of 7 Geo. 3, c. 37, said as follows :—"It cannot be contended that a subsequent Act will not control the provisions of a prior statute if it were intended to have that operation, but there are several cases in the books to show that where the intention of the Legislature was apparent that the subsequent Act should not have such an operation, there, even though the words of the statute taken strictly and grammatically would repeal a former Act, the Courts of law, judging for the benefit of the subject, have held that they ought not to receive such a construction."

Generalia specialibus non derogant.

The general rule, that prior statutes are held to be repealed by implication by subsequent statutes if the two are contrariant, is said not to apply if the prior enactment is special and the subsequent enactment is general, the general rule of law being, as stated by Lord Selborne in *Seward* v. *Vera Cruz* (1885), 10 App. Cas. 68, "that 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, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so." This rule of law is expressed by the maxim, *Generalia specialibus non derogant.*

And in *Garnett* v. *Bradley* (1878), 3 App. Cas. 950, after discussing and approving the opinion of Turner L.J., upon the same subject, given in *Gathercole* v. *Hawkins* (1855), 6 De G. M. & G. 1, Lord Hatherley put the rule thus: "An Act directed towards a special object or special class of objects will not be repealed by a subsequent general Act embracing in its generality those particular objects, unless some reference be made, directly or

by necessary inference, to the preceding special Act."(*s*) Thus, in *R.* v. *Poor Law Commissioners* (1837), 6 A. & E. 1, it appeared that a local Act (59 Geo. 3, c. xxxix.) vested in certain *ex-officio* directors and forty other persons nominated by the vestry the powers of overseers of the poor. While the parish was under this Act the Poor Law Commissioners were empowered by the Poor Law Act (4 & 5 Will. 4, c. 76), s. 39, to "direct that the administration of the laws for the relief of the poor of any single parish shall be governed and administered by a board of guardians," to be elected in a certained prescribed manner. It was argued, and ultimately held by the majority of the Court, that the local Act was not impliedly repealed by the subsequent public Act. "The Court is urged to decide," said Patteson, J., "that [s. 39 of 4 & 5 Will. 4, c. 76], from the generality of the expressions used in it, applies to all parishes without any limitation, and that it necessarily gives an implied power to the Poor Law Commissioners to repeal at their will and pleasure all local Acts so far as they regard the administration of the Poor Laws. If the Legislature had intended to give so extensive a power to the Commissioners, it might reasonably have been expected that it would have done so in express terms. Even without express terms, if s. 39 would be inoperative unless such construction were put upon it, the Court might be compelled to infer that such a power was implied. If, however, the section can be made fully effectual by a more limited construction, there can be no conclusive proof that the more extensive power was contemplated."

The same canon of construction has also been applied in the case of the Rules of the Supreme Court (*t*) and County Courts,(*u*) which have been held not to repeal the provisions of special statutes in particular cases as to costs.

The reason of this rule was thus stated by Wood, V.C.,

(*s*) But see *Pollock* v. *Lands Improvement Co.* (1887), 37 Ch. D. 661.
(*t*) *Hasker* v. *Wood* (1884), 54 L. J. Q. B. 419.
(*u*) *Reeve* v. *Gibson* (1891), 1 Q. B. 652.

in *London and Blackwall Rail. Co.* v. *Limehouse* (1857), 3 K. & J 128. "The Legislature," said he, "in passing a special Act, has entirely in its consideration some special power which is to be delegated to the body applying for the Act on public grounds. When a general Act is subsequently passed, it seems to be a necessary inference that the Legislature does not intend thereby to regulate all cases not specially brought before it, but looking to the general advantage of the community, without reference to particular cases, it gives large and general powers which in their generality might, except for this very wholesome rule of interpreting statutes, override the powers which, upon consideration of the particular case, the Legislature had before conferred by the special Act for the benefit of the public. The result of a contrary rule of construction would be that the Legislature, having authorized by a special Act the construction of some public work, would be supposed afterwards by a general Act to throw it into the power" of a few persons to prevent that public work from being carried out. Again, in *Thorpe* v. *Adams* (1871), L. R. 6 C. P. 135, Bovill, C.J., commented upon this rule as follows: "When," said he, "we look at the mode in which Acts of Parliament are passed, it cannot be presumed or conceived that the Legislature had had brought to its consideration all the special Acts and legislation which affect companies or individuals, and that is one reason for the adoption of this general rule." And Willes, J., added: "The good sense of the law as laid down by my lord is quite obvious, because if a Bill had been brought into Parliament to repeal a local Act, it would never have been allowed to pass into law without notice to the parties whose interests were affected by it, and opportunity being given to them to be heard in opposition to it, if necessary; whereas, a general provision in a public Act is discussed with reference to general policy, and without any reference to private rights, with which there is no intention on the part of the Legislature to interfere." And again, in *Taylor* v. *Oldham* (1877), 4 Ch. D. 410, Jessel M.R., having stated the

rule as given above as to the effect of general provisions in statutes upon special provisions, added: "If you once admit the doctrine that the general provisions are to overrule the special ones, anybody getting a clause inserted in a [private] Bill ought to be heard on every clause in it. It would be simply impossible to conduct private legislation at all if any such doctrine were admitted or prevailed." A good illustration of the working of this rule was given by Wood, V.C., in *Fitzgerald* v. *Champneys* (1861), 30 L. J. Ch. 782, with regard to the operation of the Fines and Recoveries Act, "by which, in the largest words, every tenant in tail is authorized to bar his entail even in those estates in which the reversion is in the Crown, which formerly could not be barred." "No one," said the Vice-Chancellor, "would think of arguing, or could argue successfully, that that Act would affect the entails made by special Act of Parliament, such as the Marlborough, the Wellington, or the Shrewsbury entails. And the reason is that the Legislature, having had its attention directed to a special subject, and having observed all the circumstances of the case and provided for them, does not intend by a general enactment afterwards to derogate from its own Act where it makes no special mention of its intention so to do."

Working of rule.

But special enactment repealed by implication if utterly repugnant to subsequent general Act.

But the rule must not be pressed too far, for, as Bramwell, L.J., said in *Pellas* v. *Neptune Ins. Co.* (1880), 5 C. P. D. 40, "a general statute may repeal a particular statute." And if a special enactment, whether it be in a public or a private Act, and a subsequent general Act are absolutely repugnant and inconsistent with one another, the Courts have no alternative but to declare the prior special enactment repealed by the subsequent general Act. Thus, in *Bramston* v. *Colchester* (1856), 6 E. & B. 246, it was held that the provisions of a local Act, under which certain arrangements had been made for maintaining borough prisoners in county gaols, were repealed by the general Prison Act of 5 & 6 Vict. c. 96, s. 18, "for," said Lord Campbell, C.J., "I think it was the intention of the Legislature to sweep away all local peculiarities, though

sanctioned by special Acts, and to establish one uniform system except in so far as there are express exceptions;" and Wightman, J., added, "It was intended to make one general law superseding all local laws as to prisons and repealing all local Acts." So, also, in *Great Central Gas Co.* v. *Clarke* (1863), 13 C. B. N. S. 838, it appeared that by a local Act the gas company was limited to a charge of 4*s.* per 1000 feet, but by the subsequent public Act of 23 & 24 Vict. c. 125, the company was compelled to supply gas of a much better quality and was allowed to charge a maximum price of 4*s.* 6*d.* per 1000 feet. It was contended, and the Court ultimately held, that the local Act was impliedly repealed by the subsequent public Act, and that consequently the limitation as to price contained in the local Act ceased to operate. "Although," said the Court, "the section in the private Act [which limits the price] is not in terms repealed, it is quite inconsistent with a clause in a subsequent public Act. That is sufficient to get rid of the clause in the private Act." So, in *Daw* v. *Metropolitan Board of Works* (1862), 31 L. J. C. P. 223, it was held that the provision in 18 & 19 Vict. c. 120, s. 141, which gave the Metropolitan Board power to alter the names of streets, impliedly repealed 11 & 12 Vict. c. clxiii. so far as it previously conferred the same power on the Commissioners of Sewers. And in *Duncan* v. *Scottish N. E. Rail. Co.* (1870), L. R. 2 H. L. (Sc.) 20, it was held that the exemption from liability to pay rates which was conferred on the defendant railway company by the special Acts under which it was made was taken away by the subsequent Poor Law Amendment Act, because, as Lord Westbury said, "the rule given by this Poor Law Act is wholly inconsistent with the exemption contained in the company's special Acts."

Effect of rule on estate Acts.

In *The Duke of Marlborough's Parliamentary Estates* (1891), 8 Times L. R. 179, the question arose whether the Settled Land Acts had repealed the fetter on alienation of land imposed by 5 Anne, c. 3, annexing certain lands to the title of Duke of Marlborough. Chitty, J., said, at p. 181: "It was argued that, as these lands were by the

statute of Anne annexed to the title, the enabling provisions of s. 58 of the Act of 1882 were not applicable. However, to uphold this argument it would be necessary to make an addition to the saving clause in s. 58, and this the Court was not at liberty to do. It was also said that general Acts of Parliament do not derogate from particular Acts, and that the *onus* of finding in the Act of 1882 enabling words rested on the applicant. He, however, held that there was a sufficient intention shown in the Act of repealing particular Acts. There was no ground for holding that the Legislature had any intention of restricting the operation of the enactment. It was to be borne in mind that the general object of the Act was to aid the owners of landed property in the circumstances of agricultural depression which existed when it was passed, and also that the tenant for life having recourse to the Act did not put the capital moneys into his own pocket, but they had to be expended for the benefit of the inheritance. Such considerations were as applicable to lands annexed to dignities as they were to lands in ordinary settlement.

In *Earl of Shrewsbury* v. *Scott* (1859), 6 C. B. N. S. 1, a similar point was raised. The facts of the case were as follows:—By the private Act of 6 Geo. 1, c. 29, a settlement was made as to the Shrewsbury estates. By s. 8 of that Act it was enacted that the estates should always follow the title and should be inalienable, but the section contained a proviso to the effect that if the first or any other son of the then Earl or any the heirs male of such son should abjure the Catholic religion and become a Protestant, his disability to alienate should cease. It was contended (among other arguments) that this 8th section, which prevented alienation except in the event of the holder of the estates becoming a Protestant, was impliedly repealed by the Catholic Emancipation Act (10 Geo. 4, c. 7). "We are told," Cockburn, C.J., said in his judgment, "that we must not construe and give effect to this 8th section by reference solely to its terms. We are asked to interpret and give effect to it, looking at it not

merely as an enactment specially intended to affect these estates alone, but as a provision of the general public law affecting the rights or disabilities of Catholics introduced into this private Act to keep it in harmony with the general law. It is said that whereas the persons who were to take estates under the settlement were Catholics, and therefore by the law of the land, as it then stood, incapacitated from taking these estates, and the 2nd section had been introduced to relieve them from this disability and to give them an exemption from the then state of the law, the 8th section was added for the purpose of preventing the boon and privilege thus conceded from operating to the extent of enabling them to alienate the estate contrary to the existing law, by which the power of alienation was taken away from Catholics. The importance of this contention is this—they say that this having been the reason why this clause was introduced into this Act, so soon as by the alteration of the general law of the land the disabilities of the Catholics were removed the clause fell to the ground by the effect of the general legislation, and the tenant in tail held the estate relieved from the clog or incumbrance which had before been imposed upon it." This ingenious argument, for various reasons which appear fully in the judgments delivered in the case, did not prevail. Had it been discussed on its own merits alone, it may be that the result would have been different, but, at any rate, the argument is worth noticing in discussing the effect of general Acts upon prior special enactments.

CHAPTER V.

COMMENCEMENT AND DURATION OF EFFECT OF STATUTES.

	PAGE
1. Commencement of Acts	364
Present rule	365
Old rule	366
Operation as to persons ignorant of Act	367
Continuing Acts	368
Modifying Acts	368
2. Meaning of term "retrospective"	369
Distinction between retrospective and *ex post facto* laws	370
Retrospectivity not presumed	370
Presumption rebutted by—	
(a) Express enactment	374
(b) Necessary implication	374
Presumption against taking away vested rights	374
No vested right in procedure	376
Effect of a postponing clause	377
Provision for anticipating commencement to some extent	
Declaratory and corrective Acts retrospective	380
Certain enactments virtually retrospective	382
3. Duration presumed perpetual	385
Forgotten and effete Acts	386
Effect of non-user and contrary practice	386
Meaning of "perpetual" as applied to Acts	387
Temporary Acts	387
(a) Commencement	387
(b) Expiration	389
(c) Continuance	390
(d) Revivor	391
4. Effect of statutes after repeal	392
Total repeal obliterates statute except as to transactions passed and closed	392
Difference in effect between total and partial repeal	393
Rights acquired under an Act not lost by its repeal	394
Nor augmented	395
Effect of proviso "except as to acts done under repealed Act"	396
Provisions of prior Act adopted by relation by subsequent Act not repealed by repeal of prior Act	397
A repealed Act may be revived only by express enactment	399
Effect of Brougham's Act, s. 5	399
Repeal by a temporary Act	400

Commencement.

1. It is a common practice to specify in Acts of Parliament the day in which the Act is to come into operation. If a

certain day is named, an Act "which," as the Court said in *Tomlinson* v. *Bullock* (1878), 4 Q. B. D. 232, "comes into operation on a given day, becomes law as soon as the day commences." This rule is adopted in the Interpretation Act, 1889, s. 36, sub-s. 2, which provides that Acts passed after 1889, and any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or bylaws made under such Acts, if expressed to come into operation on a particular day, are to be read as coming into operation immediately on the expiration of the previous day. But an Act will not have any operation until the day for its commencement, even though the sections of the Act may have been framed as if it would come into operation immediately it receives the royal assent.(*a*) The reason of this was pointed out in *Wood* v. *Riley* (1867), L. R. 3 C. P. 27, namely, "because the last thing settled is when the Act shall come into operation; therefore all the sections are to be considered as speaking from the date so fixed, and are all governed by the last section," which is the section which fixes the date. If, however, it is not specially mentioned in the Act when it is to come into operation, it is enacted by 33 Geo. 3, c. 13, that "the Clerk of the Parliaments shall indorse (in English) on every Act of Parliament which shall pass after April 8, 1793, immediately after the title of such Act, the day, month, and year when the same shall have passed and shall have received the royal assent, and such indorsement shall be taken to be a part of such Act and, to be the date of its commencement when no other commencement shall be therein provided." Consequently as it was pointed out by the Court in *R.* v. *Middlesex* (1831), 2 B. & Ad. 821, if one Act receives the royal assent a few days after another Act and the two Acts are contrariant, "the one which received the royal assent last will have the effect of repealing the other. It is, however, sometimes specially enacted that a statute is to

Present Rule.

(*a*) In the Real Property Limitation Act, 1874, the commencement of the Act was postponed till five years after its passing.

come into operation on some day prior to the day on which it receives the royal assent.(*b*) Thus, in *Jamieson* v. *Att.-Gen.* (1833), Alcock & Nap. 375, it was held that 1 Will. 4, c. 49, s. 1, which enacted that certain duties should be levied from March 15, 1830, but did not receive the royal assent until July 16, 1830, operated from March 15.

Provisions for anticipating commencement.

Where an Act passed after 1889 does not come into operation immediately upon its passing, and confers powers to do anything for the purpose of the Act, the power may be exercised unless a contrary intention appears before the commencement of the Act, so far as is necessary or expedient for the purpose of bringing the Act into (effective) operation at the date of its commencement. But no instrument made under the power comes into operation before the commencement of the Act unless a contrary intention appears in the Act.(*c*) These provisions are intended to enable the judicial and administrative departments of State to frame and publish Orders in Council and the like and Rules of Court in the interval between the passing and commencement of any Act for the due application and enforcement of which they deem expedient.

Former rule.

Before the passing of 33 Geo. 3, c. 13, all statutes were considered to come into operation on the first day of the session in which they were passed, unless they contained an express proviso to the contrary. This rule is stated by Lord Coke in 4 Inst. 25, and was acted upon in several early cases, though it does not appear to have been finally settled till the decision of the House of Lords

---

(*b*) It is stated in Dwarris on Statutes (2nd ed.), p. 544, and also in Maxwell on Statutes, p. 383, on the authority of *Burn* v. *Carvalho* (1835), 4 Nev. & Mann. 893, that "where a particular day is named for the commencement of the operation of a statute, but the royal assent is not given till a later day, the Act would come into operation only on the later day." This rule is not borne out by the case cited, which merely decides that as the language of s. 30 of 3 & 4 Will. 4, c. 42, is "prospective only," it cannot apply to any proceeding which took place before the Act was passed. In *Freeman* v. *Moyes* (1834), 1 A. & E. 338, a different decision was come to as to s. 31 of the same Act, the language of that section "not being in its terms prospective."

(*c*) Int. Act, 1889, s. 37.

in *Att.-Gen.* v. *Panter* (1772), 6 Bro. P. C. 486. In many cases (*d*) this was found to operate with great unfairness through the retrospective operation which Acts had in consequence; and where two Acts passed in the same session were repugnant, it was impossible, as Lord Tenterden pointed out in *R.* v. *Middlesex* (1831), 2 B. & Ad. 821, to know which of the two ought to be held to repeal the other. It was for these reasons, no doubt, that the above-mentioned statute of 33 Geo. 3, c. 13, was passed.

Operation of Act upon person who could not know of its existence.

As an English (*e*) Act of Parliament comes into force, as a rule, on receipt of the royal assent, and does not depend on promulgation or publication, (*f*) it binds the lieges in many cases before it has been physically possible to ascertain its terms. In accordance with the principle of law expressed by the legal maxim, *Ignorantia juris neminem excusat*, the moment an Act of Parliament actually comes into operation, strictly speaking, every person who is amenable to the law of England is affected by it, even although it may be morally certain that he could not know that the statute in question had been passed. This was laid down by Lord Eldon in *R.* v. *Bailey* (1800), Russ. & R. 4, where the prisoner was indicted under an Act of which it appeared he could not have known the existence at the time he committed the offence with which he was charged; but Lord Eldon told the jury that he was of opinion that he was, in strict law, guilty under the statute, although he could not have known that it had been passed, and that his ignorance of the fact could in no otherwise affect the case than that it might be the means of recommending him for a pardon; and this ruling was subsequently upheld by all the judges, and on their recommendation a pardon was granted to the prisoner, on the ground that he could not

(*d*) See *Latless* v. *Holmes* (1792), 4 T. R. 660, *et cas. ibi cit.*; *R.* v. *Bailey* (1800), Russ. & R. 1; *Bryant* v. *Withers* (1813), 2 M. & S. 131.

(*e*) The law of America and France as to this is discussed in Dwarris on Statutes (2nd ed.), p. 545.

(*f*) *Vide ante*, p. 34.

at the time he committed the offence, have known of the existence of the Act of Parliament. It may, however, be observed that it was suggested by the Court in *Burns* v. *Nowell* (1880), 5 Q. B. D. 454, that "before a continuous act or proceeding, not orginally unlawful, can be treated as unlawful by reason of the passing of an Act of Parliament by which it is in terms made so, a reasonable time must be allowed for its discontinuance, and though ignorance of the law may of itself be no excuse for any one who may act in contravention of it, such ignorance may nevertheless be taken into account when it becomes necessary to consider the circumstances under which the Act or proceeding was continued and when and how it was discontinued with a view to determine whether a reasonable time had elapsed without its being discontinued." It is desirable that some interval should be given for people to have a physical possibility of learning the terms of a new law, but this is not always possible, nor could any uniform delay between passing and commencement be safely prescribed.

Continuing Acts.

If an Act is passed for the purpose of continuing an expiring Act, it is enacted by 48 Geo. 3, c. 106, that if the expiring "Act shall have expired before the Bill for continuing the same shall have received the royal assent, such continuing Act shall be deemed and taken to have effect from the date of the expiration of the Act intended to be continued as fully and effectually as if such continuing Act had actually passed before the expiration of such Act, except it be otherwise specially provided in such continuing Act: Provided nevertheless, that nothing herein contained shall extend to affect any person with any punishment, penalty, or forfeiture by reason of anything done or omitted to be done by such person contrary to the provisions of the Act so continued between the expiration of the same and the date at which the Act continuing the same may receive the royal assent."

Modifying Acts.

If an Act passed after 1850 repeals wholly or in part any former enactment, and substitutes provisions in place

of the repealed enactment, the latter remains in force until the substituted provisions come into operation.(*g*)

Meaning of the word "retrospective" as applied to statute.

2. "A statute is to be deemed to be retrospective which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past."(*h*) But a statute is not properly called retrospective merely "because a part of the requisites for its operation is drawn from a time antecedent to its passing." "A statute," said Sir James Wilde in *Watton* v. *Watton* (1866), L. R. 1 P. & M. 229, "cannot be said to have a retrospective operation because it applies a new mode of procedure to suits which commenced before its passing." This was also pointed out in *R.* v. *Whitechapel* (1848), 12 Q. B. 127, by Lord Denman, C.J. In that case the parish of Whitechapel had taken proceedings for the removal of a pauper widow immediately after her husband's death. But before she had actually been removed, the 9 & 10 Vict. c. 66, was passed, which enacted by s. 2 that no widow should be removable until one year after her husband's death. It was then argued on behalf of the parish that it would be construing the Act retrospectively if it was made to apply to the case of this woman, who had become a widow before the Act was passed. It was held, however, that the Act did apply to her case, and that she could not be removed until the expiration of a year from her husband's death. "It was argued," said Lord Denman, "that the operation of the statute was confined to persons who had become widows after the Act passed, and that the presumption against a retrospective operation being intended supported this construction, but we have before shown that the statute is in its direct operation prospective only, and only relates to future removals, and that *it is not properly called*

(*g*) Interpretation Act, 1889, ss. 11 (2), 41, repealing and re-enacting Brougham's Act (13 & 14 Vict. c. 21), s. 6.

(*h*) Sedgwick on Statutory Law (2nd ed.), p. 160.

a retrospective statute, because a part of the requisites for its action is drawn from time antecedent to its passing."

Difference between "retrospective" and "*ex post facto*" statutes.

A retrospective statute is different from an *ex post facto* statute.(*i*) "Every *ex post facto* law," said Chase, J., in *Calder* v. *Bull* (1798), 3 Dallas (U. S.) at p. 391, "must necessarily be retrospective, but every retrospective law is not an *ex post facto* law. Every law that takes away or impairs rights vested agreeably to existing laws is retrospective. Thus, statutes of oblivion or pardon are certainly retrospective, and literally both concerning and after the facts committed. But I do not consider any law *ex post facto* that mollifies the rigour of the criminal law, but only those that create or aggravate the crime or increase the punishment or change the rules of evidence for the purpose of conviction. . . . . There is a great and apparent difference between making an unlawful act lawful and the making an innocent action criminal and punishing it as a crime."(*k*)

Retrospectivity not presumed.

The Act of 1793 in no way prevents Parliament from making an Act retrospective if the intention to do so is apparent. "No one denies," said Dr. Lushington in *The Ironsides* (1862), 31 L. J. P. M. & A. 131, "the competency of the Legislature to pass retrospective statutes if they think fit,(*l*) and many times they have done so." Philosophical writers (*m*) have, it is true, denied that any Legislature ought to have such a power, and it is indisputable that to exercise it under ordinary circumstances must work great injustice. Consequently, the general rule laid down by the Courts is, as Lord O'Hagan said in

---

(*i*) Blackstone (Comm. vol. i. p. 46) describes *ex post facto* laws as those by which "after an action indifferent in itself is committed, the Legislature then for the first time declares it to have been a crime, and inflicts a punishment upon the person who has committed it." Acts of indemnity are, however, also *ex post facto* laws so far as they take away civil rights of action, and are statutory pardons as to criminal liability.

(*k*) Cited with approval by Willes, J., in *Phillips* v. *Eyre* (1871), L. R. 6 Q. B. at p. 26.

(*l*) The French code contains a positive provision that laws are not to have any retrospective operation. "*La loi ne dispose que pour l'avenir, elle n'a point d'effet rétroactif*": Code Civil, s. 2.

(*m*) See Sedgwick (2nd ed.), p. 160.

Gairdner v. *Lucas* (1878), L. R. 3 App. Cas. 601, that "unless there is some declared intention of the Legislature —clear and unequivocal—or unless there are some circumstances rendering it inevitable that we should take the other view, we are to presume that an Act is prospective, and not retrospective." Bowen, L.J., in *Reid* v. *Reid* (1886), 31 Ch. D. 408, thus dealt with it: "The particular rule of construction which has been referred to, but which is valuable only when the words of an Act of Parliament are not plain, is embodied in the well-known trite maxim, *Omnis nova constitutio futuris formam imponere debet non præteritis* (*n*)—that is, that, except in special cases, the new law ought to be construed so as to interfere as little as possible with vested rights. It seems to me that even in construing an Act which is to a certain extent retrospective, and in construing a section which is to a certain extent retrospective, we ought, nevertheless, to bear in mind that maxim as applicable whenever we reach the line at which the words of the section cease to be plain. That is a necessary and logical corollary of the general proposition, that you ought not to give a larger retrospective power to a section, even in an Act which is to some extent intended to be retrospective, than you can plainly see the Legislature meant."

Similarly, in *R.* v. *Ipswich* (1877), 2 Q. B. D. 269, Cockburn, C.J., said: "It is a general rule that where a statute is passed altering the law, unless the language is expressly to the contrary, it is to be taken as intended to apply to a state of facts coming into existence after the Act." And, consequently, it was held that a person who had resided in a parish for three years, but whose residence therein had ended before the passing of 39 & 40 Vict. c. 61, did not acquire a settlement therein under s. 34, which enacts that "where any person shall have resided for the term of three years in any parish in

Settlement.

(*n*) 2 Inst. 292, adopted by Lord Cranworth in *Urquhart* v. *Urquhart* (1853), 1 Macq. H. L. (Sc.) 662.

such manner as would, in accordance with the statutes in that behalf, render him irremovable, he shall be deemed to be settled therein." One of the first reported cases on this subject is *Gilmore* v. *Shooter* (1679), 2 Mod. 310. In that case an action was brought on a marriage contract made by parol without writing before June 24, 1677, the day on which the Statute of Frauds came into operation, and the question was, whether it could be enforced after the passing of that statute, which enacted (among other things) that after June 24, 1677, "no action shall be brought on any agreement made in consideration of marriage, unless the agreement . . . . shall be in writing. . . . ." The Court held that, however general the language of the statute, it could not have been intended to affect past promises which were valid when the Act came into operation, and that it must therefore be construed as referring to future contracts only. According to all the reports of the case, the Court seems to have decided as they did solely on the ground that it would have been a flagrant violation of natural justice to make the enactment applicable to existing contracts. And in conformity with this decision it is stated in some of the reports of the case that the judges had said that an unattested will made before the passing of that Act would be good even though the testator should not die until after it came into operation.(*o*) In *Ashburnham* v. *Bradshaw* (1740), 2 Atk. 36, a similar question arose as to the effect of the Mortmain Act (9 Geo. 2, c. 36), which enacted that after June 24, 1736, no lands should be given or settled to charitable uses except by deed indented and enrolled in manner therein mentioned. Soon after the passing of the Act it was contended that it affected wills made before the Act where the testator died after it had come into operation, but on reference to the judges they all held that it did not, and Lord Hardwicke acted on their opinion.(*p*) So, with

Marriage.

Charitable uses.

(*o*) This abstract is taken from the judgment of Rolfe, B., in *Moon* v. *Durden* (1848), 2 Ex. 38.

(*p*) But see the effect of statutes upon wills further discussed below, p. 384.

regard to the effect of statutes which authorize rates to be levied, it was pointed out by Cockburn, C.J., in *Bradford Union* v. *Wilts* (1868), L. R. 3 Q. B. 616, that the principle "was adopted long ago, and has been long acted upon," that if the language of the statute is *primâ facie* prospective "the rate must be prospective, and not retrospective, so that the expenses shall fall on the ratepayers who are ratepayers at the moment of the expenses being incurred." "Consequently," he added, "whenever the Legislature thinks it expedient to authorize the making of retrospective rates, it fixes the period as to which the rate may be retrospectively made." And again, to take an instance of another kind, it was held in *Edwards* v. *Sherren* (1843), 11 M. & W. 595, that the 5 & 6 Vict. c. 122, s. 24, whereby the *London Gazette*, containing an advertisement of the adjudication of bankruptcy, is made in certain cases conclusive evidence of bankruptcy, does not apply to adjudications made before the Act came into operation. Rates.

The Welsh Sunday Closing Act, 1881, received the royal assent on August 27, 1881. S. 3 provided that it should come into operation on the day next appointed for the annual licensing meeting in each place in Wales. By 9 Geo. 4, c. 61, ss. 1, 2, the licensing meeting must be held between August 20 and September 14 in each year, and the day must be appointed at least twenty-one days before the meeting is held. In *Richards* v. *McBride* (1882), 8 Q. B. D. 119, it was held—(1) that although the preamble suggested the desirability of a change in the law, this did not give any clue as to fixing the commencement of the Act; (2) that the Act came into force at the licensing meetings of 1882, and not at those of 1881, inasmuch as it was impossible to appoint the meetings for 1881 in the interval between the passing of the Act and the last day for which they could by law be held; (3) that the Court could not construe the Act on the assumption that it was drawn in the expectation that it would pass much sooner than it did, or receive evidence to support the suggestion. Licensing.

It being, then, the general rule of law that statutes are

Retrospectivity.

not to operate retrospectively, we have now to consider under what circumstances this general rule has been departed from, and to examine the grounds, so far as they can be ascertained, for such departure.

(1) By express enactment.

(1) Sometimes it is expressly enacted that an enactment shall be retrospective; thus, by 23 & 24 Vict. c. 38, s. 12, it is enacted that "clause 32 of 22 & 23 Vict. c. 35, shall operate retrospectively."

(2) By necessary implication from the language employed by the Legislature.

(2) If it is a necessary implication from the language employed that the Legislature intended a particular section to have a retrospective operation, the Courts will give it such an operation. "Baron Parke," said Lord Hatherley in *Pardo* v. *Bingham* (1870), 4 Ch. App. 740, "did not consider it an invariable rule that a statute could not be retrospective unless so expressed in the very terms of the section which had to be construed, and said that the question in each case was whether the Legislature had sufficiently expressed that intention. In fact, we must look to the general scope and purview of the statute, and at the remedy sought to be applied, and consider what was the former state of the law, and what it was that the Legislature contemplated."

But a statute is not be read retrospectively, except of necessity. In *Main* v. *Stark* (1890), 15 App. Cas. at p. 388, Lord Selborne said: "Their lordships, of course, do not say that there might not be something in the context of an Act of Parliament, or to be collected from its language, which might give to words, *primâ facie prospective*, a larger operation; but they ought not to receive a larger operation unless you find some reason for giving it." And, "Words not requiring a retrospective operation, so as to affect an existing statute prejudicially, ought not to be so construed."

Presumption against taking away vested rights.

It is a well "recognised rule that statutes should be interpreted, if possible, so as to respect vested rights."(*q*) For it is not to be presumed that interference with existing rights is intended by the Legislature, and if a statute be

(*q*) Per Bowen, L.J., in *Hough* v. *Windus* (1884), 12 Q. B. D. at p. 237.

ambiguous the Court should lean to the interpretation which would support existing rights.(*r*)

And in the absence of anything in an Act to show that it is to have a retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act is passed.(*s*)

So careful are the Courts in endeavouring to protect vested rights that we find that in several cases judges have refused to allow statutes to have a retrospective operation, although their language seemed to imply that such was the intention of the Legislature, because, if the statutes had been so construed, vested rights would have been defeated. In *Gairdner* v. *Lucas* (1878), 3 App. Cas. 603, Lord Blackburn stated this rule of law in the following way with regard to the effect of a statute upon a transaction past and closed, where the effect would be to alter a transaction already entered into. "Where," said he, "the effect would be to make that valid which was previously invalid, to make an instrument which had no effect at all, and from which the party was at liberty to depart as long as he pleased, binding—I think the *primâ facie* construction of the Act is that it is not to be retrospective, and it would require strong reasons to show that it is not the case." In *Moon* v. *Durden* (1848), 2 Ex. 22, an action to recover a sum of money alleged to have been won upon a wager, was commenced in June 1845. In August 1845 the 8 & 9 Vict. c. 109 was passed, which enacted, in s. 18, that "no suit shall be brought or maintained for recovering" any such sum of "money," and the question was whether that enactment was retrospective so as to defeat an action already commenced. It was held that it was not retrospective, and Parke, B., in his judgment, said: "It seems a strong thing to hold that the

(*r*) Per Lord Mure in *Macdonald* (*Lord*) v. *Finlayson* (1885), 12 Rettie (Sc.) 231.

(*s*) *Leeds Bank* v. *Walker* (1883), 11 Q. B. D. 84, at p. 91, per Denman, J. As to this rule, see Maxwell on Statutes (1st ed.), p. 190, cited by Denman, J., in this case; Wilberforce on Statutes, p. 157.

Legislature could have meant that a party who under a contract made prior to the Act had as perfect a title to recover a sum of money as he had to any of his personal property, should be totally deprived of it without compensation." So, also, in *Couch* v. *Jeffries* (1769), 4 Burr. 2460, a verdict was obtained for a penalty for not paying stamp duty. After the verdict, 9 Geo. 3, c. 37, was passed, which enacted, in s. 4, that "if the duty before neglected to be paid shall be paid by September 1, 1769, the person who had incurred the penalty by the omission shall be discharged from the said penalty." In pursuance of this statute the defendant had paid the duty which he had before neglected to pay, and thereupon moved that judgment should not be entered up against him. "But," said Lord Mansfield, C.J., "here is a right vested, and it is not to be imagined that the Legislature could by general words mean to take it away from the person in whom it had so legally vested, and who had been put to expense in prosecuting."(*t*)

It is usually held that enactments affecting procedure affect pending proceedings; but this does not make them retrospective, save so far as they take away a right to use a particular procedure accrued, but not exercised, before the commencement of the Act.

No vested right in procedure.

"It is a general rule,"(*u*) said Jessel, M.R., in *Re Joseph Suche & Co.* (1875), 1 Ch. D. 50, "that when the Legislature alters the rights of parties by taking away or conferring any right of action, its enactments, unless in express terms they apply to pending actions, do not affect

---

(*t*) See also *Hough* v. *Windus* (1884), 14 Q. B. D. 220.

(*u*) This rule was for the first time distinctly enunciated by the Court of Exchequer in *Wright* v. *Hale* (1860), 30 L. J. Ex. 40. "I have always understood," said Pollock, C.B., "that there is a considerable difference between laws which affect vested rights and those laws which merely affect the proceedings of Courts, as, for instance, declaring what shall be deemed good service, what shall be the criterion to the right to costs, how much costs shall be paid, the manner in which witnesses shall be paid, or what witnesses the party shall be entitled to, and so on. . . . . I do not think a matter of that sort can be called a right in any sense in which Lord Coke in his Institutes has spoken of rights." See also *Pickup* v. *Wharton* (1832), 2 Cr. & M. 401; *Cox* v. *Thomason* (1834), 2 Cr. & J. 499; and *Pinhorn* v. *Sonster* (1861), 30 L. J. Ex. 336.

them. But there is an exception to this rule, namely, where enactments merely affect procedure, and do not extend to rights of action. . . . ." For, as Lord Blackburn said in *Gairdner* v. *Lucas* (1878), 3 App. Cas. 603, "it is perfectly settled that if the Legislature forms a new procedure, so that, instead of proceeding in this form or that, you should proceed in another and a different way, clearly these bygone transactions are to be sued for and enforced according to the form of procedure. Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be." In other words, if a statute deals merely with the procedure in an action, and does not affect the rights of the parties, "it will," as Blackburn, J., said in *Kimbray* v. *Draper* (1868), L. R. 3 Q. B. 163, "be held to apply *primâ facie* to all actions, pending as well as future."(*x*) This rule is usually expressed by saying that there is no vested right in procedure or costs.

In accordance with this rule, s. 169 of the Bankruptcy Act, 1883, has been held to save proceedings pending under the Act of 1869, but to require all subsequent proceedings, even if founded on the earlier Act, to conform to the procedure laid down in the later Act.(*y*) And in *Quilter* v. *Mapleson* (1882), 9 Q. B. D. 672, it was held that the provisions of the Conveyancing Act, 1881, giving lessees, in certain events, a means of obtaining relief against a forfeiture for certain breaches of covenant, were retrospective, so as to be available in an action of ejectment pending when it came into force, and in which judgment had been given in the court of first instance, but in which execution had been stayed.

44 & 45 Vict. c. 41.

Another ground on which it has been held that a statute is intended to have a retrospective effect is that there is a proviso in the statute that it is not to come into immediate operation upon its passing. The fact that the Legislature has given time has been used as an argument

Effect on construction of provisions delaying commencement.

(*x*) Adopted in *Att.-Gen.* v. *Theobald* (1890), 24 Q. B. D. 557.
(*y*) *Ex parte Pratt* (1884), 12 Q. B. D. 334, 341 (Fry, L.J.).

to show that it was intended that the Act, when it did come into operation, was to be retrospective. This was the main ground for the decision of the Court in *Towler* v. *Chatterton* (1829), 6 Bing. 258, and was recognised by Lord Campbell in *R.* v. *Leeds and Bradford Railway* (1852), 21 L. J. M. C. 193, and was also alluded to by Pollock, C.B. (but by none of the other judges), in *Wright* v. *Hale* (1860), 30 L. J. Ex. 40. It was not, however, the sole ground of decision in any of these cases, and cannot be enunciated as an undoubted rule with regard to the effect of statutes. In *Towler* v. *Chatterton* (1829), 6 Bing. 258, to an action of *indebitatus assumpsit* there was a plea of the Statute of Limitations. The plaintiff proved a verbal promise to pay made by the defendant in February 1828, the action was commenced in January 1829, and the question was whether the verbal promise made in February 1828 was sufficient to take the case out of the statute of 9 Geo. 4, c. 14, which had been passed in May 1828, and which enacted, in s. 1, that no promise by words only, and not in writing, should be sufficient to take a case out of the operation of the statute. By s. 10 it was enacted that the Act should not come into operation until January 1, 1829. It was held that the verbal promise in February 1828 was of no avail, for that the statute, after it had once come operation, applied to past as well as to future transactions. There are also two *nisi prius* decisions on the same point, which are cited in *Towler* v. *Chatterton*, and which even go farther, for in them it was held that the statute applied to actions commenced before January 1, 1829, if the actual trial did not take place until after that date. These three decisions were commented upon somewhat adversely by Rolfe, B., in an elaborate judgment, in *Moon* v. *Durden* (1848), 2 Ex. 33. He there said that it appeared that the decision of *Towler* v. *Chatterton* was founded mainly on the fact that by s. 10 the Act would not come into operation until the January next after its passing, and that from that it had been inferred that when that day arrived the Act was in full opera-

tion as to all contracts, past as well as future. "Now," he continued, "if the meaning of s. 10 be that it was meant to exclude from its operation all actions brought before January 1, 1829, then the statute would work no real injustice to any one. But the Court, in support of its judgment, refers to the two *nisi prius* cases in which it was held that the statute applied to the case of actions brought before January 1, 1829, if the trials did not occur till after that date, on the ground apparently that the judge was to treat the statute as being in force at the time of the trial, and therefore conclusively binding him with respect to what evidence he was to receive. If this narrow construction is to be put upon the statute, it is obvious that the 10th section must in many cases have been a mere illusory protection. I therefore feel bound to say that I cannot think these *nisi prius* cases rightly decided. Whether the decision in *Towler* v. *Chatterton* is correct would depend on whether the true meaning of the 10th section was to fix a date before which all actions must be brought, which is the construction adopted by the Court in that case. It is worthy of remark that Lord Tenterden's Act points to a writing *to be* signed by the parties, that is, to future acts only, so that the decision giving to that section a retrospective operation was not a just one, even in conformity with the most narrow construction of its language." Notwithstanding these criticisms of Rolfe, B., *Towler* v. *Chatterton* was followed by the Court of Queen's Bench in *R.* v. *Leeds and Bradford Rail. Co.* (1852), 21 L. J. M. C. 193. In that case, damage having been done by the railway company to the land of one Edmondson in constructing their line in the years 1846 and 1847, he, Edmondson, had obtained an award from certain justices under the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), ss. 22, 24, of a sum of money to be paid by the company as compensation. This award was not obtained, however, until three years after—*i.e.*, in 1850. In the year 1848 the 11 & 12 Vict. c. 43, was passed (and came into operation six weeks after its passing), by

9 Geo. 4, c. 14.

which it was enacted, in s. 11, that such awards as these must be applied for and obtained within six months from the time when the damage was done. The question therefore arose whether this Act had a retrospective operation and was to apply to cases of damage done before its passing. The Court decided that it was retrospective, and Lord Campbell, C.J., in giving judgment, said: "If the Act had come into operation immediately after the time of its being passed, the hardship would have been so great that we might have inferred an intention on the part of the Legislature not to give it a retrospective operation, but when we see that it contains a provision suspending its operation for six weeks, that must be taken as an intimation that the Legislature has provided that as the period of time within which proceedings respecting antecedent damages or injuries might be taken before the proper tribunal. . . . . A certain time was allowed before the Act was to come into operation, and that removes all difficulty. The case of *Towler* v. *Chatterton* is strongly in point."(z) Again, in *Wright* v. *Hale* (1860), 30 L. J. Ex. 40, it appeared that Pollock, C.B., was to a certain extent influenced by the fact that the Act there in question was not to come into operation immediately upon its passing. He says in his judgment: "I think that where an Act of Parliament alters the proceedings which are to obtain in the administration of justice, and does not specially say that it shall not apply to any action already brought, but merely causes the operation to pause for a certain time, thus giving an opportunity for parties to retire from suits, it applies to actions already commenced. In this case the Act was not to take effect until October, and then in October it is as if it had said, 'In October this Act of Parliament is to take effect.'"

Declaratory Acts retrospective.

Where a statute is passed for the purpose of supplying an obvious omission in a former statute, or, as Parke, J., said

(z) Reversed in *R.* v. *Edwards* (1884), 13 Q. B. D. 586, on grounds not affecting the rule laid down by Lord Campbell.

in *R.* v. *Dursley* (1832), 3 B. & Ad. 469, "to 'explain' a former statute," the subsequent statute has relation back to the time when the prior Act was passed. Thus, in *Att.-Gen.* v. *Pougett* (1816), 2 Price 381, it appeared that by 53 Geo. 3, c. 33, a duty was imposed upon hides of 9*s.* 4*d.*, but the Act omitted to state that it was to be 9*s.* 4*d.* per cwt., and to remedy this omission the 53 Geo. 3, c. 105, was passed. Between the passing of these two Acts some hides were exported, and it was contended that they were not liable to pay the duty of 9*s.* 4*d.* per cwt., but Thomson, C.B., in giving judgment for the Attorney-General, said: "The duty in this instance was in fact imposed by the first Act, but the gross mistake of the omission of the weight for which the sum expressed was to have been payable occasioned the amendment made by the subsequent Act, but that had reference to the former statute as soon as it passed, and they must be taken together as if they were one and the same Act."

Where an Act is in its nature declaratory the presumption against construing it retrospectively is inapplicable. In *Att.-Gen.* v. *Theobald* (1890), 24 Q. B. D. 597, s. 11 of the Customs and Inland Revenue Act, 1889 (52 & 53 Vict. c. 7), as to the liability of voluntary settlements to stamp duty, was held retrospective, although the litigation in which its terms were involved had commenced before it was passed. Acts of this kind, like judgments, decide like cases pending when given, but do not re-open decided cases.(*a*)

Statutes passed to protect the public sometimes held retrospective.

If a statute is passed for the purpose of protecting the public against some evil or abuse, it will be allowed to operate retrospectively, although by such operation it will deprive some person or persons of a vested right. Thus, in *R.* v. *Vine* (1875), L. R. 10 Q. B. 195, it was held that 33 & 34 Vict. c. 29, s. 14, which enacts that "every person convicted of felony shall be for ever disqualified from selling spirits by retail," applied to a person

(*a*) *Vide Att.-Gen.* v. *Marquis of Hertford* (1849), 3 Ex. 670; *Steele* v. *M'Kinlay* (1880), 5 App. Cas. 755.

who, after having been so convicted, had obtained a licence to sell spirits, and was actually holding it at the time when the Act came into force. It must, however, be observed that Lush, J., dissented from the judgment of the majority of the Court. "This is," said he, "a highly penal enactment. The sound and well-established canon of construction is that such an enactment is to be read as prospective, unless a contrary intention be clearly established from the language used. Now, I cannot collect any indication of an intention to make the enactment retrospective. . . . . This is, therefore, the very case in which the above canon of construction applies."

Some statutes virtually retrospective.

Sometimes a statute, although not intended to be retrospective, will, as a matter of fact, have a retrospective operation. For instance, if two persons enter into a contract, and afterwards a statute is passed, which, as Cockburn, C.J., said in *Duke of Devonshire* v. *Barrow* (1877), 2 Q. B. D. 289, "engrafts an enactment upon an existing contract," and thus operates so as to produce a result which is something quite different from the original intention of the contracting parties, such a statute has, as a matter of fact, a retrospective operation. Similarly, if a statute is passed which renders the performance of a contract impossible, the rule of law is that the contract is cancelled; (*b*) consequently, in this case also the statute operates retrospectively. Thus, in *Brewster* v. *Kitchell* (1697), 1 Salk. 198, it was held that where "the question is whether a covenant be repealed by Act of Parliament, this is the difference—viz., where H. covenants not to do an act or thing which was lawful to do, and an Act of Parliament comes after and compels him to do it, the statute repeals the covenant. So, if H. covenants to do a thing which is lawful, and an Act of Parliament comes and hinders him from doing it, the covenant is repealed. But

(*b*) This rule of law is only a particular instance of that enunciated in *Taylor* v. *Caldwell* (1863), 32 L. J. Q. B. 164, and followed in *Howell* v. *Coupland* (1874), L. R. 9 Q. B. 462—viz., that if the performance of a covenant is by any means, independent of the parties to it, rendered impossible, no action will lie for the non-performance of the covenant.

if a man covenants not to do a thing which was then unlawful, and an Act comes and makes it lawful, such an Act of Parliament does not not repeal the covenant."(c) So, in *Baily* v. *De Crespigny* (1869), L. R. 4 Q. B. 108, the defendant let a piece of ground to the plaintiff, and covenanted that neither he nor his assigns would build on the land immediately adjoining it. After the making of this covenant a railway company took, by compulsory purchase under the powers of their special Act, this adjoining piece of land, and built upon it, whereupon the plaintiff sued the defendant; but it was held, on the authority of the above-mentioned case of *Brewster* v. *Kitchell*, that the defendant was not liable on the covenant, which the Legislature itself had prevented him from fulfilling. Again, if an Act of Parliament is passed which affects the subject-matter of a covenant which has been previously entered into between two parties, such an Act of necessity operates retrospectively, if, and in so far as, it alters the respective liabilities of the parties to the covenant. Thus, in *Mayor of Berwick* v. *Oswald* (1854), 23 L. J. Q. B. 324, the defendants had bound themselves as sureties for one Murray on his election as borough treasurer. At the time of his election the office was an annual one, but during the first year that he held it an Act of Parliament was passed by which it was made permanent subject to the approval of the town council. The bond into which the defendants had entered was expressed to be for "any annual or other future election" to the office. It was argued for the defendants that they were not liable on this bond after the change in the law, for that they must be taken as only having bound themselves with reference to the state of the law as it existed at the time they entered into the bond. The case was eventually decided on a different point, but Maule, J., in his judgment expressly pointed out that there was nothing to prevent them from binding themselves with reference to a state of the law which did

Also if it alters an existing covenant.

(c) Followed in *Doe* v. *Rugeley* (1844), 6 Q. B. 107, and in *Newington* v. *Cottingham* (1879), 12 Ch. D. 731.

not exist at the time of entering into the bond, although, unless it clearly appeared to the contrary on the face of the bond, the ordinary assumption would be that "people in general are to be considered as contracting with reference to the state of the law as it existed at the time of making the contract."(*d*)

Apparently retrospective effect of statutes upon wills.

It was formerly held(*e*) that an Act of Parliament passed after a will has been made, but before the death of the testator, did not affect the will; but, as by the Wills Act (7 Will. 4, c. 26), s. 24, every will is now construed as taking effect as if it had been executed immediately before the death of the testator, if an Act of Parliament is passed after a will has been executed, but before the death of the testator, the will is affected by the Act. Such an Act has apparently, though not really, a retrospective effect. This was discussed in *Jones* v. *Ogle* (1873), 8 Ch. App. 192, a case in which the effect of the Apportionment Act, 1870, was under consideration. "If it were necessary to decide [the point]," said Lord Selborne, "I should have very great difficulty indeed in seeing my way to the conclusion that this Act of Parliament either was intended to alter or has in this case had the effect of altering the proper construction of words contained in a will made [but which had not come into effect] before the Act passed." In *Hasluck* v. *Pedley* (1875), L. R. 19 Eq. 273, Jessel, M.R., held that a will made before the Apportionment Act, 1870, was affected by the Act. "It is said," said he, "the testators make their wills on the supposition that the state of the law will not be altered, and it is contended that this will ought to be construed as it would have been under the old law. The answer to this is that a testator who knows of an alteration in the law (as this testator must be presumed to have done), and does not choose to alter his will, must be taken to mean that his will shall take effect according to the new law." Again, in *Constable* v. *Con-*

(*d*) Affirmed (1856), 5 H. L. C. 856.
(*e*) *Ante*, p. 372.

stable (1880), 11 Ch. D. 685, Fry, J., said, with regard to the effect of the Apportionment Act, 1870, upon a will made before it passed, "It would be a very narrow construction to hold that [the Act] did not apply to every instrument coming into operation after the passing of the Act." In *Re March* (1885), 27 Ch. D. 168, a question arose as to the effect of the Married Women's Property Act, 1882, upon a will made before the commencement of the Act by a married woman who died after the Act came into operation. Lindley, L.J., said (p. 169): "The testatrix by her will, construed as it would have been when she made it, gave the appellant half her residuary estate. We can find nothing in the statute to alter this construction." And the Court declined to give the Act a retrospective operation in the absence of any express words or necessary implication. A subsequent Act does not alter the rules for construing a will, but may affect its legal operation.

Duration presumably perpetual.

3. Every statute for which no time is limited is called a perpetual Act, and continues in force until it is repealed. "No doubt exists," said Dr. Lushington in *The India* (1864), 33 L. J. Adm. 193, "that a British (*f*) Act of Parliament does not become inoperative by mere non-user, however long the time may have been since it was known to have been actually put in force."(*g*) So, again, in *Hebbert* v. *Purchas* (1870), L. R. 3 P. C. 650, the Judicial Committee

(*f*) Acts of the Scottish Parliament may be tacitly repealed by "desuetude": *vide* Bell, Dict. Law Sc. (ed. Watson), p. 377, tit. Desuetude; Erskine (15th ed.), p. 7; *Hoggan* v. *Wood* (1890), 17 Rettie (Justiciary) 96. "The English lawyer," said Lord Eldon in *Johnstone* v. *Stotts* (1802), 4 Paton Sc. App. 285, "feels himself much at a loss here; he cannot conceive at what period of time a statute can be held as commencing to grow into desuetude, nor when it can be held to be totally worn out. All he can do is to submit to what great authorities have declared the law of Scotland to be." See also *Harvey* v. *Farquhar* (1872), L. R. 2 H. L. (Sc.) 195, *note* (1), as to notour adultery, which, although made a capital offence by the Scotch Act of 1563, c. 74 (which Act has never been repealed), is not now treated as a criminal offence. It is now repealed by 50 & 51 Vict. c. 35, so far as the punishment is concerned.

(*g*) An instance of this was the appointment by Mr. Gladstone of suffragan bishops of Dover and Nottingham under the statute of 26 Hen. 8, c. 14. No suffragan bishop had been appointed under this statute since the reign of Queen Elizabeth. See Life of Archbishop Parker, by Dean Hook, p. 450.

observed that "it is quite true that neither contrary practice nor disuse can repeal the positive enactment of a statute." This principle appears equally applicable to English, Irish, and colonial Acts,(*h*) and the term "obsolete" cannot, therefore, strictly be applied to any such Acts.(*i*)

Forgotten Acts.

But there are statutes to be found in the Statute-book which have never been acted upon since they were passed, and which apparently are only permitted to remain unrepealed because their existence has been forgotten.(*k*) For instance, the 13 Chas. 2, c. 5, enacted that every one commits a misdemeanour and is liable to a penalty who procures the signatures of more than twenty persons to a petition to the Queen or to Parliament without the previous permission of the justices or of the grand jury. "This singular provision," says Sir James Stephen in his Digest of Criminal Law, p. xxxi, "obviously exists only because it is forgotten." So, also, 12 Geo. 1, c. 29, s. 4, as to the crime of maintenance. "This Act," says Sir James Stephen, p. xxxiv, "which has been forgotten, is perhaps the most iniquitous in the Statute-book."

Effect of contrary practice or non-user.

Although a British statute cannot be actually repealed by contrary practice or non-user,(*l*) yet its effect may be materially altered thereby. Thus, in *Leigh* v. *Kent* (1789), 3 T. R. 362, a motion was made to stay the proceedings in the cause on the ground that no affidavit had been filed in accordance with the provisions of 21 Jas. 1, c. 4,

---

(*h*) As to Scotch Acts, *vide ante*, pp. 5, 6.

(*i*) In *Dobbs* v. *Grand Junction Waterworks* (1882), L. R. 10 Q. B. D. 355, Lindley, L.J., said, "The real truth is that the greater portion of s. 27 [of 7 Geo. 4, c. cxl.] has become obsolete." But the term was inaccurate if it was intended as an equivalent for "tacitly repealed."

(*k*) Daines Barrington, in his Observations on the Statutes (3rd ed.), p. 40, points out that 20 Hen. 3, *Statutum Hiberniæ de coheredibus* (which remained unrepealed until the passing of the Statute Law Revision Act, 1863), is marked *obsolete* in all the editions of the statutes.

(*l*) As to non-user, the *discours préliminaire* of the Code Napoléon runs as follows:—"Si nous n'avons pas formellement autorisé le mode d'abrogation par la désuétude ou le non usage c'est qu'il est peut-être été dangereux de le faire. Mais peut on se dissimuler l'influence et l'utilite de ce concert délibéré de cette puissance invisible par laquelle sans secousse et sans commotion les peuples se font justice des mauvaises lois et qui semblent protéger la société contre les surprises faites au législateur contre lui-même."

s. 2. As to this objection, Lord Kenyon said, on discharging the motion, "I think no such affidavit is necessary; it has never been usual to take that step. And, though where the words of an Act of Parliament are plain, it cannot be repealed by non-user, yet where there has been a series of practice without any exception it goes a great way to explain them where there is any ambiguity."

Meaning of "perpetual Acts."

No statute can be absolutely perpetual, that is to say, incapable of being repealed, for, as Lord Coke says, 4 Inst. 43, " . . . . though divers Parliaments have attempted to bar, restrain, suspend, qualify, or make void subsequent Parliaments, yet could they never effect it, for the latter Parliament hath even power to abrogate, suspend, qualify, explain, or make void the former in the whole or in any part thereof, notwithstanding any words of restraint, prohibition, or penalty in the former, for it is a maxim in the law of Parliament, *Quod leges posteriores priores contrarias abrogant.*" Formerly there was one supposed exception to this rule, namely, that a statute could not be altered by any Act passed in the same session.(*m*) But that exception was removed, as to Acts passed after 1850, by 13 & 14 Vict. c. 21, s. 1,(*n*) which enacted that "any Act may be altered, amended, or repealed in the same session in which it is passed, any law or usage to the contrary notwithstanding."

Peculiar characteristics of temporary Acts.

If an Act contains a proviso that it is to continue in force only for a certain specified time, it is called a temporary Act.(*o*) Temporary Acts have the following peculiarities :—

(1) Commencement.

(1) If an Act is in the first instance only a temporary one, and is continued from time to time by subsequent Acts, it is considered as a statute passed in the session when it was first passed, and not as a statute passed in the session in which the Act which continues its operation was passed. This was so held in *Shipman* v. *Henbest*

(*m*) *Vide ante*, p. 331.
(*n*) Now s. 10 of the Interpretation Act, 1889.
(*o*) *Vide ante*, p. 74.

(1790), 4 T. R. 109, a case in which (among other points) it was contended that 21 Jas. 1, c. 4, s. 4, which enabled a defendant, sued on any penal statute *passed before* 21 Jas. 1, to plead the general issue and to give special matter in evidence under it, did not apply to an action brought upon 1 Jas. 1, c. 22, because that statute, although originally passed before 21 Jas. 1, was only a temporary Act to continue to the next session of the next Parliament, and that in the next Parliament—viz., 6 Jas. 1—it was not continued, nor was it continued again till after the passing of the 21 Jas. 1, c. 4. But Lord Kenyon said, as to this point, in his judgment (p. 114): "It has been argued that 21 Jas. 1, c. 4, does not extend to Acts passed subsequent to it, and that this may be considered as an action brought on a subsequent statute, the 1 Jas. 1, c. 22, having expired before 21 Jas. 1, and having been only re-enacted since that time; but on this point I have not entertained a doubt from the beginning. We are all most clearly of opinion that this must be considered as an action on the 1 Jas. 1, c. 22, and that the subsequent laws which have continued it from time to time all give effect to it as an Act made in the 1st year of James I."(*p*) There is one reported case in which this doctrine does not appear to have been recognised, but, as the real decision in the case depended on another point, it cannot be considered of great importance. The case is that of *R.* v. *Phipoe* (1795), 2 Leach C. C. 673, in which it was objected that an indictment founded on the temporary Act of 2 Geo. 2, c. 25, s. 3 (which Act was revived by 9 Geo. 2, c. 18), ought to have concluded in the plural number, "against the form of the *statutes* in such case made and provided;" but it was held otherwise, because it was considered that the *re-enacting* statute was the only statute in force against the offence. This, however, is contrary to the opinion expressed by the judges in *Dingley* v. *Moor* (1601), Cro. Eliz. 750, where, on a similar

(*p*) See also *R.* v. *Morgan* (1736), 2 Str. 1066; and per Jebb, J., in *R.* v. *Swiney* (1832), Alc. & N. 132.

point having been raised, it was held that, "where a statute is made perpetual in whole or in part without any new addition or alteration, the offence may well be supposed against the form of the first statute, for that Act is made to continue." And the rule as laid down in the case first cited has been adopted by the Statute Law Revision Acts, which usually provide that where an enactment not comprised in the repeal schedule is (*inter alia*), confirmed, revived, or perpetuated by an enactment contained in the schedule, the confirmation, revivor, or perpetuation is not affected by the statute law revision repeal.(*q*)

(2) Expiration.

(2) As a general rule, and unless it contains some special provision to the contrary, after a temporary Act has expired no proceedings can be taken upon it, and it ceases to have any further effect, in the same way as we shall see(*r*) to be the case when an Act is repealed. Therefore, offences committed against temporary Acts must be prosecuted and punished before the Act expires, and as soon as the Act expires any proceedings which are being taken against a person will *ipso facto* terminate.(*s*) There is, however, a difference between the effect of the expiration of a temporary Act and the repeal of a perpetual Act, which is, as Parke, B., said in *Steavenson* v. *Oliver* (1841), 8 M. & W. 234, at p. 241, that "if an Act is repealed, it becomes (except so far as it relates to transactions already completed under it) as if it had never existed, but, if an Act expires, the duration of its provisions is a matter of construction." In this case it

(*q*) See 52 & 53 Vict. c. 24, s. 2 (S. L. R. Master and Servant).

(*r*) *Vide post*, p. 392.

(*s*) O'Connell pleaded guilty to an offence against the temporary Act of 10 Geo. 4, c. 1, but before he had been sentenced the Act expired; consequently, no further proceedings could be taken against him as to that matter. See this point discussed in the Life of the Right Hon. Francis Blackburne, by his son (Macmillan, 1874), pp. 86–94. It had been previously said by Sir Archibald Alison in his History of Europe, vol. iv. p. 299, that the prosecution of O'Connell had been abandoned by Lord Grey's Government on political grounds, but Blackburne, in a correspondence with Sir Archibald, which is quoted in his Life, pointed out that the sole ground why O'Connell was not sentenced was in consequence of the expiration of the temporary Act making it impossible to take any further proceedings.

appeared that it was enacted by 6 Geo. 4, c. 133, s. 4, that every person who held a commission as surgeon in the army should be entitled to practise as an apothecary without having passed the usual examination. This Act was a temporary one, and expired on August 1, 1826; consequently, it was contended that a person who under that Act was entitled to practise as an apothecary would lose that right after August 1, 1826, when the Act expired. But the Court held that such a person would not be so deprived of his right, and Lord Abinger, C.B., in giving judgment, said: "It is by no means a consequence of an Act of Parliament expiring that rights acquired under it should likewise expire. The Act provides that persons who hold such commissions should be entitled to practise as apothecaries, and we cannot engraft on the statute a new qualification limiting that enactment." Similarly, in *Ex parte Higginbotham* (1840), 4 Jur. 1035, it appeared that 39 Geo. 3, c. 79, s. 15, declared certain places to be disorderly within the meaning of 36 Geo. 3, c. 8, and imposed a penalty upon their owners, but as 36 Geo. 3, c. 8, was only a temporary Act, it was contended that after the expiration of the temporary Act there was no longer any offence for which a penalty could be imposed under 39 Geo. 3, c. 79, s. 15. Patteson, J., however, overruled this objection. "It is urged," said he, "that as 36 Geo. 3, c. 8, was to continue in force only for three years, s. 15 of 39 Geo. 3, c. 79, expired [also at the end of the three years, that is to say] at the end of the actual session in which it was passed, but it is ridiculous to suppose such to have been the intention of the Legislature."

(3) Continuance.

(3) It is usual at the present day to pass an Expiring Laws Continuance Act each session, and to put into a schedule each temporary Act which it is intended to continue. Formerly, however, it was the common practice of the Legislature to pass a general Act to continue all the temporary Acts relating to some particular subject, but without specifying the particular Acts to which it was intended to relate. This practice led in several cases to confusion, from the question arising as to whether or not

it was the intention of the Legislature to include some particular Act amongst those to be continued. Thus, in *Barnes* v. *White* (1845), 14 L. J. M. C. 65, it appeared that an Act for amending the roads and highways of the Isle of Wight empowered commissioners to borrow money on the tolls, but the Act was only temporary, and it was argued that 4 & 5 Will. 4, c. 10, which enacted that "all and every Act and Acts for making, amending, and repairing any turnpike roads in Great Britain which will expire with the present or next session of Parliament is and are hereby continued," did not include the above-mentioned Act, because the Act was not merely a statute for making, amending, and repairing turnpike roads, but for something more. The Court ultimately decided that the temporary Act in question was intended to be continued, but the question could never have been raised had the Legislature done what is now usual in Expiring Laws Continuance Acts, namely, put into a schedule the different Acts or parts of Acts intended to be continued.

(4) Revivor.

(4) It is now rare to revive an expired Act. The only recent instance is the revival of the Alien Act by the Prevention of Crime (Ireland) Act, 1882 (45 & 46 Vict. c. 25), s. 15. If an expired Act is revived it has been held that any Acts passed for the purpose of explaining or amending the expired Act are by implication revived also. Thus, by 29 Geo. 2, c. 28, it was enacted that "2 Geo. 2, c. 22, which was explained and amended by 3 Geo. 2, c. 27, and was further explained and amended and continued by 8 Geo. 2, c. 24, and which by 14 Geo. 2, c. 34, was further continued, and which by 21 Geo. 2, c. 33, was further amended and continued . . . . shall be, and the same is hereby, revived, and shall continue and be in force until," &c. In *Williams* v. *Rougheedge* (1759), 2 Burr. 747, the question arose whether the explanatory Acts of 3 Geo. 2, c. 27; 8 Geo. 2, c. 24; 14 Geo. 2, c. 34; and 21 Geo. 2, c. 33, were revived by 29 Geo. 2, c. 28, or whether 2 Geo. 2, c. 22, was alone revived. It was held that the explanatory Acts being all attendant upon the 2 Geo. 2, c. 22, were in effect revived along

with it, for (per Foster, J.) "it would be absurd to revive unamended an Act which wanted so many amendments as this Act had received."

Total repeal of an Act obliterates statute, except as to transactions past and closed.

4. "When an [entire] Act of Parliament is repealed,"(*t*) said Lord Tenterden in *Surtees* v. *Ellison* (1829), 9 B. & C. 752, "it must be considered (except as to transactions past and closed) as if it had never existed. That is the general rule." This rule is recognised in s. 38 of the Interpretation Act, 1889.(*u*) In order to decide whether any particular transaction is affected by the repeal of an Act it is necessary to ascertain whether the transaction in question was complete or incomplete at the time the Act was repealed. Thus, if an Act gives a right to do anything, the thing to be done, if only commenced, but not completed, before the Act is repealed, must upon the repeal of the Act be left *in statu quo*. Thus, in *R.* v. *Mawgan* (*Inhabitants of*) (1838), 8 A. & E. 496, a presentment as to the non-repair of a highway had been made under 13 Geo. 3, c. 78, s. 24, but before the case came on to be tried, the above-mentioned Act was repealed; consequently, no further proceedings could be taken. "If," said Lord Denman, C.J., "the question had related merely to the presentment, that no doubt is complete. But, *dum loquimur*, we have lost the power of giving effect to anything that takes place under that proceeding." And Littledale, J., added, "I do not say that what is already done has become bad, but that no more can be done." So, if by virtue of some statute a right becomes vested *upon* the completion of some certain transaction, *but not before*, no right whatever will have been acquired if the statute in question is repealed before the transaction is complete. Thus, in *Charrington* v. *Meatheringham* (1837), 2 M. & W. 228, it appeared that by 13 Geo. 3, c. 78, s. 81, any person who brought an

(*t*) As to effect of repealing Acts, *vide* also *ante*, pp. 332–340. As to effect of repealing an Act conferring jurisdiction, see *Gurnee* v. *Patrick* (1890), 137 U. S. 141, at p. 144 (Fuller, C.J.).

(*u*) *Vide ante*, p. 334; and see *Hough* v. *Windus* (1884), 12 Q. B. D. 224.

action for an illegal distress for rates, and was nonsuited, was liable to pay to the defendant treble costs. The plaintiff in this case had been nonsuited, but as judgment was not signed before the repeal of the abovementioned Act, it was held that the defendant had not acquired a right to the treble costs. But in *Hough* v. *Windus* (1884), 12 Q. B. D. 224, it was held that where a creditor had obtained a writ of *elegit* after the passing of the Bankruptcy Act, 1883, but before it came into force, and the sheriff had executed the writ before January 1, 1884, the creditor's rights under the old law were not taken away by the Act of 1883, ss. 146, 169, repealing the statute (13 Edw. 1, c. 18) under which writs of *elegit* issued. If an offence is punishable under some certain statute, and the statute is repealed, after the offence has been committed, but before the trial has taken place and the sentence pronounced, no punishment can be inflicted by virtue of that statute, unless, as the Court said in *Miller's case* (1764), 1 W. Bl. 450, the repealing Act contained "a special clause to allow it." On this ground it was held in *R.* v. *M'Kenzie* (1820), R. & R. 429, that if an offence was punishable under some certain statute, and was committed before, but not tried till after, the passing of an Act which repealed that statute, but imposed new penalties for the commission of the offence, the offence was not liable to be punished under either the repealed or the repealing statute.(*x*)

Total and partial repeal.

It must be borne in mind that there is a difference in effect between repealing an entire Act and merely repealing a single clause in an Act. It may no doubt be said that, if a clause is repealed, "this clause," as Kelly, C.B., said in *Att.-Gen.* v. *Lamplough* (1878), 3 Ex. D. 223, "is to be taken as if it had never existed," but it cannot be said that (as Kelly, C.B., added), "where a particular clause in an Act is repealed, the whole Act must be read as if that clause had never been enacted." For every Act of Parliament, as we have

(*x*) *Vide ante*, p. 389, *note*.

already seen,(*y*) is in the first instance to be looked at as an entirety, and is to be construed *ex visceribus actûs*. Therefore a Court of law "is entitled," as Bramwell, L.J., said in the last-mentioned case, at p. 227, "to look at the repealed portion of an Act to see what is the meaning of what remains of the Act, otherwise it would follow that an Act of Parliament, which at one time had one meaning, would by the repeal of some one clause in it have some other meaning."

Rights acquired by virtue of statute are not lost by repeal of statute.

If a right has once been acquired by virtue of some statute, it will not be taken away again by the repeal of the statute under which it was acquired. "The law itself," says Puffendorf, in his Law of Nature and Nations, bk. 1, c. 6, s. 6, "may be disannulled by the author, but the right acquired by virtue of that law whilst in force must still remain; for together with a law to take away all its precedent effects would be a high piece of injustice." Thus, in *Jacques* v. *Withey* (1788), 1 H. Bl. 65, it appeared that, it being illegal by virtue of 22 Geo. 3, c. 47, to insure tickets in a lottery, a contract for insuring lottery tickets was void, and that, consequently, any money which had been paid in pursuance of such a contract might be recovered back. After a contract of this kind had been entered into, and after money had been paid by the plaintiff to the defendant in pursuance of it, the Act of 22 Geo. 3, c. 47, was repealed; consequently, it was argued that, as such contracts were no longer illegal, the money which had been paid before the repeal of the Act could not be recovered back in an action which had not been commenced until after the repeal of the Act. It was held, however, that a contract which was void by statute when made, could not be set up again by the repeal of the statute between the time of contracting and the commencement of the suit. "If," said Coleridge, J., in commenting on the case in *Hitchcock* v. *Way* (1837), 6 A. & E. 947, "it had been

(*y*) *Vide ante*, p. 114, as to construction *ex visceribus actûs*.

originally a good contract, and a statute had passed which had made it void, and then that statute had been repealed, the contract would have been set up again. But here there was *orginally a void contract* by virtue of a statute, and therefore it cannot be made valid by the repeal of that statute."(z)

Neither can such a right be augmented.

And as a right which has once been acquired by virtue of a statute is not taken away by the repeal of that statute, so also it is not augmented. Thus, in *Butcher* v. *Henderson* (1868), L. R. 3 Q. B. 335, the plaintiff obtained a verdict for 40*s.*, but by virtue of 13 & 14 Vict. c. 61, s. 11, a plaintiff who obtained a verdict for less than £5 was deprived of his right to costs under the Statute of Gloucester. But before the plaintiff had signed judgment s. 11 of 13 & 14 Vict. c. 61, was repealed. Consequently, the plaintiff argued that his right to costs under the Statute of Gloucester was now revived, and that upon signing judgment he became entitled to costs. It was held, however, that the plaintiff had become entitled under the then existing statute to a certain definite right, namely, to a verdict for 40*s. and no costs*, and that, the transaction being then complete, no alteration in the nature of his right could be effected by the subsequent repeal of the statute under which that right had been acquired. Sometimes when an Act is repealed it is expressly enacted in the repealing Act that "this repeal shall not affect any right or liability acquired, accrued, or incurred." It was so enacted in 38 & 39 Vict. c. 55, s. 343. But, as the rule of law is as above stated, such a clause as this is apparently unnecessary, and only inserted *ex abundanti cautelâ.*

Repeal *ex abundanti cautelâ.*

Express repeals are in some cases inserted *ex abundanti cautelâ*, and to confirm and corroborate the effect of enactments in the repealing Act or some prior statute upon the enactment expressly repealed. Thus, in *Hough* v. *Windus* (1884), 12 Q. B. D. 224, it was held that

(z) *Vide ante*, p. 147, as to reference, for purposes of construction, to repealed Acts *in pari materiâ.*

s. 146 of the Bankruptcy Act, 1883, repealed the Statute of Westminster the Second (13 Edw. 1, c. 18) as to writs of *elegit*, and that s. 169, the repeal section, must be read with s. 146, and that, consequently, the savings in s. 169 did not operate to cut down the extent of the repeal effected by s. 146 so far as related to the rights of creditors who had obtained writs of *elegit* between the passing and the commencement of the Act of 1883. Savings from a repealing clause do not apply to any express antecedent provision inconsistent with them,(*a*) and it cannot, therefore, now be argued that the repeal clause can in any way control or be otherwise than subsidiary to the statute to which it is attached.(*b*)

Effect of proviso "except as to acts done under repealed Act."

If an Act is repealed, but with the proviso, "except as to acts done under it," this proviso will receive a liberal interpretation, and will be extended to any act which a person *bonâ fide* believes he was entitled to do under and by virtue of the repealed statute, even though it eventually appears that he acted wrongly. Thus, the County Courts Act (9 & 10 Vict. c. 95) enacted, in s. 139, that no costs should be awarded to the plaintiff in any action against a county court bailiff in respect of any grievance committed "by him under colour of the process of the court," unless the plaintiff recovered more than £20 damages or the judge certified. This section was repealed by 19 & 20 Vict. c. 108, s. 2, "except as to acts done under it." In *Foster* v. *Pritchard* (1857), 26 L. J. Ex. 215, it was contended with respect to an action tried after the passing of 19 & 20 Vict. c. 108, in which the plaintiff recovered less than £20 damages and the judge did not certify, that the grievance committed by the defendant under colour of the process of the court was not "an act done under" this repealed section. But, said the Court, "there can be no doubt that it was the intention of the Legislature that the words in this proviso as to 'acts done under' the repealed statutes should be construed in an extensive

(*a*) Per Selborne, L.C., in *Hough* v. *Windus* (1884), 12 Q. B. D. at p. 231.
(*b*) Case cited, p. 235, Bowen, L.J.

sense. . . . . The words 'done under' may mean 'done while a statute is in operation.' The words 'under and subject to' would, it must be admitted, have rendered this construction indisputable, and, under the circumstances, we think that the word 'under' should have this meaning."

Provisions of prior Act adopted by relation by subsequent Act are not repealed by repeal of prior Act.

Sometimes an Act of Parliament, instead of expressly repeating the words of a section contained in a former Act, merely refers to it, and by relation applies its provisions to some new state of things created by the subsequent Act.(*c*) In such a case the "rule of construction is," said Brett, L.J., in *Clarke* v. *Bradlaugh* (1881), 8 Q. B. D. 69, "that where a statute is incorporated by reference into a second statute, the repeal of the first statute by a third does not affect the second." This was first expressly decided, and then with some hesitation, in *R.* v. *Merionethshire* (1844), 6 Q. B. 343. In that case it appeared that 43 Geo. 3, c. 59, s. 1, enacts that the surveyor of bridges may take materials for the repair of bridges in the same manner as the surveyors of highways are authorized to take materials by 13 Geo. 3, c. 78,(*d*) and that "the several powers thereby vested in the surveyor of highways shall be, and the same are hereby, vested in the surveyor of bridges . . . . as fully and effectually as if the same and every part thereof were herein repeated and re-enacted." By 5 & 6 Will. 4, c. 50, s. 1, the 13 Geo. 3, c. 78, was repealed, and the question arose as to what effect the repeal of the former Act had on the above-mentioned provisions of the latter Act. Lord Denman, C.J., in giving judgment, said as follows as to this: "There is certainly a difficulty. . . . . The question is whether 43 Geo. 3, c. 59, which is unrepealed, does not

(*c*) 31 & 32 Vict. c. 50, applies the provisions of 28 & 29 Vict. c. 84; this latter Act is repealed by 40 & 41 Vict. c. 53, s. 72, but is printed in the Supplement to vol. xv. of the Revised Statutes as being still in force through 31 & 32 Vict. c. 50.

(*d*) This Act was omitted from its proper place in the Revised edition of the Statutes, but in consequence apparently of the decision of *R.* v. *Smith* (1873), L. R. 8 Q. B. 146 (cited below, p. 398), it was printed in the Appendix to vol. iv. of the Revised Statutes (1st ed.).

keep alive the power given by 13 Geo. 3, c. 78, s. 64. And I think it must be taken to do so." And Williams, J., added: "It is impossible to say that this question is without doubt. . . . . It certainly appears strange that when an Act of Parliament is *per se* abolished, it shall virtually have effect through another Act. But any difficulty which that may raise is met by the manner in which the earlier Act is introduced in 43 Geo. 3, c. 59, 'as if the same . . . . were herein repeated and re-enacted.' To save the trouble of incorporating it in terms they do so by relation, but the provisions are made part of 43 Geo. 3, c. 59, as much as if they were expressly incorporated." The doubts expressed by the Court in this case do not appear to have been felt in subsequent cases (*e*) where the same question arose. Thus, in *R.* v. *Smith* (1873), L. R. 8 Q. B. 146, it appeared that the 32 & 33 Vict. c. 27, s. 8, enacts that "all the provisions of 9 Geo. 4, c. 61, as to appeal to quarter sessions from any act of any justice shall have effect with respect to the grant of certificates under this Act." By 35 & 36 Vict. c. 94, all the provisions of 9 Geo. 4, c. 61, as to appeal to quarter sessions are repealed, but the principle laid down in *R.* v. *Merionethshire* was not attempted to be disputed, and the only question raised was as to whether the form of words used in 32 & 33 Vict. c. 27, did actually incorporate the provisions of 9 Geo. 4, c. 61. In giving judgment, the Court adopted without any hesitation the principle laid down in *R.* v. *Merionethshire* (*ubi supra*). "I agree," said Blackburn, J., "that the authorities show that the repeal of the original Act does not of itself repeal provisions as incorporated in a subsequent Act, and without authorities it is but common-sense that, where a second Act in effect re-enacts an older Act, the second Act must be expressly repealed as well as the older Act, otherwise it must be taken to remain in force." And Cockburn, C.J., also expressed

(*e*) See *R.* v. *Brecon* (1849), 15 Q. B. 813; *R.* v. *Stepney Union* (1874), L. R. 9 Q. B. 390; *Clarke* v. *Bradlaugh* (1881), 8 Q. B. D. 69, per Brett, L.J.

himself to the same effect, and then added, "The difficulty here arises from the usual form of incorporation having been departed from, but I think the form used does constructively, though not expressly, say that the appeal sections shall be incorporated." Lord Cairns' Act (21 & 22 Vict. c. 27) has been repealed by 46 & 47 Vict. c. 49, s. 3, but "the repeal was not intended to take away any of the powers given by the Act in a Chancery action, but because it was considered that the Judicature Acts re-enacted these powers, and therefore that Lord Cairns' Act had become obsolete and might be repealed."(*f*)

A repealed Act may be revived by express enactment.

Although an Act of Parliament, after it has been repealed, must "be considered as if it had never existed,"(*g*) this rule does not prevent its being revived again. Until June 10, 1850, the law with regard to the revival of repealed Acts of Parliament was that laid down by Lord Coke, 2 Inst. 686—viz., that "as by the repealing of a repeal the first Act is revived, so by reviving of an Act repealed the Act of repeal is made of no force." But on June 10, 1850, the 13 & 14 Vict. c. 21, s. 5, came into force, by which it is enacted "that where any Act, repealing in whole or in part any former Act, is itself repealed, such last repeal shall not revive the Act or provision before repealed, unless words be added reviving such Act or provision." Consequently, since that date no Act, which has been once repealed, has been revived, except by express enactment. For instance, 55 Geo. 3, c. 91, was repealed by the Statute Law Revision Act, 1873, and revived by the Statute Law Revision Act, 1874, s. 2; and 6 & 7 Vict. c. 79, was repealed by 31 & 32 Vict. c. 45, revived in part by 40 & 41 Vict. c. 42, and again repealed in part by 46 & 47 Vict. c. 22.

Effect of Brougham's Act, s. 5.

The object of the enactment of 13 & 14 Vict. c. 21, s. 5,(*h*) was, as Hannen, J., pointed out in *Mirfin* v.

(*f*) Per Lord Esher, M.R., in *Chapman* v. *Auckland Guardians* (1889), 23 Q. B. D. p. 299.
(*g*) *Ante*, p. 392.
(*h*) Now Int. Act, 1889, s. 11; *vide ante*, p. 391.

Attwood (1869), L. R. 4 Q. B. 340, "to prevent the revival of a statute contrary to the intention of the Legislature," and it apparently applies to cases of implied repeal as well as where a statute is repealed by express enactment.

Repeal by a temporary Act may be absolute or temporary.

If the Act which repeals a prior Act is itself only a temporary Act, the general rule is that the prior law is revived after the temporary Act is spent. This, however, will not be so if it was clearly the intention of the Legislature to repeal the prior Act absolutely. Thus, in *Warren* v. *Windle* (1803), 3 East 205, it was argued that the temporary Act of 26 Geo. 3, c. 108, which repealed 19 Geo. 2, c. 35, having itself expired, the 19 Geo. 2, c. 35, revived; but, said Lord Ellenborough, "that would not necessarily follow, for a law, though temporary in some of its provisions, may have a permanent operation in other respects. The 26 Geo. 3, c. 108, professes to repeal 19 Geo. 2, c. 35, absolutely, though its own provisions, which it substituted in the place of it, were to be only temporary." But when, on the authority of *Warren* v. *Windle*, it was argued in *R.* v. *Rogers* (1809), 10 East 573, that certain parts of 42 Geo. 3, c. 38, having been repealed by the temporary Act of 46 Geo. 3, c. 139, did not revive upon the expiration of the temporary Act, Lord Ellenborough said as follows: "It is a question of construction upon every Act, professing to repeal or interfere with the provisions of a former law, whether it operate as a total or partial and temporary repeal. Here the question is whether the provisions of 42 Geo. 3, c. 38, which was originally perpetual, be entirely repealed by the 46 Geo. 3, c. 139, or only repealed for a limited time. The last Act recites, indeed, that certain provisions of the former one should be repealed, but this word is not to be taken in an absolute sense, if it appear upon the whole Act to be used in a limited sense."

CHAPTER VI.

EFFECT OF STATUTES ON THE CROWN.

	PAGE
1. References to Crown in statutes	401
2. Acts made for the benefit of the Crown	402
3. Crown not bound by general words in an Act	403
Sovereign in private capacity not within rule	404
Rule applies to equitable rights of Crown	405
Effect of Acts on prerogatives as to—	
Forfeitures	407
Taxes	407
Tolls	408
Rates	408
Costs	410
Pleading	410
Crown debts	410
Prescription and limitations	411
Entails	411
Letters patent	412
Choice of courts	412
Colonial appeals	412
Mines	413
Crown may avail itself of statute which does not bind it	413
4. Acts binding the Crown without special mention	413
(a) As to learning, religion, and poor	414
(b) To suppress wrong	414
(c) To execute charitable gifts	418
5. Acts imposing statutory duty upon the Crown	419
No remedy for breach	419

1. REFERENCES in any Act to the Sovereign reigning at the time of its passing, or to the Crown, are, unless a contrary intention appears, to be read as references to the Sovereign for the time being.(*a*) Consequently, the statutory rights and obligations of the Crown do not cease upon its demise.(*b*) Her Majesty's Commissioners of Works do not represent the Crown,(*c*) nor does the Corporation of

References to the Crown.

(*a*) Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 30. The enactment is by the same section expressly made binding on the Crown.

(*b*) The earliest statutes do not seem to have been regarded as binding the successors of the Sovereign in whose reign they were passed, and appointments made by a Sovereign determined on his death. See the Act of Settlement (12 & 13 Will. 3, c. 2), s. 3.

(c) *Re Wood's Estate* (1886), 31 Ch. D. 607.

the Trinity House in the exercise of its functions under the Merchant Shipping Acts.(*d*) But the Postmaster-General does,(*e*) and the same rule seems to apply to all heads of the chief departments of State. The expression "the Crown," even in a British statute, is not confined to the prerogative as exercisable in England. The Crown rights as to debts due to a colonial Government are equally within the rule, and in *Re Oriental Bank Corporation* (1885), 28 Ch. D. 643, the priority of Crown debts was successfully asserted with reference to balances left by a colonial Government in the liquidating bank.

Statutes made for benefit of Crown.

2. It is said in *Reniger* v. *Fogossa* (1549), Plowd. p. 10, that "a statute made for the benefit of the King shall be construed most beneficially for him." The reason of this rule is explained by Plowden as being that all statutes are made by the King's subjects, and that, if a statute is made for the benefit of the King, the makers, that is, the King's subjects, are in the position of grantors or donors, and the King is in the position of a grantee or donee. Now, the general common law rule with regard to grants or gifts is that they shall be construed most strongly against the grantors and most beneficially for the grantee; "and if," continues Plowden, "it be so where a common person is grantee or donee, *à multo fortiori* where the King is grantee, therefore a statute whereby anything is given to the King must be construed most beneficially for the King." This rule, though cited in Comyns' Digest (tit. Parliament, R. 21) as well recognised with regard to the effect of statutes, has been rarely adopted in reported cases.(*f*) In *R.* v. *Treasury* (1851), 20 L. J. Q. B. 312, a question arose with regard to the construction of 1 & 2 Will. 4, c. 11, by which an annuity was granted to Queen Adelaide. After

(*d*) *Gilbert* v. *Trinity House* (1886), 17 Q. B. D. 795.
(*e*) *Re West London Commercial Bank* (1888), 38 Ch. D. 364.
(*f*) See *Bishop of Meath* v. *Lord Winchester* (1835), 4 Cl. & F. 445, at p. 484, where the rule as laid down in Comyns' Digest was prayed in aid by Sir Fred. Pollock *arguendo;* and the *Bloomfield Peerage case* (1831), 2 Dow & Cl. at p. 346, where the Lord Chancellor (Brougham) says, "All grants to which the Crown was a party are to be construed in favour of the Crown." In the old grants of patents it was usual to insert a provision that they should be construed in favour of the patentee.

disposing of various other arguments, the Court said: "Finally, reliance is placed on the exalted rank of her Majesty. We are at a loss to know how this should influence the construction of the language by which provision is made for her; we might as well be told of her exemplary virtues while living, and of her saint-like death, which will ever make her memory cherished with affection and reverence by the English nation; these we are most ready to acknowledge, but we sit here merely as judges to interpret an Act of Parliament." But this opinion is no denial of the existence of the rule, inasmuch as the Queen Consort is clearly not within the constitutional prerogatives of the Crown.(*g*)

The Crown is not bound by statute unless specially named.

3. The history of legislation is to a large extent a history of the restriction of the royal prerogative,(*h*) but "it is a well-established rule, generally speaking, in the construction of Acts of Parliament, that the King is not included unless there are words to that effect."(*i*) "This general rule, as expressed in Bacon's Abridgement [7th ed. p. 462], is that, 'where a statute is general, and thereby any prerogative, right, title, or interest is devested or taken from the King, in such case the King shall not be bound, unless the statute is made by express terms to extend to him.'"(*k*) The rule is analogous, if not equivalent, to the rule already stated,(*l*) that the common law is not presumed to be altered by statute, for the rights and titles and prerogatives of the Crown are in reality part of the common law of England. The reason of the rule is thus put by Plowden, 240: "because it is not an Act without the King's assent, and it is to be intended that when the King gives his assent he does not mean to prejudice himself or to bar himself of his liberty and his privilege, but he assents that it shall be a law among his subjects."

(*g*) Queen Natalie of Servia was denied in Germany the immunities of a Sovereign, as she was only a Queen Consort.

(*h*) Older statutes contain express savings of the prerogative.

(*i*) Alderson, B., in *Att.-Gen.* v. *Donaldson* (1842), 10 M. & W. 117.

(*k*) See *Ex parte Postmaster-General* (1879), 10 Ch. D. 462, per Jessel, M.R.

(*l*) *Ante*, p. 322.

Meaning of expression "right of Crown not being barred."

Saying that the rights of the Crown are not barred by any statute which does not name them does *not* mean that the King, looked upon as a mere individual, may not be in certain cases deprived by statutes, which do not specially name him, "of such inferior rights as belong indifferently to the King or to a subject, such as the title to an advowson or a landed estate;" what it does mean is that the King cannot in any case whatever be stripped by a statute, which does not specially name him, "of any part of his ancient prerogative, or of those rights which are incommunicable and are appropriated to him as essential to his regal capacity."(*m*) Lord Coke in the *Magdalen College case* (1616), 11 Rep. 68 b, says that it was resolved "that, where the King has any prerogative, estate, right, title, or interest, by the general words of an Act, he shall not be barred of them." The question there raised was whether the King, not being specially named in 13 Eliz. c. 10, was bound by it. By that statute it was enacted that "all leases, grants, or conveyances to be made by any master and fellows of any college . . . . of any houses, lands . . . . to any person or persons, bodies politic or corporate, for a longer term than 21 years shall be utterly void," and it was contended by the plaintiff that this statute did not extend to the King so as to make void a lease made to Queen Elizabeth by Magdalen College for a longer term than 21 years. In support of his argument the plaintiff prayed in aid various cases in which it had been held that the King was not bound by statutes unless named in them. Thus, by the Statute of West. 1 (13 Edw. 1), c. 36, which settles reasonable aid (as well to make the eldest son knight as to marry the eldest daughter) in certain, it was enacted that from henceforth of a whole knight's fee there should be given only 20*s.* and of £20 land held in socage 20*s.*, and of more, more, and of less, less; but it was held, that forasmuch as the King was not named, he was not bound by the law, and to settle that in certainty was passed the 25 Edw. 3, c. 11, in which Act the King was

(*m*) See Dr. Wooddeson's Vinerian Lectures, vol. i. p. 31.

specially named. Also the King hath a prerogative *quod nullum tempus occurrit regi*, and therefore the general Acts of limitations or of plenarty shall not extend to him.(*n*) Lord Coke also says, "Many other cases were cited upon this large and common ground which you may find in our books and especially in Plowden's Comm. *Willion* v. *Barkley* (1560), 240 b." The cases cited by Plowden bear out the proposition above stated—namely, that where the King has any "prerogatives, estate, right, title, or interest, which are incommunicable and appropriated to him as essential to his regal capacity," he shall not be barred to them by the general words of an Act of Parliament.

In *Perry* v. *Eames* (1891), 1 Ch. 657, the rule was thus stated by Chitty, J., at p. 665, speaking of the Prescription Act: "The Crown is not named in that section, but is named in the 2nd and 3rd sections. Therefore, regard being had to the general rule, that the Crown is not bound by a statute unless named, a very strong case arises for holding that the Crown is not bound by the 3rd section. It was, however, argued for the plaintiffs that the Crown is bound by necessary implication, because the servient tenement is not mentioned in the 3rd section. . . . . But it appears to me a wholly immaterial circumstance whether the servient tenement is mentioned or not. It is not a circumstance from which any intention on the part of the Crown can be inferred, much less is it sufficient to raise a necessary implication, or to support an irresistible inference of intention to bind the Crown." And he proceeded to lay down a further rule of great importance in modern times where the functions of the Crown are put into commission: "It was contended that although the section [3] might not apply where the legal estate was vested in the Crown, it does apply where the legal estate is held by subjects in trust for the Crown. In support of this contention various authorities were cited for the plaintiffs, but none of them really touched the point. One

2 & 3 Will. 4, c. 71, ss. 3.

(*n*) See *Att.-Gen.* v. *Emerson* (1891), A. C. 649, in which the Crown claimed part of the Maplin Sands which had been in the possession of subjects for at least five centuries.

of them was *Sharp* v. *St. Sauveur.*(*o*) All that was there decided was that the Crown could enforce in the Court of Chancery a trust of land created for an alien prior to the Naturalisation Act, 1870. That has no bearing on the case before me. In ancient times it was not the practice to vest the legal estate in trustees for the Crown, and thus there is little or no direct ancient authority on the point. The second resolution in the *Magdalen College case* (*p*) appears, however, to be large enough to cover it. It was resolved that where the King has any prerogative, right, title, or interest, he shall not be barred of them by the general words of an Act of Parliament. There is no reason for confining this resolution to mere legal interests, or for excluding an absolute beneficial ownership in the Crown. In *Mersey Docks* v. *Cameron*,(*q*) a case involving the liability of the Mersey Docks to be rated to the poor under the statute of Elizabeth, Lord Cranworth stated the law as to the exemption of the Crown in the following passage (at p. 508): 'The Crown, not being named, is not bound by the Act. It follows, therefore, that lands or houses occupied by the Crown, or by servants of the Crown for the purposes of the Crown, are not liable to be rated; and I conceive that it is from a confusion between property occupied for public purposes and property occupied by servants of the Crown that this mistake has arisen.' This principle exempts from rates, not only royal palaces, but also the offices of the Secretaries of State, the Horse Guards, the Post Office, and many similar buildings. On the same ground police-courts, county courts, and even county buildings occupied as lodgings at the assizes have been held exempt. These decisions, however, have all gone on ground more or less sound, that these might all be treated as buildings occupied by servants of the Crown,(*r*) and for the Crown, extending in some instances the shield of the Crown to what might more fully be described as the

43 Eliz. c. 2.

(*o*) (1872) 7 Ch. App. 343.
(*p*) (1616) 11 Rep. 74 b.
(*q*) (1864) 11 H. L. C. 443.
(*r*) *Coomber* v. *Berks Justices* (1883), 9 App. Cas. 71.

public government of the country." And after referring to *R.* v. *McCann* (1868), L. R. 3 Q. B. 144, as placing a trustee for the Crown in the same position as a servant of the Crown, Chitty, J., added (*loc. cit.* p. 669): "Now, in the cases before me the Crown's absolute beneficial ownership for the purposes of the Act is expressly manifested by a public statute, and it is obvious that the legal estate was vested in trustees merely for the purposes of more convenient administration by a department of the Queen's Government. I am of opinion, then, that the prerogative of the Crown takes these cases out of the operation of the 3rd section."

Penalties or forfeitures.

An Act creating a forfeiture does not bind the Crown. Thus, it was in *R.* v. *Kent Justices* (1890), 24 Q. B. D. 181, decided that the Weights and Measures Act, 1878, did not apply to Post Office weights, as to hold so would involve a forfeiture of Crown property. All statutory fines and forfeitures belong to the Crown unless otherwise provided by the Act creating them. Where a penalty is created by statute, and nothing is said as to who may recover it, and the offence is not against an individual, it belongs to the Crown, and, consequently, a common informer cannot sue on a penal statute unless an interest in the penalty is given to him by express words or necessary implication.(*s*)

41 & 42 Vict. c. 49.

Duties and taxes.

The Crown receives and does not pay duties and taxes. But in the Stamp Act, 1891,(*t*) provision is made for the imposition of stamp duty on instruments relating to property belonging to the Crown or being the private property of the Sovereign in the same manner as on property of subjects, unless a contrary intention is expressed. The effect of this provision is to alter the common law presumption as to the exemption of the Crown from the provisions of a statute so far as relates to stamp duties on instruments. In *R.* v. *Cook* (1789), 3 T. R. 519, the question arose whether 25 Geo. 3, c. 51, s. 4, enacting that there should be charged a duty of 1½*d.* per mile upon every

(*s*) *Bradlaugh* v. *Clarke* (1883), 8 App. Cas. 354. As to penal Acts, see Part III. *infra*.

(*t*) 54 & 55 Vict. c. 39, s. 119.

horse hired to travel post, made this duty payable by a person carrying despatches for the Government. Lord Kenyon, in deciding that this Act did not bind the King, said: "Generally speaking, in the construction of Acts of Parliament the King in his royal character is not included, unless there be words to that effect. . . . . Although there is no special exemption of the King in this Act, yet I am of opinion that he is exempted by virtue of his prerogative in the same manner as he is virtually exempted from the 43rd Eliz. and every other Act imposing a duty or tax upon the subjects."

Tolls. In *Mayor of Weymouth* v. *Nugent* (1865), 6 B. & S. 22, the question was whether stone brought into the harbour of Weymouth for the use of Government works was exempt from wharfage duty chargeable by a private Act upon all goods brought into the harbour. It was contended that the Crown, not having been expressly exempted, was liable to pay this wharfage. But it was held that, as immunity from all tolls of any kind is a prerogative right of the Crown, if the Crown was to be held liable by implication to pay wharfage duty a prerogative of the Crown would be directly affected, and the well-established rule that the Crown was not bound by an Act of Parliament, unless named in the Act, would be broken through.(*u*)

Rates. It is also a prerogative right of the Crown not to pay rates, and it has always been held that the Crown, not being named in the 43 Eliz. c. 2, is not liable to be rated for the relief of the poor. The later decisions on this subject have greatly extended the meaning of the expression "in the occupation of the Crown." At the present time, not only is all property in the occupation of the Crown not rateable, but also where property is occupied *for* the Crown it is not to be rated. Lord Blackburn, in *Coomber* v. *Justices of Berks* (1883), 9 App. Cas. 61, at p. 71, thus stated the general rule: "It seems to me that it is not material whether the assessment statute imposing any tax does so, like the Poor Rate Acts, for a local purpose, or like the

(*u*) See also *Northam Bridge Co.* v. *R.* (1886), 55 L. T. 759.

statute imposing a duty on post-horses, considered in *R.* v. *Cook* (1789), 3 T. R. 519, or the income-tax, for an imperial purpose. In each there is an implied exemption on the ground of prerogative. And if the property is so held as to bring it within the ground of exemption from the one statute, it must surely be brought within the ground of exemption from the other." And Lord Watson said, at p. 77: "The existence of the same kind and degree of interest on the part of the Crown which is deemed in law sufficient to protect an occupier from liability to the poor-rate must also be held sufficient to shield the owner of the bare legal estate against any demand for payment of income-tax. The judgment of a Court of law to the effect that certain public purposes are such as are required and created by the Government of the country, and must therefore be deemed part of the use and service of the Crown, is a decision resting upon grounds altogether outside and independent of the provisions of the Act of Elizabeth, and, so far as I know, of any other taxing Act to be found in the Statute-book. I therefore think that the cases in which it has been decided that the actual occupiers of assize courts and police stations are exempt from poor-rate as being within the privilege of the Crown are decisions of an equal authority in a question as to exemption from income-tax."(*x*)

The question then arises, What property falls within this conceded exemption? The rule laid down in *R.* v. *Cook* (*y*) as to tolls has been held also to apply to local rates, but controversy has raged round the question, What is Crown property within the rule? The leading case on this subject is *Mersey Docks* v. *Cameron*,(*z*) where Lord Westbury laid it down that public purposes to make an exemption "must be such as are required and created by the Government of the country, and are therefore to be deemed part of the use and service of the

(*x*) Lord Bramwell agreed, *loc. cit.* p. 79.
(*y*) (1789) 3 T. R. 519.
(*z*) (1865) 11 H. L. C. 443.

Crown."(*a*) The rule is also laid down by Lord Cairns in substantially the same terms in *Greig* v. *University of Edinburgh* (1868), L. R. 1 H. L. (Sc.) 350: "The Crown not being named in the English or Scotch statutes on the subject of assessment, and not being bound by statute when not expressly named, any property which is in the occupation of the Crown, or of persons using it exclusively in or for the service of the Crown, is not rateable to the relief of the poor."

Costs. It is also a prerogative right of the Crown not to pay costs in any judicial proceeding, and it was held in *R.* v. *Beadle* (1857), 26 L. J. M. C. 111, that there was no power to award costs against the Crown except in those cases in which it was expressly authorized by Act of Parliament.(*b*) "I do not believe," said Lord Campbell, C.J., in giving judgment, "that it was the intention of the framers of the Act to embrace cases of this sort, but it is enough for us to say that the Crown is not expressly mentioned in this Act, and cannot therefore be bound." But this does not affect the right of the Crown to receive costs. Power to make rules of court binding on the Crown seems to be given by 44 & 45 Vict. c. 59, s. 6.

Pleading. So, also, it being a prerogative right of the Crown to plead double or plead and demur in a petition of right without the leave of the Court, it was held in *Tobin* v. *R.* (1863), 32 L. J. C. P. 216, that that right, not being in express terms taken away by 23 & 24 Vict. c. 34, remained the same as it was before the passing of that Act.

Crown debts. Debts due to the Crown or to its agents take priority over debts due to subjects, even in bankruptcy, unless there is express statutory provision to the contrary.(*c*) This provision applies even if the debt is due to the Crown in respect of a colonial Government (*d*) or the Post Office.(*e*)

(*a*) See also *Perry* v. *Eames* (1891), 1 Ch. 658, 668.
(*b*) 20 & 21 Vict. c. 43, ss. 4, 6: *Moore* v. *Smith* (1859), 28 L. J. M. C. 126; and 19 & 20 Vict. c. 56, s. 24: *Alexander* v. *Officers of State for Scotland* (1868), L. R. 1 H. L. (Sc.) 276.
(*c*) *Ex parte Postmaster-General* (1879), 10 Ch. D. 595.
(*d*) *Re Oriental Bank Corporation* (1885), 28 Ch. D. 643.
(*e*) *Re West London Commercial Bank* (1888), 38 Ch. D. 364.

And in *Re Oriental Bank Corporation* (1885), 28 Ch. D. 643, it was decided that although the Bankruptcy Act, 1883, took away the priority of the Crown over other creditors in the distribution of assets, and the Judicature Act, 1875, s. 10, had directed the assimilation of liquidation and bankruptcy procedure and the respective rights of secured and unsecured creditors, yet the Crown retained, under the Companies Acts, its right to be paid Crown debts in full in priority to other creditors of a company.

Prescription and limitation.

The Prescription Acts (*f*) and Statutes of Limitation do not affect the Crown unless there are express words. The same principle applies with reference to Acts creating offences. There is no limitation at common law to the right of the Crown, or of a subject in the name of the Crown, to prosecute for treason, felony, or misdemeanour.

Entail.

So, with regard to the right to a reversion in an estate, in *Re Cuckfield Burial Board* (1855), 24 L. J. Ch. 585, the question was whether s. 7 of the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), bound the Crown. That section enables persons having a limited interest in land as tenants for life or in tail to sell and convey lands for public purposes. In this case certain lands, which were required for a burial-ground, had been by a private Act settled upon the ancestor of the tenant in tail, with an express enactment that the entail was not to be barred, and with an ultimate reservation to the Crown upon failure of issue male. It was objected on behalf of the Crown that this section of 8 & 9 Vict. c. 18, did not enable the tenant in tail to convey away this ultimate reversion of the Crown. Romilly, M.R., in giving judgment, said: "The Act is very general in its wording; it certainly includes the present tenant in tail, and, notwithstanding the statutory disability to bar the entail, he has not only power to sell, but to convey and bar his heirs in tail and all remaindermen except the Crown, which cannot be bound by any Act without being named. He must therefore obtain the consent of the Crown before he can effectually convey."

(*f*) *Vide ante*, p. 405.

Letters patent.

By the Statute of Monopolies (21 Jas. 1, c. 3), s. 6, the Crown is permitted to grant letters patent to the true and first inventor of a new manufacture, reserving to him the sole working and making such new manufacture for fourteen years. In *Feather* v. *R.* (1865), 6 B. & S. 257, it was decided that this statute, and any grant of letters patent made by the Crown by virtue of it, did not bind the Crown, and that the Crown was entitled itself to manufacture the new invention for the use of the nation, notwithstanding the grant of the letters patent; and in *Dixon* v. *London Small Arms Co.* (1876), 1 App. Cas. 632, this decision was affirmed and extended to the case of any person who, as agent for the Crown, manufactured an article as to the manufacture of which letters patent had been granted to some other person.

Choice of courts.

"The King by his prerogative may sue in what court he pleases, and of this prerogative he is not barred by Magna Charta, though it enacts *in the negative*, '*quod communia placita non sequuntur curiam nostram sed teneantur in aliquo loco certo*,' for he may have a *quare impedit* in the King's Bench."(*g*) Again, it being, as Kelly, C.B., said in *Att.-Gen.* v. *Constable* (1879), 4 Ex. D. 173, "part of the prerogative of the Crown that the Sovereign is entitled to be an actor in any litigation affecting the rights of the Crown, and to determine in the Court of Exchequer any matter in which the Crown is interested," it was held in that case that, "as there are certainly not any words in the Judicature Acts which limit the right of the Crown in respect of the decision of questions affecting the revenue," the above-mentioned prerogative right was not affected by those Acts.(*h*) Acts taking away the right to *certiorari* do not, as a rule, bind the Crown.(*i*)

Admitting appeals.

The prerogative of the Crown to admit appeals from the colonies is not, and cannot be, affected by any colonial legislation;(*k*) but, so far as relates to matters within the

(*g*) *Magdalen College case* (1616), 11 Rep. 68 b.
(*h*) See *Att.-Gen.* v. *Barker* (1871), L. R. 7 Ex. 177; *Dixon* v. *Farrer* (1886), 18 Q. B. D. 643.
(*i*) See Mellor & Short, Crown Practice, pp. 91, 115.
(*k*) *Cushing* v. *Dupuy* (1880), 5 App. Cas. 409. *Vide infra*, p. 448.

competence of a colonial Legislature, the prerogative may be cut down and the Crown bound by apt words in statutes.(*l*)

Mines.

The prerogative rights of the Crown extend to gold and silver in all lands, and in *Att.-Gen.* v. *Morgan* (1891), 1 Ch. 432, it was decided that the Acts 1 Will. & Mar. c. 30, and 5 Will. & Mar. c. 6, although they relax the prerogative in favour of the subject, do not diminish the prerogative as to mines worked simply as gold mines, even where the gold is mixed with base metal.

But Crown may avail itself of statute without being named in it.

Although the Crown may not be prejudiced by the operation of a statute which does not specially name the Crown, and although, as Alderson, B., put it in *Att.-Gen.* v. *Donaldson* (1842), 10 M. & W. 117, at p. 124, "it is inferred *primâ facie* that the law, made by the Crown with the assent of Lords and Commons, is made for subjects and not for the Crown," still, if the King is desirous of performing some act in his natural capacity as an Englishman, and not in his public and royal capacity, it is a general rule that "the King may take the benefit of any particular Act, although he be not especially named in it."(*m*) Thus, in 7 Rep. 32, the question was discussed whether the King, being tenant in tail, might by fine levied bar the estate tail by virtue of the statute *de Donis*, and it was there stated by Lord Coke, who was then Attorney-General, that the King could bar an entail; "for as he claims in respect of his natural capacity as heir of the body of a subject, and not in respect of his public and royal capacity, it would be hard that the King, being issue in tail of a gift made to a subject, should be in a worse condition than if he had not been King."(*n*)

What statutes bind Crown

4. It was said by Lord Coke in the *Magdalen College case*

(*l*) See *Canada* v. *British Columbia* (1889), 14 App. Cas. 295; *St. Catherine's Milling Co.* v. *R.* (1888), 14 App. Cas. 46; *Att.-Gen.* v. *Mercer* (1883), 8 App. Cas. 767.

(*m*) 1 Bl. Comm. 262.

(*n*) In *Duke of Brunswick* v. *King of Hanover* (1848), 2 H. L. C. 1, 6 Beav. 1, it was suggested that a foreign Sovereign could be sued in England in matters affecting his private capacity, although as a king he was exempt from British law. See Hall, Int. Law (3rd ed.), pp. 65–67; Calvo (4th ed.), ss. 1460, 1461.

without its being specially named in them.

(1616), 11 Rep. 74 b, that there are three kinds of statutes which always bind the King without specially naming him.(*o*)

(a) Those for maintenance of religion, learning, and the poor.

The first kind is, statutes "that provide necessary and profitable remedy for the maintenance of religion, the advancement of learning, and the relief of the poor." Under this head Lord Coke classes the statute of 13 Eliz. c. 10, upon the construction of which the question in the *Magdalen College case* turns. "God forbid," he says, "that by any construction the Queen, who made the Act with the assent of the Lords and Commons, should be exempted out of this Act of 13 Eliz., which provides necessary and profitable remedy for the maintenance of religion, the advancement of good literature, and the relief of the poor." "It is to be known," he adds, "that the law never presumes that any one will do a thing either against religion or any religious duty." But this obligation has been held not to include the payment of poor-rates.(*p*) Similarly, it was laid down in the *Case of Ecclesiastical Persons* (1601), 5 Rep. 14, that "all statutes which are made to suppress wrong, to take away fraud, or to prevent the decay of religion, shall bind the King, although he be not named, for religion, justice, and truth are the sure supporters of the crowns and diadems of kings." So, also, it was held in *R.* v. *Archbishop of Armagh* (1721), 1 Str. 516, that an Irish Act, passed in 10 & 11 Chas. 1, for the consolidation of endowed rectories and vicarages, as being an Act for the advancement of religion, bound the Crown, although it was not named.

(b) Statutes for suppression of wrong.

The second kind of statutes mentioned by Lord Coke in the *Magdalen College case*, as binding the King when he is not named, are statutes for the suppression of wrong.(*q*)

(*o*) Dr. Wooddeson (Vinerian Lectures, vol. i. p. 31) says with regard to the kinds of statutes which are mentioned by Lord Coke as being exceptions to the general rule, "This is surely opening a very uncertain latitude."

(*p*) *Vide ante*, p. 408.

(*q*) In *Corporation of London* v. *Att.-Gen.* (1848), 1 H. L. C. 440, 448, the question whether "a statute which effects a transfer of the jurisdiction from one Court to another, or the extension of the jurisdiction of a Court," binds the Crown was raised, but was not decided. *Vide supra*, p. 412.

"The King," says Lord Coke, is "the fountain of justice, and common right, and the King, being God's lieutenant, cannot do a wrong, *Solum rex hoc non potest facere quod non potest injuste agere.*(r) And although a right was remediless, yet the Act which provides a necessary and profitable remedy for the preservation of it and to suppress a wrong shall bind the King." And in support of this doctrine Lord Coke cites *Willion* v. *Berkley* (1560), Plowd. 246, where it was decided that the statute *de Donis conditionalibus* bound the King. "If a tenant in tail," says Lord Coke, "before the statute *de Donis* had aliened, it was tortious, but no remedy was given for it until the statute *de Donis* was made, and Lord Berkley's case was, that land was given to King Henry VII. and to the heirs male of his body, and the question was whether the King could aliene or not. And it was adjudged that he could not aliene, but that he was restrained by the said Act for three reasons. (1) Because such alienation before the statute was wrongful, although such wrong wanted remedy; for it would be a hard argument to grant that the statute which restrains men from doing wrong and ill should permit the King to do it. (2) Forasmuch as the said Act is *statutum remediale*, and provides a remedy for this remediless wrong, and that it was necessary and profitable to provide such remedy, it was adjudged that it should bind the King. (3) Because it was an Act of preservation of the possessions of noblemen, gentlemen, and others, it should also bind the King." Also, in 11 Rep. 72 b, Lord Coke reports a resolution of the Court of King's Bench to the effect that the statute of 13 Edw. 1, c. 5, against tortious usurpation, being an Act to suppress wrong, was binding upon the King. Similarly, in 2 Inst. 681, Lord Coke says that it was held in *Beaumont's case* (1553) that the statute of 32 Hen. 8, c. 28, concerning discontinuances, which was passed to prevent husbands from alienating during coverture the lands belonging to their wives, bound the King, although he was not named in it, because it was made to suppress a wrong. Also,

(r) *Vide* Broom, Const. Law, p. 725.

in Plowden's Comm. 236 b, it is said (*s*) that the Statute of Merton (20 Hen. 3), c. 5, which enacts that usuries shall not run against any being within age, binds the King, so that, "if the King give land to another reserving a rent payable at a feast certain, and for default of payment that he shall double the rent for every default, and afterwards the grantor dieth, his heir being within age, he shall not double the rent to the King." "For," says Plowden, "although the statute is general, yet the King is bound by it, because it is made for remedy of infants and for the public good." Plowden also says (*t*) that "the Statute of Merton (20 Hen. 3), c. 10, which ordains that every freeman which oweth suit . . . . may freely make his attorney to do these suits for him, includes the King in the general words, because the Act is made for the ease and convenience of subjects." Also, in 1 Inst. 120 a, Lord Coke says, with regard to the statute of 31 Eliz. c. 6, s. 4, which enacts that simoniacal presentations to benefices shall be void, and that "the person so corruptly taking . . . . any such benefice . . . . shall thereupon and from thenceforth be adjudged a disabled person in law to have or enjoy the same benefice," "that the Act, being made for suppression of simony and such corrupt agreements, so binds the King in that case as he cannot present him that the law hath disabled." Again, Lord Coke says in 11 Rep. 74 a, with respect to 27 Eliz. c. 4, which enacts that "every conveyance made to the intent and of purpose to defraud and deceive any purchasers, shall be deemed only against such purchaser to be utterly void," "that if one who intends to sell his land had by fraud conveyed it, by deed enrolled, to the Queen to the intent to deceive the purchaser . . . . in that case the purchaser shall enjoy the land against the Queen by the statute of 27 Eliz. c. 4, for, although the Queen is not excepted, yet the Act, being general and made to suppress fraud, shall bind the Queen." Also, in 2 Inst. 169,

(*s*) In 2 Inst. 89, Lord Coke mentions this as an alternative explanation of this statute.

(*t*) P. 236 b. Lord Coke in his exposition on this statute in 2 Inst. 99 is silent as to whether it binds the King or not.

Lord Coke says, with respect to the statute of 3 Edw. 1, c. 5, which enacts that none shall disturb elections under pain of great forfeiture, "The Act is penned in the name of the King, viz., the King commandeth, and therefore the King bindeth himself not to disturb any electors to make free election."(*u*) Also, in 2 Inst. 142, Lord Coke says, with respect to the statute of 52 Hen. 3, c. 22, which enacts that none may distrain his freeholders to answer as to their freehold, *quia hoc nullus facere potest sine præcepto Domini Regis:* "This Act doth bind the King, for there is a writ directed to the King's bailiff of his manor of N., the words whereof be . . . . And if the King's bailiff doth not obey this writ, the tenant shall have attachment against him."(*x*) Also, in *Crooke's case* (1690), 1 Show. 208, the question was whether the King was bound by 22 Chas. 2, c. 11, by which it was enacted that two certain parishes in London should be united and established as one parish, and that the first presentation should be made by the patron of that living whereof the endowment was of the greatest value. The King was the patron of that church which was of least value, but it was contended that by his prerogative he had a right to present first, and that this statute did not bind him, as he was not expressly named; but it was held otherwise, and the presentation by the other patron was confirmed. Again, in *R.* v. *Tuchin* (1704), 2 Ld. Raym. 1061, the question was whether the statute of 14 Edw. 3, which enacted that no process shall be annulled or discontinued by a mistake in writing, "but, as soon as the thing is perceived by the challenge of the party, it shall be hastily amended in due form," extended to the Crown, and it was held by Powell, J., that it did not, "because the Crown is never named in an Act of Parliament by name of party." It seems, therefore, that, except for this expression, he would have held the Crown to be bound by this Act. A similar point was discussed in *R.* v. *Wright* (1834), 1 A. & E. 434, where the question was whether 11 Geo. 4

(*u*) See also 4 Mod. 207.
(*x*) See also Show. 209.

& 1 Will. 4, c. 70, s. 8, which enacted "that writs of error upon any judgment given by any of the said Courts [i.e., King's Bench, Common Pleas, and Exchequer] shall hereafter be made returnable only before the judges of the other two Courts in the Exchequer Chamber," applied to judgments upon indictments, the Crown not being specially named in the Act. As the point was raised by the Court itself, the Crown not disputing its liability, only one side was heard, and no considered judgment was given, but all these earlier decisions were cited in argument and apparently acquiesced in. Again, in *R.* v. *Ridge* (1817), 4 Price 50, the question was whether certain bills, which had got into the hands of the Crown, but which, it was admitted by the Crown, were void as between the original parties as being tainted with usury, could be sued upon by the Crown on the ground that the usury laws, which did not specially name the Crown, could not bind it. It was held as being perfectly clear that, as the bills would have been void in the hands of an ordinary third person, their vice could not be removed by the fact that the third person in this case was the Crown. "This is too monstrous a proposition," said Garrow, B., "for serious consideration, and would require to be supported by undoubted authority." In *Baron de Bode* v. *R.* (1849), 13 Q. B. 378, the question was raised whether a writ of error would lie to the Exchequer Chamber in a case in which the Crown was the real party. "It was argued," said the Court, "that the statute by which this Court is constituted, 11 Geo. 4 & 1 Will. 4, c. 70, s. 8, did not bind the Crown, or affect the Queen's right to have a writ of error brought to the House of Lords. We think the Crown is bound by that statute. The rule on the subject is fully explained in *Att.-Gen.* v. *Allgood* (1743), Parker's Reps. 1. A difference is there remarked between statutes which name parties plaintiffs or defendants, which do not apply in words to the Crown, and statutes which use words sufficiently large to include the Crown, which is the present case."

(c) Statutes that tend to pervert the

The third kind of statutes mentioned by Lord Coke in the *Magdalen College case* (1616), 11 Rep. 74 b, as binding

the King when he is not named, are statutes which tend to perform the will of the founder or donor. "That appears," said Lord Coke, "*in Statuto Templariorum*, 17 Edw. 2, where it is said, *Ita semper quod pia et celeberrima voluntas donatoris in omnibus teneatur et expleatur, et perpetuo sanctissime perseveret.*" He further cites, in support of this proposition, the statute *de Donis conditionalibus* (13 Edw. 1, c. 1), "which," says he, is notable to this purpose, for there it appears that it was necessary and profitable that the will of the donor should be observed, the words of which Act to this purpose are, *Propter quod Rex Dominus perpendens quod necessarium et utile est apponere remedium statuit, quod voluntas donatoris in cartâ doni sui manifeste expressa de cætero observetur*, which bound the King, as is adjudged in *Lord Berkley's case* in Plowden's Comm., where (p. 247) it is said, that men ought to observe the intent or will of other men, and to violate it is ill." It does not appear that this doctrine has been acted upon since Lord Coke's time, so that it is difficult to say what view the Courts would take of it at the present day.

Will of a founder or donor.

These are the principal cases in which it has been held that the Crown is bound by statutes without being named in them. These cases are scarcely sufficient in number or variety to justify the very general adoption of the propositions propounded by Lord Coke in the *Magdalen College case* (1616), 11 Rep. 74 b, with regard to the kind of statutes by which the Crown is bound without being named; at the same time there does not seem to be any case in which Lord Coke's propositions are either denied or overruled. In *Ex parte Postmaster-General* (1879), 10 Ch. D. 595, Jessel, M.R., said, "The general rule, as expressed in Bacon's Abridgement [7th ed. at p. 462], is that 'where an Act of Parliament is made for the public good, the advancement of religion and justice, and to prevent injury and wrong, the King shall be bound by such Act, although not particularly named therein.'"

Lord Coke's propositions too sweeping.

5. If a duty is thrown upon the Crown by statute, there is no way of enforcing the performance of that duty if left unperformed by the Crown. If a subject neglects to per-

Statutory duties imposed upon the Crown.

form a statutory duty there are several ways in which he may be proceeded against,(*y*) but no proceedings of any kind can be taken either against the Crown itself or against any servant of the Crown to compel the performance of a statutory duty. For no action of tort can be brought against the Crown upon any statute, in the absence of express provisions, in consequence of the maxim that the King can do no wrong.(*z*) This rule had in Canada the curious result that persons injured on State railways had no remedy (*a*) until the passing of 44 Vict. c. 25 (Canada) (1 Rev. Statt. Canada, pp. 603–606). This immunity continues absolute in the United Kingdom, but in many colonies has been qualified or restricted by statute,(*b*) and also extends to remedy by mandamus. Thus, in *R.* v. *Treasury Commissioners* (1872), L. R. 7 Q. B. 387, it appeared that 29 & 30 Vict. c. 39, s. 14, enacts that where any sum of money has been granted to her Majesty to defray expenses for any specified public service, it shall be lawful for her Majesty to authorize and require the Treasury to issue, out of the credits granted to them, the sums that may be required to defray such expenses. By the annual Appropriation Acts a certain sum is applied to defray the charges for prosecutions at assizes and quarter sessions. The charges for certain prosecutions having been taxed in the ordinary way, the Lords of the Treasury refused to pay certain items, whereupon a writ of mandamus was moved for to compel them to do so, on the ground that it was a duty thrown upon them by statute. But the writ was refused. "When," said Cockburn, C.J., "a duty has to be performed (if I may use the expression) by the Crown, this Court cannot claim, even in appearance, to have any power to command the Crown. In like manner, when parties are acting as servants of the Crown, and are amenable to the Crown, whose servants they are, they are not

(*y*) *Vide ante*, pp. 248–256.
(*z*) See Chitty, Prerogatives of the Crown, pp. 340–348; Broom, Const. Law, p. 727.
(*a*) *R.* v. *M'Leod* (1883), 8 Canada 1. *Cf. R.* v. *MacFarlane* (1882), 7 Canada 216.
(*b*) *Att.-Gen. for Straits Settlements* v. *Wemyss* (1888), 13 App. Cas. 192.

amenable to this Court in the exercise of its prerogative jurisdiction."(*c*) The subject has been fully discussed in the recent case of *R.* v. *Sec. of State for War* (1891), 2 Q. B. 332, where it was pointed out that any obligation imposed on a servant of the Crown by statute or royal command is not enforceable by mandamus unless the statute makes it clear that the duty or trust imposed is not as between the Crown and its agent, but as between the agent and the subjects.(*d*)

(*c*) See cases collected in Mellor & Short, Crown Practice, p. 17.
(*d*) See also *Kinloch* v. *Sec. of State for India* (1882), 7 App. Cas. 619.

CHAPTER VII.

TERRITORIAL EFFECT OF STATUTES.

	PAGE
1. Divisions of the subject-matter	422
2. Effect on British subjects and their property	423
May bind subjects within or without realm	423
Do not bind realty of subject out of realm	424
May bind personalty of subject out of realm	425
3. Effect on the territory of England	426
Binds realty in England in hands of subject or foreigner	426
Exception for legacy and succession duty of lands in England held by a foreigner	427
4. Effect on the persons of foreigners	429
English Acts bind foreigner in England or on British ships	429
Limits of realm	429
Privileges of resident foreigners	431
Privileges of absent foreigners	433
Absent foreigners not bound by British Acts	436
5. Effect on property of foreigners abroad	438
6. Effect of British statutes in parts of British Islands other than England	440
In Wales and Berwick	443
In Scotland	444
In Ireland	445
In the Isle of Man and Channel Islands	446
7. Effect of British Acts in the colonies and India	446
In planted colonies	451
In conquered or ceded colonies	453
In India	455
8. Territorial effect of colonial Acts	456

Divisions of the subject-matter.

1. THE territorial effect of British and colonial (*a*) statutes may be conveniently discussed under seven heads:—

(1) The effect of British Acts of Parliament upon British subjects and their property, real and personal, whether they reside within or without British dominions;

(*a*) The territorial effect of colonial statutes was fully discussed in *Phillips* v. *Eyre* (1869), L. R. 4 Q. B. 225, affirmed on appeal, L. R. 6 Q. B. 1.

(2) Their effect upon land in England, whether the owner or occupier of the land is or is not domiciled in England;

(3) Their effect on the persons of foreigners;

(4) Their effect on the property of foreigners out of British jurisdiction;

(5) Their effect in parts of the British Islands other than England;

(6) Their effect in the colonies and India; and

(7) The territorial effect of colonial Acts.

British statutes may bind British subject within or without realm.

2. The general rule as to the effect of a British Act of Parliament upon a British subject was stated by Sir T. Wilde *arguendo* in the *Sussex Peerage case* (1844), 11 Cl. & F. 95, to be that "the British Parliament possesses the power to impose restrictions and disabilities and incapacities upon any British subject, which shall operate upon him anywhere." This general rule was accepted by the House of Lords, and it was held by them on this ground that the Royal Marriages Act, 1772 (12 Geo. 3, c. 11), which enacted, in s. 1, that "no descendant of the body of George II. shall be capable of contracting matrimony without the previous consent of his Majesty . . . . and that every marriage of any such descendant without such consent first had and obtained shall be null and void," operated to render void a marriage contracted by a descendant of George II. in Rome. It had been argued on behalf of the claimant of the peerage that this Act only applied to marriages contracted in England; but the judges who were consulted gave it as their opinion (at p. 144) that the intention of the Act was clearly to create "an incapacity attaching itself to the person of A. B. [*i.e.*, the Duke of Sussex] which he carried with him wherever he went, for," they added, "it is clear that an Act of the Legislature will bind the subjects of this realm, both within the kingdom and without, if such is its intention." But whether any particular Act of Parliament purports to bind British subjects abroad will always depend upon the intention of the Legislature, which must be gathered from the language of the Act in question; there is no presumption either one way or the other, although

from time to time judges utter *dicta* expressing a prepossession for or against the presumption that Parliament intends to legislate for British subjects wherever found.(*b*) "Service out of the jurisdiction is an interference with the ordinary course of the law, for generally Courts exercise jurisdiction only over persons who are within the territorial limits of their jurisdiction. If an Act of Parliament gives them jurisdiction over British subjects wherever they may be, such jurisdiction is valid; but, apart from statutes, a Court has no power to exercise jurisdiction over any one beyond its limits."(*c*)

With respect to statutes creating crimes the rule has been thus stated: "All crime is local.(*d*) The jurisdiction over the crime belongs to the country where the crime is committed, and, except over her own subjects, her Majesty and the imperial Legislature have no power whatever."(*e*) This statement is, however, subject to certain exceptions—*e.g.*, piracy *jure gentium*, and cases within the Foreign Jurisdiction Acts. And in a Government Bill in Parliament in 1890 it was proposed to take a very large jurisdiction in some cases over foreigners in respect of offences committed abroad. But no independent foreign State recognises the liability of its subjects to punishment in a foreign State for offences committed within the borders of the State to which the offender belongs; and in the Explosives Act of 1883 (46 Vict. c. 3) Parliament was careful to exclude aliens from the extra-territorial operation of the statute, and in the Official Secrets Act, 1889, aliens not in the service of the British or a colonial Government are not brought within the penalties of the statute.(*f*)

British statute does not bind

"When we speak of the right of a State to bind its own

(*b*) See, however, a *dictum* of Pollock, C.B., in *Rosseter* v. *Cahlmann* (1853), 22 L. J. Ex. 129.

(*c*) Per Cotton, L.J., in *Re Busfield* (1886), 32 Ch. D. 131.

(*d*) *Contra*, see Wharton, Conflict of Laws (2nd ed.), ch. xiii., and the remarkable decision in *Ex parte Nillins* (1884), 53 L. J. M. C. 157; Clarke on Extradition (3rd ed.), p. 225.

(*e*) Per Halsbury, L.C., in *Macleod* v. *Att.-Gen. of N. S. W.* (1891), A. C. at p. 458.

(*f*) The Territorial Waters Act, 1878 (41 & 42 Vict. c. 73), is based on a claim of territorial jurisdiction over the waters referred to in the Act.

native subjects everywhere, we speak only of its claim and exercise of sovereignty over them when they return within its own territorial jurisdiction, and not of its right to compel or require obedience to such laws on the part of the other nations within their own territorial sovereignty. On the contrary, every nation has an exclusive right to regulate persons and things within its own territory, according to its own sovereign will and policy."(*g*) All the authorities in England and the United States recognise the principle in its fullest import, that real estate or immovable property is *exclusively* subject to the laws of the Government within whose territory it is situate.(*h*) "So firmly is this principle established, that in cases of bankruptcy the real estate of the bankrupt, situate in foreign countries, is universally admitted not to pass under the assignment."(*i*) This rule does not, however, apply as between the United Kingdom and the colonies,(*k*) inasmuch as the British Parliament is constitutionally capable of legislating for the whole empire. It has more than once been contended in Canada that the British North America Act, 1867, amounted to an abdication by the imperial Parliament of all legislative authority in Canada in respect of the matters dealt with by that Act. But this contention appears to have been based on reasoning from the Constitution of the United States, and has been rejected by the Canadian Courts. In 1879 it was contended that the imperial Medical Acts of 1858 and 1868 were overridden by the British North America Act of 1867, and by an Ontario Act of 1874 passed in execution of the legislative authority given by the Act of 1867. But it was held that the imperial Acts overrode the colonial Act, and were not impliedly repealed by the Act of 1867.(*l*)

real property of British subject which is without H.M.'s dominions.

With regard to personal property the maxim of law is, But British statutes may

(*g*) Story, Conflict of Laws (8th ed.), s. 22.
(*h*) *Ibid.* s. 428, where all the authorities for this rule of law are collected.
(*i*) *Ibid.* s. 428.
(*k*) See *Williams* v. *Davies* (1891), A. C. 460 ; *infra*, p. 449.
(*l*) *R.* v. *College of Physicians and Surgeons* (1879), 44 Upp. Can. Q. B. 564.

bind personal property of British subjects which is abroad.

Mobilia sequuntur personam. "The right and disposition of movables is to be governed by the law of the domicile of the owner, and not by the law of their local situation."(*m*) Consequently, a British statute can bind the personal property of a British subject wherever situate. "Personal property," said Lord Loughborough in *Sill* v. *Worswick* (1791), 1 H. Bl. 690, "has no visible locality, but is subject to that law which governs the person of the owner. With regard to the disposition of it, it follows the law of the person. The owner in any country may dispose of his personal property. If he dies, it is not the law of the country in which the property is, but the law of the country of which he is a subject, that will regulate the succession. And . . . . if a bankrupt [in England] happens to have property which lies out of the jurisdiction of the law of England, if the country in which it lies proceeds according to the principles of well-regulated justice, there is no doubt but that it will give effect to the title of the assignees." Thus, in *Colquhoun* v. *Brooks* (1889), 15 App. Cas. 493, the House of Lords were prepared to hold that property in a colony could be made subject to the British Income Tax Acts.(*n*)

English land is bound by English Acts regardless of the holder.

3. Lord Selborne said in *Freke* v. *Lord Carbery* (1873), L. R. 16 Eq. 466,(*o*) that "the territory and soil of England . . . . is governed by all statutes which are in force in England," and it makes no difference whether the owner of the soil be domiciled in England or elsewhere.(*p*) Thus, in *Birtwhistle* v. *Vardill* (1840), 7 Cl. & F. 895, the question was whether a child born of domiciled Scotch parents who did not intermarry until after that child's birth could inherit land in England. It was admitted that by the law of Scotland the child was legitimate, but by the Statute of Merton (20 Hen. 3), c. 9, it was enacted

(*m*) Story, *lib. cit.* s. 376.

(*n*) See also *Colquhoun* v. *Heddon* (1890), 25 Q. B. D. 129; and *vide infra*, p. 449.

(*o*) *Cf. Duncan* v. *Lawson* (1889), 41 Ch. D. 398.

(*p*) This principle applies even when land is held in England by a foreign Sovereign or diplomatist. Royal and diplomatic privilege do not extend to real property.

that "they would not change the laws of the realm" with regard to children before matrimony not being entitled to inherit land. Consequently, it was held that such a child could not take lands in England as the heir of his father. In the case of personal estate the child would have been entitled as next of kin under the Statute of Distributions.(*q*) So, also, in *Curtis* v. *Hutton* (1808), 14 Ves. 537, it was held that, although the Mortmain Act does not extend to Scotland, still that land in England can no more be devised for the benefit of a Scotch charity than of an English charity. "The subject of the Statute of Mortmain," said the Court, "is real estate in England, and the owners of such property are disabled by the statute from disposing of it to any charitable use except in a particular way. It would be somewhat incongruous to refuse to permit such a disposition for the most laudable charitable institution in England, but if the party chose to carry his benevolent intention beyond England, to permit him to do so." So, also, in *Freke* v. *Lord Carbery* (1873), L. R. 16 Eq. 463, it was argued that a leasehold property situate in London was not subject to the limitations of the Thellusson Act if the testator was domiciled in Ireland. "This leasehold property," said Lord Selborne, "is part of the territory and soil of England, and the fact that the testator has a chattel, and not a freehold, interest in it makes it in no way whatever less so." The maxim *Mobilia sequuntur personam* is inapplicable to a bequest of an interest in land, because "land, whether held for a chattel or freehold interest, is in nature, as a matter of fact, immovable and not movable."(*r*) Real property is in all cases governed by the *lex rei sitæ* and English Courts have no jurisdiction to adjudicate with reference to land out of England, nor will they recognise any foreign adjudication as to land in England.(*s*)

It may appear at first sight to militate against this doctrine that not only is a chattel interest in land in

Exception as to legacy duty.

(*q*) *Re Goodman's Trusts* (1881), 17 Ch. D. 290.
(*r*) See *Duncan* v. *Lawson* (1889), 41 Ch. D. 398.
(*s*) *Moçambique Co.* v. *British South Africa Co.* (1892), 8 Times L. R. 396.

England, which is bequeathed by a person not domiciled in England, held free from legacy duty,(*t*) but also that even succession duty (*u*) is held not to be payable upon freehold land in England if devised by such a person. This result flows only from the special wording of the statutes which impose these duties. The statute as to legacy duty enacts that "every legacy given by any will of *any person*" shall be subject to legacy duty, and it was held that the words "any person" referred only to such persons as were at their death domiciled in England. "It is admitted," said the judges in *Thomson* v. *Att.-Gen.* (1845), 12 Cl. & F. 17, "in all the decided cases, that the very general words of the statute, 'every legacy given by any will of any person,' must of necessity receive some limitation, and . . . . we think such necessary limitation is that the statute does not extend to the will of any person who at the time of his death was domiciled out of Great Britain, whether the assets are locally situate in England or not." And the question as to the payment of succession duty upon lands situate in England which are devised by a person not domiciled in England was decided upon similar grounds in *Wallace* v. *Att.-Gen.* (1865), 1 Ch. App. 1. In that case it appeared that the Succession Duty Act (16 & 17 Vict. c. 51), s. 2, enacts that "every disposition of property by reason whereof any person becomes beneficially entitled to any property . . . . shall be deemed to have conferred upon the person so entitled a succession," as to which he shall be liable to pay duty. "I think," said Lord Cranworth, "that in order to be brought within this section the legatee must be a person who becomes *entitled* by virtue of the laws of this country." Consequently, freehold land in England devised by a person not domiciled in England is not liable to succession duty. The law as to probate duty is different, probate duty being (by 55 Geo. 3, c. 184, s. 37, and schedule, Part III.) payable upon "the estate and effects" of the testator. The statute does not

(*t*) *Thomson* v. *Att.-Gen.* (1845), 12 Cl. & F. 1.
(*u*) *Wallace* v. *Att.-Gen.* (1865), 1 Ch. App. 1.

refer either to the person of the testator or his domicile; consequently, if the estate and effects are in foreign lands, probate duty is not payable upon them, though the testator may be domiciled in England.(*x*) In *Blackwood* v. *R.* (1883), 8 App. Cas. 82, it was decided that "personal estate" in the New South Wales Stamp Duties Act of 1880, s. 16, must be read as limited to such estate as the colonial grant of probate conferred jurisdiction to administer—*i.e.*, to *bona notabilia* within the colony, as to which alone, by virtue of the Charter of Justice granted under 4 Geo. 4, c. 96, the Supreme Court of the colony can grant probate.(*y*)

Foreigners while within this realm subject to our laws.

4. It is recognised by the law of nations that a foreigner, so long as he is within the limits of a State, is in all respects subject to its laws. But this rule is more accurately described as one of municipal than of international law, since no sovereign State would tolerate any other rule.(*z*) "The laws of every State affect and bind directly all property, whether real or personal, within its territory, and all persons who are resident within it, whether natural-born subjects or aliens."(*a*) Therefore, if a foreigner, while within England, offends against its laws, he is liable to be punished in the same way as if he were an Englishman. The question as to what are the limits of the realm was exhaustively discussed in *R.* v. *Keyn* (1876), 2 Ex. D. 63. In that case the prisoner was a foreigner, and was found guilty of manslaughter, but, as the crime was committed on the high seas about two miles from the shore of England, it was contended that the English Courts had no jurisdiction to try him, on the ground that the realm of England extends to low-water mark, but no farther. It was argued on the part of the Crown that the sea within a belt or zone of three miles from the shore forms part of the realm, but, after an elabo-

Limits of realm.

(*x*) *Att.-Gen.* v. *Hope* (1834), 1 C. M. & R. 552, per Wigram *arguendo;* see also *Att.-Gen.* v. *Pratt* (1874), L. R. 9 Ex. 140, 143.

(*y*) *Commissioner of Stamps* v. *Hope* (1891), A. C. 477; *Kannreuther* v. *Geisellbrecht* (1884), 28 Ch. D. 179; and see *post*, p. 456.

(*z*) Diplomatic immunity is merely a personal and temporary privilege.

(*a*) Story, Conflict of Laws (8th ed.), s. 18; *cf.* Wharton, Conflict of Laws (2nd ed.), ch. xiii.

rate discussion, it was held by the majority of the judges that the Court had no jurisdiction to try him. "The county," said Sir R. Phillimore, "extends to low-water mark, where the 'high seas' begin. . . . . There appears to be no sufficient authority for saying that the high sea was ever considered to be within the realm, and . . . . there is a total absence of precedents since the reign of Edward III. to support the doctrine that the realm of England extends beyond the limits of counties." And Cockburn, C.J., added (at p. 173): "The position that the sea within a belt or zone of three miles from the shore, as distinguished from the rest of the open sea, forms part of the realm or territory of the Crown is a doctrine unknown to the ancient law of England, and has never yet received the sanction of an English criminal court of justice." But since this decision of *R.* v. *Keyn* the Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict. c. 73), has been passed, by which it is declared and enacted, in s. 1, that "an offence committed by a person, whether he is or is not a subject of her Majesty, on the open sea within the territorial waters of her Majesty's dominions [that is, by s. 7, "within one marine league of the coast measured from low-water mark"] is an offence within the jurisdiction of the Admiral, although it may have been committed on board or by means of a foreign ship, and the person who committed such offence may be arrested and punished accordingly." This statute was deliberately passed to override the views of the majority of the judges in *R.* v. *Keyn*, and to declare that the opinion of the minority was and always had been the law.(*b*) Since the abolition of local venues the question of local limits is of small importance in civil proceedings. R. S. C. 1883, Ord. 11, defines the cases in which the English Courts are to exercise civil jurisdiction over persons or property not within England, and constitutes the present legislative limit of the jurisdiction of English Courts over foreigners abroad and British subjects in other parts of the empire.

(*b*) See *R.* v. *Dudley* (1884), 14 Q. B. D. 281.

Resident foreigners entitled to privileges given by our laws.

A foreigner resident in England is entitled to the protection of English law,(*c*) including the right to sue in the English courts for any wrong, whether committed in or out of England, provided it does not involve a question as to the title of land abroad.(*d*) "The right of all persons," said the Judicial Committee in *The Halley* (1868), L. R. 2 P. C. 193, at p. 202, "whether British subjects or aliens, to sue for damages in English courts in respect of torts committed in foreign countries has long since been established,(*e*) and there seems to be no reason why aliens should not sue in England for personal injuries done to them by other aliens, when such injuries are actionable both by the law of England and also by that of the country where they are committed." So, also, a resident foreigner is entitled to avail himself of all privileges which may have been granted by statutory enactment just as though he were an Englishman. Brett, L.J., in *Boucicault* v. *Chatterton* (1877), 5 Ch. D. 280, said, in dealing with an argument as to the meaning of the word "published": "If so, the word 'published' [in 7 & 8 Vict. c. 12, s. 19] must have one meaning when applied to English authors and another meaning when applied to foreign authors under precisely similar circumstances. That seems to me to be contrary to the common canon of the construction of statutes." In *Jefferys* v. *Boosey* (1854), 4 H. L. C. 955, a question arose as to the application of the Copyright Act, 1710 (8 Anne, c. 19), enacting that "the author of any book . . . . shall have the sole liberty of printing and reprinting such book for the term of fourteen years." As to the effect of this enactment upon foreigners resident in this country, Lord Cranworth said: "*Primâ facie* the Legislature of this country must be taken to make laws for its own subjects exclusively, and where an exclusive privilege is given to a

(*c*) It is said that an alien has no legal right to enter British territory: *Musgrove* v. *Chun Teeong Toy* (1891), A. C. 272. But see 6 Law Quarterly Review, p. 27.

(*d*) Subject to the limitations imposed by R. S. C. 1883, Ord. 11: *Moçambique Co.* v. *South Africa Co.* (1892), 8 Times L. R. 396.

(*e*) See *De Sousa* v. *South Africa Co.* (1892), 8 Times L. R. 396; *Santos* v. *Illidge* (1860), 8 C. B. N. S. 861.

particular class at the expense of the rest of her Majesty's subjects, the object of giving the privilege must be taken to have been a national object, and the privileged class to be confined to a portion of that community for the general advantage of which the enactment is made. But when I say that the Legislature must *primâ facie* be taken to legislate only for its own subjects, I must be taken to include under the word 'subjects' all persons who are within the Queen's dominions, and who thus owe to her a temporary allegiance. I do not doubt but that a foreigner resident here and composing and publishing a book here is an author within the meaning of the statute, and I go further—I think that if a foreigner, having composed, but not having published, a work abroad, were to come to this country and print and publish it here, he would be within the protection of the statute." And the opinion of Parke, B., in that case, when advising the House of Lords, has been adopted by the Privy Council in a very recent case, *Macleod* v. *Att.-Gen. of N. S. W.* (1891), A. C. 455, at p. 458. He says (4 H. L. C. 926): "The Legislature has no power over any persons except its own subjects—that is, persons natural-born subjects, or resident, or whilst they are within the limits of the kingdom. The Legislature can impose no duties except on them, and, when legislating for the benefit of persons must *primâ facie* be considered to mean the benefit of those who owe obedience to our laws and whose interests the Legislature is under a correlative obligation to protect." On similar grounds it was held by the House of Lords in *Princess of Reuss* v. *Bos* (1871), L. R. 5 H. L. 176, that if a company at its outset contemplates some description of management and of business in this country, it comes within the provisions of the Companies Act, 1862, and may be registered and afterwards wound up under that Act, although in substance all its operations may be abroad and all the subscribers to the memorandum of association and all the directors are foreigners residing abroad. In this case the Court had to consider whether a statute conferred a benefit on an alien obtainable in England, not whether it purported to impose a burden on

him in respect of acts done outside England. And from this point of view there is no inconsistency between *Jefferys* v. *Boosey* and *Routledge* v. *Low*. In *Routledge* v. *Low* (1868), L. R. 3 H. L. 100, Lords Cairns and Westbury seemed disposed to hold that if a foreigner first publishes a book in this country he would be entitled to the benefit of the Copyright Act, whether he was resident in this country at the time of the publication or not. Conversely, it was held in *Macnee* v. *Persian Investment Co.*(*f*) that a company formed under the Companies Acts to carry on a lottery in Persia could not be condemned as illegal under 9 Geo. 1, c. 19, inasmuch as there was nothing to show that lotteries were illegal in Persia. And Chitty, J., said, at p. 312, "The Legislature of Great Britain of that day did not intend to exercise any jurisdiction over lotteries in foreign countries kept and carried on exclusively in foreign countries."

British statutes rarely bind foreigners out of British jurisdiction.

It is sometimes stated that a British Act inconsistent with international law has no validity. "The British Parliament," said the Judicial Committee in *Lopez* v. *Burslem* (1843), 4 Moore P. C. 300, at p. 305, "certainly has no general power to legislate for foreigners out of the dominions and beyond the jurisdiction of the British Crown;" and Story regards it as "plain that the laws of one country can have no intrinsic force *proprio vigore* except within the territorial limits and jurisdiction of that country. They can bind only its own subjects and others who are within its jurisdictional limits, and the latter only while they remain therein; and whatever extra-territorial force they are to have is the result, not of any original power to extend them abroad, but of that respect which, from motives of public policy, other nations are disposed to yield to them, giving them effect, as the phrase is, *sub mutuæ vicissitudinis obtentu*, with a wise and liberal regard to common convenience and mutual benefits and necessities."(*g*) This proposition is not true in municipal law. Each State can, at its own international risks, reject the

(*f*) (1890) 44 Ch. D. 306.

(*g*) Conflict of Laws (8th ed.), s. 7. *Moçambique Co.* v. *British South Africa Co.* (1892), 8 Times L. R. 542 (C. A., Lord Esher, M.R.)

opinions of other States as to international law. "It is all very well to say that international law is one and indivisible, but it is notorious that different views are entertained in different civilised countries on many questions of international law, and when international law is administered by a municipal court it is administered as part of the law of that country."(*h*) But no subjects of any other nation are bound to yield the slightest obedience to British Acts except when they are resident in or passing through Great Britain itself, or some settlement or dependency of Great Britain where British law is in force.(*i*) In *Bulkeley* v. *Schutz* (1871), L. R. 3 P. C. 769,(*k*) the question was raised whether the Companies Act, 1862, could bind "a foreign partnership actually complete and existing in a foreign country." The Judicial Committee were clearly of opinion that the Companies Act, 1862, never contemplated that such a partnership as this could be brought within the purview of the English Act of Parliament, the English Legislature having no power over the shareholders of such a company.

It was held in *Ex parte Blain* (1879), 12 Ch. D. 522, by Brett, L.J., that "foreigners not domiciled here, and not present in this country, could not be made subject to the English bankruptcy law, unless they had committed an act of bankruptcy in England." "The whole question," said James, L.J. (at p. 526), "is governed by the broad, general, universal principle, that English legislation, unless the contrary is expressly enacted, or so plainly implied as to make it the duty of an English Court to give effect to an

---

(*h*) Per Lindley, L.J., in *Re Queensland Mercantile and Agency Co., Limited* (1892), 1 Ch. 219, 226.

(*i*) In *The Indian Chief* (1801), 3 Rob. Adm. 12, at p. 23, Lord Stowell said that in Eastern parts if Europeans settle or found a mere factory they are not admitted into the general body and mass of the society of the nation, but they are considered as taking their national character from that association under which they live and carry on their commerce. Consequently, any European (though he be of a different nationality) who takes up his abode in such a settlement is considered as amenable to the laws of the particular European country from which the original settlers came. The Foreign Jurisdiction Acts are based on this theory. But see *Abdul Messih* v. *Farrah* (1887), 13 App. Cas. 431.

(*k*) *Cf. Bateman* v. *Service* (1881), 6 App. Cas. 386.

English statute, is applicable only to English subjects or to foreigners who, by coming into this country, whether for a long time or a short time, have made themselves during that time subject to English jurisdiction."(*l*)

In *Bloxam* v. *Favre* (1883), 8 P. D. 101, it was held that a will made according to the forms of English law by an alien, who was domiciled abroad at the time of her death, was not entitled to probate in this country. It was argued that the Naturalisation Act, 1870 (33 Vict. c. 14), s. 2, which enacted that ". . . . property of every description may be . . . . disposed of by an alien in the same manner in all respects as by a natural-born British subject," would enable such a will to be proved in England; but it was held that "every statute is to be so interpreted and 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," and that to allow such a will as this (which might perhaps have been pronounced invalid by the tribunals of the country where the alien in question died) to be proved in England would be acting contrary to this principle.

But a non-resident foreigner may take advantage of benefits conferred by British statutes.

The question was raised in *Jefferys* v. *Boosey* (1854), 4 H. L. C. 815, as to how far a foreigner resident abroad may avail himself of any benefits or advantages conferred upon any particular class of individuals by a British Act. The Copyright Act, 1710 (8 Anne, c. 19), enacted that "the author of any book shall have the sole liberty of printing and reprinting such book for fourteen years." A question arose whether the enactment referred to British authors only (that is, to authors resident in this country at the time of the publications of their works here) or to all authors of every nation. In the Exchequer Chamber it had been held that the Act referred to all authors alike, but upon appeal the House of Lords, after an elaborate discussion, unanimously acted upon the opinion of the minority of the judges who were present during the argument, and reversed the judgment of the

(*l*) See *Re Artola* (1890), 24 Q. B. D. 640.

Court below, holding that the 8 Anne, c. 19, gives the benefit of copyright to British authors only. But the Act was repealed by the Copyright Act, 1842 (5 & 6 Vict. c. 45), and in *Routledge* v. *Low* (1868), L. R. 3 H. L. 100, the meaning of the word "author," as used in the latter Act, was much discussed, although the real point at issue in the case did not depend upon the construction put upon that word. Lords Cairns and Westbury appear to have considered that the author of any book first published in England, no matter whether he was himself in England at the time of the publication or not, was entitled to the benefits of the English Copyright Act. "A British statute," said Lord Westbury, "must be considered as legislation for British subjects only, unless there are special grounds for inferring that the statute was intended to have a wider operation. But by the common law of England, the alien friend, though remaining abroad, may acquire and hold in England all kinds of personal property,(*m*) and when a statute is passed which creates or gives peculiar protection to a particular kind of personal property and does not exclude the alien, why is he to be deprived of his ordinary right of possessing such property or being entitled to such protection?" This reasoning seems cogent, and would probably be treated with respect should it become necessary to decide the point on any future occasion.

Effect of British statutes purporting to affect foreigners out of British jurisdiction.

Although English law does not prevent a foreigner *resident abroad* from receiving benefit through the operation of a British statute, it must be accepted as a general rule, for purposes of construction, that "the British Parliament has no proper authority to legislate for foreigners out of its jurisdiction, and therefore no statute ought to be held to apply to foreigners with respect to transactions out of British jurisdiction, unless the words of the statute are perfectly clear."(*n*) If, however, "the Legislature of England in express terms applies its legislation to matters beyond its legislatorial capacity, an English Court must

(*m*) And since 1870 also real property.
(*n*) *The Amalia* (1863), 1 Moore P. C. N. S. 471, 474 (Dr. Lushington).

obey the English Legislature, however contrary to international comity such legislation may be."(*o*) And "if," as Cockburn, C.J., said in *R.* v. *Keyn* (1876), 2 Ex. D. 160, "the Legislature of a particular country should think fit by express enactment to render foreigners subject to its law with reference to offences committed beyond the limits of its territory, it would be incumbent on the Courts of such country to give effect to such an enactment, leaving it to the State to settle the question of international law with the Governments of other nations." And in *The Amalia* (1863), 1 Moore P. C. N. S. 471, at p. 474, Dr. Lushington said, "I never said that, if it pleased the British Parliament to make laws as to foreigners out of the jurisdiction, Courts of justice must not execute them; indeed, I said the direct contrary." And this result may also flow from necessary implication as well as from express enactment.(*p*) Thus, the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), s. 267, enacts "that all offences committed at any place out of British dominions by any seaman who at the time when the offence was committed or *within three months previously* had been employed in any British ship," shall be liable to be tried at the Central Criminal Court. The effect of this enactment was discussed to some extent in *R.* v. *Anderson* (1868), L. R. 1 C. C. R. 161. In that case an American serving on board a British ship was indicted at the Old Bailey for the murder of a sailor while the ship was in the river Garonne in France. It was objected for the prisoner that the Court had no jurisdiction to try him. It was ultimately decided that the Court had jurisdiction independently of the Act in question,(*q*) and consequently it became unnecessary to decide what was the effect of this enactment. "The difficulty," said Blackburn, J., "as to the statute legislating for those out of the scope of its authority we must deal with when it arises. As a general rule, no doubt, we

(*o*) *Niboyet* v. *Niboyet* (1879), 4 P. D. 20 (Brett, L.J.).
(*p*) *Ex parte Blain* (1879), 12 Ch. D. 526, per James, L.J.
(*q*) Not at common law, but under the Offences at Sea Act, 1536 (28 Hen. 8, c. 15).

should construe a British statute according to the principles of international law, and confine a legislative enactment to a British subject, or to a person subject to British protection."(*r*)

British statutes presumed not to bind the property of foreigners out of British jurisdiction.

5. Although British statutes sometimes purport to bind the persons of foreigners out of British jurisdiction (and, when they so purport, it is the clear duty of British Courts of law to execute and give effect to such statutes), it has been held otherwise with regard to the property of foreigners out of British jurisdiction. "It is quite clear," said Lord Westbury in *Att.-Gen.* v. *Campbell* (1872), L. R. 5 H. L. 524, 531, that "you cannot apply an English Act of Parliament to foreign property while it remains foreign property." This rule of law is "the natural consequence" of the proposition of international jurisprudence, that "every nation possesses an exclusive sovereignty and jurisdiction within its own territory. . . . . For it would be wholly incompatible with the equality and exclusiveness of the sovereignty of all nations, that any one nation should be at liberty to regulate . . . . things not within its own territory. It would be equivalent to a declaration that the sovereignty over a territory was never exclusive in any nation, but only concurrent with that of all nations, that each could legislate for all. . . . . The absurd results of such a state of things need not be dwelt on."(*s*)

This rule is so far true that British Courts cannot act *in rem* against property of foreigners abroad, and that the *forum rei sitæ* would disregard the English judgment *in rem* as made in violation of the ordinarily accepted rules of international comity. But for purposes of construction the rule is a presumption only.

In *Colquhoun* v. *Brooks* (1889), 14 App. Cas. 493, the question arose whether a person resident in England was liable to pay income-tax under the Income Tax Acts upon

(*r*) See *R.* v. *Dudley* (1884), 14 Q. B. D. 284; and *cf. Re Ross* (1890), 140 U. S. 453, 476.

(*s*) Story, Conflict of Laws (8th ed.), s. 20; *cf.* Wharton, Conflict of Laws (2nd ed.), ch. xiii.

profits made by him in a business in Australia and not remitted to the United Kingdom. Lord Herschell (at p. 503) said: "Notwithstanding the ingenious criticism to which they have been subjected . . . . I think that, giving to the enactment its natural meaning, the facts stated do bring the respondent [the trader] within it. It is urged, however, for the respondent, that, if this construction be adopted, a foreigner residing for a short time only in this country would be subjected to taxation here in respect of the whole of his business earnings in his own country or elsewhere, that so to tax him would be opposed to international comity, and that a construction which would involve such a consequence cannot be correct. I think the learned counsel for the respondent are right in saying that the result which they point out would follow in the case of a foreigner, but I do not feel satisfied that it would involve a violation of international law, and that the construction contended for by the Crown ought on that ground to be summarily rejected. Reliance was placed upon the decisions under the Legacy and Succession Duty Acts,(*t*) which have imposed a limit upon the broad language of the enactments subjecting legacies and successions to taxation. But it must be remembered that it was necessary to put some limits on these general terms in order to bring the matters dealt with within our territorial jurisdiction. Without such a limitation the Legacy Duty Act, for example, would have been applicable, although neither the testator nor the legatee, nor the property devised or bequeathed, was within or had any relation to the British dominions." Lord Macnaghten, at p. 511, dealing with the same aspect of the case, said: "Moreover, although the contention on the part of the Crown, if carried to its legitimate conclusion, would certainly lead to startling results in the case of a foreigner temporarily resident in this kingdom, I do not think that even those results are so plainly at variance with what is due to the comity of

16 & 17 Vict. c. 34, s. 2, sched. D.

(*t*) *Vide ante*, p. 427.

nations as to compel your lordships summarily to reject the contention without considering carefully what the Legislature has actually said."

Implication as to extent.

6. *Primâ facie* a British Act extends to the whole of the United Kingdom. But the extent is often restricted by express words, and Acts containing no express words limiting their extent are often held inapplicable to the whole United Kingdom by reason of the phraseology used. In *Westminster Fire Office* v. *Glasgow Provident Investment Society* (1888), 13 App. Cas. 699, Lord Watson, at p. 716, supplied the true criterion when he said that the tenor of the enactment there in question (14 Geo. 3, c. 78, s. 83), and the remedies provided by it, indicated that they were not intended by the Legislature to apply to Scotland or to be administered by the Scotch Courts. The rule is thus stated in a Scotch case: "35 & 36 Vict. c. 91, contains no words excluding Scotland from its provisions. Ireland is specially excluded, and the statute deals with interests which are the same on either side of the Border. The only reason for supposing that it was not meant to extend to Scotland is that it is drawn with such exclusive reference to English legislation, and English institutions and procedure, that though it would be easy enough to find equivalents in our usages for these requisites it would be difficult, if not impossible, to follow out in Scotland the precise injunctions of the Act. It is not the part of the judge to criticise the Acts of the Legislature; but I do not, I think, transgress due limits if I say that it is unfortunate that our public bodies and our courts of law should be put to solve questions such as these when a little ordinary care and inquiry by those by whom such English Acts are framed would prevent them from arising. There were only two courses which ought to have been followed, either to introduce a clause excluding Scotland, or to have provided proper machinery for its operation in Scotland. I incline to the opinion that the statute applies to Scotland because its object is general, and there are no words to exclude and no reason for excluding Scotland from its operation, although I see great difficulties in the way of its

practical application."(*u*) "The evil which the Act professes to remedy and the circumstances in which it was to apply arise in Scotland as much as in England, and though English phraseology is used to some extent and reference made to English officials and English machinery, this happens not infrequently in imperial statutes which are undoubtedly of application in all parts of the United Kingdom."(*x*)

In the construction of statutes extending to Great Britain or the whole of the United Kingdom decisions of the Scotch or Irish courts of the statute are considered by, but are not treated as absolutely binding on, the English courts.(*y*) The comity of courts is regarded as entitling concurrent decisions in Scotland or Ireland to respect, but not obedience, and it is for the House of Lords, as the *commune forum* of the three kingdoms, to settle (*z*) divergencies of construction of Acts extending to the whole United Kingdom, as it is for the Judicial Council to make uniform the construction of imperial Acts.

Construing terms in a general Act distributively in Scotland and England.

When a general Act uses terminology which has different senses in the legal systems of England and Scotland,(*a*) the question arises whether the term is to be construed differently according as the question of construction arises in English or in the Scotch courts, or, if not, what sense is to be given to the term to be construed. In *R.* v. *Slater* (1881), 8 Q. B. D. at p. 272,(*b*) it was suggested that where terms of art are used which have a different meaning in England and Scotland, they are to be read in each country in the sense which they ordinarily bear there.

(*u*) Lord Moncrieff in *Perth Water Commissioners* v. *McDonald* (1879), 6 Kettie (Sc.) at p. 1055.

(*x*) Per Lord Gifford, p. 1061; *cf.*, as to Ireland, *R.* v. *Mallow* (1859), 12 Ir. C. L. R. 116.

(*y*) *Vide ante*, p. 15.

(*z*) The Railway and Canal Traffic Act, 1888, s. 17 (5), contains provisions for appeal to the House of Lords in case of divergence between the Supreme Courts of England, Scotland, or Ireland.

(*a*) See *In re Wanzer, Limited* (1891), 1 Ch. 305, as to the meaning of the term "sequestration" in s. 123 of the Companies Act (1862).

(*b*) As to the term "indictment."

Construction of English law terms in Acts extending to Scotland.

But this suggestion must not be too implicitly followed, and the true rules as to the construction of terms used in statutes applying to more than one part of the United Kingdom are best stated in the words of Lord Macnaghten in *Income Tax Commissioners* v. *Pemsel* (1891), App. Cas. 531, at pp. 579, 580: "It seems to me that statutes which apply to Scotland as well as to England, and which touch upon matters commonly dealt with in legal language, may be divided into three classes. Sometimes, but very rarely, legal terms are carefully avoided, as in the Succession Duty Act. Sometimes in very recent statutes, as in the Bills of Exchange Act and the Partnership Act, every legal term according to English law is immediately followed by its equivalent in Scotch legal phraseology, and where no exact equivalent is to be found a neutral and non-legal expression is adopted. But in some cases certainly, and especially in the legislation of former days, the statute proclaims its origin and speaks the language of an English lawyer with some Scotch legal phrases thrown in rather casually. The Income Tax Acts, I think, fall within this class, though no doubt the Act of 1842 is less conspicuously English than its predecessors. How are you to approach the construction of such statutes? We are not, I think, quite without a guide. It seems to me that there is much good sense in what Lord Hardwicke says in his well-known letter to an eminent Scotch judge.(*c*) Incidentally he happened to deal with the very point. He observed that where there are two countries with different systems of jurisprudence under one Legislature, the expressions in statutes applying to both are almost always taken from the language or style of one, and do not harmonise equally with the genius or terms of both systems of law. That was perhaps rather a delicate way of stating the case, but one must remember to whom Lord Hardwicke was writing, and his meaning is perfectly clear. Then he explained how these statutes ought to be expounded. 'You must,' he said, 'as

(*c*) See Lord Kames' Elucidations, p. 385 (ed. 1800) referred to in the report of *Lord Saltoun's case* (1860), 3 Macq. H. L. (Sc.) at p. 675, *note* (*a*).

in other sciences, reason by analogy'—that is, as I understand it, you must take the meaning of legal expressions from the law of the country to which they properly belong, and in any case arising in the sister country you must apply the statute in an analogous or corresponding sense, so as to make the operation and effect of the statute the same in both countries. Thus you get what Lord Hardwicke calls a consistent, sensible construction. A simpler plan is now recommended. Though the words have a definite legal meaning in England you must not, it is now said, look at that meaning unless it be in vogue north of the Tweed. You must put out the light you have unless it penetrates directly to the furthest part of the room. That was not Lord Hardwicke's view. He seems to have thought reflected light better than none."

Rule as to taxing Acts.

A taxing Act must, if possible, be so interpreted as to make the incidence of its taxation the same in all parts of the United Kingdom to which it applies. This rule was laid down in the House of Lords on a Scotch appeal in *Lord Saltoun* v. *Lord Advocate* (1860), 3 Macq. H. L. (Sc.) 659, by Lord Campbell, and was adopted in *Commissioners of Income Tax* v. *Pemsel* (1891), App. Cas. 531.

From this a second rule has been deduced, that in such an Act the Court *must* assume that the words used by the Legislature are used in their popular signification. Lord Campbell in *Lord Saltoun's case* (*ubi supra*) said, "The technicalities of the laws of England and Scotland where they differ must be disregarded, and the language of the Legislature must be taken in its popular sense." But the technicalities there in question were not technical expressions in the Act under consideration, but the technicalities in the law of real property outside the Act.(*d*) And this rule is subordinate to those laid down by Lord Macnaghten (*supra*, p. 442).

Effect in Wales and Berwick.

English and British statutes, by 20 Geo. 2, c. 42, s. 3, have effect in Wales and Berwick-on-Tweed, without ex-

(*d*) Per Lord Macnaghten in *Income Tax Commissioners* v. *Pemsel* (1891), App. Cas. at p. 578.

press mention of either.(*e*) No question has since that time arisen as to the effect of such Acts in those places. But occasionally mention is made of one or other or both, for purposes of inclusion or exclusion,(*f*) and in recent Acts Wales is named as a concession to the parliamentary sentiments of the Principality.(*g*)

Effect in Scotland.

English statutes prior to the union with Scotland have no effect in that country. British statutes passed between 1704 and 1800 presumably apply to Great Britain unless a contrary intention appears.(*h*)

Where an Act contains a proviso that "nothing in this Act shall extend to Scotland," or something to that effect, showing that the Act was intended only for some particular part of the kingdom, the effect of thus limiting its operation is to put the excluded part of the United Kingdom, so far as that Act is concerned, into the position of a foreign country. It was expressly provided that the Bankruptcy Act, 1869, should not extend to Ireland; consequently, it was held in *Re O'Loghlen* (1871), 6 Ch. App. 406, that a debtor summons taken out under the Act cannot be served on any person unless he *bonâ fide* reside in England. "The true principle of construction," said Mellish, L.J., "of Acts intended only for particular parts of the United Kingdom is that all things which are to be done must be done within the jurisdiction of the Court [which is regulated by the Act], unless the Act expressly or by necessary implication enables them to be done elsewhere." But a limitation of the operation of an Act to some particular part of the kingdom will not necessarily make the Act wholly inoperative with regard to all things relating or belonging to the excluded part. Thus, in *R.* v. *Brackenridge* (1868), L. R. 1 C. C. R. 134, it was contended that the Forgery Act, 1861 (24 & 25

(*e*) See 1 Bl. Comm. 93–99.
(*f*) See 11 & 12 Vict. c. 42, s. 32; 6 & 7 Will. 4, c. 103.
(*g*) *Vide* Int. Act, 1889, ss. 13, 16, 23.
(*h*) In *Fordyce* v. *Bridges* (1847), 1 H. L. C. 1, a question was raised as to whether 4 & 5 Will. 4, c. 22, applies to Scotland, but no general principles were then discussed.

Vict. c. 98), which by s. 55 enacts that "nothing in this Act shall extend to Scotland except as otherwise hereinbefore expressly provided," did not extend to the offence of forging Scotch bank-notes. But the Court held that it did, and that the effect of the above-mentioned words was merely to exclude from the operation of the Act offences committed and punishable in Scotland. So, in *R.* v. *Lightfoot* (1856), 6 E. & B. 822, it was contended that a summons issued in England against the putative father of a bastard child could not be served on the father in Scotland, where he had gone to reside, as 7 & 8 Vict. c. 101, was a statute extending, by s. 75, only to England. As to this argument, Lord Campbell said (p. 829): "S. 75 is evidently intended merely to prevent the Act from having a general operation over the United Kingdom with regard to 'the laws relating to the poor,' and can have nothing to do with the incidents of a proceeding before English petty sessions as to the maintenance of a bastard born in England."(*i*)

Effect of English statutes in Ireland.

From the conquest of Ireland by Henry II. until the passing of Poyning's law (10 Hen. 7), Ireland legislated for itself, and English statutes had no force there.(*k*) From that date till 1719, no English or British Act applied to Ireland unless it was specially named or included. In that year, by 6 Geo. 1, c. 5, the British Legislature asserted the right to make laws for Ireland. This claim was abandoned in 1782 (by 22 Geo. 3, c. 53), and the Irish Legislature became independent from the British. So matters stood until the Union, and "since the Union all Acts of Parliament extend to Ireland, whether expressly mentioned or not, unless that portion of the United Kingdom be expressly excepted, or the intention to except it is otherwise plainly shown."(*l*)

But the Act of Union has not extended to Ireland any English or British Act passed before 1800 which did not

(*i*) See *Berkley* v. *Thomson* (1884), 10 App. Cas. 45.
(*k*) See 1 Bl. Comm. 103.
(*l*) 1 Steph. Comm. 101. See *R.* v. *Mallow* (1859), 12 Ir. C. L. R. 35.

previously apply to Ireland. Thus, Ireland is still a place "beyond the seas," and "out of the realm of England," within the meaning of 4 & 5 Anne, c. 3. "If," said the Court in *Lane* v. *Bennett* (1836), 1 M. & W. 75, "the expression 'beyond the seas' is to be construed as equivalent to 'out of the realm of England' [as we think it is], then the Act of Union does not bring Ireland within that realm or make it parcel thereof, but it forms one united kingdom of both, and provides that all the laws then in force in each shall remain as by law established in each. Any one, therefore, in Ireland is still out of that which was the realm contemplated by the statute of Anne, although England has ceased to be a separate kingdom," and various statutes, such as the Wagering Act, have been extended to Ireland by express enactment.

4 Anne, c. 16, (Ruffhead).

Effect in Man and Channel Islands.

The Isle of Man (*m*) and the Channel Islands are subject to the British Legislature; but British statutes do not extend to these islands unless they are specially named.(*n*)

Where an enactment is meant to extend to the Channel Islands, it is usual,(*o*) but not invariable,(*p*) to insert the following clause: "The Royal Courts of the Channel Islands shall register this Act."

Effect of British Acts in colonies and India.

7. The legislation applicable to a British colony falls into three classes:

1. Imperial statutes expressly extending to the colony.

2. (a) English or British statutes (*q*) extended to the colony as part of the personal law of the first settlers; or

(b) Legislation of foreign States in force in the colony on its conquest or cession.

(*m*) Purchased in 1765 (5 Geo. 3, c. 6).

(*n*) See 1 Bl. Comm. 105, 106. *Re States of Jersey* (1853), 9 Moore P. C. C. 185.

(*o*) See Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 289; Savings Bank Act, 1891 (54 & 55 Vict. c. 21). *Vide ante*, p. 37.

(*p*) Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 10.

(*q*) The statutes of Scotland and Ireland do not bind any colony. Nova Scotia is under the English common law: *vide North American Life Co.* v. *Craigen* (1886),12 Canada 278, 292.

3. Colonial Acts or ordinances enacting new laws, or adopting British Acts with or without modification.

Theoretically, the British Parliament can legislate for the whole empire. But it is never presumed to legislate except for the United Kingdom, unless apt words are inserted in the Act.

Imperial Acts extending to colonies are of two kinds: Imperial Acts extending to colonies.

(a) Constitution Acts, applying to particular colonies or groups of colonies; and

(b) Acts extending to all colonies.

To the first class belong the British North America Act, 1867, and the Acts amending it, and the Federal Council Act of Australasia and the Constitution Acts establishing responsible government in many colonies.

No legal question can arise as to the validity of any of these Acts, or the competence of the imperial Legislature to amend or alter them.(*r*)

The Act (6 Geo. 3, c. 12) declaring the legislative competence of the British Parliament over the American colonies seems to be still in force, if and so far as it applies to Canada and the West India Islands. But since 18 Geo. 3, c. 12, s. 1, Taxing Acts do not extend to colonies, except with reference to duties for regulation of commerce, and these, if collected in a colony, must be spent there.

Inasmuch as the Constitution Acts create colonial Legislatures of more or less limited powers, the question frequently arises whether the powers granted have been exceeded; and the Judicial Committee of the Privy Council has to determine questions similar to those raised before the Supreme Court of the United States in respect of Federal and State legislation.

In dealing with Acts of this class the Judicial Committee declines to lay down any hard-and-fast rules of

---

(*r*) *Vide ante*, p. 81; Broom, Const. Law, pp. 120, 126, 191; 1 Steph. Comm. 125; Todd, Parl. Govt. in Colonies, ch. iv.; *Routledge* v. *Low* (1868), L. R. 3 H. L. 100.

construction;(*s*) and the tendency of its decisions is in conformity with political considerations, and is markedly to extend (*t*) and not to limit the authority of colonial Legislatures, which are recognised as supreme within their own domain.

Acts of this class cannot be repealed or amended by the colonial Legislatures unless they contain express provisions to that effect. The British North America Act, 1867, can be amended only by the imperial Parliament,(*u*) but the Constitution Acts of the Australian colonies in most cases contain provisions empowering the colonial Legislature to amend certain parts of the Constitution.(*w*)

Acts which extend to all her Majesty's dominions, override the inconsistent provisions of every prior imperial or colonial Act relating to any British possession. This is a clear constitutional rule, and has been recognised in Canadian decisions.(*x*) Every subsequent colonial Act which is repugnant to an imperial Act extending to the colony, or to any Order in Council or regulation made under the Act, or having in the colony the effect of the Act, is void and inoperative to the extent of the repugnancy.(*y*)

But very few modern Acts extend to the whole of the empire, and it is now usual to insert in Acts of this class a suspensory clause, enabling the imperial Government to suspend the operation in a colony of an imperial Act, so long as a satisfactory equivalent for its terms is provided by the colonial Legislature.(*z*)

In the case of Merchant Shipping and Admiralty jurisdiction the intervention of the imperial Legislature

---

(*s*) *Citizens' Insurance Co.* v. *Parsons* (1883), 9 App. Cas. 96. *Hodge* v. *R.* (1883), 9 App. Cas. 117, 128.

(*t*) *Harris* v. *Davies* (1885), 10 App. Cas. 279; *Powell* v. *Apollo Candle Co.* (1885), 10 App. Cas. 282; *Cheong Tung Toy* v. *Musgrove* (1891), A. C. 247.

(*u*) See Todd, Parliamentary Government in the Colonies (1st ed.), p. 189; 34 & 35 Vict. c. 28; 38 & 39 Vict. cc. 38, 53.

(*w*) *E.g.*, Western Australia Constitution Act, 1889 (53 & 54 Vict. c. 26), s. 5.

(*x*) *R.* v. *College of Physicians and Surgeons* (1879), 44 Upp. Can. Q. B. 564, on the Medical Act, 1868.

(*y*) 28 & 29 Vict. c. 63, s. 2.

(*z*) *E.g.*, Extradition Acts, 1870 and 1873; Official Secrets Act, 1889.

is essential, the colonies only having such powers of extra-territorial legislation as are expressly conferred by their Constitution Acts or other imperial legislation.

In the case of an imperial Act it would seem that the decisions of the Courts of the United Kingdom (even if not of the last resort), though not strictly binding on the colonial Courts, should be followed by them.(*a*)

The English Bankruptcy Act, 1869, applied, *sub modo*, to all her Majesty's dominions,(*b*) and the Bankruptcy Act, 1883, seems to apply to land in any part of the world.(*c*) In *Williams* v. *Davis* (1891), A. C. 460, at p. 465, the Judicial Committee said: "The Supreme Court lays down the principle that an imperial Act does not apply to a colony unless it be expressly so stated or necessarily implied. They point out that there is no case deciding that land in a colony passes under s. 17 (of the Bankruptcy Act, 1869); and they dwell on the inconveniences which would arise from conflicts of law if an English statute were to transfer land beyond the limits of the United Kingdom. On these grounds they hold that under the word "property" (in s. 17) land in Lagos does not pass to the trustee in bankruptcy. Upon this reasoning their lordships have to remark that there is no question here of any conflict between English and foreign law. Lagos was not in 1869, and is not now, a foreign country. How far the imperial Parliament should pass laws framed to operate directly in the colonies is a question of policy, more or less delicate, according to circumstances. No doubt has been suggested that if such laws are passed they must be held valid in colonial courts of law.(*d*) It is true that the laws of every country must prevail with respect to the land situated there. If the laws of a colony are such as would not admit of a transfer of land by a mere vesting order or mere appointment of a trustee, questions may

(*a*) See *Trimble* v. *Hill* (1880), 5 App. Cas. 342.
(*b*) Vaughan Williams on Bankruptcy (5th ed.), p. 181.
(*c*) *In re Artola* (1890), 24 Q. B. D. 640.
(*d*) See *R.* v. *College of Physicians and Surgeons* (1879), 44 App. Cas. Q. B. 564, on the imperial Medical Act.

arise which must be settled according to the circumstances of each case. Such questions are specially likely to arise in those colonies to which the imperial Legislature has delegated the power of making laws for themselves, and in which laws have been made with reference to bankruptcy." The Judicial Committee went on to say, at p. 466: "If a consideration of the scope and object of a statute leads to the conclusion that the Legislature intends to affect a colony, and the words used are calculated to have that effect, they should be so construed. It has been pointed out above [p. 465] that some sections of the statute clearly bind the colonies in words which do not necessarily, but which may, apply to land. By the Bankruptcy Act of 1849 (12 & 13 Vict. c. 106), s. 142, all lands of the bankrupt 'in England, Scotland, Ireland, or in any of the dominions, plantations, or colonies belonging to her Majesty, are to vest in his assignees.' By the Bankruptcy Act of 1883 (46 & 47 Vict. c. 52), s. 168, the property which is passed to the trustee includes 'land, whether situate in England or elsewhere.' The Scotch Act of Bankruptcy, passed in 1856 (19 & 20 Vict. c. 72), s. 102, vests in the trustee the bankrupt's 'real estate situate in England, Ireland, or in any of her Majesty's dominions.' The Irish Act of Bankruptcy, passed in 1857 (20 & 21 Vict. c. 60), s. 268, vests in the bankrupt's trustee all his land, 'wheresoever situate.' No reason can be assigned why the English Act of 1869 should be governed by a different policy from that which was directly expressed in the Scotch and Irish Acts and in the English Acts immediately preceding and immediately succeeding. It is a much more reasonable conclusion that the framers of the Act considered that in using general terms they were applying their law wherever the imperial Parliament had the power to apply it; and their lordships hold that there is no good reason why the literal construction of the words should be cut down so as to make them inapplicable to a colony."(*e*)

(*e*) See *Ex parte Rogers* (1881), 16 Ch. D. 666, per Jessel, M.R.

Primâ facie the common and statute law of England as it was on the plantation of the colony extends to every British colony (including the United States of North America) which was colonised without conquest or cession by a civilised Power. It is deemed to have been planted with the settlers as their personal law. The question whether a given English or British Act extends to a colony is not in truth a question of construction, but of history. The answer depends, not upon anything in the terms of the Act itself, but upon the opinions of the judges as to whether the Act is one which in its nature could be treated as forming part of the body of law which Englishmen would carry with them to a new country. For an Act passed prior to the formation of a colony to run in the colony without express words, the Act must be applicable to the circumstances of the colony,(*f*) or be adopted by colonial Act or ordinance,(*g*) or applied by royal charter.(*h*) Planted colonies.

The law on this subject is thus summed up by Lord Watson in *Cooper* v. *Stuart* (1889), 14 App. Cas. 286, at p. 291: "The extent to which English law is introduced into a British colony and the manner of its introduction must necessarily vary according to circumstances. There is a great difference between a colony acquired by conquest or cession, in which there is an established system of law, and that of a colony which consists of a tract of territory practically unoccupied, without settled inhabitants or settled law, at the time when it was peacefully annexed to the British dominions. The colony of New South Wales belongs to the latter class. In case of such a colony the Crown may by ordinance, and the imperial Parliament or its own Legislature, when it comes to possess one, may by statute, declare what part of the common and statute law of England shall have effect

(*f*) *Whicker* v. *Hume* (1858), 1 D. M. & G. 506, 7 H. L. C. 124; *Jex* v. *M'Kinney* (1869), 14 App. Cas. 79; 1 Bl. Comm. 108.

(*g*) *Att.-Gen.* v. *Stewart* (1817), 2 Meriv. 143.

(*h*) See *Jephson* v. *Riera* (1835), 3 St. Tr. N. S. 591, as to Gibraltar, a conquered colony.

within its limits. But when that is not done the law of England must (subject to well-established exceptions) become from the outset the law of the colony, and be administered by its tribunals. In so far as it is reasonably applicable to the circumstances of the colony, the law of England must prevail until it is abrogated or modified either by ordinance or statute. The often-quoted observations of Sir William Blackstone (1 Comm. 107) appear to their lordships to have a direct bearing upon the present case. He says: 'It hath been held that if an uninhabited country be discovered and planted by English subjects, all the laws then in being which are the birthright of every English subject are immediately there in force (Salk. 411, 666). But this must be understood with very many and very great restrictions. Such colonists carry with them only so much of the English law as is applicable to the condition of an infant colony; such, for instance, as the general rules of inheritance and protection from personal injuries. The artificial requirements and distinctions incident to the property of a great and commercial people—the laws of police and revenue (such especially as are enforced by penalties), the mode of maintenance of the Established Church, the jurisdiction of spiritual Courts, and a multitude of other provisions, are neither necessary nor convenient for them, and therefore are not in force. What shall be admitted and what rejected, at what times and under what restrictions, must, in case of dispute, be decided in the first instance by their own provincial judicature, subject to the decision and control of the King in Council; the whole of their Constitution being also liable to be new modelled and reformed by the general superintending power of the Legislature in the mother country.' Blackstone in that passage was setting right an opinion attributed to Lord Holt, that all laws in force in England must apply to an infant colony of that kind. If the learned author had written at a later date he would probably have added that, as the population, wealth, and commerce of the colony increase, many rules and principles

of English law, which were unsuitable to its infancy, will gradually be attracted to it, and that the power of remodelling its laws belongs also to the colonial Legislature."

Conquered or ceded colonies.

Primâ facie those parts of the British empire which have been acquired by conquest or cession from a civilised Power remain under the laws of the Power to which they originally belonged,(*i*) subject to the modifications(*k*) introduced since the conquest or cession; and in the construction of colonial Acts or ordinances in these colonies regard must be had to the common law, the prevailing and the special rules, if any, of construction adopted by that law.

The effect of British statutes upon conquered or ceded colonies was elaborately discussed in the case of *Att.-Gen.* v. *Stewart* (1817), 2 Meriv. 156. The question there raised was whether the Statute of Mortmain was in force in the island of Grenada. Sir William Grant decided that it was not, and, after citing the passage from Blackstone which has just been quoted, continued as follows: "Whether the Statute of Mortmain be in force in the island of Grenada will depend on this consideration—whether it be a law of local policy, adapted solely to the country in which it was made, or a general regulation of property equally applicable to any country in which property is governed by the rules of English law. Now the object of the Statute of Mortmain was wholly political; it grew out of local circumstances and was meant to have merely a local operation. It was passed to prevent what was deemed a public mischief in England, and not to regulate the power of devising or to prescribe the forms of alienation. The Mortmain Act, framed as it is, is quite inapplicable to Grenada or any other colony. In its causes, its objects, its provisions, its qualifications,

---

(*i*) See Tarring's Law of the Colonies, ch. i.

(*k*) New York, Maine, and Jamaica were put under the common law of England. The criminal law of Quebec is that of England (14 Geo. 3, c. 83, s. 11), but the civil law is based on the custom of Paris.

and its exceptions, it is a law wholly English, calculated for purposes of local policy complicated with local establishments, and incapable, without great incongruity in the effect, of being transferred, as it stands, into the code of any other country. I am of opinion, therefore, that it constitutes no part of the law of the island of Grenada." In *Whicker* v. *Hume* (1858), 7 H. L. C. 124, the effect in a colony of this same statute was again discussed, with reference to New South Wales, a colony planted by Englishmen, and not a conquered colony. It was contended that the decision in *Att.-Gen.* v. *Stewart* was inapplicable. The House of Lords, however, held that the general principles laid down by Sir William Grant in the words above quoted were entirely correct and governed this case. "It is true," said Lord Chelmsford, "that the inhabitants of a conquered country have these laws only which are established by the Sovereign of the conquering country, and that the colonists of a planted colony carry with them such laws of the mother country as are adapted to their new situation.(*l*) But the opinion of Sir William Grant related generally, I think, to the Statute of Mortmain as applicable to all colonies, and therefore, upon general principles, I come without any hesitation to the conclusion that it is not applicable to New South Wales."(*m*) But the English law as to perpetuities "is founded," as the Judicial Committee said in *Yeap* v. *Ong* (1875), L. R. 6 P. C. 381, at p. 394, "upon considerations of public policy, which seem to be as applicable to the con-

---

(*l*) "The common law of England is the common law of the plantations, and all statutes in affirmance of the common law passed in England antecedent to the settlement of any colony are in force in that colony unless there is some private Act to the contrary, though no statutes made since these settlements are there in force unless the colonies are particularly mentioned." In these words Richard West gave his opinion as to the Admiralty jurisdiction in the plantations, June 20, 1720. See Opinions of Eminent Lawyers, by George Chalmers, vol. ii. 202. Upon this rule depends the currency of the common law in the States of the American Union (other than Florida and Louisiana).

(*m*) *Cf. Jex* v. *McKinney* (1889), 14 App. Cas. 77; *Cooper* v. *Stuart* (1889), 14 App. Cas. 291.

dition of such a place as Penang as to England," and, consequently, it was held to extend to the settlement of Penang.

India does not come precisely within the category either of planted or conquered colonies. "India," said the Judicial Committee, in *Adv.-Gen.* v. *Ranee* (1839), 2 Moore P. C. N. S. 59, "was a settlement made by a few foreigners for the purpose of trade in a very populous and highly civilised country under the government of a powerful Mahomedan ruler, with whose sovereignty the English Crown neither attempted nor pretended to interfere for some centuries afterwards. . . . . The laws and usages of Eastern countries where Christianity does not prevail are so at variance with all the principles, feelings, and habits of European Christians, that they have usually been allowed by the weakness or indulgence of the potentates of those countries to retain the use of their own laws, and their factories have for many purposes been treated as part of the territory of the Sovereign from whose dominions they come. But the permission to use their own laws by European settlers does not extend those laws to natives, within the same limits, who remain to all intents and purposes subjects of their own Sovereign, and to whom European laws and usages are as little suited as the laws of the Mahomedans and Hindoos are suited to Europeans." Consequently, "if the English laws were not applicable to Hindoos on the first settlement of the country," the question arises, "how could the subsequent acquisition of the rights of sovereignty by the English Crown make any alteration?" The answer to that question was given by the Judicial Committee in the following words—viz., "it might enable the Crown by express enactment to alter the laws of the country, but, until so altered, the laws remain unchanged." If, therefore, we wish to know whether any particular British statute binds the natives in India, it is necessary in the first place to ascertain whether, by any express enactment, British law has been introduced into the part of India in question, and then, if it appears that it has

Effect in India.

been so introduced, it is further necessary to consider, with regard to any particular enactment, whether it would be possible to enforce it among natives who are not Christians, but Mahomedans or Hindoos, without intolerable injustice and cruelty. For instance, to apply the law against bigamy to a people among whom polygamy is a recognised institution would be monstrous, and accordingly it has not been so applied. It was accordingly held in the above-mentioned case of *Adv.-Gen.* v. *Ranee*, that the English law of *felo de se* did not bind the natives in any part of India. Similarly, in *Ram Coomar* v. *Chunder* (1877), 2 App. Cas. 208, it was held "that the English laws of maintenance and champerty are of no force as specific laws in India. . . . . They were laws," said the Judicial Committee, "of a character directed against abuses prevalent in England in early times, and had fallen into comparative desuetude. Unless, therefore, they were plainly appropriate to the condition of things in the Presidency towns of India, it ought not to be held that they had been introduced there as specific laws upon the general introduction of British law." So, also, in *Mayor of Lyons* v. *East India Company* (1836), 1 Moore P. C. 176, it was held that the English law incapacitating aliens from holding real property has never been introduced into India. But, on the other hand, it was held in *Ruckmaboye* v. *Lulloobhoy* (1850), 8 Moore P. C. 4, that the Limitation Act, 1623 (21 Jas. 1, c. 16), extends to India and applies to Hindoos and Mahomedans as well as to Englishmen.

Territorial effect of colonial Acts.

8. Colonial Acts in one respect differ from imperial, that they can have no extra-territorial effect even as to British subjects unless express power of extra-territorial legislation is conceded to the colony by an imperial Act or charter. The New South Wales Act, 46 Vict. No. 17, s. 54, made bigamy punishable in the colony "wheresoever the second marriage takes place." Macleod was indicted and convicted in New South Wales for bigamy, his first marriage having taken place in New South Wales, and the second in Missouri. On appeal to the Privy Council

the statute was explained as applying only to bigamy committed in New South Wales. "If their lordships construe the statute as it stands and upon the bare words, any person married to any other person who marries a second time anywhere in the habitable globe, is amenable to the criminal jurisdiction of New South Wales, if he can be caught in that colony. That seems to their lordships an impossible construction of the statute; the colony can have no such jurisdiction, and their lordships do not desire to attribute to the colonial Legislature an effort to enlarge their jurisdiction to such an extent as would be inconsistent with the powers committed to a colony, and, indeed, inconsistent with the most familiar principles of international law. It therefore becomes necessary to search for limitations to see what would be the reasonable limitation to words so general." And after considering the limitations to be imposed in construing the enactment, the Court continued (at p. 458): "If the wider construction had been applied to the statute, and it was supposed that it was intended to comprehend cases so wide as those insisted on at the bar, it would have been beyond the jurisdiction of the colony to enact such a law. Their jurisdiction is confined within their own territories, and the maxim which has more than once been quoted, *Extra territorium jus dicenti impune non paretur*, would be applicable to such a case."(*n*)

The construction adopted in this case was *ut res magis valeat quam pereat*, to limit the operation of the statute to the territory of New South Wales, instead of declaring it wholly *ultra vires* and void, as upon the more obvious interpretation of its terms it clearly appeared to be.

A similar difficulty arose in *The Canadian Prisoners' case*,(*o*) where a colonial Legislature had made a pardon for treason conditional on banishment to a named place

(*n*) *Macleod* v. *Att.-Gen. for New South Wales* (1891), A. C. at p. 457 (Lord Halsbury, C.).
(*o*) 3 St. Tr. N. S. (ed. Macdonell), p. 933.

out of the colony, and serious questions arose in the course of transportation of the exiles to their place of banishment.

Colonial laws are also subject to the following rules not applicable to British Acts:—

(1) A colonial Legislature may pass laws repugnant to and virtually repealing the common law or any statute held to apply to the colony as part of the personal law of the colonists.(*p*) It seems also always to have been competent for a colonial Legislature to repeal any statute passed prior to the formation of the colony which has been held to form part of the law of the colony.

(2) Every colonial law is void so far as it is repugnant to the provisions of an imperial Act extending (by express words or necessary intendment or implication) to the colony, or of any order or regulation made under any such Act, or which has in the colony the force and effect of the Act in question.(*q*)

(3) A colonial law is not void for inconsistency with the instructions to the Governor of the colony, except those actually contained in the letters patent or other instrument by which he is authorized to concur in passing or to assent to laws for the peace, order, and good government of the colony.(*r*)

(4) But this power of repeal does not apply to imperial statutes passed after the Constitution Act of the colony and extending to the colony, nor to Orders in Council under such Acts.(*s*)

In modern Acts extending to the whole empire it is usual to insert a power of suspending the operation of

---

(*p*) 28 & 29 Vict. c. 63, s. 3.

(*q*) 28 & 29 Vict. c. 63, ss. 1, 2, 3. As to the Governor's instructions, see Todd, Parl. Govt. in Colonies, ch. iv., in observations of Higginbotham, C.J., in *Toy* v. *Musgrove* (1888), 14 Victoria L. R. 349, 371, S.C. (1891) A. C. 247.

(*r*) 28 & 29 Vict. c. 63, s. 4.

(*s*) See the Canada Copyright Act, 1875 (38 & 39 Vict. c. 53, imp.), and *Smiles* v. *Belford* (1877), 1 Tupper (Upp. Can. App.) 436.

the imperial Act in a colony so long as efficient colonial legislation on the same subject is in force.(*t*)

(5) A colonial law which assigns jurisdiction to a Court created under an imperial Act is not invalid, but the Court may decline jurisdiction.(*u*)

When an English or British Act is transplanted in general terms extended to a colony, the construction to be put on the Act is that given by the English Courts.(*x*)

Referring to English Acts to construe colonial Acts.

Where a colonial Legislature re-enacts in substantially the same terms a British Act not originally applying to the colony, the adopted enactment is to be construed in the colony in the same way as the original enactment.(*y*) The two are treated as being *in pari materiâ*.

Subject to the variations already indicated, the rules of construction applicable to English and colonial statutes seem to be precisely the same, so far as relates to colonies to which the English common law extends. And in the colonies, English books and cases on the construction of the statute law are freely cited and frequently followed in the decisions of the colonial judges. And the decisions of the Privy Council tend to uniformity of construction throughout the empire. In *Railton* v. *Wood* (1890), 15 App. Cas. at p. 366, the Judicial Committee adopted, in the construction of a New South Wales statute, the canons of construction laid down by Selborne, L.C., in *Hill* v. *E. & W. India Dock Co.* (1882), 22 Ch. D. 14, and by Lord Cairns in the same case, 9 App. Cas. 453.

But in cases of ambiguity in a colonial Act, the Privy Council have difficulty in accurately ascertaining what is the special scope or policy of the statute brought into question before them. The Judicial Committee have re-

---

(*t*) See the Extradition Acts, 1870 and 1873, and the International Copyright Act, 1886.

(*u*) See *Att.-Gen. for Canada* v. *Flint* (1884), 17 Canada 707, following *Valin* v. *Langlois* (1880), 5 App. Cas. 115.

(*x*) See *Att.-Gen. of Brit. Columbia* v. *Att.-Gen. of Canada* (1889), 14 App. Cas. 301, on the effect of the English Law Ordinance of 1867 of British Columbia.

(*y*) *Trimble* v. *Hill* (1880), 5 App. Cas. 342.

cently reversed(*z*) two decisions of the Supreme Court of New South Wales, both turning on the policy of a statute, relating in one case to land, and the other to insolvency, in which the colonial and English notions of policy may very well have differed essentially.

Where the colonial differs from the British method of dealing with the subject-matter, decisions upon British Acts must be applied cautiously, if at all, to the colonial legislation. "There are decisions on the construction of English statutes with reference to English modes of taxation, which would be of great value if it were first found that the Victorian Legislature had adopted any such method, but which are of little value until that conclusion has been reached. It appears to their lordships that the Court below has first searched for a rule of law, and has then bent the statute in accordance with it; whereas, until the rule, scope, and intention of the statute has been discovered, it cannot be seen what rules of law are applicable to it."(*a*)

(*z*) *Alison* v. *Burns* (1889), 15 App. Cas. 44; *Railton* v. *Wood* (1890), 15 App. Cas. 363.

(*a*) Judicial Committee, per Lord Hobhouse, in *Blackwood* v. *R.* (1882), 8 App. Cas. at p. 91.

CHAPTER VIII.

EFFECT OF MISTAKES IN STATUTES.

	PAGE
1. Causes of mistakes	461
Mistake not to be assumed	462
Doubts settled by reference to original Acts	462
2. Misstatements of fact	463
Facts in preamble may be controverted	463
Whether Act private or public	464
3. Misstatement of law	465
Incorrect statements as to existing law do not bind Courts	465
But afford strong evidence of the state of the law	466
4. Misprints	467
Obvious misprint may be corrected by judges	468
Correction by other officials	469
Accidental omission may be supplied	470

1. THERE are numberless mistakes in reference and mistakes of all kinds in Acts of Parliament,(*a*) due either to the draftsman or the printer,(*b*) or the conjoint or adverse efforts of the two Houses of Parliament. The draftsman may mistake facts or may erroneously assume the law on any particular subject to be different from what it really is; (*c*) and the printer may incorrectly reproduce the draftsman's manuscript, or mistakes may creep into a Bill during its passage through Parliament. Mistakes of fact or law.

Part I. of the first schedule to the Conveyancing and Law of Property Act, 1881, headed "Acts affected," and

---

(*a*) See Parl. Pap. 1875—C—No. 208, p. 48. 32 & 33 Vict. c. 19, s. 4, refers to 6 & 7 Vict. c. 106, in error for 6 & 7 Will. 4, c. 106.

(*b*) "The ancient system of ingrossing all Bills upon parchment after the report was discontinued in 1849, when both Houses agreed to substitute Bills printed on vellum by the Queen's printer for the parchment rolls." May, Parl. Prac. (9th ed.) p. 581. "The original authenticated vellum prints are preserved in the House of Lords, and . . . . copies of the Act, printed by the Queen's printer, are referred to as evidence in courts of law. The original prints may also be seen, when necessary, and copies taken." *Ib.* p. 598.

(*c*) *Vide ante*, p. 28.

comprising a list of nine statutes relating to searches for judgments, Crown debts, &c., was referred to in s. 5 of the Bill as originally drawn. That section failed to become law upon the passing of the Act, and the schedule of "Acts affected," which depended upon that section, although retained, is apparently in no way connected with the Act as it now stands.

The converse case occurred in the Artisans and Labourers' Dwellings Act, 1879 (42 & 43 Vict. c. 64), s. 22, sub-s. 3, which provided that loans for the purposes of the Act should be secured by a mortgage "in the form set forth in the third schedule hereto." There was no third schedule appended to the Act, and it was necessary to pass a supplementary Act of Parliament (43 Vict. c. 8), declaring that those words had been "inserted by mistake," and that the section should be construed and read as if those "words had not been inserted therein."

Mistake not to be assumed.

In *Richards* v. *McBride* (1881), 8 Q. B. D. 119, Grove, J., in rejecting the meaning sought to be put upon a statute on behalf of the respondent, said (p. 122): "No one, in construing a statute or any other literary production, could put such a construction upon the words unless by supposing they were a mistake. But we cannot assume a mistake in an Act of Parliament. If we did so we should render many Acts uncertain by putting different constructions on them according to our individual conjectures. The draftsman of the Act may have made a mistake. If so, the remedy is for the Legislature to amend it."

Reference to original Acts.

Doubts as to the accuracy of the Queen's printer's copies of statutes are settled so far as possible by reference to the original Acts or vellum prints, which are usually treated as conclusive. "What the expression 'collecting' in s. 60 [of 7 & 8 Vict. c. 101] refers to I confess I am at a loss to understand. It would seem probable it was a mistake, and that it should have been 'correcting,'(*d*) but we have referred to the Parliament

(*d*) *Qy.* "collating."

roll of the statute, and there the word is 'collecting.'"(*e*)

Facts stated in preamble of a statute may be controverted.

2. With regard to an averment in the preamble of a statute, Lord Coke says (on Littleton, bk. 1, 19 b): "By the authority of our author the rehearsal or preamble of a statute is to be taken for truth, for it cannot be thought that a statute that is made by authority of the whole realm, as well of the King and of the lords spiritual and temporal, and of all the Commons, will recite a thing against the truth." But this proposition is too wide to be accepted as correct at the present day, and from the case of *Leicester* v. *Haydon* (1572), Plowd. 398 (cited in *Stead* v. *Carey* (1845), 14 L. J. C. P. 182), it would appear doubtful whether the proposition was not too wide at the time it was made. It is clear that a recital in an Act of Parliament may be used as evidence, but it is not conclusive evidence, and it is liable to be rebutted. Thus, in *R.* v. *Sutton* (1816), 4 M. & S. 532, it was allowed to put in as evidence to prove that riots had been committed in the neighbourhood of Nottingham, the preamble of 52 Geo. 3, c. 17, which recited "that considerable numbers of disorderly persons had for some time past assembled themselves . . . . in several parts of the county of Nottingham." Lord Ellenborough, C.J., said as to this, "I do not say how far this evidence was conclusive; I only say that it was admissible."(*f*) And in *Earl of Carnarvon* v. *Villebois* (1844), 13 M. & W. 313, in order to prove the existence of certain rights of free warren and free chase against copyholders, it was allowed to put in an Inclosure Act of 23 Geo. 3, which contained a proviso that nothing should prejudice the rights of the lord of the manor to the rights of free warren and free charge, "as being," as Parke, B., put it, "some recognition of the right upon a subject-matter upon which evidence of reputation would be receivable."(*g*)

(*e*) Per Quain, J., in *R.* v. *Haslingfield* (1874), L. R. 9 Q. B. at p. 209.
(*f*) *Vide supra*, p. 47.
(*g*) See Wilberforce on Statute Law, p. 15.

But the erroneous declarations of the Legislature, though historically inconclusive as to the past, may create law as to the future, or may be prospectively, though not retrospectively, conclusive.

Immaterial whether statute be a public or private Act.

As private Acts do not bind strangers, recitals in private Acts have in some cases (*h*) been held to be altogether inadmissible as evidence against persons not named in them. But as a general rule (*i*) recitals in private Acts (as well as recitals in public Acts) are treated as admissible in evidence, although, as Lord Campbell said in *R.* v. *Haughton* (1852), 22 L. J. M. C. 89, "a recital in a private Act is not conclusive either in law or in fact, and this recital is merely evidence of the road being in Denton, and is therefore inadmissible against an estoppel." And in his judgment he added: "Had there been anything amounting to an enactment that the road should be considered in Denton, that would have prevailed over the estoppel, but a mere recital in an Act of Parliament either of fact or law is not conclusive, and we are at liberty to consider the fact or the law to be different to the statement in the recital."(*k*) And in the *Wharton Peerage case* (1844), 12 Cl. & F. 295, in order to prove the relationship existing between different members of a certain family so as to substantiate part of the pedigree, a private Act of Parliament describing the relationship was offered in evidence. Upon this the Lord Chancellor said: "It is very strong evidence, for it is the well-known practice of this House not to allow the insertion of such a statement in the recitals of a private Act unless

---

(*h*) In *Duke of Beaufort* v. *Smith* (1849), 4 Ex. 470, per Parke, B.; and see Taylor on Evidence (8th ed.), p. 1420.

(*i*) "You cannot say," said Willes, J., in *Mills* v. *Mayor of Colchester* (1867), 36 L. J. C. P. 214, "the statute cannot be looked to, but . . . . that what is stated in the statute is not to be taken as a proof of any matter of fact or law."

(*k*) In *Edinburgh and Glasgow Rail. Co.* v. *Linlithgow* (1860), 3 Macq. H. L. (Sc.) 704, the Lord Chancellor (Lord Campbell) said: "The recitals in a statute cannot bind those who are not within the enacting part." For decisions in the American courts to the same effect see Sedgwick on Statutory Law (2nd ed.), p. 44.

the truth of that statement has been previously proved to the satisfaction of the judges to whom the Bill was referred."(*l*)

Incorrect statement as to existing law does not bind the Courts.

3. "That, in fact, the language of an Act of Parliament may be founded on some mistake, and that words may be clumsily used, I do not deny. But I do not think it is competent to any Court to proceed upon the assumption that the Legislature has made a mistake.(*m*) Whatever the real fact may be, I think a Court of law is bound to proceed upon the assumption that the Legislature is an ideal person that does not make mistakes."(*n*)

"We ought in general," said Lord Blackburn in *Young* v. *Leamington* (1883), L. R. 8 App. Cas. 526, "in construing an Act of Parliament, to assume that the Legislature knows the existing state of the law."(*o*) In other words, it is presumed that the Legislature has informed itself as to the state of the law on any subject as to which it undertakes to legislate; for example, if the Legislature amends a statute which has received a judicial interpretation, it is presumed that the Legislature was acquainted with that interpretation at the time it amended the statute.(*p*) Thus, in *Mulcahy* v. *R.* (1868), L. R. 3 H. L. 306, at p. 319, the judges said of the Act of 36 Geo. 3, c. 7, "that statute did in terms sanction and embody the received interpretation of the Statute of Treasons, with which it must be presumed that the Legislature was acquainted, and which it left undisturbed." But if it appears from the wording of an Act of Parliament that the Legislature was under some misapprehension as to

---

(*l*) In the *Shrewsbury Peerage case* (1857), 7 H. L. C. at p. 13, Lord St. Leonards said: "That used to be the practice, but it is not so now. The evidence in support of private Bills is not now submitted to and reported on by the judges, and future recitals will not therefore be evidence." The practice only applied to private estate Bills: see 2 Clifford 769.

(*m*) *Vide ante*, p. 462.

(*n*) Halsbury, L.C., in *Commissioners of Income Tax* v. *Pemsel* (1891), A. C. at p. 549.

(*o*) See also per Lord Denman in *R.* v. *Watford* (1846), 9 Q. B. 626, at p. 635.

(*p*) This is so even in technical matters, such as "the difference between the existing courses of practice in Bankruptcy and in Chancery"; per Selwyn, L.J., in *Kellock's case* (1868), 3 Ch. App. 781.

the state of the law on a particular subject, such a misapprehension "would not," as was said by Cockburn, C.J., in *Earl of Shrewsbury* v. *Scott* (1859), 29 L. J. C. P. 53, "have the effect of making that the law which the Legislature had erroneously assumed it to be." Thus, in *Mollwo, March & Co.* v. *Court of Wards* (1872), L. R. 4 P. C. 419, at p. 437, the Judicial Committee said: "Some reliance was placed on the 28 & 29 Vict. c. 86, s. 1, which enacts that the advance of money to a firm upon a contract that the lender should receive a rate of interest varying with the profits, or a share of the profits, shall not of itself constitute the lender a partner, or render him responsible as such. It was argued that this raised an implication that the lender was so responsible by the law existing before the passing of the Act. The enactment is no doubt entitled to great weight as evidence of the law, but it is by no means conclusive, and when the existing law is shown to be different from that which the Legislature supposed it to be, the implication arising from the statute cannot operate as a negation of its existence."(*q*)

Enunciation in a statute of a proposition of law is strong evidence of what the law really is.

At the same time it must be borne in mind that if we find a rule of law enunciated in the preamble to a statute, or if it appears from the language of the statute that the Legislature has acted upon the idea that such a rule existed, it is very strong evidence of what the law on the

(*q*) The following *dicta* also bear out this principle. In *Ex parte Lloyd* (1851), 1 Sim. N. S. 250, Lord Cranworth, V.C., said, "The Legislature . . . . are not interpreters of the law, and Courts of justice are not bound by a mistake of the Legislature as to what the existing law is." In *Mitcalfe* v. *Hanson* (1866), L. R. 1 H. L. 250, Lord Cranworth said: "No doubt the Legislature may have mistaken the law as to the effect of the former statute." In *R.* v. *Haughton* (1853), 22 L. J. M. C. 92, Lord Campbell said "a mere recital in an Act of Parliament, either of fact or of law, is not conclusive, and we are at liberty to consider the fact or the law to be different from the statement in the recital." This *dictum* was cited by Lord Chelmsford in *Mersey Docks* v. *Cameron* (1865), 11 H. L. C. 443, at p. 518. In *Cambridge University* v. *Bryer* (1812), 16 East 317, at p. 326, Le Blanc, J., said as follows:—"If the Court are clear in their construction of an Act, they are bound to give effect to that construction, although they should be of opinion that an erroneous construction has been put upon it by other Acts." In *Sewell* v. *Burdick* (1885), 10 App. Cas. 105, Lord Bramwell pointed out two statements of law in the preamble of a statute which were, in his opinion, inaccurate.

subject actually is, and, as was said by Lord Campbell in *R.* v. *Treasury* (1851), 20 L. J. Q. B. 311, "the burden of proving that the Legislature has fallen into a mistake is cast upon those who say so." Also, a rule of law may be sometimes found so distinctly recognised in a statutory enactment that to deny the existence of the rule of law would be in fact to abrogate the statute. Thus, in *Norton* v. *Spooner* (1854), 9 Moore P. C. 103, it was argued that an action for damages for *crim. con.* would not lie by the Dutch law which prevails in British Guiana. But it appeared that by a legislative Act of the colony, No. 22 of 1844, it was enacted that "whenever any action shall be brought . . . . to procure reparation for pecuniary damages . . . . for criminal conversation with any wife," certain formalities therein prescribed should be observed as to the trial of such an action before a judge and jury of twelve men. "Their lordships quite agree," said the Judicial Committee, "that the main object of this Ordinance was to introduce and regulate the trial by jury, but when an Act of the Legislature declares that an action for a particular wrong shall be tried in a particular way . . . . it appears to their lordships that it would be no less than monstrous to say that a cause of action thus recognised and provided for shall be treated as no cause of action at all. This goes far beyond a recital in an Act of legislation, which may . . . . be often not conclusive. This is an express and distinct enactment, that if an action be brought for such a cause as that now under consideration . . . . such and such shall be the consequences."

Obvious misprint in a statute may be corrected.

4. As a general rule (*r*) a Court of law is not authorized to supply a *casus omissus*, or to alter the language of a statute for the purpose of supplying a meaning, if the language used in the statute is incapable of one, even though they may be of opinion that a mistake has been made in drawing the Act.(*s*) "Whether," said Jessel,

(*r*) *Ante*, p. 82.
(*s*) A curious mistake was made in 39 & 40 Vict. c. 36, for in s. 268 it is

M.R., in *Laird* v. *Briggs* (1881), 19 Ch. D. 33, "we can alter the word 'convenient' in s. 8 of 2 & 3 Will. 4, c. 71, by putting in the word 'easement' instead, is a question of very considerable difficulty. A judge may take the view that s. 8, as it stands, is so absurd that the word 'convenient' cannot stand there; but that does not quite conclude the question as to whether you can insert another word. All I wish to say is, that I think the question is open for discussion." In *Lyde* v. *Barnard* (1836), 1 M. & W. 101, at p. 123, Lord Abinger said that the word "upon," in 9 Geo. 4, c. 14, s. 6, "must be rejected as nonsensical;" but Parke, B., at p. 115, after observing that "the words of the clause were clearly inaccurate, probably through a mistake in the transcriber into the Parliamentary Roll," added, "We must make an alteration in order to complete the sense, and must either transpose some words or interpolate others." Thus, in *Green* v. *Wood* (1845), 7 Q. B. 178, it was suggested that the words in 3 Geo. 4, c. 39, s. 2, "unless judgment shall have been signed *or execution issued*," should be read "unless judgment shall have been signed *and execution levied*," because the last three words, as they stood, were incapable of a meaning. "To give an effectual meaning," said Lord Denman, C.J., "we must alter not only 'or' into 'and,' but 'issued' into 'levied.' It is extremely probable that this would express what the Legislature meant. But we cannot do this." And Patteson, J., added: "It is clear to my mind that some mistake has occurred in drawing this Act . . . . but I do not think we should be justified in making the alterations contended for. It is best to say that the words have no meaning at all." But if there is an obvious misprint in an Act of Parliament the Courts will not be bound by the letter of the Act, but will take care that its plain meaning is carried out. "It is our duty," said Tindal, C.J., in *Everett* v. *Wells* (1841), 2

---

enacted that no action shall be commenced against a coastguard officer until one month next after notice in writing, but in s. 272 it is enacted that "every action against such officer shall be commenced within one month."

M. & G. 269, at p. 277, "neither to add to nor to take away from a statute, unless we see good grounds for thinking that the Legislature intended something which it has failed precisely to express." Thus, in *The Chancellor of Oxford* v. *Bishop of Coventry* (1615), 10 Rep. 57 b, it was resolved that "when the description of a corporation in an Act of Parliament is such that the true corporation intended is apparent . . . . though the name of the corporation is not precisely followed, yet the Act of Parliament shall take effect." So, in *R.* v. *Wilcock* (1845), 7 Q. B. 321, at p. 338, Lord Denman, C.J., said: "The question is whether the Act of 17 Geo. 3, c. 56, was repealed by 58 Geo. 3, c. 51, which repeals 'an Act passed in the 13th year of' George III., entitled 'an Act for,' &c., and here is set out the title of 17 Geo. 3, c. 56, not that of any Act passed in the 13th year of George III., nor, as we presume, of any other Act whatever. A mistake has been committed by the Legislature; but having regard to the subject-matter, and looking to the mere contents of the Act itself, we cannot doubt that the intention was to repeal the Act of 17 Geo. 3, and that the incorrect year must be rejected."(*t*)

Correction by officials of errors in Acts.

When the royal assent is given by commission, the Bills to which the assent is to apply are specified in the commission by the statutory short titles given to them by clauses in the Bills.

The effect of this appears to be that any error in the print of an Act so assented to can on discovery be corrected at any time, inasmuch as what is assented to is not a particular written or printed paper, but the Bill, the whole Bill, and nothing but the Bill; and if the statute is printed and circulated from any copy other than that which has passed between the Houses, the

(*t*) Similarly with regard to an obvious mistake in a will, Lord Brougham said in *Langston* v. *Langston* (1834), 2 Cl. & F. 194, at p. 240: "Any one who reads this will cannot doubt that some mistake must have happened, and that is a legitimate ground in construing an instrument, because that is a reason derived, not *dehors* the instrument, but one for which you have not to travel from the four corners of the instrument itself."

error can be set right. The first print issued of the Education Act, 1891, was withdrawn, and a new print issued. The competence of public officials to take this step depends on a question of fact, whether the first issue was or was not printed from the proper copy. The printers and officials clearly have no power to alter the copy assented to in any way, and it is for the judges, or in the last resort the Legislature, to correct the error.

Accidental omission in schedule may be corrected.

An evidently accidental omission in the schedule to an Act may be supplied. Thus, in *R.* v. *Strachan* (1872), L. R. 7 Q. B. 465, it appeared that by 33 & 34 Vict. c. 97, sch., *sub tit.* Voting-Paper, "any instrument for the purpose of voting by any person entitled to vote at any meeting" was to be stamped with a 1*d.* stamp. It was argued that the expression "at any meeting" included the assembling of the town council to elect aldermen, and that, consequently, all voting-papers used at such elections must be stamped. But the Court held otherwise, on the ground that it could never have been the intention of the Legislature by such an enactment as this to alter the whole system of voting at public elections. "We must take it," said Cockburn, C.J., "that this schedule having been alphabetically arranged, instead of as in the former Act, there has been an *accidental omission* of some words of reference, such as the word 'such.'"

Otherwise in America.

In the United States a different rule seems to be applied with regard to clerical errors in statutes. In 1872 an Act of Congress was passed which contained a clause exempting from the 20 per cent. *ad valorem* duty "fruit-plants, tropical and semi-tropical," but in the engrossed Act of Congress a comma was substituted by a clerical error for the hyphen, and consequently the exempting words stood thus, "fruit, plants, tropical and semi-tropical." In consequence of this mistake, certain Bahama traders brought actions in the United States Courts to recover the 20 per cent. *ad valorem* duty that they had been compelled to pay upon tropical fruit subsequent to the 6th of June 1872. The United

States Government allowed the actions to go by default, as the Secretary of the Treasury decided that the clerical error rendered a new Act of Congress necessary to enforce any duty upon tropical fruit, and the United States Government repaid to the Bahama traders some 50,000 dollars in consequence of this mistake.(*t*)

In a recent case before the Supreme Court of the United States arising upon the McKinley Act, it was contended that the Act was unconstitutional, on account of the omission of the tobacco rebate section from the Bill as signed by the President, and that the omission of the section by the enrolling clerk, whether due to accident or fraud, avoided the Act, although the Bill was reported to the President and signed as a law.(*u*) But the Supreme Court have now decided the law to be valid.

(*t*) See the Blue-Book of the Bahamas for the year 1873, published in "Papers relating to H.M.'s Colonial Possessions, Part I. 1875."

(*u*) See Times, Dec. 1, 1891.

PART III.

PENAL STATUTES.

CHAPTER I.

DEFINITION AND CONSTRUCTION OF PENAL ACTS.

	PAGE		PAGE
1. Definition of a penal Act	473	2. Construction of a penal Act	476
Ambiguity of term	473	Strict construction	476
Causes of ambiguity	474	Relaxation of rule	477
Rules for deciding whether an Act is penal	474	Operation of statute not to be narrowed by this rule.	479

Penal Act an ambiguous term.

1. THE term "penal statute," if employed without qualification, is ambiguous.(*a*) For most, if not all, Acts containing a command or prohibition contain also some express penalty or sanction for disobedience to the command or prohibition which they contain, and where they are silent the common law or the received rules of construction import into them the appropriate sanction —*i.e.*, where the disobedience affects the public interests, liability to indictment for misdemeanour;(*b*) and where it affects private interests, liability to action by the person injured by the disobedience.(*c*)

From the point of view of a pleader a penal statute is one upon which an action for penalties can be

(*a*) *Vide Huntington* v. *Attrill* (1892), 8 Times L. R. 341.
(*b*) *R.* v. *Hall* (1891), 1 Q. B. 747.
(*c*) *Vide ante*, pp. 247–252.

brought by a public officer, a common informer, with or without the consent of the Attorney-General, or a person aggrieved. But "penal Act" in its wider sense includes every statute creating an offence against the State, whatever the character of the penalty for the offence. And the expression "penal" as used in the international rule that "one State will not execute the penal laws of another," applies "not only to prosecutions and sentences for crimes and misdemeanours, but also to all suits in favour of the State for the recovery of penalties for any violation of statutes for the protection of its revenue or other municipal laws, and to all judgments for such penalties."(*d*) The English Courts will examine the terms of a foreign Act to see whether it is or is not a penal law, and in their examination will not be bound down by the construction put upon the Act in the State to which it belongs,(*e*) otherwise an English Court might be bound to enforce a foreign law which it deemed penal on the strength of foreign decisions that it was not penal.

Cause of the ambiguity.

The cause of the ambiguity is that statutes fall from the point of view of penalty or sanction into three, and not into two classes, viz.:

(1) Acts enforceable by criminal remedies;

(2) Acts enforceable by civil remedies by way of damages;

(3) Acts enforceable by civil remedies in the form of penalty.

Into the third class fall those now comparatively rare Acts in which the sanction for disobedience consists in the right to sue or inform for a specific penalty by civil procedure. They fall into three subdivisions:

(a) Actions by the Attorney-General or a public official;

(b) Actions by common informers; and

(c) Actions by persons aggrieved.

(*d*) *Wisconsin* v. *Pelican Insurance Society* (1887), 127 U. S. 265, approved in *Huntington* v. *Attrill* (1892), 8 Times L. R. 341.

(*e*) *Huntington* v. *Attrill*, *ubi supra*.

(a) and (b) are in substance the same. The right of a private prosecutor to proceed in a criminal case is theoretically a right to act for the Crown. The prosecutor (since the abolition of appeals) recovers nothing to himself by the prosecution, except in the case of offences under the Larceny Act, 1861. But in penal actions the common informer obtains by specific statutory provision the whole or part of the "blood money."(*f*)

(c) differs from an ordinary civil action only in that the sum recoverable is liquidated. It is not a penal law within the meaning of international law.(*g*)

The question whether an Act is or is not penal is now in civil cases material for four reasons only:

(1) With respect to discovery, inasmuch as equity practice has dealt with such actions as so far criminal in their nature as to refuse to assist the plaintiff by interrogation of the defendant;

(2) With respect to the need of leave of the Court for compromise of the action;

(3) With respect to venue, which in penal actions is usually local; (*h*) and

(4) With respect to the right of appeal, for if a penal action were held to be "a criminal cause or matter" no appeal would lie to the Court of Appeal.

With reference to criminal law it is material for the purpose of deciding whether disobedience to an Act is or is not a misdemeanour, and this question can only arise in absence of specific sanction in the Act itself.(*i*)

Rules for deciding whether an Act is penal.

The following rules apply for deciding where statutes are or are not to be deemed penal:

(1) *Primâ facie*, the imposition of a fine or penalty

(*f*) A term now used opprobriously, but surviving from the ancient Saxon law and the procedure by appeal.

(*g*) *Huntington* v. *Attrill* (1892), 8 Times L. R. 341.

(*h*) See R. S. C. 1883, Ord. 20, r. 1.

(*i*) See *R.* v. *Tyler* (1891), 2 Q. B. 592 (Bowen, L.J.).

or forfeiture by a statute makes the procedure criminal.(*k*)

Lord Fitzgerald in *Bradlaugh* v. *Clarke* (1882), 8 App. Cas. at p. 383, thus laid down the rule to be deduced from the old authorities: (*l*) "Where it is ordained by statute that for feasance, misfeasance, or non-feasance the offender shall forfeit a sum of money, and it is not expressed to whom he forfeits it, in all such cases the forfeiture shall be intended for the Queen, save in cases where the penalty is assessed as compensation to the party injured."

(2) That the fine, penalty, or forfeiture is payable to an individual does not *per se* render the remedy civil.(*m*) . . . .

(3) But where the penalty is recoverable by action of debt the remedy is civil.

Even in this case the action may not be compromised without the leave of the Court,(*n*) and a collusive action for penalties is both unlawful (*o*) and ineffectual.(*p*)

(4) In certain cases the penalty has been held to be in truth liquidated damage, and not a penalty in the stricter sense.(*q*)

Where an Act imposes a penalty for its contravention, the question arises whether the penalty is inflicted by way of punishment or by way of compensation for the breach. If the former, the contravention is a criminal offence, and even if the sole remedy for the offence is the statutory penalty, the contravention is none the less criminal.(*r*)

(*k*) *Mellor* v. *Denham* (1880), 5 Q. B. D. 467; *R.* v. *Whitchurch* (1881), 7 Q. B. D. 534; *R.* v. *Paget* (1881), 8 Q. B. D. at p. 157, per Field, J.; *Ex parte Schofield* (1891), 2 Q. B. 428.

(*l*) Bacon, Abr. tit. Prerogative, B. 10, vol. 6.

(*m*) *R.* v. *Paget* (1881), 8 Q. B. D. at p. 157, following *Hearne* v. *Gorton* (1859), 2 E. & E. 66. See *R.* v. *Tyler* (1891), 2 Q. B. 588.

(*n*) See R. S. C. 1883, Ord. 50, rr. 13, 14, 15.

(*o*) 4 Hen. 7, c. 20.

(*p*) *Girdlestone* v. *Brighton Aquarium Co.* (1878), 3 Ex. D. 137, 4 Ex. D. 107.

(*q*) See *Reeve* v. *Gibson* (1891), 1 Q. B. 652.

(*r*) *R.* v. *Tyler* (1891), 2 Q. B. 598, per Kay, L.J.; *cf. Musgrove* v. *Chun Teeong Toy* (1891), A. C. 272.

(5) In certain other cases, the penalty being recoverable only by a person aggrieved, the action is deemed so far penal that discovery in aid of it is not permitted.

(6) An Act may be remedial from one point of view, and penal from another.

In *Stanley* v. *Wharton* (1821), 9 Price 301, it was argued that 11 Geo. 2, c. 19, s. 3, which enacted that "if any person shall wilfully . . . . assist any tenant in fradulently conveying away or concealing any part of his goods, every person so offending shall forfeit and pay to the landlord . . . . double the value of the goods . . . . to be recovered by action of debt," was a penal Act. "But," said Graham, B., "this Act is clearly distinguishable from those Acts which impose penalties," and is "entirely and purely remedial." But in *Hobbs* v. *Hudson* (1890), 25 Q. B. D. 232, the same Act was held so far penal that discovery could not be obtained in an action brought upon it.

Strict construction.

2. It is said that penal statutes must be construed strictly—*i.e.*, that "when the Legislature imposes a penalty, the words imposing it must be clear and distinct."(*s*) But this rule must be read as applicable, if at all, only to penalties of a quasi-public character, and not to Acts creating penalities for infractions of general law which are in the nature of purely civil remedies.(*t*) The rules laid down in *Heydon's case* (1584), 3 Rep. 8,(*u*) for the construction of obscurely penned statutes are there said to apply to penal as well as to other statutes, but Pollock, C.B., stated in *The Alexandra's case* (1863), 2 H. & C. 509, that the penal statutes there alluded to are statutes which create some disability or forfeiture, and not such as create crimes, and added that' 'no calamity would be greater than to introduce a lax or elastic construction of a criminal statute to serve a special but a temporary

(*s*) *Willis* v. *Thorp* (1875), L. R. 10 Q. B. 385 (Blackburn, J.).
(*t*) *Vide Huntington* v. *Attrill* (1892), 8 Times L. R. 341.
(*u*) *Ante*, p. 112.

purpose." This rule is said to be "founded on the tenderness of the law for the rights of individuals, and on the plain principle that the power of punishment is vested in the Legislature, and not in the judicial department, for it is the Legislature, not the Court, which is to define a crime and ordain its punishment."(*x*) As to enactments creating crimes, the rule was adopted *in favorem vitæ* in respect of treason and capital felonies, and extended to misdemeanours.

The question was of more importance in days when there was a disposition to introduce that species of criminal equity (*y*) which led to the dissolution of the Court of Star Chamber. Blackstone lays down the rule thus:(*z*) "The law of England does not allow of offences by construction, and no case shall be holden to be reached by penal laws but such as are within both the spirit and the letter of such law." The doctrine upon which must be based the *ratio decidendi* of cases put upon constructive fraud (viz., estoppel by conduct), constructive notice or constructive trusts, is inapplicable to the interpretation of a statute, and especially inapplicable to enactments dealing with crime or imposing penalties. For there is no estoppel with relation to the construction of any instrument, though in particular cases the parties may be bound to adopt, for the purposes of regulating their rights or obligations, under the instrument a construction other than the true legal construction.

Relaxation of rule.

But at the present day the distinction between a strict and a liberal construction has almost disappeared with regard to all classes of statutes, so that all statutes, whether penal or not, are now construed by substantially the same rules. "A hundred years ago," said the Court in *Lyons' case* (1858), Bell C. C. 38, at p. 45, "statutes were required to be perfectly precise, and resort was not had

(*x*) *U. S.* v. *Wiltberger* (1820), 5 Wheaton (U. S.) 76, at p. 95 (**Marshall, C.J.**).

(*y*) *Vide ante*, pp. 118–121, "Construction by the Equity" of a statute and see Co. Litt. (ed. Thomas), vol. i. p. 29, *note* Q.

(*z*) 1 Bl. Comm. 88 (ed. Hargr.), *note* (37).

to a reasonable construction of the Act, and thereby criminals were often allowed to escape. This is not the present mode of construing Acts of Parliament. They are construed now with reference to the true meaning and real intention of the Legislature." Therefore, "although the common distinction," as Pollock, C.B., said in *Nicholson* v. *Fields* (1862), 31 L. J. Ex. 235, "taken between penal Acts and remedial Acts, that the former are to be construed strictly and the others are to be construed liberally, is not a distinction, perhaps, that ought to be erased from the mind of a judge," yet the distinction now means little more than "that penal provisions, like all others, are to be fairly construed according to the legislative intent as expressed in the enactment, the Courts refusing on the one hand to extend the punishment to cases which are not clearly embraced in them, and on the other equally refusing by any mere verbal nicety, forced construction, or equitable interpretation to exonerate parties plainly within their scope."(*a*) In *Stephenson* v. *Higginson* (1852), 3 H. L. C. 686, the rule was thus stated by Lord Truro: "In construing an Act of Parliament, every word must be understood according to the legal meaning, unless it shall appear from the context that the Legislature has used it in a popular or more enlarged sense; that is the general rule; but in a penal enactment, where you depart from the ordinary meaning of the words used, the intention of the Legislature that those words should be understood in a more large or popular sense must plainly appear." In *Dickenson* v. *Fletcher* (1873), L. R. 9 C. P. 7, Brett, J., put the rule thus: "Those who contend that a penalty may be inflicted must show that the words of the Act distinctly enact that under the circumstances it has been incurred.

(*a*) Sedgwick on Statutory and Constitutional Law (2nd ed.), p. 282, cited in *Att.-Gen.* v. *Sillem* (1862), 2 H. & C. 531, by Bramwell, B., who there calls it "a passage in which good sense, force and propriety of language are equally conspicuous, and which is amply borne out by the authorities, English and American, which are cited in support of it."

They must fail, if the words are merely equally capable of a construction that would, and one that would not, inflict the penalty." This principle of construction is thus accurately stated by Sedgwick: "The more correct version of the doctrine appears to be that statutes of this class are to be fairly construed and faithfully applied according to the intent of the Legislature, without unwarrantable severity on the one hand or unjustifiable lenity on the other, in cases of doubt the Courts inclining to mercy."(*b*)

Where an enactment imposes a penalty for a criminal offence a person against whom it is sought to enforce the penalty is entitled to the benefit of any doubt which may arise on the construction of the enactment.(*c*) And while it is probably true that the principles of construction have been somewhat relaxed in formality in modern days, yet at the same time strictness of statement is still valuable, especially in a case where the result may be highly penal,(*d*) and the procedure indicated by a penal Act must be closely followed.(*e*)

Operation of statute not to be narrowed by this rule.

But penal statutes must never be construed so as to narrow the words of the statute to the exclusion of cases which those words in their ordinary acceptation would comprehend. The Judicial Committee in *The Gauntlet* (1872), L. R. 4 P. C. 191, said: "No doubt all penal statutes are to be construed strictly—that is to say, the Court must see that the thing charged as an offence is within the plain meaning of the words used, and the Court must not strain the words on any notion that there has been a slip or a *casus omissus*, or that the thing is so clearly within the mischief that it must have been intended to be included,(*f*) and would have been included

---

(*b*) On Statutory Law (2nd ed.), p. 287, cited with approval by Bramwell, B., in *Foley* v. *Fletcher* (1858), 27 L. J. Ex. 106.

(*c*) *Rumball* v. *Schmidt* (1882), 8 Q. B. D. at p. 608, per Huddleston, B.

(*d*) *Cotterell* v. *Lemprière* (1890), 24 Q. B. D. 637 (Lord Coleridge, C.J.); *cf. R.* v. *Brittleton* (1884), 12 Q. B. D. 266, 268.

(*e*) See *Smith* v. *Wood* (1889), 24 Q. B. D. 23.

(*f*) In *Jenkinson* v. *Thomas* (1790), 4 T. R. 666, Lord Kenyon said: "We must not extend a penal law to other cases than those intended by the

if thought of. On the other hand, the person charged has a right to say that the thing charged, although within the words, is not within the spirit of the enactment. But where the thing is brought within the words and within the spirit, there a penal enactment is to be construed, like any other instrument, according to the fair common-sense meaning of the language used, and the Court is not to find or make any doubt or ambiguity in the language of a penal statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other instrument."

"When large enough words are used," a prohibition may be extended so as to apply to something which has come into existence since the passing of the Act. Thus, in *Graves* v. *Ashford* (1867), L. R. 2 C. P. 410, it was held that the piracy of a picture by means of photography is within the statutes of George II. and George III., which were passed for the protection of artists and engravers, although photography was not a known art at the time those statutes were passed. But in *R.* v. *Smith* (1870), L. R. 1 C. C. R. 266, the question arose whether a person could be convicted under the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 91, of receiving a chattel, "knowing the same to have been feloniously stolen," where the stealing of partnership property had been committed by a partner in a firm. The offence of stealing by a partner was not made felony until the passing of 31 & 32 Vict. c. 116; consequently, the question was whether 24 & 25 Vict. c. 96, could be extended by implication so as to embrace an offence which was not felony at the time the Act was passed, and the Court held that it could not be so extended.

Legislature, even though we think they come within the mischief intended to be remedied."

CHAPTER II.

EFFECT OF PENAL STATUTES.

	PAGE
1. Conditions precedent to enforcing penal Act	481
(a) Proof of *mens rea*	481
(b) Proof of knowledge or personal neglect	487
(c) *Bonâ fide* claim of right ousts jurisdiction of inferior court	488
2. Recovery of penalty	489
Who may sue for statutory penalty	489
Joint or several liability to penalties	490
Cumulative penalties	491
Alternative penalties	492
3. Effect of penal Acts on corporations	493
Liabilities	
Rights	
4. Effect of penal Acts on contracts	494
Contract is void if performance involves doing an act made penal	494
Exception when penalty only for revenue purposes	495
Contract void, though penalty unenforceable	496

1. SUBJECT to certain exceptions, it is essential, to make any person liable for disobeying a penal statute, that there should be a *mens rea* in the person who contravenes the statute. This principle is shortly expressed by the maxim of law, *Actus non facit reum nisi mens sit rea.* If a person does an act in itself indifferent, it must be distinctly proved, before he can be said to have have had "a guilty mind," that he did this indifferent act with a criminal intention; but, if the act which he does is in itself unlawful, then the person who does the act will be assumed to have had a criminal intention, and, if he fails to justify or excuse the doing of the act, the law will hold him to be guilty. This was clearly laid down by Lord Mansfield in *R.* v. *Woodfall* (1770), 5 Burr. 2661, at p. 2666. "I told the jury," said he, "that where an act, in itself indifferent, becomes criminal, if done with a particular intent, there the intent

Mens rea must be proved to exist before penalty can be enforced.

must be proved and found; but when the act is in itself unlawful, the proof of justification or excuse lies on the defendant, and in failure thereof the law implies a criminal intent." Similarly, in *R.* v. *Dixon* (1814), 3 M. & S. 11, at p. 15, Lord Ellenborough said: "It is an universal principle that when a man is charged with doing an act, of which the probable consequences may be highly injurious, the intention [to injure] is an inference of law resulting from the doing the act." This principle of law was applied in the case of *R.* v. *Hicklin* (1868), L. R. 3 Q. B. 360, where it was held that the publication of a pamphlet called The Confessional Unmasked, which contained a quantity of obscene matter, was a misdemeanour within the meaning of 20 & 21 Vict. c. 83, s. 1, and was not justified or excused by the fact that it had been published solely for the purpose of exposing the iniquity of the confessional. "I do not think," said Blackburn, J., "that you could so construe this statute as to say that, whenever there is a wrongful act of this sort committed, you must take into consideration the intention and object of the party in committing it, and, if these are laudable, that that would justify the wrongful act." And this decision was followed in the subsequent case of *Steele* v. *Brannan* (1872), L. R. 7 C. P. 261, where the same question was at issue. "The probable effect," said Bovill, C.J., "of the publication of this book being prejudicial to public morality and decency, the appellant must be taken to have intended the natural consequences of such publication, even though the book were published with the objects referred to by his counsel."

In *R.* v. *Tolson* (*a*) a question arose whether a woman could be convicted of bigamy who had married a second time, believing, in good faith and upon reasonable grounds, that the first husband was dead. The act charged fell within the very words of the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100),

(*a*) (1889) 23 Q. B. D. 168.

s. 57, "whoever being married shall marry any other person during the life of the former husband or wife shall be guilty of felony," and the prisoner could not bring herself within the exception, as her husband had not been continually absent for seven years last past. The Court were divided (nine to five) as to the proper answer to the question, and it became necessary to discuss the maxim, *Actus non facit reum nisi mens sit rea*,(*b*) and to examine the decisions in which it has been applied, in order to extract some idea of its meaning and of its application to statutory offences. Cave, J., said (at p. 182): "At common law an honest and reasonable belief in the existence of circumstances which, if true, would make the act for which a prisoner is indicted an innocent act, has always been held to be a good defence. This doctrine is embodied in the somewhat uncouth maxim, *Actus non facit reum nisi mens sit rea*. Honest and reasonable mistake stands, in fact, on the same footing as absence of the reasoning faculty, as in infancy, or perversion of that faculty, as in lunacy. Instances of the existence of this common law doctrine will readily occur to the mind. So far as I am aware, it has never been suggested that these exceptions do not equally apply in the case of statutory offences unless they are excluded expressly or by necessary implication."(*c*) Assuming the correctness of this view, the result reached by the learned judge can be attained by reference to the ordinary rule of construction, that a rule of the common law, whether as to substantive or adjective law, is not abrogated by statute, except by express provision or necessary implication.(*d*) The rule already laid down (*ante*, p. 328), that, where a statute creates a new kind of felony, the common law incidents of felony attach, appears to be applicable, not

(*b*) The validity of the plea of insanity to a charge of crime rests on this maxim.

(*c*) This rule is substantially that laid down by Brett, J., in *R.* v. *Prince* (1875), L. R. 2 C. C. R. 154, and adopted by Stephen, J., in *R.* v. *Tolson*, *loc. cit.* p. 190.

(*d*) *Vide ante*, pp. 322, 328.

only to questions of procedure and forfeiture, but also to the evidence admissible to prove or disprove the commission of the crime.

Sir James Stephen, in the same case (*loc. cit.* p. 185), dealt with the question from another point of view. "My view of the subject is based upon a particular application of the doctrine usually, though I think not happily, described by the phrase, *Non est reus nisi mens sit rea.* Though the phrase is in common use, I think it most unfortunate, and not only likely to mislead, but actually misleading, on the following grounds. It naturally suggests that, apart from all particular definitions of crimes, such a thing exists as a *mens rea,* or guilty mind, which is always expressly or by implication involved in every definition. . . . . To an unlegal mind it suggests that, by the law of England, no act is a crime which is done from laudable motives—in other words, that immorality is essential to crime." After discussing the history of the phrase, he went on thus (at p. 187): "The principle involved appears to me, when fully considered, to amount to no more than this. The full definition of every crime contains, expressly or by implication, a proposition as to a state of mind. Therefore, if the mental element of any conduct alleged to be a crime is proved to have been absent in any given case, the crime so defined is not committed. Or again, if a crime is fully defined, nothing amounts to that crime which does not satisfy that definition. Crimes are at the present day far more accurately defined, by statute or otherwise, than they formerly were. The mental element of most crimes is marked by one of the words, 'maliciously,' 'fraudulently,' 'negligently,' or 'knowingly.' But it is the general, I might, I think, say the invariable, practice of the Legislature to leave unexpressed some of the mental elements of crime. In all cases whatever, competent age, sanity, and some degree of freedom from some kind of coercion are assumed to be essential to criminality, but I do not believe they are ever introduced into any statute by which any particular crime is defined." It will be found that by using the words

"wilfully and maliciously," or by specifying some special intent as an element of particular crimes, knowledge of fact is implicitly made part of the statutory definition of most modern definitions of crime; but there are some cases in which this cannot be said.(*e*)

Upon the principles thus laid down there seems to be general judicial agreement, and the whole difficulty arises on their application to particular definitions of offences; *i.e.*, in deciding whether the statute prohibits absolutely the acts defined as constituting an offence, or whether the prohibition is to be read with the common law qualification. The application must in every case turn on the wording of the particular enactment, or, in case of ambiguity,(*f*) upon the governing intention of the Act in which it is contained, or the set of Acts relating to the subject-matter. And decisions on particular statutes are consequently of value only when they are *in pari materiâ* with the enactment under discussion, or are drawn in the same terms as that under review. These rules apply equally to Orders in Council or other instruments creating offences, which are issued under statutory authority.

The maxim, *Actus non facit reum nisi mens sit rea*, is, therefore, not of absolutely universal application. "In old time," said Stephen, J., in *Cundy* v. *Le Cocq* (1884), 13 Q. B. D. 210, "and as applicable to the common law or to earlier statutes, the maxim may have been of general application, but a difference has arisen owing to the greater precision of modern statutes." "Although, *primâ facie* and as a general rule, there must be a mind at fault before there can be a crime, it is not an inflexible rule, and a statute may relate to such a subject-matter and may be so framed as to make an act criminal whether there has been any intention to break the law or otherwise to do wrong, or not. There is a large body

This rule not applicable where statute is for the protection of property.

(*e*) *E.g.*, 24 & 25 Vict. c. 100, s. 55; *R.* v. *Prince* (1875), L. R. 2 C. C. R. 154; s. 56 and s. 4, but not ss. 5, 6, 7, of 48 & 49 Vict. c. 69 (Criminal Law Amendment Act, 1885).

(*f*) See per Keating, J., *Nichols* v. *Hall* (1873), L. R. 8 C. P. 322, 327.

of municipal law in the present day which is so conceived. Bylaws are constantly made regulating the width of thoroughfares, the height of buildings, the thickness of walls, and a variety of other matters necessary for the general welfare, health, or commerce, and such bylaws are enforced by the sanction of penalties, and the breach of them constitutes an offence, and is a criminal matter . . . . and in such a case the substance of the enactment is that a man shall take care that the statutory direction is obeyed, and that if he fails to do so he does so at his peril."(*g*) "*Mens rea* may be dispensed with," said Cockburn, C.J., in *R.* v. *Sleep* (1861), L. & C. 44, at p. 52, "by statute, although the terms which should induce us to infer that it is dispensed with must be very strong." "There are enactments," said Brett, J., in *R.* v. *Prince* (1875), L. R. 2 C. C. R. 163, "which by their form *seem* to constitute the prohibited acts into crimes, and by virtue of these enactments persons charged with the committal of the prohibited acts may be convicted in the absence of the knowledge or intention supposed necessary to constitute a *mens rea*. Such are enactments with regard to trespass in pursuit of game, or of piracy of literary or dramatic works, or the statutes passed to protect the revenue." To these may be added enactments relating to the sale of food(*h*) and drugs,(*i*) and to weights and measures.(*j*) And the reason why it is not necessary to prove the existence of a *mens rea* in persons charged with committing offences against these enactments is because, as Brett, J., goes on to point out, they "do not [really] constitute the prohibited acts into crimes, but only prohibit them for the purpose of protecting the individual interest of individual persons or of the revenue."(*k*) "It has been decided

---

(*g*) *R.* v. *Tolson* (1889), 23 Q. B. D. 173 (Wills, J.).
(*h*) *Dyke* v. *Gower* (1892), 1 Q. B. 220.
(*i*) *Cf. Fitzpatrick* v. *Kelly* (1873), L. R. 8 Q. B. 337.
(*j*) *Cf. Great Western Rail. Co.* v. *Bailie* (1864), 5 B. & S. 929.
(*k*) *Cf. Davies* v. *Harvey* (1874), L. R. 9 Q. B. 433, per Lush, J. See *Bond* v. *Evans* (1888), 21 Q. B. D. 249.

more than once," said the Court in *Watkins* v. *Major* (1875), L. R. 10 C. P. 665, "that a person may be convicted under the statutes passed to prohibit trespassing in pursuit of game, although he had no *mens rea*, and believed that he was not a trespasser. For these game statutes are not merely criminal statutes, but are statutes passed for the protection of the peculiar rights of those entitled to shoot game." But these statutes are criminal statutes for purposes of appeal, although they create only what are in French law termed *contraventions*.

Either knowledge or personal neglect must be proved before penalty can be enforced.

Another important general rule with regard to the operation of penal statutes is that before a person can be convicted under a penal statute it is necessary to prove either that he knew that he was doing the prohibited act, or that it happened either in consequence of his personal neglect or without his having any lawful excuse.(*l*) If the accused was insane, under the present law he is found guilty, but insane, and not acquitted for insanity as provided by the common law. But with reference to neglect the law is unchanged. In *Nicholls* v. *Hall* (1873), L. R. 8 C. P. 336, a person had been convicted under the Contagious Diseases (Animals) Act, 1869, for neglecting to give notice of the fact that he had in his possession a diseased animal; his defence was that he was not aware that the animal was diseased, and that, consequently, it was impossible for him to give notice of a fact of which he had no knowledge. On appeal, the conviction was quashed, on the ground that his defence was a good one, and that "knowledge is an essential ingredient of the offence." For, as the Court said in *Emmerton* v. *Matthews* (1862), 31 L. J. Ex. 142, "a salesman offering for sale a carcase with a defect of which he is not only ignorant, but has not any means of knowledge, is not liable to any penalty, and does not as a matter of law impliedly warrant that the carcase is fit for human food." In *Dickenson* v. *Fletcher* (1873), L. R. 9 C. P. 1, an owner of a mine

(*l*) *Vide* 4 Bl. Comm. p. 21.

was indicted under the Mines Regulation Act, 1860 (23 & 24 Vict. c. 151), for not having the safety lamps used in the mine examined and securely locked by some duly authorized person. It was proved that the respondent had appointed a competent lamp-man, and that it was through his default that on the occasion in question the lamps had been given out unlocked. Upon these facts the magistrates had refused to convict, and, on appeal, their decision was confirmed, on the ground that a person cannot be made liable to a penalty if there has been no neglect or default on his part. So, in *Rider* v. *Wood* (1859), 2 E. & E. 343, it appeared that by 4 Geo. 4, c. 34, s. 3, it is a misdemeanour for a servant to absent himself from service before the term of his contract is completed, but it was held that a servant could not be convicted under this enactment unless it was proved that he had "absented himself from the service without lawful excuse, knowing at the time that he had no such excuse."(*m*) But this rule is not absolute, and under the Sale of Food and Drugs Act milksellers have been convicted without any evidence of personal knowledge or default,(*n*) and some modern Acts substitute presumption for evidence, and throw on the accused the burden of establishing his innocence.(*o*)

Bonâ fide claim of right ousts jurisdiction of inferior court.

A third important rule with regard to the operation of penal statutes is that a *bonâ fide* claim of right ousts the jurisdiction of an inferior court. This rule, in truth, also applies in most criminal proceedings, as *mens rea* is inconsistent with *bonâ fide* claim of right. But so far as relates to justices, it applies, owing to their incapacity to try questions of title. "The rule of law," said Blackburn, J., in *R.* v. *Stimpson* (1863), 32 L. J. M. C. 210, "is that the justices are not to convict where a real question is raised between the parties as to the right. As soon as that is done the jurisdiction which

(*m*) *Cf. Chisholm* v. *Doulton* (1889), 22 Q. B. D. 741.
(*n*) *Dyke* v. *Gower* (1892), 1 Q. B. 220.
(*o*) *R.* v. *Kent Justices* (1889), 24 Q. B. D. 181 (Mathew, J.).

before existed ceases, and the question ought to be left to be decided by a higher tribunal." At the same time it must be borne in mind, as Cockburn, C.J., observed in *Cornell* v. *Sanders* (1862), 32 L. J. M. C. 9, "that the doctrine as to the jurisdiction of the justices being ousted by a claim of right applies only to a claim of right alleged by the defendant as a part of his case which he comes before the justices to set up. If he *bonâ fide* raises a question of title in himself, the justices have no longer any jurisdiction to go on with the hearing, but there must be some show of reason in the claim, and it is not sufficient unless he satisfy the justices that there is some reasonable ground for his assertion of title." A person, therefore, who makes a claim of right must be prepared to show that the right he claims is one which can exist in law, and, as Wightman, J., observed in *Cornell* v. *Sanders* (1862), 32 L. J. M. C. 9, if it appears that the title which he sets up in himself is "not such a title as is known to the law," the jurisdiction of the justices will not be ousted. Thus, in *Hudson* v. *M'Rae* (1864), 33 L. J. M. C. 65, it appeared that a person had been convicted for "unlawfully and wilfully attempting to take fish" contrary to the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 24. It was proved that he claimed a right, as one of the public, to fish from a footpath, where the public had fished for sixty years previously. The justices held that he had acted and made his claim under a *bonâ fide*, but mistaken, supposition that he had such a right. They also held that such a right could not be acquired in a non-navigable river, and, consequently, they convicted him. On appeal, the conviction was upheld, on the ground that the right set up was a right that could not possibly exist in law, and that, consequently, the jurisdiction of the magistrates was not ousted.

But right must be one that can exist at law.

2. "It was acknowledged as an incontestable proposition of law (*p*) 'that where a penalty is created by statute and

Who may sue for penalty.

(*p*) It would have been more accurate to say "established rule of construction."

nothing is said as to who may recover it, and it is not created for the benefit of a party grieved, and the offence is not against an individual, it belongs to the Crown, and the Crown alone can maintain a suit for it.' Bramwell, L.J., referred to Comyns' Digest, Forfeiture, C., as correctly laying down that doctrine. If it were necessary, many other authorities to the same effect might be mentioned. It reasons on a very plain and clear principle. No man can sue for that in which he has no interest; and a common informer can have no interest in a penalty of this nature unless it is expressly or by necessary implication given to him by statute. The Crown, and the Crown alone, is charged generally with the execution and enforcement of penal laws enacted by public statutes for the public good, and is interested *jure publico* in all penalties imposed by such statutes, and therefore may sue for them in due course of law where no provision is made to the contrary. The *onus* is upon a common informer to show that the statute has conferred upon him a right of action to recover the particular penalty which he claims."(*q*)

Joint or several liability to penalty.

3. "It has been decided," said the Judicial Committee in *Del Campo* v. *R.* (1837), 2 Moore P. C. 15, at p. 18, "that, where the offence is made a joint offence by statute, the parties concerned are liable to but one forfeiture," whereas, if a statute imposes a penalty for an offence and expressly states that "every person" concerned in committing the offence shall be liable to the penalty, it has been held, in *R.* v. *Dean* (1843), 12 M. & W. 39, that the penalty may be recovered against each person concerned, although only one offence has been committed. But if the statute does not expressly state whether, when only one offence has been committed, but more than one person has been concerned in committing the offence, the penalty shall be recoverable from each person concerned, it appears that the true rule is, that where the offence is in its

(*q*) *Bradlaugh* v. *Clarke* (1882), 8 App. Cas. 358.

nature single and cannot be severed, only one penalty is recoverable against all, whereas if the offence is in its nature severed, every person concerned may be separately guilty of it and severally liable to pay the penalty. This was pointed out by Lord Mansfield in *R.* v. *Clark* (1777), 2 Cowp. 610, at p. 612. "Where," said he, "the offence is in its nature single and cannot be severed, there the penalty shall be only single, because, though several persons may join in committing it, it still constitutes but one offence. But where the offence is in its nature several, and where each person concerned may be separately guilty of it, there each offender is separately liable to the penalty, because the crime of each is distinct from the offence of the others, and each is punishable for his own crime. For instance, the offence created by 1 & 2 Ph. & Mar. c. 12, is 'the impounding a distress in a wrong place.' One, two, three, or four may impound it wrongfully; it is still but one act of impounding; it cannot be severed; it is but one offence, and therefore shall be satisfied by one forfeiture. So, under 5 Anne, c. 14, killing a hare is but one offence in its nature, whether one or twenty kill it; it cannot be killed more than once. If partridges are netted by night, two, three, or more may draw the net, but still it constitutes but one offence." But it was held in *R.* v. *Littlechild* (1871), L. R. 6 Q. B. 293, that the offence of "killing or taking any game . . . . on a Sunday" in contravention of 1 & 2 Will. 4, c. 32, s. 3, is an offence which, as Lush, J., observed in that case, "it is perfectly clear that two or more persons may commit," and that they may be "jointly charged" but "separately convicted." And it is important to come to a correct decision as to whether an offence is several or not, because, if an offence is several and a joint fine is imposed upon all the persons engaged in committing the offence, such a conviction would be bad and liable to be quashed. It was so held in *Morgan* v. *Brown* (1836), 4 A. & E. 515, for, as it is said in Hawkins (P. C. bk. ii. c. 48, s. 18), "otherwise one who hath paid his proportionate part might be continued in prison till all the others have

also paid theirs, which would be in effect to punish him for the offence of another."

Cumulative penalties.

The question also arises whether the penalty imposed by a statute for doing some certain prohibited act is cumulative (*r*) or not, that is to say, whether, if the act is done by the same person more than once on the same day and at the same place, that person is liable to one penalty only or to a penalty for each time he does the act in question. The answer to this question will entirely depend upon the language employed by the Legislature, it being borne in mind, as was said by Bovill, C.J., in *Garrett* v. *Messenger* (1867), L. R. 2 C. P. 585, that "if the Legislature intends that there should be more than one penalty, that intention will no doubt be expressed in clear and unequivocal terms." Thus, in *Brooke* v. *Milliken* (1789), 3 T. R. 509, it appeared that it was enacted by 12 Geo. 2, c. 36, s. 1, that "it shall not be lawful to import into this kingdom for sale any book . . . . and if any person shall sell any such book . . . . such offender shall forfeit £5 and double the value of every book which he shall so sell," and it was held that a person who sold two such books to different persons on the same day was liable to a penalty for each act of sale. So, also, in *Ex parte Beal* (1868), L. R. 3 Q. B. 387, it was held that, where a penalty of £10 was imposed by 25 & 26 Vict. c. 68, s. 6, "if any person . . . . shall sell any repetition copy or imitation of any work of the copyright of which he is not at the time being the proprietor," a person who sold ten copies at one time of such a work had committed ten separate offences, and was liable to be punished for each separately. But if it is clear from the language used in the statute that, as Lord Mansfield said in *Crepps* v. *Durden* (1777), Cowp. 640, "repeated offences are not the object which the Legislature had in view in making the statute," the

(*r*) Penalties are also said to be cumulative when a person by the same act commits two distinct and substantive offences: *Saunders* v. *Baldy* (1835), 6 B. & S. 791.

penalty will not be considered as cumulative. In that case it appeared that it was enacted by the Sunday Observance Act, 1679 (29 Chas. 2, c. 7), s. 1, that "no tradesman shall do or exercise any worldly labour upon the Lord's day, and that every person shall for every such offence forfeit the sum of five shillings," and it was held that a person who sold small hot loaves four times on one Sunday had committed but one offence against the statute, and was liable to one penalty only. "On the construction of the Act of Parliament," said Lord Mansfield, "the offence is, exercising his ordinary trade upon the Lord's day, and that without any fractions of a day, hours or minutes. It is but one entire offence, whether longer or shorter in point of duration; so, whether it consist of one or of a number of particular acts. There is no idea conveyed by the Act itself, that, if a tailor sews on the Lord's day, every stitch he takes is a separate offence, or, if a shoemaker work for different customers at different times on the same Sunday, that those are so many separate and distinct offences."

Alternative penalties.

Penalties are also said to be cumulative when the same act or omission constitutes an offence under two or more Acts. But this use of the term is now inaccurate, as such penalties are always alternative, and not cumulative. S. 33 of the Interpretation Act, 1889, provides that where under any Act (whether general, local and personal, or private, and whether passed before or after January 1, 1890) any forfeiture or penalty is payable to a party aggrieved, it shall be payable to a body corporate in every case where that body is the party aggrieved.(*s*) This does not alter the rule of common law that a corporation cannot sue as a common informer.

Effect of penal Acts on corporations.

3. The liabilities of corporations under penal statutes are thus stated by Bowen, L.J.(*t*): "I take it to be clear that in the ordinary case of a duty imposed by statute, if the breach of the statute is a disobedience to

(*s*) Interpretation Act, 1889 (52 & 53 Vict. c. 69), s. 2 (2).
(*t*) *R.* v. *Tyler* (1891), 2 Q. B. 594.

the law, punishable in the case of private persons by indictment, the offending corporation cannot escape from the consequences that would follow in the case of an individual by showing that they are a corporation. That seems to me to be good sense and good law."

52 & 53 Vict. c. 63, s. 2 (1).

By the Interpretation Act, 1889, repealing and re-enacting 7 & 8 Geo. 4, c. 28, s. 14, "In the construction of every enactment relating to an offence punishable on indictment or on summary conviction, whether contained in an Act passed before or after January 1, 1890, the expression 'person' shall, unless the contrary intention appears, include a body corporate." The statutory rule is laid down in terms partly wider, partly narrower, than the judicial rule, which was enunciated without reference to the statute. A contrary intention is held to appear in the case of treason, felony, or misdemeanours, involving personal violence, as riots or assaults.(*u*) But in the case of libel and nuisance corporations may be prosecuted.

Contract which involves in its performance the doing of something made penal is void.

4. Any contract which involves in its fulfilment the doing of an act which is prohibited by statute, is void,(*x*) and, as a general rule, as Lord Hatherley said in *Re Cork and Youghal Railway* (1869), 4 Ch. App. 758, "everything in respect to which a penalty is imposed by statute must be taken to be a thing forbidden." Consequently, if a contract involves in its performance the doing of anything which is rendered penal by statute, the contract will be void. This rule of law was enunciated by Lord Holt in *Bartlett* v. *Viner* (1692), Skinner 323, as follows: "Where a penalty is annexed to the doing of an act, though it be not prohibited, yet, if it appears upon the record to be the consideration, the agreement is void, for it will be ridiculous to give judgment that the plaintiff shall receive such a thing, the which if he takes, he shall be subject to the penalty of a statute; therefore, in every case where a statute inflicts a penalty for doing

---

(*u*) See *Pharmaceutical Society* v. *London and Provincial Supply Association* (1880), 5 App. Cas. 857, 869.

(*x*) *Vide ante*, p. 263.

an act, though the act be not prohibited, yet the thing is unlawful, for it cannot be intended that a statute would inflict a penalty for a lawful act."

A contract may be void without being illegal, when the making of the contract is forbidden, but the sole penalty for disobedience to the prohibition is, that the contract cannot be enforced. This is the case with betting contracts within the Wagering Act (8 & 9 Vict. c. 109).(*y*)

Exception to this rule if penalty merely imposed to secure to revenue particular source of income.

But this general rule, as enunciated by Lord Holt, is subject to an important exception, arising from the fact that penalties are imposed by statute for two distinct purposes—(1) for the protection of the public against fraud, or for some other object of public policy; (2) for the purpose of securing certain sources of revenue either to the State or to certain public bodies. The question, therefore, will always arise, with regard to these cases, "whether," as Parke, B., said in *Taylor* v. *Crowland Gas Co.* (1854), 10 Ex. 293, "looking at the statute, the object of the Legislature in imposing the penalty was to prohibit the particular act, or merely to secure to the revenue" some particular source of income. In *Brown* v. *Duncan* (1829), 10 B. & C. 93, the plaintiffs were distillers, and one of them had rendered himself liable to a penalty under 4 Geo. 4, c. 94, s. 131, for carrying on a retail business in spirits at the same time; it was contended, therefore, that, as a penal statute had been contravened by one of them, they could not recover the price of spirits sold by them. "But we think," said Lord Tenterden, "that the plaintiffs are entitled to recover; there has been no fraud on their parts, although they have not complied with the statutory regulations. . . . . The clauses of the Act had not for their object to protect the public, but the revenue only." Similarly, in *Wethcrall* v. *Jones* (1832), 3 B. & Ad. 221, where the plaintiff, who was a dealer in spirits, had rendered himself liable to a penalty for non-compliance with an excise

(*y*) *Haigh* v. *Sheffield* (1874), L. R. 10 Q. B. 109.

regulation required by 6 Geo. 4, c. 80, s. 115, as to the form of the permit to be sent out along with any spirits sold by him, it was held that this irregularity as to the permit, "though a violation of law by him, did not deprive him of the right of suing upon a contract in itself perfectly legal." "Where," said the Court, "the consideration and the matter to be performed are both legal, we are not aware that a plaintiff has ever been precluded from recovering by an infringement of the law, not contemplated by the contract, in the performance of something to be done on his part." Again, in *Smith* v. *Mawhood* (1845), 14 M. & W. 452,(*z*) it appeared that the Excise Act of 6 Geo. 4, c. 81, ss. 25, 26, subjected to penalties any person who sold tobacco without taking out the licence required for that purpose, but it was held that this Act did not avoid a contract for the sale of tobacco made by a person who had omitted to fulfil the requirements of the Act, because the penalties were imposed merely for the benefit of the revenue. "I think," said Parke, B., "that the object of the Legislature was not to prohibit a contract of sale by dealers who have not taken out a licence pursuant to the statute, but, if such was the object, they certainly could not recover, although the prohibition was merely for the purpose of revenue." And in considering the effect of a statutory prohibition on a contract, it is always necessary to decide whether the penalty imposed for breach of the statute is meant as a compensation to the person aggrieved or a penal sanction. In the former case, the statute in effect permits the contract on payment of the penalty; in the other it forbids it *in toto*.(*a*)

Contract is avoided if penal Act contravened, although penalty be not enforceable.

And if it is clear that a penalty is imposed by statute for the purpose of preventing something from being done on some ground of public policy, the thing prohibited, if done, will be treated as void, even though the penalty

(*z*) Approved in *Mellis* v. *Shirley L. R.* (1885), 16 Q. B. D. 446, at p. 452.

(*a*) *Cf. Musgrove* v. *Chung Teeong Toy* (1891), A. C. 242.

imposed is not enforceable. Thus, in the *Sussex Peerage case* (1844), 11 Cl. & F. 85, the question was whether the marriage of the Duke of Sussex was void in consequence of the provisions of the Royal Marriages Act, 1772 (12 Geo. 3, c. 11). That Act, by s. 3, imposes the penalties of a *præmunire* upon any person who solemnises or assists at the celebration of any marriage in contravention of its provisions. It appeared that the marriage of the Duke of Sussex was celebrated without the royal consent which was required by the Act, but as it took place in Rome, and as there is no provision made in s. 3 for the trial of the offender where the offence should be committed out of England, it was argued that the necessary inference was that the statute itself did not extend to prohibit a marriage out of England. This argument, however, did not prevail. "We think," said the judges in delivering their opinion, "that the most just and reasonable inference is, that the penal clause is itself defective in not making provision for the trial of British subjects when they violate the statute out of the realm, and not that we should refuse, on account of the defect in the penal clause, to give the plain words of the statute their necessary force, and hold the enactment itself to be substantially useless and inoperative."

PART IV.

PRIVATE ACTS.

CHAPTER I.

NATURE AND CONSTRUCTION OF PRIVATE ACTS.

	PAGE
1. What is a private Act	498
Distinction between public and private Acts	498
Grounds of distinction	498
Local and personal Acts	506
Act may be partly public, partly private.	507
2. Construction of private Acts	509
How far same as of public Act	509
Acts for purpose of assurance	509
Acts enabling interference with private property	510
Private Acts, as contracts with the public	512
Classification of contents of private Acts	516
General scheme not affected by clauses embodying private bargains	517
Reference to Acts *in pari materiâ*	517

Private Acts.

1. PRIVATE ACTS have been dealt with historically by Mr. Clifford in his recent and excellent work on the History of Private Bill Legislation, and from the point of view of parliamentary practice by Sir Erskine May (Lord Farnborough), and the Standing Orders of both Houses, and the volumes of reports on the decisions of the Referees of Private Bills. But these authorities are not to any extent concerned with the construction of a private Act when obtained, which they leave to the Courts of law.

Parliament now understands by private Bills all those

projects of law which affect the interests of particular localities, and not of a public general character, and are introduced by petition.(*a*) Every Bill for the particular interest or benefit of any person or persons, whether it is brought in upon petition or motion, or report from a committee, or brought from the Lords, is a private Bill within the meaning of the table of fees established by the Standing Orders of the House of Commons.(*b*)

Distinction between public and private Acts.

Sir E. May points out(*c*) the difficulty which is found in distinguishing between public and private Bills in Parliament, and that many Acts included in the public general statutes are, if public, not general, being confined to particular local areas.

Origin of private Acts.

Private Acts appear to have originated in the orders made by Parliament upon the petitions of individuals for the redress of private grievances for which there was no remedy at common law, which were in the nature of orders of the High Court of Parliament. "As the limits of judicature and legislation became defined, the petitions applied more distinctly for legislative remedies."(*d*)

"From the reign of Henry IV., the petitions addressed to Parliament prayed more distinctly for peculiar powers besides the general law of the land and for the special benefit of the petitioners. Whenever these were granted the orders of Parliament, in whatever form they may have been expressed, were in the nature of private Acts, and after the practice of legislating by Bill and statute had grown up in the reign of Henry VI., these special enactments were embodied in the form of distinct statutes."(*e*)

But it is not until the 31st of Henry VIII. (1539) that the distinction between public Acts and private Acts is

---

(*a*) 1 Cliff. Hist. Priv. Bill Leg. p. 267. See also Sedgwick, Statutory Law (2nd ed.), pp. 24-27.
(*b*) Parl. Pap. 1891—C—No. 395, p. 106.
(*c*) Parl. Pract. (9th ed.) p. 745.
(*d*) *Ibid.* 608 ; 1 Cliff. 270.
(*e*) May (9th ed.), p. 755, referring to statutes of the realm published under the direction of the Record Commission.

for the first time specifically stated on the enrolment in Chancery.(*f*)

The functions of Parliament in passing private Bills have always retained the mixed judicial and legislative character of ancient times, and, with certain exceptions, all which are defined as private by the Standing Orders of either House, are still required to be brought in by petition.(*g*) "In passing private Bills," says Sir Erksine May, "Parliament still exercises its legislative functions, but its proceedings partake also of a judicial character. The persons whose private interests are to be promoted appear as suitors for the Bill, while those who apprehend injury are admitted as adverse parties in the suit. Many formalities of a court of justice are maintained . . . . and the solicitation of a Bill in Parliament has been regarded by Courts of equity so completely in the same light as an ordinary suit, that the promoters may be restrained by injunction from proceeding with a Bill the object of which was to set aside a covenant."(*h*) It was said in *Ex parte Hartridge* (1870), 5 Ch. App. 679, that although the Court of Chancery "has the power to act *in personam*, and, if a proper case should be proved, to restrain any person from making an improper application to Parliament" for a private Act, still "it is difficult to conceive or define what are the cases in which it would be proper for the Court to exercise that power," and there is no record of a case in which this alleged power has been exercised.

As to their introduction into Parliament.

The views of Lord Coke (1 Inst. 98 a) as to general statutes have been regarded as pointing to the following important distinctions between public or general and particular or private statutes:—

(1) Their several degrees of notoriety.—"The judges

(*f*) 1 Rev. Statt. (1st ed.) Intr. p. xii; see also a learned note in *R.* v. *Milton* (1843), 1 C. & K. 59, *note* (*b*); Cruise's Digest, vol. v. p. 1, tit. Private Act; and Comyns, Dig. tit. Parliament, R. 7.

(*g*) The present classification is given in detail in Parl. Pap. 1891—C—No. 395, pp. 33, 44.

(*h*) Parl. Pract. (9th ed.) p. 756.

may and ought to take notice of public Acts without pleading, but private Acts must be pleaded." But there are some exceptions to both parts of this rule.

(a) Some public Acts must still be pleaded; *e.g.*, those Acts which entitle a person sued for a wrong to plead the general issue must specify any statute under which he pleads not guilty of the alleged wrong.

(b) Since 1850 local and personal Acts printed by public authority have ceased to be private from the point of view of judicial notice (13 & 14 Vict. c. 21, s. 7; 52 & 53 Vict. c. 63, s. 9).

(2) The mode of trial.—"The existence of a public Act must be tried by the judges, who are to inform themselves in the best manner they can. But a private Act may be put in issue, and shall be tried by the record."(*i*)

(3) A private Act will not bind strangers though it is without a saving of their rights.(*k*) The answer to this question raised depends on the nature of the rights created by the private Act.

(4) A public Act printed by a person authorized by the Crown was always good evidence to a jury, but (till 1850) of a private Act there must either be an exemplification under the great seal or a copy sworn to be compared with the Parliament Roll.(*l*)

A public Act never required any proof,(*m*) and where it is necessary to refer to one, a copy is not given in evidence, but merely referred to to refresh the memory. But it used to be necessary to prove all private Acts, on the ground that though every man is bound to take notice of all Acts which concern the kingdom at large, he is not presumed to be cognizant of those which merely concern the private rights of another. "Originally," as Lord Lyndhurst said in *Woodward* v. *Cotton* (1834), 1

(*i*) *Vide ante*, pp. 55, 56.
(*k*) 1 Co. Litt. (ed. Thomas) p. 25, *note* (16). *Vide infra*, p. 519.
(*l*) *Ante*, p. 42.
(*m*) *Vide ante*, p. 40.

C. M. & R. 44, at p. 48, "private Acts were required to be proved by a copy examined with the Parliament Roll." It might also be proved by means of a transcript or of an exemplification under the great seal, and this is still necessary, if it is required to prove a private Act which has not been printed by the Queen's printer. If it has been so printed, then 8 & 9 Vict. c. 113, s. 3, applies, by which it is enacted that "all copies of private and local and personal Acts, if purporting to be printed by the printers to either House of Parliament, shall be admitted as evidence thereof by all courts, judges, justices, and others, without any proof being given that such copies were so printed."(*n*)

The legal distinction between public and private Acts is still important for three reasons:

(a) As to judicial notice.
(b) As to pleading.
(c) As to construction.

For purposes of judicial notice all Acts passed after 1850 are deemed public Acts unless the contrary is declared therein.(*o*) But as to prior Acts the question may still arise whether they are public or private, and further questions arise as to the effect of Brougham's Act, and the Interpretation Act, 1889, on the pleading and construction of private Acts.

Grounds of distinction between public and private Acts.

Blackstone (*p*) defines private or special (*q*) Acts "to be rather exceptions than rules, being those which only operate upon particular persons and private concerns such as the Romans entitled *senatus decreta*, in contradistinction to *senatus consulta*, which regarded the whole community." This definition, so far as it relates to Acts prior to 1851, seems to be generally borne out by the decisions of the judges. But it has some curious results. Thus, doubts existed till 1778 (19 Geo. 3, c. 44, s. 4) whether the Toleration Act (1 Will. & Mar. c. 18) was

(*n*) *Vide ante*, p. 42.
(*o*) Int. Act, 1889 (52 & 53 Vict. c. 63), s. 9.
(*p*) 1 Comm. 85. See also Stephen's Comment. (5th ed.) p. 70, and Bacon's Abr. tit. Statutes [F].
(*q*) *Vide ante*, p. 65.

a public or a private Act.(*r*) In *Dawson* v. *Paver* (1849), 7 Hare 415, Wigram, V.C., said as to the distinction between a public and private Act, "Whether an Act is public or private does not depend upon any such formal consideration as whether it has a clause declaring that it shall be deemed a public Act, but upon the substantial considerations of the nature of the case." So, in *Brett* v. *Beales* (1829), M. & M. 421, 52 Geo. 3, c. 141, was held to be a private Act, although s. 166 enacted that it should be deemed to be a public Act. The object of the Act was to allow tolls to be levied on all persons using a certain navigation, and it was contended that this enactment would affect all the Queen's subjects. Lord Tenterden, however, held at Nisi Prius (after consulting the other judges) that the given power was not so extensive, for it was only to levy toll on any that thought fit to use the navigation, not on people in general. In *Jones* v. *Axen* (1696), 1 Ld. Raym. 119, it was held that 22 & 23 Chas. 2, c. 20 (an Act for the relief of insolvent debtors), was a public Act, for the following reasons: "1. Because all the people of England may be concerned as creditors to these insolvents. 2. It is an Act of charity, and therefore ought to have a more candid interpretation. 3. It is an Act too long and difficult to be pleaded at large, so that it would put these poor people to a greater expense than they could bear to plead it specially." In *Ingram* v. *Foote* (1701), Ld. Raym. 709, an Act of pardon was held not to be a general Act. In *Kirk* v. *Nowill* (1788), 1 T. R. 124, Buller, J., said, "Though it be true that Acts of Parliament relating to trade in general are public Acts, yet a statute which relates only to a certain trade is a private one." If a private Act be referred to or in any way recognised by a subsequent public Act, the private Act must afterwards be considered as being a public Act. This was first

(*r*) "It seems not a little extraordinary that a statute [23 Hen. 6, c. 9] which concerns the administration of the public justice of the whole kingdom should ever have been construed to be a private statute": 2 Williams' Saunders (ed. 1871), p. 454.

decided in *Saxby* v. *Kirkus* (1753), Buller N. P. 224, and this decision was afterwards acted upon in *Samuel* v. *Evans* (1789), 2 T. R. 573. An Act has been held to be a public one if the King or the Prince of Wales is specially named in it. Thus, in *R.* v. *Buggs* (1694), Skinner 429, it was held that 2 & 3 Ph. & Mar. c. 11, which inflicted a penalty upon all persons not being cloth-workers who used the trade of dyers or weavers, was a public Act, as the forfeiture was to the King, and so the King was concerned.(*s*) Similarly, in *Morris* v. *Hunt* (1819), 1 Chitt. (K. B.) 453, it was objected that 53 Geo. 3, c. 152, which was an Act to amend the law respecting the expenses of the hustings and poll-clerks so far as regards the city of Westminster, was a private Act, but Abbott, C.J., said: "It relates to a branch of the Legislature of the kingdom, and that is sufficient to give it the character and operation of a public Act. . . . . It has been held [in 8 Rep. 28 b] that an Act relating to the Prince of Wales' rights in the Duchy of Cornwall is a public Act, by reason of the rank and importance of the personage to whom it relates. By parity of reasoning, the Act in question, from its nature, is a public Act." So also Acts of a local nature have been held to be public Acts on account of the publicity of the subject-matter treated of by them. Thus, the Act of Bedford Levels,(*t*) and also the Act for rebuilding Tiverton,(*u*) have been held to be public Acts on this ground. Also, in *Riddle* v. *White* (1793), 1 Anstr. 281, at p. 293, an inclosure Act was held to be a public Act because by it "the Legislature bind the land and change its nature, and thereby the rights of many persons who could not be parties are bound with it." The insertion in a private Act of a section requiring it to be judicially noticed does not

(*s*) *Willion* v. *Berkeley* (1560), Plowd. 231; see *Barrington's case*, (1611) 8 Co. Rep. 136 b, 138 a; *Att.-Gen.* v. *Ball* (1846), 10 Ir. Eq. Rep. 161 (Brady, C.).

(*t*) Buller's Nisi Prius, 225; *Dupays* v. *Shepherd* (1698), 12 Mod. 216; Gilbert on Evidence, 13; Pothier (ed. Evans), ii. 152.

(*u*) Buller's Nisi Prius, 225.

necessarily make it a public Act in every sense of the term. The effect of a clause of this kind was decided in *Hesse* v. *Stevenson* (1803), 3 B. & P. 565. There a bankrupt under the provisions of a special Act assigned a patent which he had obtained before his bankruptcy. The Court held that the patent had, prior to the Act, vested in his assignees, and that the Act did not enlarge his title, although it recited that the patent was vested in the bankrupt. Lord Alvanley said, at p. 578: "But though the Act be public, it is of a private nature. The only object of the proviso for making it a public Act is that it may be judicially taken notice of instead of being specially pleaded, and to save the expense of proving an attested copy. But it never has been held that an Act of a private nature derives any additional weight or authority from such a proviso: it only affects Koops [the bankrupt] and those claiming under him, and authorizes him to do certain acts which by the letters patent he could not have done. . . . . It is not, then, possible to consider this Act as giving any title to Koops which he had not at the time when it was passed. Such has been the construction which has always been put upon Acts of Parliament of this nature." The same views have been expressed by Lord Tenterden in *Brett* v. *Beales* (1829), 1 M. & M. 416, 425, after consulting the Court of King's Bench; and by Lord Abinger in *Ballard* v. *Way* (1836), 1 M. & W. 520, 529; and were adopted in Ireland by Brady, C., in *Att.-Gen.* v. *Ball* (1846), 10 Ir. Eq. Rep. 146, and *Att.-Gen.* v. *Marrett* (1846), 10 Ir. Eq. Rep. 167.

In *Ballard* v. *Way* (1836), 1 M. & W. 520, it was proposed to put in evidence the Borough Market Act in an action with respect to premises named in the schedule to the Act, on the ground that the purchaser of the premises had notice of the provisions of the Act. Lord Abinger said, "I consider that these Acts do not affect all mankind with the knowledge of what is contained in them."

In *Brett* v. *Beales* (1829), 1 M. & M. 416, it was con-

tended that 52 Geo. 3, c. 141, must be proved by an examined copy of the Act from the Parliament Roll, and could not be proved by a Queen's printer's copy, although by s. 166 it is called a public Act, and that it could be put in evidence to prove the existence of the tolls to which it referred. Lord Tenterden held (p. 425) that the words making the Act public only applied to the forms of pleading (and authentication), and did not vary the general nature and operation of the Act; and secondly, that the power to levy tolls did not make the Act public, as it extended only to persons using the navigation. The latter reasoning applies to all railway Acts.

But all these decisions are prior to Brougham's Act (13 & 14 Vict. c. 21); and in *Aiton* v. *Stephen* (1876), 1 App. Cas. 456, Lord Cairns described a local Act (8 & 9 Vict. c. 25) as "an Act which in the first instance assumed the shape of a private Bill, but which must be judicially noticed as a public Act, and must have all the operation of a public Act." This *dictum*, so far as it goes, is against the decisions already quoted.

Local and personal Acts.

Some private Acts are called "public, local, and personal," or merely "local and personal." This designation was first applied in 1797, when the House of Lords resolved that the King's printer should class the public general statutes and the special, local, and private, in separate volumes; and on May 8, 1801, a resolution was passed by the House of Commons, and agreed to by the House of Lords, that the general statutes and the "public, local, and personal," in each session, should be classed in separate volumes.(*x*) The term "local and personal Act" was first used by the Legislature in Sir Frederick Pollock's Act (5 & 6 Vict. c. 97), by which certain special provisions were made with regard to Acts of this kind. But it appears that no definite rule can be laid down as to whether an

(*x*) *Vide ante*, p. 67, and *Richards* v. *Easto* (1846), 15 M. & W. 244, at p. 250, per Parke, B.; and *Sheppard* v. *Sharp* (1856), 25 L. J. Ex. 255, per Coleridge, J.

Act is to be considered "local and personal" or not, for it does not necessarily follow that because an Act is not printed among the local and personal Acts it will be held not to be of a local and personal nature. "Whether an Act is printed in one part of the statute-book or another depends," said Pollock, C.B., in *Richards* v. *Easto* (1846), 15 M. & W. 244, at p. 248, "upon whether certain fees have been paid upon it or not."(*y*) Thus, in *Cock* v. *Gent* (1843), 12 M. & W. 234, the Court held that 47 Geo. 3, c. xxxv., which empowered certain commissioners to adjudicate on demands not exceeding a certain amount made by any persons against defendants resident within certain limits, but which had a clause making it a public Act, "exactly met the description of a local and personal Act." But in *Barnett* v. *Cox* (1847), 9 Q. B. 617, the Court held that the Metropolitan Police Acts are not of a local and personal nature, because of "the public importance of the rights that they maintain, and the generality of their application to all the Queen's subjects within the Metropolitan Police District." This decision was, however, received with some hesitation by the Court of Exchequer in *Moore* v. *Shepherd* (1854), 24 L. J. Ex. 29. "I confess," said Alderson, B., "that I am unable to distinguish between a police Act that affects London and one that relates to the smallest town in the kingdom. The size of the place cannot make any difference; the question is whether the Act be general in its operation."

Act may be partly public and partly private.

In *Richards* v. *Easto* (1846), 15 M. & W. 244, it was held that an Act may be in part public and in part private. And this principle was recognised in several early cases. Thus, in *Ingram* v. *Foot* (1701), 12 Mod. 613, Holt, C.J., said, "Whereas it is urged that this Act concerns the King's revenues, therefore it is general law; the difference *per luy* is, when an Act concerns the King's revenues for the King's advantage, it is general,

(*y*) Since 1868 public Acts of a local character have been printed with the local Acts. But in the Parliament Roll the Acts are numbered consecutively without regard to whether they are general, local, personal, or private. *Vide ante*, p. 67.

secus where it concerns it in order to a diminution thereof to the advantage of particular persons. And an Act of Parliament may be general in part, and particular in other part." Again, in an *Anonymous case* (1698), 12 Mod. 249, Holt, C.J., said, "An Act of Parliament concerning the revenue of the King is a public law, but it may be private in respect to some clauses in it relating to a private person." Similarly, in the case of *Ex parte Gorely* (1864), 34 L. J. Bank. 1, it was held that s. 83 of 14 Geo. 3, c. 78, applied generally to the whole of England, although the remainder of the Act was limited in its operation to the metropolitan district. "When we approach the 83rd section," said Lord Westbury, "we find that the enactment therein contained is heralded by a particular preamble of its own, which preamble recites a general and universal evil as being the occasion of its passing. I think, therefore, the just conclusion is that this enactment is intended to be general—is intended to meet a general and not a local evil." The decision in this case is of small authority since the doubts cast upon it by Lord Watson in *Westminster Fire Office* v. *Glasgow Provident Society* (1888), 13 App. Cas. 699, at p. 716. But the construction of Lord Westbury has received some parliamentary support from the fact that the sections in question were excepted from the general repeal of 14 Geo. 3, c. 78, by the Metropolitan Building Acts.

Effect of local Act on customs.

In speaking of 14 & 15 Vict. c. xciv., relating to mining customs in Derbyshire, Blackburn, J., said, "The articles and customs by this Act established are contained in the first schedule to it, and whether the customs there mentioned were really ancient or not, and whether they were such as would before the passing of this Act have been held reasonable or not, I think that since the passing of that Act they have the force of statute law."(z)

(z) For an attempt to infer a lost local Act to support a custom, *vide Chilton* v. *Corporation of London* (1870), 7 Ch. D. 735.

Inclosure Acts seem to be read as private agreements, but it has been held that they vest the sporting rights over inclosed land in the allottees, unless they are specially reserved to the lord,(*a*) by virtue of the rule that a claim in derogation of freehold must be read strictly against the person making it. Inclosure Acts.

2. "When the construction is perfectly clear," said Lord Esher in *Altrincham Union* v. *Cheshire Lines Committee* (1885), 15 Q. B. D. 603, "there is no difference between the modes of construing a public Act and a private Act, the only difference [which at any time exists being] as to the strictness of the construction to be given to it when there is any doubt as to the meaning." Construction of public and private Acts, how far alike.

"Private Acts," says Blackstone,(*b*) "have been often resorted to as a mode of assurance where, by the ingenuity of some and the blunders of other practitioners, an estate is so grievously entangled by a multitude of resulting trusts, springing uses, executory devises, and the like artificial contrivances—a confusion unknown to the simple conveyances of the common law—that it is out of the power of either the courts of law or equity to relieve the owner. . . . . A law thus made, though it binds all parties to the bill, is yet looked upon rather as a private conveyance than as the solemn Act of the Legislature." In this opinion he is supported by Lord Hardwicke in *Hornby* v. *Houlditch*, cited 1 T. R. 93. Such private Acts are not, therefore, to be construed in precisely the same way as public Acts, but rather like a conveyance or a contract, "according," as Lord Kenyon said in *Townley* v. *Gibson* (1789), 2 T. R. 705, "to the intention of the parties." Therefore, in order to construe it, "we may," as Lord Wensleydale said in *Rowbotham* v. *Wilson* (1860), 8 H. L. C. 347, at p. 363, "look at the surrounding circumstances at the date of it," just as though it were an agreement. So, if a private Act contains a proviso which, taken literally, is unreasonable, "words not inconsistent Private Acts for the purpose of assurance construed as conveyances.

(*a*) *Duke of Devonshire* v. *O'Connor* (1890), 24 Q. B. D. 468, 473.
(*b*) 2 Comm. 344.

with the words used [in the proviso] may be interpolated to give it a reasonable construction." So said Channell, B., in *Makin* v. *Watkinson* (1870), L. R. 6 Ex. 28, with regard to the construction of a covenant entered into between two contracting parties; and "this doctrine of *Makin* v. *Watkinson*," said Brett, J., in *London and South-Western Rail. Co.* v. *Flower* (1876), 1 C. P. D. 85, "is as applicable to the construction of a [private] Act of Parliament as to that of an ordinary contract." So, also, if an agreement has been entered into by the promoters of a private Bill, that agreement will not be upset by the private Act when it comes into force, although the Act may contain some stipulation which is contrariant to the agreement. Thus, in *Savin* v. *Hoylake Rail. Co.* (1865), L. R. 1 Ex. 11, it appeared that the plaintiff had agreed with the promoters of a railway Bill to bear the costs of obtaining it, but the Bill, when passed, was found to contain the usual clauses directing the railway company to pay the costs of obtaining the Bill; consequently, the plaintiff argued that the Act upset the previous agreement. But the Court held otherwise. "A private Act of Parliament," said Pollock, C.B., "is in the nature of an agreement between the parties; why, then, may not an agreement be made in derogation of that private Act, provided the agreement be not inconsistent with the public interest?"

Presumption against interference with private rights by private Acts.

If a private Act is passed empowering interference with private property or private rights, the rights of private individuals *may* be invaded without any notice having been previously given to them by the applicants to Parliament, and notwithstanding that they have no opportunity given them of opposing the passing through Parliament of the Act conferring these powers. "When an Act of this description [19 & 20 Vict. c. lxx.] is obtained by a company for purposes of profit, to confer upon them rights and powers which they would not have at common law, the provisions of such a statute must be somewhat jealously scrutinised, and I think that they ought not to be held to possess

any right unless it be given in plain terms or arise as a necessary inference from the language used."(*c*) "If such powers," said Selwyn, L.J., in *Lamb* v. *North, London Rail. Co.* (1869), 4 Ch. App. 528, "are *clearly* given by the Legislature, whatever the hardship is upon any individual, it is our duty to carry into effect the provisions of the Act." But if the language of the private Act is at all ambiguous, "every presumption," said Best, C.J., in *Scales* v. *Pickering* (1828), 4 Bing. 448, at p. 452, "is to be made against the company, and in favour of private property, for, if such a construction were not adopted, Acts would be framed ambiguously in order to lull parties into security." For "it is to be observed," as Tindal, C.J., said in *Parker* v. *Great Western Rail. Co.* (1844), 7 Scott N. R. 835, at p. 870, "that the language of these Acts of Parliament is to be treated as the language of the promoters of them. They ask the Legislature to confer great privileges upon them, and profess to give the public certain advantages in return. Therefore Acts passed under such circumstances should be construed strictly against the parties obtaining them, but liberally in favour of the public." "If there be any reasonable doubt," said Lord Cottenham in *Webb* v. *Manchester and Leeds Rail. Co.*, cited in *Dowling* v. *Pontypool Rail. Co.* (1874), L. R. 18 Eq. 746, "as to the extent of the powers [given to the railway company in their private Act], they must go elsewhere and get enlarged powers, but they will get none from me by way of construction of their Act of Parliament." "A company," said Lord Ellenborough in *Gildart* v. *Gladstone* (1809), 11 East 675, "in bargaining with the public, ought to take care to express distinctly what payments they are to receive, and the public ought not to be charged unless it is clear that it was so intended." Thus, in *Stourbridge Canal Co.* v. *Wheeley* (1831), 2 B. & Ad. 792, the plaintiffs' canal had been made under 16 Geo. 3, c. 28, and an action was brought

(*c*) Per Lord Herschell in *Scottish Drainage, &c., Co.* v. *Campbell* (1889), 14 App. Cas. 139, at p. 142.

to recover compensation from the defendants for using the plaintiffs' canal in a manner not strictly contemplated in their Act. In deciding against the plaintiffs' claim, Lord Tenterden said as follows: "The canal having been made under the provisions of an Act, the rights of the plaintiffs are derived entirely from that Act. This, like many other cases, is a bargain between a company of adventurers and the public, the terms of which are expressed in the statute, and the rule of construction in all such cases is now fully established to be this, that any ambiguity in the terms of the contract must operate against the adventurers and in favour of the public, and the plaintiffs can claim nothing that is not clearly given them by the Act." So we find that, if in a private Act clauses are introduced to preserve general rights, such clauses will be construed so as to protect such rights as far as possible. Thus, in *Clowes* v. *Staffordshire Potteries, &c., Co.* (1873), 8 Ch. App. 125, it appeared that a company had been empowered by a private Act to construct waterworks. The Act contained a clause protecting generally all rights which riparian owners possessed before the passing of the Act, and it was held that such a clause prevented the company from fouling a stream from which they were empowered to take water. "If a public company," said Mellish, L.J., "or any private individuals, obtain an Act of Parliament which they say enables them to take away the common law rights of any person, they are bound to show that it does it with sufficient clearness."

Private Acts considered as "contracts with the public."

The same considerations apply to Acts purporting to impose a charge on private persons. "However, we are dealing now, not with a public, but a private Act of Parliament, and I have always understood, with reference to private Acts as contradistinguished from public Acts of Parliament, that if a charge is imposed upon the person of an individual it must be so imposed in clear and express terms, and not left to implication. My lords, the original Act seems to have been prepared with very considerable care, and I would say with a due regard to

the rights and interests of others. But, after all, the language is the language of the drainage company. I presume they had no opponents. The Act presents the language of the company, and of the company alone."(*d*)

Railway and canal Acts.

Railway or canal Acts, obtained by companies for the purpose of enabling them to execute certain works, are often spoken of as "contracts with the public." In *Blackmore* v. *Glamorgan Canal Co.* (1832), 1 My. & K. 154, at p. 162, Lord Eldon said as to Acts of this kind: "When I look upon these Acts of Parliament I regard them all in the light of contracts made by the Legislature on behalf of every person interested in anything to be done under them, and I have no hesitation in asserting that, unless that principle is applied in construing statutes of this description, they become instruments of greater oppression than anything in the whole system of administration under our Constitution. Such Acts have now become extremely numerous, and from their number and operation they so much affect individuals, that I apprehend that those who come for them to Parliament do in effect undertake that they shall do and submit to whatever the Legislature empowers and compels them to do, and that they shall do nothing else; that they shall do and shall forbear all that they are required to do, and forbear as well with reference to the interest of the public as with reference to the interests of individuals." "To this language of Lord Eldon," said the Court of Error in *R.* v. *York and North Midland Rail. Co.* (1852), 1 E. & B. 858, "it is not necessary to take the least exception," if, that is, it is understood as simply meaning that "those who come for such Acts of Parliament do, in effect, undertake that they shall do and submit to whatever the Legislature empowers and compels them to do." The more correct way of speaking of the powers given by private Acts is put by Alderson, B., in *Lee* v. *Milner*

(*d*) Per Lord Fitzgerald in *Scottish Drainage, &c., Co.* v. *Campbell* (1889), 14 App. Cas. 139, at p. 149.

(1837), 2 Y. & C. Ex. 611, 618, as follows:—"These Acts have been called parliamentary bargains made with each of the landowners. Perhaps more correctly they ought to be treated as conditional powers given by Parliament to take the lands of the different proprietors through whose estates the works are to proceed. Each landholder has a right, therefore, to have the powers strictly and literally carried into effect as regards his own land, and has a right also to require that no variation shall be made to his prejudice in the carrying into effect the bargain between the undertakers and any one else." Likewise, in the above-mentioned case of *R.* v. *York and North Midland Rail. Co.* (1852), 1 E. & B. 864, the Court said: "It is said that a railway Act is a contract on the part of the public to make the line, and that the public are a party to that contract, and will be aggrieved if the contract may be repudiated by the company at any time before it is acted upon. Though commonly so spoken of, railway Acts, in our opinion, are not contracts, and ought not to be construed as such; they are what they profess to be, and no more; they give conditional powers which, if acted upon, carry with them duties, but which, if not acted upon, are not either in their nature or by express words imperative (*e*) on the companies to whom they are granted."

But, although it may be inexact to describe a private Act as a contract with the public, it seems correct to describe those parts of it which affect particular persons as contracts between them and the promoters of the Act, whether the clauses were inserted, as is often the case, by mutual agreement, or were forced upon them by the Legislature.(*f*)

Private Act, if regarded as a contract between the parties, to be

If this canon be adopted, we must simply look to see what the contract actually is, as contained within the four corners of the Act, and we must disregard anything

(*e*) As to when permissive Acts are obligatory, see above, p. 316.

(*f*) *Countess of Rothes* v. *Kirkcaldy Waterworks Commissioners* (1882), 7 App. Cas. 707 (Lord Watson).

that may have been said during the negotiation of the contract, or while the Bill was being discussed before a parliamentary committee.(*g*) "I cannot be assisted," said Wood, V.C., in *Steele* v. *Midland Rail. Co.* (1865), 1 Ch. App. 282, "in the construction of the Act by knowing what took place before the committee when both parties were arguing face to face until at length the committee came to a conclusion." Neither will plans, which may have been exhibited (whether in pursuance of any standing order of either House of Parliament or not) with regard to the work, in any way bind the parties unless those plans are ultimately incorporated into the Act itself. This question, which appears to have been at one time open to some doubt,(*h*) may be looked upon as now finally set at rest by the case of *North British Rail. Co.* v. *Tod* (1846), 12 Cl. & F. 722. In that case plans and sections of an intended railway had, in pursuance of standing orders of the House of Lords, been exhibited, and it appeared that according to these plans the railway would intersect the approach to the respondent's house at a point about 500 feet from his lodge and at a depth of about 15 feet below the surface. The respondent, relying on these representations, abstained from opposing the appellants' Bill in Parliament. After the Bill had received the royal assent the appellants served the respondent with a notice, by which it appeared that they intended to carry their railway across his approach in a totally different manner from that described in the plans and sections which they had deposited; consequently, the respondent applied to the Court for an injunction to restrain them from carrying out their undertaking in a manner different from that described in their plans. The Court below granted the injunction

construed, like contracts, according to what is contained within its four corners.

(*g*) *Vide ante*, p. 143.

(*h*) "I found that what had certainly been very much the opinion of the profession in this country, namely, that the parties were bound by the exhibition of such plans, had met with a very wholesome correction by the doctrine laid down by Lord Eldon in *Heriot's Hospital case* (1844), 2 Dow 301": per Lord Cottenham, *North British Rail. Co.* v. *Tod* (1846), 12 Cl. & F. 722, at p. 732.

prayed for, but the House of Lords, on appeal, reversed this decision, and, in delivering his judgment, Lord Cottenham said as follows: "The plans which are required to be exhibited by the Standing Orders, except so far as they are made part of the Act, are entirely out of the question. When we are looking to what the rights of the parties are, we can only look to the Act of Parliament by which these rights are regulated. Plans or proceedings previous to the enactment can have no effect upon the enactments themselves." And Lord Campbell added: "What is the construction of the Act of Parliament? The Act of Parliament must be considered as overruling and doing away with everything that has taken place prior to the time when the Act of Parliament passed, and renders the representation or proposal of the company, pending the Act of Parliament, of no avail. Many cases have occurred in the common law courts in which it has been held that everything that takes place before a written contract is signed by the parties, is entirely to be disregarded in construing the contract by which they are bound. If the respondent had been cautious . . . . he would have had a special clause introduced into the Act to protect his rights. . . . . But he abstained from introducing any such clause, and therefore he must be considered as having acceded to the company having all the powers which the Act confers upon them, under which powers they are at liberty to deviate in the manner proposed."

Classification of contents of private Acts.

Acts regulating railway and canal and water and gas companies contain provisions of several kinds. The main are—

(1) Those affecting the internal constitution of the company.

(2) Those regulating the dealings of the company with passengers or owners of goods to be carried.

(3) Those affecting the Crown or local authorities.

(4) Those empowering the acquisition of lands.

Every private Act passed for the purpose of carrying

out some general scheme (as, for instance, the making of a railway or the supplying of a certain district with water or gas), must contain general clauses, by which the general scheme is regulated, such coming under heads (1), (2), and (3). "Many of the provisions of Acts of Parliament constituting companies," said Bramwell, L.J., in *Att.-Gen.* v. *Great Eastern Rail. Co.* (1878), 11 Ch. D. 501, "are not provisions as between the companies and the public, but agreements among the shareholders *inter se*, which constitute their agreement of partnership, their instrument of settlement." As to heads (2), (3), the Act is substantially public.

General scheme of private Act not controlled by clauses in nature of bargains with particular individuals.

The clauses under head (4) do not affect the public at large, but only the owners of lands through or near which the works of the company are carried. They are subdivided into two kinds of clauses—namely, those which are in the nature of private bargains with certain particular individuals, which we may call *particular* clauses; and those by which the object to be effected is regulated, which may be termed *general* clauses. In construing private Acts the *particular* clauses ought not to have any effect upon the construction of the *general* clauses under any of the heads indicated. This rule of construction was enunciated by Lord Cairns in *East London Rail. Co.* v. *Whitchurch* (1875), L. R. 7 H. L. 89, and was adopted by the House of Lords. "These clauses," said he, "are in the nature of private arrangements, put into the Act at the instance of particular parties, who either act with greater caution than other parties, or act with a desire to make a better bargain for themselves than other parties have made. They are not put in by the Legislature as part of a general scheme of legislation which it desires to express, but they are in the nature of particular contracts, and ought not to have any effect upon the construction of a general clause."

In *Mersey Docks and Harbour Board* v. *Henderson* (1888), 13 App. Cas. 599, the portions of a private Act relating to tonnage dues upon export and import were

Reference to Acts *in pari materiâ*.

construed by reference to the Customs Acts in force at the time when the private Act was passed, inasmuch as they create the machinery and regulate the trade and commerce of the country in respect of export and import, and are therefore those from which the Legislature would naturally adopt the phraseology when imposing dock rates in respect of trade in goods to and from a port.

CHAPTER II.

EFFECT OF PRIVATE ACTS.

	PAGE
1. Private Act does not bind strangers	519
Private Act binds all named in it, even without concurrence, and in absence of notice	520
2. Private Act binds persons dealing with company formed under it	522
3. Repeal of private by public Act	522
Repeal of public by private Act	523
Effect of local Act on taxing Act	523
Repeal of private by private Act	525
4. Relieving against private Act if obtained by fraud	525
5. Setting aside fraudulent agreement to obtain a private Act	526
6. Creating new jurisdiction by private Act	528

Private Acts do not bind strangers.

1. "It is said in the books," said Wigram, V.C., in *Dawson* v. *Paver* (1844), 5 Hare 415, at p. 434, "that public Acts bind all the Queen's subjects. But of private Acts of Parliament it is said that they do not bind strangers, unless by express words or necessary implication the intention of the Legislature to affect the rights of strangers is apparent in the Act." "If in a local and personal Act," said Lord Blackburn in *River Wear Commissioners* v. *Adamson* (1877), 2 App. Cas. 766, "we found words that seemed to express an intention to enact something quite unconnected with the purpose of the promoters, and which the committee would not, if it did its duty, have allowed to be introduced into such an Act, I think the judges would be justified in putting almost any construction on the words that would prevent its having that effect." In *Lucy* v. *Levington* (1671), 1 Vent. 176, it was said that "every man is so far a party to a private Act as not to gainsay it, but

not so as to give up his interest. 'Tis the great question in *Barrington's case* (1611), 8 Rep. 136. The matter of the Act there directs it to be between the foresters and the proprietors of the soil, and therefore it shall not extend to the commoners to take away their common. Suppose an Act says, Whereas there is a controversy concerning land between A. and B., it is enacted that A. shall enjoy it, this does not bind others, though there be no saving clause, because it was only intended to end the difference between these two."

Private Act binds all parties named in it or not.

A private Act binds all parties named in it, whether or not they concurred in passing it. This was much discussed in the case of *Earl of Shrewsbury* v. *Scott* (1859), 6 C. B. N. S. 1. The facts of that case, so far as relates to this point, were that in 1718 a private Act, 6 Geo. 1, c. 29, was obtained to settle the Shrewsbury estates, and by s. 8 of that Act it was enacted that the estates should always follow the title and should be inalienable, but the section contained a proviso that, if the first or any other son of the then earl or any the heirs male of any such son should abjure the Catholic religion and become a Protestant, his disability to alienate should cease. In 1856 the then earl, being tenant in tail, alienated the estates, and one of the grounds relied upon by the alienee was that the private Act of 1718 was not binding upon any tenant in tail, the tenant in tail in 1718 not having been a party to the Act. As to this argument, Cockburn, C.J., in his judgment said: "We have been reminded that a private Act of Parliament has been said upon high authority to be little more, if anything, than a private conveyance between those who are parties to it, and to a certain extent I agree in that proposition. Recitals in a private Act could never bind persons who were not parties to the Act. Provisions, however general in their terms, could not be held to affect the rights of parties who were not before Parliament and whose rights were never intended to be affected. Thus, if a tenant for life should obtain power to convey an estate in fee, no Court would hold that it

could have been the intention of the Legislature to bind a remainderman who was not a party to the Act or named in it. But if an Act in positive and express terms professes to affect and does affect the rights of parties named in it, it is quite impossible, as it seems to me, to maintain that a court of law is not bound to give effect to the provisions of such an Act, although such parties may not have concurred in passing it."

and whether or not they had notice of its introduction into Parliament.

A private Act binds all parties named in it, whether they have had notice of its introduction into Parliament or not. This was pointed out in *Edinburgh Rail. Co.* v. *Wauchope* (1842), 8 Cl. & F. 710, in consequence of a note appended to his interlocutor by the Lord Ordinary to the effect "that he is by no means satisfied that due parliamentary notice was given to the pursuer, previous to the introduction of the private Act for regulating the Edinburgh Railway Company . . . . and that he should strongly be inclined to hold that rights previously established could not be taken away by a private Act, of which due notice was not given to the party meant to be injured." As to this Lord Cottenham said, p. 720: "It appears that in the Court below an impression existed that an Act of Parliament might or might not be binding on parties according as there might or not be proof that the individual to be affected by it had had notice of the Act while in progress through the two Houses [that the standing orders for the protection of private rights not having been complied with, the authority of the Act of Parliament itself would be affected (*a*)]. There is no foundation for such an idea, but such an impression appears to have existed in Scotland, and I express my clear opinion upon it, that no such erroneous idea may exist in future." And Lord Campbell added, p. 723: "The Lord Ordinary seems to have been of opinion that if this Act professed to take away Mr. Wauchope's rights, it would have had that effect only if due notice had been given him of the introduction of the Bill into the House

(*a*) *Loc. cit.* p. 720, per Lord Brougham.

of Commons, but that, notice not having been given to him, it could not have such effect, but became wholly inoperative. I cannot but express my surprise that such a notion should ever have prevailed. There is no foundation whatever for it. All that a Court of justice can do is to look to the Parliamentary Roll. If from that it should appear that a Bill had passed both Houses and received the royal assent, no Court of justice can inquire into the mode in which it was introduced into Parliament, or into what was done previous to its introduction, or what passed in Parliament during its progress in its various stages through both Houses."

Private Act also binds all persons dealing with a company created by it.

2. "If need was," said Erle, C.J., in *Cahill* v. *London and N. W. Rail. Co.* (1861), 10 C. B. N. S. 154, at p. 172, "I should be prepared to hold that, where a company is created by Act of Parliament, having privileges and rights granted to them and liabilities and duties imposed upon them in respect of their incorporation, parties dealing with them must be taken to be cognizant of the provisions of the Act of Parliament granting those privileges and rights and imposing those duties and liabilities, although it be a private Act." This *dictum* of Erle, C.J., which was acquiesced in by Willes, J., and Byles, J., is now well established as a statement of the law.

Repeal of special by general Act.

3. In the absence of any indication of intention on the part of the Legislature, local Acts are not repealed by public general Acts.(*b*)

"There is another rule which has been laid down, which is a good rule if it is properly applied, namely, that where there has been a particular rule established by custom or by statute, where there is some particular law standing, and a subsequent enactment has general words which would repeal the particular law or particular custom if they were taken in all their generality, yet nevertheless the first particular law is not to be repealed unless there is a sufficient indication of intention to repeal

(*b*) *Fitzgerald* v. *Champneys* (1861) 30 L. J. Ch. 777. *Vide ante*, pp. 357, 360.

it. It is not to be repealed by mere general words; the two may stand together, the first, the particular law, standing as an exceptional proviso upon the general law. And," he continued, "I think, on consideration, and after looking into the cases which have been referred to, that although the doctrine itself is sound, it was misapplied in this case." He went on to point out that in all the cases cited (*c*) there was a statute in favour of a particular class of persons or the property.

In the Clauses Acts of 1845 and 1847 provisions are inserted requiring promoters to keep a copy of their private Act and to give access to it on demand. There is no positive rule (*d*) which prevents a public Act from being repealed either expressly or by implication by a private Act; but, as Malins, V.C., said in *Perring* v. *Trail* (1874), L. R. 18 Eq. 91, "a Court ought never to presume an intention to modify or repeal a public Act by a private one," for private Acts "demand peculiar vigilance, lest public laws be lightly set aside for the benefit of particular persons or places."(*e*)

Repeal of public Act by private Act.

In *City and South London Rail. Co.* v. *London County Council* (1891), 2 Q. B. 513, it was held that the Act regulating the undertaking of the company exempted them from the Metropolitan Building Acts. It is more accurate to describe the effect of a private or a public Act by saying that the former creates an exception or exemption than by saying that it effects a repeal.

A local and personal Act does not repeal public Acts relating to taxation.

Effect of local Acts on taxing Acts.

The Mersey Docks and Harbour Act, 1857, s. 284, provides for the application of moneys collected, levied, borrowed, and raised or received under the Act, and concludes: "except as aforesaid such moneys shall not be applied by the board for any other purpose whatsoever."

(*c*) Lord Blackburn in *Garnett* v. *Bradley* (1878), 3 App. Cas. at p. 967.

(*d*) May, Parl. Pract. (9th ed.) p. 753, states that 7 & 8 Geo. 4, c. 31, was amended by 2 & 3 Will. 4, c. lxxviii. (local and personal), and that in 1864 the City of London Tithes Act repealed a public Act of Henry VIII.

(*e*) May, Parl. Pract. (9th ed.) p. 753.

S. 285 provides for liability to local and parochial rates, but the Act is silent as to imperial taxation. It was thereupon contended in *Mersey Docks* v. *Lucas* (1883), 9 App. Cas. 891, that the Mersey Docks and Harbour Board were exempted from liability to income tax beyond the sum paid as interest on the debt incurred for the acquisition and working of their property.

Lord Selborne said(*f*): "In advising the House in *Mersey Docks* v. *Cameron* (*g*) and [in] *Jones* v. *Mersey Docks*,(*h*) my noble and learned friend [Lord Blackburn], who then delivered the opinion of the judges, which was adopted by the House in a case where there was no such special clause [as s. 285], said, 'There are no negative words prohibiting the application of the rates to payment of the poor rates, and we think, in conformity with the decision in *Tyne Commissioners* v. *Chirton*,(*i*) that enactments directing that the revenue shall be applied to certain purposes and no other, are directory only, and mean that, after all charges imposed by law on the revenue have been discharged, the surplus, or free revenue, which otherwise might have been disposed of at the pleasure of the recipients, shall be applied to these [the specified] purposes.'" After expressing full concurrence with the opinion quoted, Lord Selborne added (p. 902): "Even independently of the sound general doctrine laid down in the passage which I have read . . . . it seems to me that the view expressed in the Court of Appeal (*k*) is perfectly right, and that it would be a very strange thing indeed, and wholly inconsistent with the principles which are well established as to the construction of Acts of Parliament, and I may say more especially of local and personal Acts of this nature, of duties given to the Crown, taxes imposed by the authority of the Legislature by public Acts for public purposes were held to be taken away by general Acts of this kind in a local and personal Act

(*f*) *Loc. cit.* 901.
(*g*) (1865) 11 H. L. C. 443, 480.
(*h*) *Ibid.*
(*i*) (1859) 1 E. & E. 516.
(*k*) Not reported.

and an Act in which the Crown is nowhere mentioned so as to be bound by it. The addition of an express saving clause as to parochial and local rates cannot, in my opinion, prevent the application to public taxes of the principles which, upon the enacting words, would otherwise have been applicable."

The same learned lord pointed out another difficulty—viz., that income tax is imposed in one sense in each year by the Continuance Acts, or the Acts varying the rate from time to time; and in another sense by the Income Tax Act, which is referred to and incorporated in subsequent Acts; so that the tax may be said to be imposed subsequently to any given local Act under which exemption is claimed.(*l*)

5 & 6 Vict. c. 35.

Repeal of private Act by private Act.

"It is a rule of law," Turner, L.J., is reported to have said in *Birkenhead Trustees* v. *Laird* (1854), 23 L. J. Ch. 458, "that one private Act of Parliament cannot repeal another, except by express enactment . . . . that is to say, the rule of law as to the construction of such Acts is not to do anything which would be in effect a repeal of any clause, unless in the subsequent Act some words are inserted which would operate as an express repeal of the former.(*m*) . . . . That appears to be the rule as laid down by the learned Judge Jenkins in his work called Eight Centuries of Reports, where, in the Fifth Century, Case 11, he lays it down that 'a special statute does not derogate from a special statute without express words of abrogation.'"

It is said that a private Act may be relieved against, if obtained by fraud.

4. It is said by Blackstone(*n*) that a private Act, "when obtained upon fraudulent suggestions, hath been relieved against." And this proposition is adopted by Cruise.(*o*) Cruise, however, points out(*p*) that formerly any Act of Parliament, private as well as public, "was

(*l*) *Cf. Commissioners of Income Tax* v. *Pemsel* (1891), A. C. 532, at p. 591, per Lord Macnaghten.

(*m*) This *dictum* of Turner, L.J., is not contained in the report of the case in 4 De G. M. & G. 742.

(*n*) 2 Comm. 346.

(*o*) Digest, vol. 5, tit. Private Act, s. 50 (p. 28, ed. 1824).

(*p*) *Loc. cit.* s. 49.

considered as an assurance of so high a nature that although it was obtained by fraud yet it could not be relieved against by any of the Courts of law or equity, but only by the power that made it, that is, by Parliament." In support of Blackstone's proposition Cruise gives an abstract of the case of *Mackenzie* v. *Stuart*, decided by the House of Lords on appeal from the Court of Session in 1754; and cites the case of *Biddulph* v. *Biddulph*, decided by the House of Lords in 1790. In neither of these cases, however, is the doctrine discussed, or any reasons given for the decision. The question has never been solemnly discussed in any modern case. In *Stead* v. *Carey* (1845), 1 C. B. 496, at p. 516, Cresswell, J., said, "It is something new to impeach an Act of Parliament by a plea stating that it was obtained by fraud;" and in *Waterford Rail. Co.* v. *Logan* (1850), 14 Q. B. 672, the Court refused to allow a plea alleging that "the Act was obtained by the fraud of the plaintiffs,"(*q*) and the proper course to adopt when a Bill or clause is smuggled through Parliament is to bring in a Bill to repeal the clause in question.(*r*)

Can secret and fraudulent agreement for obtaining a private Act be set aside?

5. It is also said that in England (*s*) any agreement which may be made to disarm opposition to a Bill, and which is intended by both parties to the agreement to be kept secret, will be held invalid as being a fraud upon the Legislature, and contrary to the principles of public policy. Thus, in *Vauxhall Bridge Co.* v. *Earl Spencer* (1817), 2 Madd. 356, it appeared that, in order to induce

---

(*q*) See also *dicta* of Willes, J., in *Lee* v. *Bude* (1871), L. R. 6 C. P. 580, cited *ante*, p. 81.

(*r*) The Torquay Harbour and District Act, 1886, s. 38, as to Sunday processions, was repealed in 1888 by a Pier and Harbours Confirmation Act (No. 2). A private Bill is now before Parliament, promoted by the Salvation Army, to repeal a similar clause in the Eastbourne Improvement Act, 1885.

(*s*) "In America," said Sedgwick in his treatise on Statutory Law (2nd ed.), p. 53, "contracts made with a view to secure the passage of legislative enactments have been held to be void as against public policy. Thus a contract to procure the passage of an Act by the Legislature by using personal influence, to pay a sum for withdrawing opposition to the passage of a law touching the interests of a corporation, have all been held void." See May Parl. Pract. (9th ed.) p. 756, *note* 2.

the proprietors of Battersea Bridge not to oppose a private Act which the Vauxhall Bridge Company were applying to Parliament for, the plaintiffs paid into the hands of trustees a certain sum of money, which was to be handed over to the defendants, the proprietors of Battersea Bridge, as soon as the Act was passed. No opposition was made to the Bill by the defendants, and the Act was passed, but the plaintiffs then disputed the right of the defendants to have this sum of money handed over to them, on the ground that the agreement not to oppose the passing of the Act was invalid, as being a fraud upon the Legislature and contrary to public policy. And so it was held by the Court. "This agreement," said Plumer, V.C., "was secretly made during the pendency of the Bill in Parliament, and that secrecy is the great ground of objection to it. . . . . The object of the agreement was to prevent an opposition to the Bill in Parliament, and it was to be concealed from the Legislature. Such an underhand agreement was a fraud upon the Legislature and contrary to principles of public policy. The contract, therefore, is invalid."(*t*) But it seems from the case of *Lord Howden* v. *Simpson* (1839), 10 A. & E. 817, that the mere fact of an agreement of this kind being kept secret is not sufficient to invalidate it; it must also be proved that there was an intention to deceive the Legislature by making some false representation to it. In *Lord Howden* v. *Simpson* it appeared, said the Court, "that the plaintiff and the defendant had agreed together to represent to the Legislature the line of road described in the then pending Bill as the line which was to be adopted and acted upon, whilst, in truth, they intended at the time to apply for, and adopt and act on, another, if obtained. . . . . The supposed fraud [therefore] consists in an intention to make a *false* representation to the Legislature, by stating the object of the adventurers to

(*t*) Reversed by Lord Ellon on appeal (1821), Jac. 64, on other grounds.

be to carry one line into effect and concealing the design of applying for another. . . . . It is not enough that the existence of such an agreement was at the time of entering into it, and afterwards, in fact, kept secret from the Legislature and all the world besides by both parties. The quality of the agreement, whether fraudulent or not, must depend upon the intention of the parties to it at the time of making it, and if there did not then exist the intention of deceiving the Legislature, by concealing from it, whilst the petitioners were asking for one set of powers, the purpose of asking afterwards for others, the agreement cannot be void." So, also, in *Shrewsbury Rail. Co.* v. *London and North-Western Rail. Co.* (1849), 2 Mac. & G. 324, it appeared that a Bill had been brought in for the purpose of enabling one company to grant to another company a lease of certain lines of railway, and this Bill was opposed by a third company, but ultimately an agreement was come to, by which, in consideration of the third company withdrawing their opposition, the other two companies engaged to conduct their traffic in a certain specified way, so as not to prejudice the interests of the third company. On a Bill being filed to enforce this agreement, it was contended that the agreement was a fraud upon Parliament. "I cannot, however," said Lord Cottenham, "see how that can be the case. . . . . It cannot be said that the parties could not come to a private arrangement between themselves. The opposition to a Bill must be supposed to be for the purpose of guarding the particular interest of the parties opposing. If those objects are attained by any private arrangement, it is no fraud on Parliament."

Creating new jurisdiction by private Act.

6. Although the Legislature can undoubtedly in a private Act, by specific enactment and in terms, make any provision it pleases for a particular state of circumstances, it has been held that Parliament cannot by a private Act in a specific and particular case confer upon a Court of justice a jurisdiction to do something which is beyond the general jurisdiction of that Court, and any

provision in a private Act professing to do so would be inoperative. In *Green* v. *Mortimer* (1860), 3 L. T. 642, by a private Act called Carew's Estate Act, 1857, certain lands and stock were vested in trustees to pay the yearly income to C., and it was enacted that the Court of Chancery might, so far as the rules of law and equity and the jurisdiction of the Court would admit, make orders so as to insure that the life estate of C. should be inalienable. By an agreement made with one Ford C. covenanted to charge his life interest with the payment of a certain sum of money, but by an order of the Court made subsequently to the agreement it was ordered that the whole of the income payable to C. for his life should be inalienable by him, and from time to time when it became payable should be applied solely for his exclusive personal enjoyment. Upon this a Bill was filed by the plaintiff on Ford's behalf against the trustees, submitting that notwithstanding the order Ford was entitled to a charge in accordance with the agreement made by C. with Ford. To this Bill the trustees demurred, and contended that C. took, not a life estate *simpliciter*, but an inalienable life estate which it was plainly the object of the Legislature to confer upon him. But the Lord Chancellor (Lord Campbell), in giving judgment against the demurrer, expressed his great surprise that such an Act should appear upon the statute book; it must have been passed *per incuriam*. The Act contained something which was quite absurd, and in terms gave the Court power to do that which was quite impossible, for it was clear that the Court could have no power to do that which the Act professed to empower it to do. The order by which the declared intentions of the Act were to be carried out was *ultra vires* of the Court, for there could be no power to give such a qualification to C.'s interest. There must be the same power in C. to encumber his estate as if the Act had never passed.

But this decision stands by itself as a warning, and not as a precedent. A very large number of Acts, usually

described as private, do create a new jurisdiction, and new offences.(*u*) And in *Cairns* v. *Linton* (1889), 16 Rettie (Justiciary) 84, the Court of Session felt constrained to hold that a local Act had given the Sheriff of Midlothian a large jurisdiction in the rest of Scotland as to execution of process.

(*u*) *E.g.*, the Eastbourne Improvement Act, 1885.

APPENDIX A.

CERTAIN WORDS AND EXPRESSIONS, USED IN STATUTES, WHICH HAVE BEEN JUDICIALLY OR STATUTABLY EXPLAINED.

ABSENCE, in 20 & 21 Vict. c. 85, s. 23, with regard to a lawsuit, means non-appearance in the suit, and not absence without knowledge or notice of the suit. *Phillips* v. *Phillips* (1866), L. R. 1 P. & M. 169.

ABSOLUTE (ASSIGNMENT), in Judicature Act, 1873, s. 25 (6), means an assignment absolute in form and intended to operate in substance by passing the legal property in the *chose in action*, even if it contains a trust in respect of the amount recorded in respect of the *chose in action*. *Comfort* v. *Betts* (1891), 1 Q. B. 737.

ACCORDANCE WITH THE FORM (IN), does not mean in the form, *i.e.*, not verbal and literal following, but substantial following of the form. *Thomas* v. *Kelly* (1888), 13 App. Cas. 506, 519; *Re Heseltine* (1891), 1 Ch. 464, 472.

ACQUISITION OF GAIN, in the Companies Act, 1862 (25 & 26 Vict. c. 89), s. 4, as applied to a company or society, does not mean the acquisition of gain to the society itself, but gain to any member. *Shaw* v. *Benson* (1883), 11 Q. B. D. 563, following *Padstow Total Loss Association* (1881), 20 Ch. D. 137.

ACT TO BE PASSED IN THE PRESENT SESSION.—43 Geo. 3, c. 122, s. 2, enacted that certain duties were to be "assessed and collected under the regulations of any Act *to be passed* in the present session of Parliament for consolidating certain of the provisions, &c." The Act was passed on August 11, 1803, but the Act "for consolidating certain of the provisions, &c.," 43 Geo. 3, c. 99, had been passed on July 27, 1803. It was argued in *Nares* v. *Rowles* (1810), 14 East 510, that the words "to be

passed" could not refer to 43 Geo. 3, c. 99, as it had been passed prior to August 11. "The session," said Lord Ellenborough, "is a thing of continuity, and therefore, when the legislature speak of 'any Act to be passed in that session,' they mean any Act that shall be passed from the commencement to the conclusion of the session, embracing both the past and future portions of it. . . . . In referring the words to the whole period of the session, we violate no rule of grammar, they may fairly be taken to mean any Act which at the expiration of that session shall have been passed for the purpose, and, with reference to the whole session from its commencement, it is 'an Act to be passed in that session.'"

ACTION, in 29 & 30 Vict. c. 19 (Parliamentary Oaths), s. 5, is used in its generic sense, as including proceedings by the Crown, as well as by the subject; Selborne, L.C., *Bradlaugh* v. *Clarke* (1882), 8 App. Cas. at p. 361 (*diss.* Lord Blackburn, at p. 375).

„ See *Cause of action*, *infra*, p. 538.

ACTIONS AND SUITS, in 53 Geo. 3, c. 216, held not to include a bankruptcy petition. *Guthrie* v. *Fisk* (1824), 3 B. & C. 178.

ACTS OR PRACTICES, in s. 59 of the Stamp Act, 1870, c. 97, s. 59 (see now 54 & 55 Vict. c. 39, s. 43), means "carries on business with a *quasi*-permanent habitat," and points to a series of acts, and not to an isolated transaction such as attending a taxation on a retainer for that specific purpose. *Re Horton* (1881), 8 Q. B. D. 434 (Field and Cave, JJ.).

ADDRESS, in the Bills of Sale Act, 1878, Amendment Act, 1882 (45 & 46 Vict. c. 43), ss. 8, 9, does not mean place of residence, but a place where the witness could be found by letter or call. *Re Heseltine* (1891), 1 Ch. 464.

ADJOINING OWNER, in Metropolitan Management Act, 1855 (18 & 19 Vict. c. 120), s. 85, includes a tenant for years of part of a house. *Fillingham* v. *Wood* (1891), 1 Ch. 51.

ADJOURN, in 15 & 16 Vict. c. 57, s. 4, is used in its popular sense, *i.e.*, "deferring or postponing an inquiry to a future day." *Fitzgerald's case* (1869), L. R. 5 Q. B. 18.

ADMIRALTY.—The Lord High Admiral of the United Kingdom for the time being, or the Commissioners for the time being for executing that office. Int. Act, 1889 (c. 63), s. 12 (4).

ADMITTED SET-OFF, in the County Courts Act, 1888, c. 43, s. 27, means set-off admitted by *both* parties. *Hubbard* v. *Goodley* (1890), 25 Q. B. D. 156.

ADVANTAGE, in the Official Secrets Act, 1889 (52 & 53 Vict. c. 69), s. 7, includes (1) "any office or dignity, and any forbearance to demand any money or money's worth, or valuable thing;" (2) "any aid, vote, consent, or influence, or pretended aid, vote, consent, or influence;" and (3) "any promise or procurement of an agreement or endeavour to procure, or the holding out of any expectation of any gift, loan, fee, reward, or advantage as above defined."

ADVISEDLY, in 13 Eliz. c. 12, s. 2, means "deliberately," *i.e.*, "after consideration" or "not inadvertently," but not merely "intentionally." *Heath* v. *Burder* (1862), 15 Moore P. C. 147.

AFFECTED INJURIOUSLY.—See *Injuriously affected.*

AFFIDAVIT.—See *Oath.*

AFTERNOON.—In 9 Geo. 4, c. 61, sch. C., the expression "afternoon divine service" means "the earlier part of the time from noon to midnight as distinguished from the evening." Per Erle, J., in *R.* v. *Knapp* (1853), 2 E. & B. 451.

AGENT.—*Vide ante*, p. 193.

AGGRIEVED (PERSON).—For purposes of ascertaining rights of appeal, any person who is in any sense a party to a legal proceeding is aggrieved by a wrong decision with regard to the proceeding. *Reed & Co.* (1887), 19 Q. B. D. 174.

„ A term of very ancient origin, appearing on the Statute Roll of 1363: "*et outre le dit Roy voet que si nul se sent grevez, mette avant sa petition en ce Parlement et il en avera convenable respons*" (*vide* 1 Cliff. 272).

AGRICULTURE, in the Board of Agriculture Act, 1889 (52 & 53 Vict. c. 30), s. 12, includes horticulture.

ALL CONTRACTS, in 37 & 38 Vict. c. 62, s. 1, does not include marriage settlements made by infants, but only contracts falling within the three classes specified in the Act. *Duncan* v. *Dixon* (1890), 44 Ch. D. 211 (Kekewich, J.); *contra*, *Ex parte* Jones (1881), 18 Ch. D. 122, per Jessel, M.R.

AMUSEMENT.—See *Entertainment or amusement.*

AND, as used in a turnpike Act of 42 Geo. 3, is not to be taken conjunctively, but disjunctively or distributively, that is, as equivalent to "or." *Waterhouse* v. *Keen* (1825), 4 B. & C. 200. See also *Townsend* v. *Read* (1861), 10 C. B. N. S. 317; but see as to "and" in a will, *Re Sutton* (1885), 28 Ch. D. 466.

ANNUAL VALUE, in the Grand Junction Waterworks Acts, 1826 (7 Geo. 4, c. 140), s. 27, and 1852 (15 & 16 Vict. c. 157), s. 46, means "net annual value" as defined in the Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), s. 1. *Dobbs* v. *Grand Junction Waterworks Co.* (1883), 9 App. Cas. 49.

„ in the Reform Act, 1832 (2 & 3 Will. 4, c. 45), s. 27, means the fair annual rent without deduction for landlord's repairs. *Colvill* v. *Wood* (1846), 2 C. B. 210.

APPROACH.—See *Immediate approach.*

ARMAMENT, in the Naval Defence Act, 1889 (52 & 53 Vict. c. 8), s. 8, means "reserves as well as outfit."

ARTIFICIAL RAISING OF TEMPERATURE, PRODUCTION OF HUMIDITY, includes "the raising of temperature or the production of humidity by any artificial means whatsoever *except by gas* when used for lighting purposes only." Cotton Cloth Factories Act, 1889 (52 & 53 Vict. c. 62), s. 4.

ASSESSOR (Sc.).—The assessor appointed and acting under the (Scotch) Valuation Acts, see 49 Vict. c. 15, s. 3.

ASSIGNEE, in s. 37 of the Solicitors Act, 1843 (6 & 7 Vict. c. 73), does not mean assignee in bankruptcy, but assignee within the meaning of s. 25 of the Judicature Act, 1873 (36 & 37 Vict. c. 66). *Ingle* v. *McCutchan* (1884), 12 Q. B. D. 518.

ASSIZES, in England, Wales, and Ireland, means the courts of assize usually held in every year, including the sessions of the Central Criminal Court.

„ does not include a court of assize held under a special commission, or held in Ireland under 40 & 41 Vict. c. 57, s. 63. Int. Act, 1889 (c. 63), s. 13 (5).

ASSURANCE, in 17 & 18 Vict. c. 36, s. 7, does not include a receipt containing an inventory, and given by a sheriff's officer for the price of goods sold under an execution. *Woodgate* v. *Godfrey* (1879), L. R. 5 Ex. 24.

AT THE TRIAL, in 38 & 39 Vict. c. 50, s. 6, means during or immediately at the end of the trial, and *not* after a lapse of an hour and a half after judgment given. *Pierpoint* v. *Cartwright* (1880), 5 C. P. D. 139; and see *Upon the trial.*

ATTACHMENT FOR DEBT, in the Sheriffs Act, 1887, s. 14 (1), does not include arrest on an order of commitment under the Debtors Act, 1869, s. 5. *Mitchell* v. *Simpson* (1890), 25 Q. B. D. 183.

ATTEST, in 7 Will. 4 and 1 Vict. c. 26, s. 9, means "be present and see what passes, and, when required, bear witness to the fact." Per Dr. Lushington in *Bryan* v. *White* (1850), 2 Robertson 317; followed in *Sharp* v. *Birch* (1881), L. R. 8 Q. B. D. 113, as to the meaning of the word as used in 41 & 42 Vict. c. 31, s. 6; see also *Ford* v. *Kettle* (1882), 9 Q. B. D. 143.

ATTORNEY-GENERAL, in imperial Acts, or Acts relating to the British Islands or the whole of the United Kingdom, is used as a compendious expression for the law officers of the Crown in each part of the United Kingdom or empire affected by the enactment —*e.g.*, 1889, c. 52, s. 7 (2), Official Secrets; c. 69, s. 4 (2), Public Bodies Corrupt Practices.

AUTHOR OF A PHOTOGRAPH (within 25 & 26 Vict. c. 68, ss. 1, 4) means the person who took the negative. *Nottage* v. *Jackson* (1883), 11 Q. B. D. 630. *Vide ante*, p. 207.

BANK (THE), in the National Debt Redemption Act, 1889 (c. 4, s. 8), means the Governor and Company of the Bank of England, or the Governor and Company of the Bank of Ireland, as the case may require.

„ OF ENGLAND, as circumstances require, means (*a*) the Governor and Company of the Bank of England, or (*b*) the Bank of the Governor and Company of the Bank of England. Int. Act, 1889 (c. 63), s. 12 (18).

„ OF IRELAND, as circumstances require, means (*a*) the Governor and Company of the Bank of Ireland, or (*b*) the Bank of the Governor and Company of the Bank of Ireland. Int. Act, 1889 (c. 63), s. 12 (19).

BANKER, in the Bank Charter Act, 1844 (7 & 8 Vict. c. 32), means a person carrying on the business of banking, whether by the issue of bank-notes or otherwise.

BANKS.—The earlier Acts relating to banks apply to banks of issue as distinguished from banks of deposit. *Att.-Gen.* v. *Birkbeck* (1884), 12 Q. B. D. 605, at p. 616. *Vide ante*, pp. 189, 190, 193, 225.

BARE TRUSTEE, in 38 & 39 Vict. c. 87, s. 48, means a trustee "without any beneficial interest," but *quære* whether the fact that he has active duties to perform makes any difference. *Morgan* v. *Swansea* (1876), 3 Ch. D. 585.

BEERHOUSE means "a place where beer is sold to be consumed on the premises, and BEERSHOP is a place where beer is sold to be consumed off the premises." Per Fry, J., in *Holt* v. *Collyer* (1880), 16 Ch. D. 721; *sed quære et vide cas. ibi cit. Vide Nicoll* v. *Fenning* (1882), 19 Ch. D. 267.

BELONGING TO SUCH SHIP.—See *Persons belonging to such ship.*

BEYOND THE SEAS, in 21 Jas. 1, c. 16, s. 7, has the same meaning in law as "out of the realm" or "out of the land." *Ruckmaboye* v. *Lulloobhoy* (1851), 8 Moore P. C. 4.

BOARD OF TRADE, in all Acts, means the Lords of the Committee for the time being of the Privy Council appointed for the consideration of matters relating to trade and foreign plantations. Int. Act, 1889 (c. 63), s. 12 (8).

BOOK, in 5 & 6 Vict. c. 45, s. 24, includes periodical. *Henderson* v. *Maxwell* (1877), 4 Ch. D. 163.

„ PUBLISHED IN NUMBERS, in Copyright Act, 1886 (49 & 50 Vict. c. 33), s. 11, "includes any review, magazine, periodical work, work published in a series of books or parts, transactions of a society or body, and other books of which different volumes or parts are published at different times."

BOROUGH.—*Vide ante*, p. 178.

BOUNDARY.—See *Place having a known boundary.*

BRAND, in Patents Act, 1883, s. 64, means "a device applied to an article by burning, and not a device woven or incorporated into the substance of the article." *Pirie* v. *Goodall* (1892), 1 Ch. 35.

BRIDGE, in s. 46 of the Railways Clauses Consolidation Act, 1845, includes the highway passing over it. *Lancashire and Yorkshire Rail. Co.* v. *Bury Corporation* (1889), 14 App. Cas. 417.

„ in 22 Hen. 8, c. 5, and 5 & 6 Will. 4, c. 50 (Highways), s. 21, only applies to bridges in existing highways, unless there be distinct evidence of acquiescence by the inhabitants in the building and dedication of the bridge. *R.* v. *Southampton* (1886), 17 Q. B. D. 424.

BRITISH INDIA.—All territories and places within the Queen's dominions which are for the time being governed by her Majesty through the Governor-General of India or through any officer subordinate to him. Int. Act, 1889, c. 63, s. 18 (4); *cf.* 1890, c. 4, s. 9 (1).

„ ISLANDS = the United Kingdom, the Channel Islands, and the Isle of Man. Int. Act, 1889 (c. 63), s. 18 (1).

„ POSSESSION = any part of the Queen's dominions except the United Kingdom. Int. Act, 1889 (c. 63), s. 18 (2).

„ Where parts of her Majesty's dominions are under both a central and a local Legislature, all parts under the central Legislature are for the purposes of this definition to be treated as one possession. Int. Act, 1889 (c. 63), s. 18 (2).

BUILDING LINE, in Public Health (Building in Streets) Act, 1888. —See *Ravensthorpe L. B.* v. *Hinchcliffe* (1890), 24 Q. B. D. 168; *Att.-Gen.* v. *Edwards* (1891), 1 Ch. 194.

„ in Metropolitan Building Acts.—See *Barlow* v. *Kensington Vestry* (1886), 11 App. Cas. 257; *London County Council* v. *Cross* (1892), 8 Times L. R. 537.

BUSINESS has no definite technical meaning, but is to be read with reference to the object and intent of the Act in which it occurs. *Ex parte Breall* (1881), 16 Ch. D. 477 (James, L.J.).

„ in the Companies Act, 1862, s. 199, ordinarily means trading (for gain) under the Act (*Re Bristol Athenæum* (1889), 43 Ch. D. 236), and is not wide enough to include the case of a literary or scientific institution not carried on for gain.

„ (CARRYING ON)—*i.e.*, as a principal, not as a clerk or workman. *Graham* v. *Lewis* (1888), 22 Q. B. D. 1.

„ (TRADE OR), in the Customs and Inland Revenue Act, 1878 (41 & 42 Vict. c. 15), s. 13 (2), meaning of, discussed in *Muat* v. *Shaw Stewart* (1890), 17 Rettie (Sc.) 377.

CALCULATED TO DECEIVE, in Patents Act, 1883, s. 5 (5), means which will induce the public to purchase the article in question in the belief that it was other than it really is. *Eno* v. *Dunn* (1890), 15 App. Cas. 252.

CALENDAR MONTH is computed in the same way in civil and criminal proceedings. *Radcliffe* v. *Bartholomew* (1892), 1 Q. B. 161.

CANDIDATE, in 51 Geo. 3, c. 126, means a man who offers himself to the suffrages of the electors. See Parl. Elections Act, 1868, s. 3.

CARRIAGE.—*Vide ante*, p. 190.

CARRIED INTO, in 24 Vict. c. 10, s. 6, is used in a wider sense than "imported." *Dapueto* v. *Wyllie* (1874), L. R. 5 P. C. 492.

CARRYING ON BUSINESS, in 9 & 10 Vict. c. 95, s. 60, of a railway company, applies only to the station where the general superintendence of the whole company is centred. *Brown* v. *L. & N.W. Rail. Co.* (1863), 32 L. J. Q. B. 318; *Palmer* v. *Caledonian Rail. Co.* (1892), 8 Times L. R. 502.

CASH, in 30 & 31 Vict. c. 131 (Companies), s. 25. See *In re Johannesberg Co.* (1891), 1 Ch. 119.

CATTLE, in 28 & 29 Vict. c. 60, includes pigs (*Child* v. *Hearn* (1874), L. R. 9 Ex. 176) and horses (*Wright* v. *Pearson* (1869), L. R. 4 Q. B. 582).

CAUSE OF ACTION means everything which the plaintiff would have to prove if traversed in order to support his claim to the judgment of the Court. *Cooke* v. *Gill* (1872), L. R. 8 C. P. 107.

„ includes an assignment of a cause of action. *Read* v. *Brown* (1888), 22 Q. B. D. 128.

„ in 53 Geo. 3, c. 127, s. 1, is "not a technical word signifying one kind or another, it is *causa jurisdictionis*, any suit, action, matter, or other similar proceeding competently brought before and litigated in a particular court." Per Lord Selborne in *Green* v. *Lord Penzance* (1881), 6 App. Cas. 671.

CAVEAT, in 15 & 16 Vict. c. 83, s. 20, means "anything in the nature of an opposition at any stage, and is not confined to the opposition at the Great Seal, which was the meaning of '*caveat*' under the old practice." Per Lord Cairns, L.C., in *Johnson's Patent* (1880), 13 Ch. D. 398, *note* (1).

CHANCELLOR, THE LORD, is to be taken in all Acts as a compendious expression for "the Lord High Chancellor of Great Britain for the time being"; when used in reference to Ireland only, the Lord Chancellor of Ireland for the time being; unless the contrary intention appears in the Act in which the expression is used. Int. Act, 1889, s. 12 (1). As to the first, see National Debt Redemption Act, 1889 (c. 4), s. 18.

CHARGE OR CONTROL, in the Employers' Liability Act, 1880 (43 & 44 Vict. c. 42), s. 1 (5), is construed as being two expressions, both meaning the same thing, but not including the case of a person who merely had the duty to clean and oil the machinery of the

locking apparatus and points on a railway. *Gibbs* v. *G. W. R.* (1883), 11 Q. B. D. 22.

CHARGE UPON LAND, in 19 Geo. 2, c. 28 (Parliamentary Elections), does not include taxes and rates. See s. 5.

CHARGED UPON LAND, in the Limitation Act, 1832 (3 & 4 Will. 4, c. 27), s. 1, applies to payments in the nature of tithes imposed by 37 Hen. 8, c. 12, on houses in the City of London. *Payne* v. *Esdaile* (1888), 13 App. Cas. 613.

CHARITABLE PURPOSES, technically, and in the eye of a Court of justice, "has a meaning so extensive as to include everything which is expressly described as a 'charitable use' in 43 Eliz. c. 4, s. 1, or is within what has been called the equity of the statute, but there is perhaps not one person in a thousand who knows what is the technical and legal meaning of the word 'charity.'" Per Lord Cairns in *Dolan* v. *Macdermott* (1868), 3 Ch. App. 678.

,, in the Income Tax Act (5 & 6 Vict. c. 35), sch. A., s. 61, has the legal technical meaning given it by English law. *Commissioners of Income Tax* v. *Pemsel* (1891), A. C. 532.

CHARITY, in 16 & 17 Vict. c. 137, s. 66, applies to every institution in England and Wales endowed for charitable purposes, "even though the constitution of the charity or the *corpus* of the property should be abroad." *Re Duncan* (1867), 2 Ch. App. 392.

,, COMMISSIONERS.—The Charity Commissioners for England [and Wales] for the time being. Int. Act, 1889 (c. 63), s. 12 (14).

CHATTEL OR VALUABLE SECURITY, in 24 & 25 Vict. c. 96, s. 75, does not include a policy of insurance which has become due. *R.* v. *Tatlock* (1877), 2 Q. B. D. 163.

CHIEF SECRETARY, when used with reference to Ireland, means the Chief Secretary to the Lord Lieutenant for the time being. Int. Act, 1889 (c. 63), s. 12 (10).

CHILD, in 43 Eliz. c. 2, s. 7, does not include grandchild. *Maund* v. *Mason* (1874), L. R. 9 Q. B. 254.

,, in Statute of Distributions.—*Vide ante*, p. 192.

,, when used in a statute, "means exactly what Wood, V.C., said as regards the word 'children' in a will, that is, children according to the law of England." Per Jessel, M.R., in *Re Goodman's Trust* (1880), L. R. 14 Ch. D. 622; overruled (1881), 17 Ch. D. 266, *diss.* Lush, L.J.

CHURCH, as used in 5 Geo. 4, c. 36, s. 1, includes chancel. *Rippin* v. *Bastin* (1869), L. R. 2 Adm. & E. 386.

CLAIM, in the Parliamentary Registration Acts, includes a statutory declaration in support of a claim to vote. *Ainsley* v. *Nicholson* (1890), 24 Q. B. D. 144.

CLAUSE OF A WILL, in 29 Chas. 2, c. 3, s. 6, means "some collocation of words in the will which, when removed out of the will, will leave the rest of the will intelligible": per Lord Cairns in *Swinton* v. *Bailey* (1879), 4 App. Cas. 77; and, per Mellish, L.J., (S.C.) 1 Ex. D. 121, "the word 'clause' is not used in any strict or technical sense, but merely means the same thing and has the same effect as 'part.'"

COAL, in the Metropolitan Streets Act, 1867, s. 15 (30 & 31 Vict. c. 134), does not include coke. *Fletcher* v. *Fields* (1891), 1 Q. B. 790.

COLLUSION, in the Matrimonial Causes Act, 1860, s. 7.—See *Hunt* v. *Hunt* (1878), 47 L. J. P. D. & A. 22; *Alexandre* v. *Alexandre* (1870), L. R. 2 P. & D. 164; *Butler* v. *Butler* (1890), 15 P. D. 67 (C. A.).

COLONIAL LEGISLATURE.—The authority other than the Imperial Parliament or the Queen in Council competent to make laws for a British possession (including India). Int. Act, 1889 (c. 63), s. 18 (7); *cf.* Statt. 1890, c. 52, s. 26.

COLONY.—Any part of the Queen's dominions except the British Islands and British India. Int. Act, 1889, c. 63, s. 18 (3).

„ Where parts of the Queen's dominions are under both a local and a central Legislature (*e.g.*, Canada and Australia), all parts under the central Legislature are one colony for the purposes of this definition. *Cf.* Army (Annual) Act, 1890, c. 4, s. 9 (2).

COMMENCEMENT.—*Vide ante*, p. 177.

COMMISSIONERS OF WOODS *or* OF WOODS AND FORESTS.—The Commissioners for the time being of her Majesty's Woods and Forests and Land Revenues. Int. Act, 1889 (c. 63), s. 12 (12).

„ OF WORKS.—The Commissioners for the time being of her Majesty's Works and Public Buildings. Int. Act, 1889 (c. 63), s. 12 (13).

COMMITTED FOR TRIAL, refers in England and Wales to any person committed to prison or admitted to bail by a court, judge, justice, or coroner, with a view to his being tried before a judge and jury. Int. Act, 1889 (c. 63), s. 27.

COMMITTED TO PRISON, as used in 40 & 41 Vict. c. 21, s. 57, means "ordered to be kept in prison." *Mullins* v. *Treasurer of Surrey* (1881), 7 App. Cas. 1, 9.

COMMITTEE, as used in the articles of association of a limited company, need not necessarily consist of more than one person. *Re Taurine Company* (1884), 25 Ch. D. 118.

COMMON LODGING-HOUSE, in 14 & 15 Vict. c. 28, and 16 & 17 Vict. c. 41, means a common lodging-house kept for the purpose of profit, and open to all comers of whatever class (*Booth* v. *Ferrett* (1890), 25 Q. B. D. 89; *Langdon* v. *Broadbent* (1878), 37 L. T. 436); and does not include charitable institutions, even where persons of the poorest classes are allowed to sleep in a common room.

COMMUNICATE AND COMMUNICATIONS, in Official Secrets Act, 1889 (52 & 53 Vict. c. 52), s. 8, "include any communication, whether in whole or in part, and whether the document, sketch, plan, model, or information itself, or the substance or effect thereof only be communicated."

COMPANY.—See *Public company whether incorporated or not.*

„ in the Railway Companies Act, 1867 (30 & 31 Vict. c. 127), ss. 3, 4, includes a dock company which has a short line of railway attached although the railway is ancillary to the dock. *G. N. R.* v. *Tahourdin* (1883), 13 Q. B. D. 370.

„ INCORPORATED BY ACT OF PARLIAMENT.—An insurance company incorporated by charter, in virtue of powers given by an Act of Parliament, is a company incorporated by Act of Parliament within the meaning of an investment clause. *Elve* v. *Boyton* (1891), 1 Ch. 501.

COMPETENT COURT, in 32 & 33 Vict. c. 62, s. 5, "must be understood to mean a Court acting within the local limits of its existing jurisdiction." *Washer* v. *Elliott* (1876), 1 C. P. D. 174.

CONCERNED IN THE CONTRACT, in Public Health Act, 1875 (c. 55), sch. II., r. 64, "has no very definite meaning, and was perhaps purposely employed for that very reason, viz., to prevent the conflict between interest and duty that might otherwise inevitably arise." *Nutton* v. *Wilson* (1889), 22 Q. B. D. 748 (Bowen, L.J.).

CONDUCT AND AFFAIRS OF BANKRUPT, in s. 28 (2) of the Bankruptcy Act, 1883, means conduct arising out of or connected with the bankruptcy, but is not confined to the matters specified in s. 28 (3). *Re Jones* (1890), 24 Q. B. D. 589.

CONSOLIDATED FUND, in the Naval Defence Act, 1889 (c. 8), s. 8, means the Consolidated Fund of the United Kingdom of Great Britain and Ireland.

CONSUL OR VICE-CONSUL.—For the purpose of the application of the Extradition Acts, 1870 and 1873, to British possessions, includes any person recognised by the Governor of a British possession as a consular officer of a foreign State (1873, c. 60, s. 7). This enactment was passed to cover the Canadian decision in *Lamirande's case* (1866), 10 Lower Can. Jur. 289.

" under 12 & 13 Vict. c. 68 (Marriages of British Subjects Abroad)—

(*a*) A consul-general or consul authorized or directed by writing under the hand of a Secretary of State to solemnise and register marriages.

(*b*) Any person duly authorized to act in the absence of any such consul.

(*c*) Where there is no British consul resident in any foreign place, any British vice-consul or consular agent directed or authorized in writing under the hand of a Secretary of State to solemnise and register marriages in such place.

CONSULAR AGENT, in the 1st schedule to the Fisheries Act, 1868 (31 & 32 Vict. c. 45), is equivalent to "consular officer" as defined in that Act, s. 5. The definition of 1868 is slightly affected by that in the Int. Act, 1889 (52 & 53 Vict. c. 63), s. 12 (20).

" OFFICER, in all Acts, includes consul-general, consul, vice-consul, consular agent, or any person for the time being authorized to discharge the duties of consul-general, consul, or vice-consul. Int. Act, 1889 (c. 63), s. 12 (20). This definition is based on that contained in the Sea Fisheries Act, 1868 (31 & 32 Vict. c. 45), with the substitution of "authorized to discharge" for "discharging." In the earlier Act also, "consular agent" in the convention scheduled to the Act is defined as equivalent to consular officer.

" in the Merchant Shipping Act, 1876 (c. 80), s. 13, means "any consul-general, vice-consul, consular agent, or other officer recognised by a Secretary of State as a consular officer of a foreign State." This seems to be superseded by the definition of 1889. But the word authorized is ambiguous, unless it be conceded that consular authority depends upon his exequatur or the recognition by a Secretary of State for the British Crown and not upon the mandate contained in a foreign commission.

CONSULAR OFFICER.—In the Army Act (44 & 45 Vict. c. 58), s. 94 (1), "any British consul-general, consul, or vice-consul, or person duly exercising the authority of a British consul."

" Another Act of the same year, c. 10 (Commissioners for Oaths), contains in s. 6 (1), an enumeration of British consular officers as consul-general, consul, vice-consul, acting consul, pro-consul, and consular agents exercising his functions in any foreign place.

" The Army Act (44 & 45 Vict. c. 58), s. 104, exempts from billeting "the house of residence of any foreign consul duly *accredited* as such." The word accredited is applicable to the foreign consul, while received or recognised would be more appropriate. The section ought to be amended in the next Army Annual Act so as to square with the definition in the Interpretation Act.

" Officer in the consular service of her Majesty, in the Naturalisation Act, 1870 (33 & 34 Vict. c. 14), s. 17, means and includes consul-general, consul, vice-consul, consular agent, and any person for the time being discharging the duties of consul-general, consul, vice-consul, or consular agent.

" The definition of the Int. Act, 1889, covers the following enactments as to consuls:—1861, c. 121, s. 4 (Subjects dying Abroad); 1868, c. 45, s. 5 (Sea Fisheries); 1870, c. 14, s. 17 (Naturalisation); 1870, c. 52 (Extradition), s. 17 (1), foreign; 1873, c. 60 (Extradition), s. 7, foreign; 1876, c. 80 (Merchant Shipping), s. 34, British; 1881, c. 58 (Army), s. 94 (1), British; s. 104, foreign.

CONTEXT is not limited to the context of the particular section in which the definition occurs, but means the context of the whole Act. Esher, M.R., *In re Evans* (1891), 1 Q. B. 144.

CONTRACT, in 30 & 31 Vict. c. 131, s. 25, means "a contract binding in law, which of course imports a consideration." Per Thesiger, L.J., in *Anderson's case* (1877), 7 Ch. D. 113.

CONVEYANCE, in 2 & 3 Anne, c. 4, means "any instrument which carries from one person to another an interest in land." Per Lord Cairns in *Credland* v. *Potter* (1874), 10 Ch. App. 12.

" OR ASSIGNMENT, in the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (*a*), is limited to those particular modes of disposition of property, and means a formal conveyance or assignment properly so called of the whole, or substantially the whole,

of the debtor's property. *Re Spachman* (1890), 24 Q. B. D. 741 (Fry, L.J.).

CONVEYANCE OR ASSIGNMENT is an instrument under seal actually transferring the legal and equitable interest in the property, so as to take it out of the assignor and vest it in the assignees. Lopes, L.J.

CONVICTED OF FELONY, in 33 & 34 Vict. c. 29, s. 14 (Licensing), does not apply to a person who after conviction for felony has received a free pardon. *Hay* v. *Tower Justices* (1890), 24 Q. B. D. 561.

CO-PARTNERSHIP, as used in 31 & 32 Vict. c. 116, s. 1, is not used in the sense of co-ownership, as the modern usage confines the meaning of the word to societies formed for gain. *R.* v. *Robson* (1886), 16 Q. B. D. 140.

COPYRIGHT, in the Copyright Act, 1842, applies to matter contained in a newspaper registered as a serial publication. *Cate* v. *Devon Newspaper Co.* (1889), 40 Ch. D. 500.

COST OF RELIEF, in 31 & 32 Vict. c. 122, s. 33, does not mean the cost of relief as fixed by the guardians of the union (to which the deserted wife is chargeable) upon making an order for relief, but what the justices estimate as the proper cost of relief. *Dinning* v. *South Shields Union* (1884), 13 Q. B. D. 25 (C. A.).

COSTS (DOUBLE).—See *Hasker* v. *Wood* (1885), 54 L. J. Q. B. 419.

" (FULL), in s. 26 of the Copyright Act, 1842, means costs as between party and party, and not as between solicitor and client. *Avery* v. *Wood* (1891), W. N. 127.

COTTON CLOTH FACTORY means "any room, shed, or workshop, or any part thereof in which the *weaving* of cotton cloth is carried on." Cotton Cloth Factories Act, 1889 (52 & 53 Vict. c. 62), s. 4.

COUNTY.—*Vide ante*, p. 178. "County" presumably includes county of a city or of a town. Int. Act, 1889, c. 63, s. 4.

" in 4 & 5 Will. 4, c. 76, s. 38, includes a county of a town. *R* v. *Pearce* (1880), 5 Q. B. D. 386.

" COURT, as respects England and Wales—

(*a*) unless the contrary intention appears, means in every Act and Order in Council passed or made after 1846, "a court under the County Courts Act, 1888" (see Int. Act, 1889, c. 63, s. 6).

(*b*) in the Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 18, the common law county court, now held only for parliamentary elections, and the due execution of writs.

COUNTY COURT, as respects Ireland, in Acts passed after 1889, means a civil bill court within the meaning of the County Officers and Courts (Ireland) Act, 1877. Int. Act, 1889, c. 63, s. 29.

COURT.—See *Competent Court.*

„ OF APPEAL means her Majesty's Court of Appeal in England or Ireland. Int. Act, 1889 (c. 63), s. 13 (2).

„ OF ASSIZE in England, Wales, and Ireland, means a court of assize, a court of oyer and terminer, and a court of gaol delivery, or any of them, and includes the Central Criminal Court. Int. Act, 1889 (c. 63), s. 13 (4).

„ OF OYER AND TERMINER OR GENERAL GAOL DELIVERY, in the Assizes Relief Act, 1889 (52 & 53 Vict. c. 12), s. 7, includes a court of assize and the Central Criminal Court. See Int. Act, 1889 (c. 63), s. 13.

„ OF QUARTER SESSIONS means the justices of any county, riding, parts, division, or liberty of a county, or of a county of a city, or county of a town (borough) in general or quarter sessions assembled; and also the court of a recorder of a municipal borough which has a separate court of quarter sessions. Int. Act, 1889 (c. 63), s. 13 (14).

„ OF SUMMARY JURISDICTION.—See *Summary jurisdiction.*

CREDITOR, in 24 & 25 Vict. c. 134, s. 192, means any person having a claim which can be proved under the bankruptcy, whether it is strictly a debt or not. *Wood* v. *De Mattos* (1876), L. R. 1 Ex. 100.

„ in 12 & 13 Vict. c. 106, s. 112, is confined to creditors who were such at the time the person in question became bankrupt. *Re Poland* (1866), 1 Ch. App. 357.

„ in Bankruptcy Act, 1883 (c. 52), s. 6, does not include a receiver appointed in an action in the Chancery Division, as a receiver has no remedy in his own right against debtors of the person of whose property he is receiver. *Re Sacker* (1889), 22 Q. B. D. 179 (C. A.).

„ in the Companies Act, 1862, ss. 80, 82, does not include a person who has obtained a garnishee order attaching a debt due by a company under the Act to a creditor of the company. *Re Combined Weighing and Advertising Machine Co.* (1889), 43 Ch. D. 99 (C. A.).

CREDITOR does not include the creditor of a creditor of a company who has obtained a garnishee order attaching a debt due from the company to his debtor.

CREDITORS WHOM THE COURT THINKS ENTITLED TO BE HEARD includes outside creditors in the case of a scheme of an arrangement of the affairs of a liquidating railway company. ***East and West India Dock Co.*** (1890), 44 Ch. D. 38.

CRIME, in 33 & 34 Vict. c. 75 (Elementary Education, England), sch. 2, Part I., r. 14, includes a "conspiracy" punishable under the Criminal Law and Procedure (Ireland) Act, 1887 (50 & 51 Vict. c. 20). *Conybeare* v. *London School Board* (1891), 1 Q. B. 118.

CRIMINAL CAUSE OR MATTER, in the Judicature Act, 1873, s. 47, does not include any question arising out of the committal of a clergyman for contumacy to an order of the Ecclesiastical Court: *Cox* v. *Hakes* (1890), 15 App. Cas. 506; nor an order striking a solicitor off the rolls: *Re Eade* (1890), 25 Q. B. D. 228.

" includes decision on a *habeas corpus* under the Extradition Acts, 1870 and 1873. *Re Alice Woodhall* (1889), 20 Q. B. D. 832.

" includes a proceeding to compel a magistrate to state a case upon a point of law arising in a criminal cause or matter. *Re Schofield* (1891), 2 Q. B. 428.

" includes decisions before a magistrate under the Metropolitan Building Act: *Payne* v. *Wright* (1892), 8 Times L. R. 288; and proceedings for penalties under the Companies Act, 1862, s. 27: *R.* v. *Tyler* (1891), 2 Q. B. 588.

CROFTER means any person who, on June 25, 1886, was tenant of a holding from year to year, "who resided on his holding, the annual rent of which does not exceed £30 in money, and which is situate in a crofting parish, and the successors of such person in his holding, being his heirs or legatees." Crofters Act, 1886 (c. 29), s. 34.

CROFTING PARISH means a parish in which there were, on June 25, 1886, or within eighty years prior thereto, holdings consisting of arable land held with a right of pasturage in common with others, and in which there still are tenants of holdings from year to year who reside on their holdings, the annual rent of which respectively does not exceed £30 in money on June 25, 1886.

NOTE.—This definition and that of "crofting parish" cross each other.

CUSTOM, as used in 5 & 6 Will. 4, c. 76, s. 2, is not used in the technical sense of the word, but is only equivalent to "usage." *Prestney* v. *Mayor of Colchester* (1882), 21 Ch. D. 120.

CUT.—See *Stab, cut, or wound.*

DAY.—"Our law," said Sir W. Grant in *Lester* v. *Garland* (1808), 15 Ves. 248, "rejects fractions of a day more generally than the civil law does, the effect of which is to render the day a sort of indivisible point, so that any act, done in the compass of it, is no more referable to any one than to any other portion of it, but the act and the day are co-extensive, and therefore the act cannot properly be said to be passed until the day is passed." "It is a well-known maxim that the law takes no notice of the fractions of a day . . . . except where there are conflicting rights between subject and subject." *Tomlinson* v. *Bullock* (1879), 4 Q. B. D. 232. But if a statute enacts that "a licence shall commence on the day on which the same shall be granted," it "does not" (*Campbell* v. *Strangeways* (1878), 3 C. P. D. 107) "necessarily mean that it shall begin at the first moment of the day;" therefore, if a person does the thing requiring a licence without having previously taken out a licence, the taking out a licence later in the day will not exonerate him from the penalty to which he became liable for doing the thing without having previously taken out a licence. For "though" (*Combe* v. *Pitt* (1763), 3 Burr. 1434) "the law does not in general allow of the fraction of a day, yet it admits it in cases where it is necessary to distinguish. And I do not see why the very hour may not be so too, where it is necessary, and can be done, for it is not like a mathematical point which cannot be divided." In *Chick* v. *Smith* (1840), 8 Dowl. 340, Patteson, J., said, "The good sense of the matter is that, where it is necessary to show which was the first of two acts, the Court is at liberty to consider fractions of a day. The rule of law would be otherwise absurd." *Vide Clarke* v. *Bradlaugh* (1881), 7 Q. B. D. 151.

DEALINGS, in s. 17 of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), refers to matters particularly connected with the bankruptcy as distinguished from conduct in the man's general conduct. Per Lord Coleridge, C.J., in *In re A Solicitor* (1890), 25 Q. B. D. at p. 25.

DEBENTURE, in the Stamp Act, 1870 (33 & 34 Vict. c. 97), schedule, *s. v.* Debenture and Mortgage, "is a word which has somehow crept into the English language and does not appear to admit of any accurate definition, but it is recognised by the statute as something different from a promissory note." *British India, &c., Co.* v. *Commissioners of Inland Revenue* (1881), 7 Q. B. D. 168, 170.

DEBT, in 9 Geo. 4, c. 14, s. 5, means "actionable debt." *Rawley* v. *Rawley* (1876), 1 Q. B. D. 463.

„ in 12 & 13 Vict. c. 106, s. 113, includes money due under an order of the Court of Chancery. *Lees* v. *Newton* (1876), L. R. 1 C. P. 658.

„ in 30 & 31 Vict. c. 69, s. 1, does not include mortgage debt. *Newmarch* v. *Starr* (1878), 9 Ch. D. 12.

„ within the Bankruptcy Act, 1883, s. 18 (3), means everything which might mature into a debt, including all liabilities from which a bankrupt would be relieved by an order of discharge. *Flint* v. *Barnard* (1888), 22 Q. B. D. 90.

„ *Vide ante*, p. 207.

„ DUE, in 32 & 33 Vict. c. 71, s. 15 (5), is not confined to debts presently payable, but does not include debts only contingent at commencement of bankruptcy. *Ex parte Kemp* (1874), 9 Ch. App. 387.

„ IMPRISONMENT FOR, does not include imprisonment under a committal order. *Mitchell* v. *Simpson* (1889), 23 Q. B. D. 373; *Stonor* v. *Fowle* (1887), 13 App. Cas. 20.

DEED, in the Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 20, means something which passes a pecuniary interest. Per Blackburn, J., in *R.* v. *Morton* (1873), L. R. 2 C. C. R. 27.

"DEFAULT, OWNER IN," in s. 257 of the Public Health Act, 1875, means "one who has not performed his share of the works requisite," *i.e.*, so much of the work specified in the notice under the section as applies to him. *Simcox* v. *Handsworth L. B.* (1881), 8 Q. B. D. 39.

DEFECT OR INACCURACY, in s. 7 of the Employers' Liability Act, 1880 (43 & 44 Vict. c. 42), as applied to notice of action, includes the omission of the date in the notice of action required by the section. *Carter* v. *Drysdale* (1883), 12 Q. B. D. 91.

„ IN CONDITION OF MACHINERY means unfitness for the purpose for which the machine is supplied. *Heske* v. *Samuelson* (1883), 12

Q. B. D. 30. Even if each part is sufficient, yet if the whole arrangement is defective it is a defect within the Act. *Cripps* v. *Judge* (1884), 13 Q. B. D. 583.

Define, in 18 & 19 Vict. c. 55, s. 35, which empowers the colonial Parliament to define its privileges, &c., means "declare," and not merely "specify" or "enumerate." *Dill* v. *Murphy* (1864), 1 Moore P. C. N. S. 487.

Definite and certain, in the Stamp Act, 1870 (33 & 34 Vict. c. 97), s. 3, applies, not to the interest or the nature of the interest of the settlor, but to the amount of the stock put into settlement. *Onslow* v. *Commissioners of Inland Revenue* (1891), 1 Q. B. 239.

Defraud, intent to, in the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), means to make the purchaser take something which he did not know he was taking, not putting off a bad article in order to get money unfairly. *Starey* v. *Chilworth Gunpowder Co.* (1890), 24 Q. B. D. 96.

,, means more than an intent to cheat a customer. (Same case.)

,, means more than to induce the buyer to accept goods which might otherwise be rejected. (Same case.)

Delineated, in the Pontypool Railway Act, 1865, s. 23, does not mean "surrounded in every part by lines," but "sketched or represented or so shown that landowners would have notice that the land might be taken." *Dowling* v. *Pontypool Rail. Co.* (1874), L. R. 18 Eq. 740. See hereon *Protheroe* v. *Tottenham, &c., Rail. Co.* (1891), 3 Ch. 278.

Depending.—See *Suit depending.*

Description of the residence, in 17 & 18 Vict. c. 36, s. 1, means such a description as would enable a person to make the necessary investigations before advancing money or supplying goods on credit. *Jones* v. *Harris* (1872), L. R. 7 Q. B. 158.

Deserted, in 24 & 25 Vict. c. 55, s. 3, is not used "in the ordinary acceptation of the word, but the statute must be taken to mean that, where the husband permanently gives up the society of his wife and continues to live in a different place apart from her, she shall be looked up to as a different person from what she would otherwise be, for she resides where she does for her own, and not for any marital purpose." Per Cockburn, C.J., in *R.* v. *Maidstone* (1880), 5 Q. B. D. 33.

DESIGN, in s. 60 of the Patents, Designs, and Trade Marks Act, 1883 (46 & 47 Vict. c. 57), refers only to the shape or visible form of the object represented, and not to the object which the design has in view in adopting the shape or the particular purpose which the shape is intended to serve. *Hecla Foundry Co.* v. *Walker & Co.* (1889), 14 App. Cas. 550; and see *Holdsworth* v. *McCrea* (1867), L. R. 2 H. L. at p. 388; *Walker* v. *Falkirk Iron Co.* (1887), 14 Rettie (Sc.) 1081.

DETERMINATION OF TENANCY.—Agricultural Holdings Act, 1883, s. 7, construed with reference to custom of country. *Re Paul* (1890), 24 Q. B. D. 247.

DEVISE, in 29 Chas. 2, c. 3, s. 6, means "that group or collection of words reduced into writing which operates as a disposition of the testator's land." Per Lord Penzance in *Swinton* v. *Bailey* (1879), 4 App. Cas. 79.

„ in the Wills Act (7 Will. 4 & 1 Vict. c. 26), "includes, unless a contrary intention appears by the will, a devise by way of appointment under a special or general power conferred on the testator as to property not his own." Per Jessel, M.R., in *Freme* v. *Clement* (1881), 18 Ch. D. 515.

DIPLOMATIC OFFICER in the diplomatic service of her Majesty, in the Naturalisation Act, 1870, c. 14, means any "Ambassador, Minister, or chargé d'affaires, or Secretary of Legation, or any person appointed by such Ambassador, Minister, chargé d'affaires, or Secretary of Legation to execute any duties imposed by the Act on an officer in the diplomatic service of her Majesty" (s. 17).

„ REPRESENTATIVE OF A FOREIGN STATE," for the purposes of the Extradition Acts, 1870 and 1873, "includes any person recognised by a Secretary of State as a consul-general of that State." Ext. Act, 1873 (c. 60), s. 7, extending Ext. Act, 1870 (c. 52), s. 7.

„ SERVICE.—Enumeration of diplomatic offices in the Diplomatic Salaries Act, 1869 (c. 43), s. 7.

DISABILITY, in the Naturalisation Act, 1870, c. 14, s. 17, means the status of being an infant, lunatic, idiot, or married woman.

DISCRETION.—*Vide ante*, p. 288.

DISPOSITION, in 3 & 4 Will. 4, c. 74 (Fines and Recoveries Act), s. 38, is not restricted to the deed barring the entail, but comprises it

and all other instruments by which the arrangement between the vendor and the purchaser is carried out. *Crocker* v. *Waine* (1864), 5 B. & S. 697.

DISPUTE BETWEEN EMPLOYER AND WORKMAN, in 38 & 39 Vict. c. 90, s. 4, includes a complaint made by the employer as to the conduct of the workman. *Clemson* v. *Hubbard* (1875), 1 Ex. D. 179.

DISTANCE, when mentioned in a statute, how computed. See *Mile.*

DISTRICT OF A CONSUL, under 11 & 12 Vict. c. 68, s. 19, means—

(*a*) Such parts of the foreign country in which or at a place in which the consul is appointed to reside or is directed or authorized to solemnise and register the marriages of British subjects as a Secretary of State may by writing under his hand direct.

(*b*) In the absence of any special direction, then the district of the consulate of such consul (as indicated in his consular commission and *exequatur*).

DIVIDED, in 41 Vict. c. 15, s. 13, refers to the structural arrangement of the houses taxed by the Act, and not to the mode of dealing with the divided houses. *Yorkshire Insurance Co.* v. *Clayton* (1881), 8 Q. B. D. at p. 420 (Brett, L.J.).

DIVIDENDS, in 33 & 34 Vict. c. 35, s. 2, "includes (besides dividends strictly so called) all payments made by the name of dividend, bonus, or otherwise, out of the revenue of trading or other public companies, divisible between all or any of the members of such respective companies, whether such payments shall be usually made or declared at any fixed time or otherwise." *Carr* v. *Griffiths* (1879), 12 Ch. D. 661.

DOCUMENT, unless the context otherwise requires, "includes part of a document." Official Secrets Act, 1889 (52 & 53 Vict. c. 52), s. 8.

„ OF TITLE TO GOODS, in the Factors Act, 1889 (52 & 53 Vict. c. 45), s. 1 (4), includes "bill of lading, dock warrant, warehouse-keeper's certificate, and warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by indorsement or by delivery, the possessor of the document to transfer or to receive goods thereby represented."

DOMESTIC ANIMALS, in 12 & 13 Vict. c. 92, s. 2 (as amended by 17 & 18 Vict. c. 60, s. 3), includes any pet bird; and also birds kept in

captivity and trained as decoy birds. *Colam* v. *Paget* (1884), 12 Q. B. D. 66.

DOMICILED IN ENGLAND, in the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 6 (1), means "England" as distinguished from other parts of the United Kingdom. *Re Mitchell* (1884), 13 Q. B. D. 418.

DOMINION.—See *Foreign dominion.*

DOUBLE COSTS.—See *Costs.*

DRAINS, TRENCHES, AND WATERCOURSES, in 14 Geo. 3, c. 96, s. 97, means those watercourses only which have been made by the hand of man and artificially connected with the navigation in question. *Smith* v. *Barnham* (1876), 1 Ex. D. 422.

DRIVER *or* DRIVERS, in ss. 37, 40–52, 54, 58, 60–67, of the Town Police Clauses Act, 1847, includes the conductor of an omnibus. Town Police Clauses Act, 1889 (c. 14), s. 4 (1).

DRUNKENNESS.—See *Permit drunkenness.*

DULY MADE.—A contract "made in writing," in the Companies Act, 1867 (30 & 31 Vict. c. 131), s. 25, means a contract executed by all the parties thereto. *Ex parte Menzies* (1890), 43 Ch. D. 118.

DWELL, in 9 & 10 Vict. c. 95, s. 128, applies to the place at which a person who has not any permanent place of abode may be temporarily residing. *Alexander* v. *Jones* (1876), L. R. 1 Ex. 133. "To dwell," said Kelly, C.B., in *Riley* v. *Read* (1879), 4 Ex. D. 102, "is to live and occupy for all the purposes of life."

DWELLING-HOUSE, in 41 & 42 Vict. c. 26 (Parliamentary and Municipal Registration), s. 5, means a part of a house separately occupied, not by a lodger merely, but in such a manner that the occupied can be separately rated to the relief of the poor. *Bradley* v. *Baylis* (1881), 8 Q. B. D. 195.

„ in 5 & 6 Vict. c. 35 (Income Tax), s. 100, sch. D., "does not include a house in which a bank or limited company carries on business," even if the manager lives in part of it. *Russell* v. *Town and County Bank* (1888), 13 App. Cas. 418, 430; *cf.* *Tennant* v. *Smith* (1892), A. C. 150.

„ in the Bankruptcy Act, 1883, s. 6 (d), for purposes of founding bankruptcy jurisdiction over a foreigner, held to include "furnished rooms" taken under circumstances which did not make the hirer a lodger. *Re Hecquard* (1890), 24 Q. B. D. 74.

DWELLING-HOUSE.—A dwelling-house need not be a separate building. It may be bounded by a horizontal plane just as well as by a vertical plane, and would therefore include a *flat*, but not lodgings, nor rooms in a hotel. See *Allchurch* v. *Hendon Assessment Committee* (1891), 2 Q. B. 436.

ECCLESIASTICAL COMMISSIONERS.—The Ecclesiastical Commissioners for England [and Wales] for the time being. Int. Act, 1889 (c. 63), s. 12 (15).

„ PURPOSE, in 19 & 20 Vict. c. 104 (Lord Blandford's Act), s. 14, includes "burial of the dead." *Hughes* v. *Lloyd* (1888), 23 Q. B. D. 157. So that when a parish is divided under that Act for ecclesiastical purposes, parishioners in the old undivided parish cease to have any right of interment in the old parish churchyard unless they are resident within the ecclesiastical district within which it lies. It also includes publishing banns and solemnising marriages. *Fuller* v. *Alford* (1883), 10 Q. B. D. 418. Spiritual purposes is distinct (see 6 & 7 Vict. c. 37, ss. 9 and 15).

EDUCATION DEPARTMENT, in all Acts, means the Lords of the Committee for the time being of the Privy Council appointed for Education. Int. Act, 1889 (c. 63), s. 12 (6).

„ DEPARTMENT, SCOTCH, in all Acts, means "the Lords of the Committee for the time being of the Privy Council appointed for Education in Scotland." 1889, c. 63, s. 12 (6), taken from s. 1 of the Scotch Education Act, 1870.

EFFLUVIA INJURIOUS TO HEALTH, in 38 & 39 Vict. c. 55, s. 114, include an effluvium which causes sick persons to become worse, although not injurious to persons in sound health. *Malton* v. *Malton* (1879), 4 Ex. D. 302.

EMOLUMENT in 31 & 32 Vict. c. 110, s. 8 (7), is "the most comprehensive word the Legislature could have used." *R.* v. *Postmaster-General* (1878), 3 Q. B. D. 430; and see *Remuneration*.

ENDOWED SCHOOLS ACTS means the Endowed Schools Acts, 1869 (32 & 33 Vict. c. 56) and 1873 (36 & 37 Vict. c. 87). *Vide* 52 & 53 Vict. c. 40, s. 17, Wales.

ENGLAND, in s. 5 of 1889, c. 72, shall mean Scotland in the application of the Act to Scotland (s. 17). This ought to have been done by defining "place of abode," with reference to that part of the United Kingdom in which the local authority giving the notice exercises its functions.

ENTERTAINMENT, in 23 & 24 Vict. c. 27, s. 6, does not merely apply to public entertainments, like concerts, but also to the general accommodation provided in refreshment-rooms. *Muir* v. *Keay* (1875), L. R. 10 Q. B. 594; *Howes* v. *Inland Revenue* (1876), 1 Ex. D. 394.

„ OR AMUSEMENT, in 21 Geo. 3, c. 49, s. 1, does not apply to proceedings of a religious nature. *Baxter* v. *Langley* (1868), L. R. 4 C. P. 21.

ESTATE OF A BANKRUPT, in 6 Geo. 4, c. 16, s. 98, is to be understood in the same way as in common language the expression "the estate of a mortgagor" is understood—viz., as meaning "his own estate subject to a mortgage." Per Lord Tenterden in *R.* v. *Winstanley* (1831), 1 C. & J. 444.

EXECUTE, in the Indian Wills Act, No. 25, 1838, s. 7, "is employed to designate the whole operation [of making a will], including both the signature and acknowledgment of the testator and the attestation of the subscribing witnesses." *Casement* v. *Fulton* (1845), 5 Moore P. C. 141.

EXPOSED FOR SALE, in the Margarine Act, 1887 (c. 29), s. 6, means exposed to view in the shop in the sight of the purchaser. *Crane* v. *Lawrence* (1890), 25 Q. B. D. 152; *contra*, *Wheat* v. *Brown* (1892), 8 Times L. R. 294.

EXTRAORDINARY TRAFFIC means unusual in weight or kind either as compared with what is usually carried over roads of the same nature in the highway district, or as compared with that to which the road in its fair and ordinary use may be subjected. *Pickering Lythe East Highway Board* v. *Barry* (1881), 8 Q. B. D. 59, 62 (Lopes, J.).

„ includes the passage of traction engines and trucks over a highway connecting two main roads, and used principally by farmers of land adjoining it for ordinary traffic. *R.* v. *Ellis* (1882), 8 Q. B. D. 466.

FALSE PRETENCE, within the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 90, must be of *an existing fact*. But the Courts take wide views as to what is an existing fact. *R.* v. *Gordon* (1889), 23 Q. B. D. 354. S. 90 was passed because of an earlier case, *R.* v. *Dangar* (1857), 1 D. & B. C. C. 307.

FALSELY PACKED, in the Hops Act, 1866 (29 & 30 Vict. c. 37), s. 5, means not substantially according to sample. *Johnson* v. *Gaskain* (1891), 8 Times L. R. 70.

FAMILY, in 23 Vict. c. xiii. s. 33, includes the inmates of a workhouse. *Liskeard* v. *Liskeard* (1881), 7 Q. B. D. 509.

FATHER, in 4 & 5 Ph. & Mar. c. 8, s. 3, which imposes a penalty upon any person who "takes away any woman-child out of the custody of the father of such child," includes the putative father of an illegitimate child. *R.* v. *Cornforth* (1740), 2 Str. 1162.

FELONY.—Acts declaring any act or omission to be felony attach to the act or omission all the incidents for the time being attached by common law or other past or future statutes to felonies. *Vide ante*, p. 329.

„ in Acts extending or applied to Scotland = high crime and offence. Int. Act. 1889 (c. 63), s. 28. A like provision is common in Acts prior to that date, and in them is not superseded by the later Act.

FEMALE.—*Vide Masculine;* and *ante*, p. 175.

FICTITIOUS OR NON-EXISTENT, in 45 & 46 Vict. c. 61 (Bills of Exchange), s. 7 (3), considered in *Bank of England* v. *Vagliano* (1891), A. C. 107. *Quot judices tot sententiæ.*

FIELDMASTER *or* FIELD-REEVE means a person appointable to superintend the ordering, fencing, cultivating, and improving of open and common fields. (1772, 13 Geo. 3, c. 81, s. 3).

FINAL JUDGMENT, in the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, does not include (1) an order by consent to pay costs: *Ex parte Schmitz* (1884), 14 Q. B. D. 509; (2) a garnishee order absolute: *Ex parte Chinery* (1883), 12 Q. B. D. 342; although by the Judicature Act, 1873, orders are enforceable in the same way as judgments.

„ AND CONCLUSIVE, in the Metropolis Management Act, 1855, s. 129, now means final and conclusive as to the facts only, inasmuch as the decision of the magistrate on a point of law can be questioned by a special case under the Summary Jurisdiction Act, 1879. *R.* v. *Bridge* (1890), 24 Q. B. D. 607.

FINANCIAL YEAR.—*Vide ante*, p. 177.

FOREIGN DOMINION, in 25 & 26 Vict. c. 20, s. 1, means "a country which at some time formed part of the dominions of a foreign State or potentate, but which by conquest or cession has become a part of the dominions of the Crown of England." Per Cockburn, C.J., in *Ex parte Brown* (1864), 5 B. & S. 290.

FOREIGN POSSESSIONS, in the Income Tax Acts (5 & 6 Vict. c. 35, s. 100, and 16 & 17 Vict. c. 34, s. 2, sch. D.), applies to profits and gains entirely earned abroad, but does not apply where the business is domiciled in England, nor to profits earned by a trader carrying on one single business partly in the United Kingdom and partly elsewhere, even though they are not remitted to the United Kingdom. *London Bank of Mexico* v. *Apthorpe* (1891), 1 Q. B. 383; *Colquhoun* v. *Brooks* (1889), 14 App. Cas. 493.

FORFEIT, as used in 17 & 18 Vict. c. 104, s. 103, in the expression "shall be forfeited to her Majesty," implies that the property forfeited is "divested by the offence committed." *The Annandale* (1867), 2 P. D. 219; and see Sedgwick on Statutory Law (2nd ed.), p. 78.

FORMED, in the Companies Act, 1864 (25 & 26 Vict. c. 89), s. 4, is used in its popular sense, and not technically; consequently, a society originally instituted in 1861 need not be registered under the Act even if the effect of its constitution is to create a new partnership from time to time between its members subsequent to the commencement of the Companies Act, 1862. *Shaw* v. *Simmons* (1883), 12 Q. B. D. 117.

FORTHWITH, "in an Act of Parliament, has [in several cases] been construed to mean 'in a reasonable time,' as soon as the party who is to perform the act can reasonably perform it." *R.* v. *Price* (1853), 8 Moore P. C. 213; and see *Immediately*.

„ in 9 Geo. 4, c. 31, s. 27, means "forthwith if demanded." *Coster* v. *Hetherington* (1859), 1 E. & E. 802.

„ in 8 & 9 Vict. c. 10, s. 3, means "with due and proper diligence and without any delay which cannot be satisfactorily explained." *R.* v. *Worcestershire* (1846), 10 Jur. 595.

„ in Bankruptcy Rules, 1870, r. 144, "has not a fixed and absolute meaning, but must be construed with reference to the objects of the rule and the circumstances of the case." Per Lush, L.J., *Ex parte Lamb* (1882), 19 Ch. D. 173.

FRANCHISE, in the County Courts Act, 1888 (52 & 53 Vict. c. 41), s. 56, includes the right or privilege granted by letters patent for a new invention. *R.* v. *Judge of Halifax County Court* (1891), 1 Q. B. 793, 2 Q. B. 263.

FRONT MAIN WALL OF THE BUILDING ON EITHER SIDE, in Public Health (Buildings in Streets) Act, 1888 (51 & 52 Vict. c. 52), s. 3.

For the considerations by which it is to be ascertained, see *Att.-Gen.* v. *Edwards* (1891), 1 Ch. 194.

GAME, in Scotland, specified as "hares, partridges, pheasants, muir-fowls, tarmargans, heath-fowl, snipes, and quails." 13 Geo. 3, c. 54, s. 3.

„ in 1 & 2 Will. 4, c. 32, s. 40, means *living* game, "although in some other parts of the statute, as, for instance, when it speaks of game at a poulterer's, the word 'game' may properly mean dead game." *Kenyon* v. *Hart* (1865), 6 B. & S. 255.

GAMING, in the Licensing Act, 1872 (c. 94), s. 17, is the playing of any game for money or money's worth, whether the game be or be not lawful. *Dyson* v. *Mason* (1889), 22 Q. B. D. 351, 5 L. Q. R. 331.

GAOL, in the Assizes Relief Act, 1889 (c. 12), s. 7, includes house of correction.

GENERAL SESSIONS, as used in 17 Geo. 3, c. 38, s. 4, "is another word for quarter sessions in contradistinction to a special sessions, every quarter sessions being a general sessions." *R.* v. *London Justices* (1812), 15 East 633.

GOLD MINE.—See *Att.-Gen.* v. *Morgan* (1891), 1 Ch. 432.

„ OR SILVER, in 30 & 31 Vict. c. 90, s. 1, does not mean "pure gold or pure silver, but merely what is ordinarily called gold or silver." *Young* v. *Cook* (1877), 3 Ex. D. 105.

GOOD CAUSE, in 35 & 36 Vict. c. 66 (Judicature), s. 49, includes, but is not confined to, everything for which the party is responsible connected "with the institution or conduct of the suit and calculated to occasion unnecessary litigation and expense." *Huxley* v. *W. L. Ry.* (1889), 14 App. Cas. 26, at p. 33 (Lord Watson).

GOODS, in 2 & 3 Vict. c. 71 (Metropolitan Police), s. 40, includes "dogs": *R.* v. *Slade* (1888), 16 Cox Cr. Cas. 496; not synonymous there with chattels (a dog not being a chattel: *R.* v. *Robinson* (1859), Bell Cr. Cas. 34).

„ in 19 & 20 Vict. c. 60, s. 5, includes horses. *Young* v. *Giffen* (1858), 21 Dunlop (Sc.) 87.

„ in the Factory Act, 1889 (c. 45), includes "wares and merchandise." S. 1 (3).

„ in s. 2 of the County Courts Admiralty Jurisdiction Amendment Act, 1869 (32 & 33 Vict. c. 51), does not include passengers'

luggage, and is used only in reference to carriage under bills of lading. *R.* v. *Judge of City of London Court* (1883), 12 Q. B. D. 115.

GOVERNOR OF A BRITISH POSSESSION, in the Naturalisation Act, 1870, c. 14, s. 17, includes "any person exercising the chief authority in such possession."

„ means "any person or persons administering the government of a British possession, and includes the Governor-General of India." Extradition Act, 1870 (c. 52), s. 26.

„ as to Canada and India, means the Governor-General or any person for the time being having his power; as to any other British possession, the officer for the time being administering the government of the possession. Int. Act, 1889 (c. 63), s. 18 (6).

GRANT LAND, in Drill Grounds Act, 1886 (49 Vict. c. 5), s. 3 (G), means "to grant, convey, or enfranchise land, or any limited right in or over land."

GUARDIAN OF ANY HOSPITAL, in 13 Eliz. c. 10, s. 2, includes lay persons, and extends to secular institutions. *Governors of Magdalen* v. *Knotts* (1878), 8 Ch. D. 724.

GUARDIANS, BOARD OF, in England, means a board of guardians under the Poor Law Act, 1834, or anybody under a local Act exercising like powers; in Ireland, a board of guardians elected under 1 & 2 Vict. c. 56, and any persons appointed by the Local Government Board to carry out that and the Amending Acts. Int. Act, 1889 (c. 63), s. 16 (3).

GUARDIANS, in Ireland.—See 1889, c. 56, s. 9 (a). The definition is almost the same as that in Int. Act, 1889 (c. 63), s. 16, save that it does not expressly include the persons appointed by the Local Government Board to execute the Irish Poor Law Acts.

HACKNEY CARRIAGE, HACKNEY COACH, in the Town Police Clauses Act, 1847, ss. 37, 40–52, 54, 58, 60–67, includes an omnibus as defined by the Town Police Clauses Act, 1889 (c. 14), s. 3. *Vide* same Act, s. 4 (1).

„ in 51 & 52 Vict. c. 8 (Inland Revenue), s. 4, includes an omnibus running along a fixed route. *Hickman* v. *Birch* (1890), 24 Q. B. D. 172.

HEAR (TO), in 37 & 38 Vict. c. 85, s. 9, in the expression "requires the judge to hear the matter of the representation," means to "hear

and finally determine the whole matter." Per Lord Selborne in *Green* v. *Lord Penzance* (1881), 6 App. Cas. 669.

Hearing, in 13 & 14 Vict. c. 35, s. 14, means "when the Court has heard the case sufficiently to enable it to see what the question is to be determined." *Bright* v. *Tyndall* (1876), 4 Ch. D. 196.

" **upon the merits**, in 24 & 25 Vict. c. 100 (Offences against the Person Act), s. 44, necessary to give justices jurisdiction to give a certificate of dismissal of a summons for assault, does not include a hearing of the defendant's account of the facts after the plaintiff has given notice that he does not intend to proceed upon the summons. *Reed* v. *Nutt* (1890), 24 Q. B. D. 669 (Lords Coleridge and Esher). The words "upon the merits" inserted in the Act of 1861 appear to limit the jurisdiction which justices had been decided to have under the earlier Act, 9 Geo. 4, c. 31, s. 7. See *Tunnicliffe* v. *Tedd* (1848), 5 C. B. 553, and *Vaughton* v. *Bradshaw* (1860), 9 C. B. N. S. 103.

Held, in 30 & 31 Vict. c. 131, s. 40, has no specific technical meaning, but simply means "that the contributory has had his name upon the register as the holder of the shares for the period in question." Per Chitty, J., *Re Wala Company* (1883), 21 Ch. D. 857.

" **with**, in Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), ss. 49, 63, applies to lands not immediately contiguous to the lands compulsorily taken. *Cowper Essex* v. *Acton L. B.* (1889), 14 App. Cas. 167. "They are not words of art. They are ordinary language, and must be understood with reference to their object." Lord Bramwell, *loc. cit.* 168.

Hereditaments, in 38 Geo. 3, c. 5 (Land Tax), s. 4, includes a railway tunnel, which is an interest in land, and not a mere easement through it. *Met. Rail. Co.* v. *Fowler* (1892), 1 Q. B. 165.

" of any tenure, in the Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), s. 3, includes incorporeal hereditaments. *G. W. R.* v. *Swindon Rail. Co.* (1884), 9 App. Cas. 787, 809.

" **title to**, in County Court Act, 1888, s. 56, is defined as including *land* and a leasehold interest therein. *Tomkins* v. *Jones* (1889), 22 Q. B. D. 599. The word is not used as describing the *quantum* of interest, but as describing the subject-matter itself—viz., the land. Bowen, L.J., 602. He referred to ss. 59, 60, 61.

Hereinbefore contained, in 30 & 31 Vict. c. 127, s. 23, is ambiguous, and may mean "before contained in this Act," or "before contained in this section;" therefore, which of the two meanings is

the proper one must be discovered "from the context and the general scheme of the Act." *Re Cambrian Rail.* (1868), 3 Ch. App. 297.

HORSEFLESH, for the purposes of the Sale of Horseflesh, &c., Regulation Act, 1889 (c. 11), "includes the flesh of asses and mules, and means horseflesh cooked or uncooked, alone or accompanied by or mixed with any other substance."

HOSPITAL, in 38 Geo. 3, c. 5, s. 25, includes not only hospitals in the legal sense of the word (s. 3), but also hospitals in the popular sense of the word. *Colchester* (*Lord*) v. *Kewney* (1876), L. R. 1 Ex. 377.

" [OR CHARITY SCHOOL], 48 Geo. 3, c. 55, sch. B.; 14 & 15 Vict. c. 36.—The character of such a place for the purpose of exemption from inhabited house duty depends on the character of and uses of the school or other buildings at the time of the assessment, and not upon their character at the time of the passing of the Acts under which the taxation is authorized to be made or the exemption is claimed. *Governors of Charterhouse* v. *Lamarque* (1890), 25 Q. B. D. 121. A school may be within the exemption of a taxing Act when the Act is passed, but by changes in its constitution may cease to be entitled to the exemption.

" AND INSTITUTION, in the Idiots Act, 1886 (s. 17), means any hospital or institution, or part of a hospital or institution (not being an asylum for lunatics) wherein idiots and imbeciles are received and supported wholly or partly by voluntary contributions, or by any charitable bequest or gift, or by applying the excess of payments of some patients for or towards the support, provision, or benefit of other patients.

HOUSE, in the Lands Clauses Act, 1845, s. 92, means "all which would with a reasonable latitude of construction pass under the description of 'house' or 'messuage' in a deed or will." *Steele* v. *Midland Rail.* (1866), 1 Ch. App. 278. *Cf. Barnes* v. *Southsea Rail. Co.* (1885), 27 Ch. D. 542.

" in criminal statutes, means "a permanent building in which the tenant, or the owner and his family, dwells or lives. It must not be a mere tent or booth, as in a market; it must be a permanent building." Per Huddleston, B., in *Chapman* v. *Royal Bank* (1881), 7 Q. B. D. 140.

" in Metrop. Man. Act, 1855, s. 105, includes all land upon which there is a building which is, or may be, used for the habitation

of man. Per Lord Esher, M.R., *Wright* v. *Ingle* (1885), 16 Q. B. D. 390.

Idiot or imbecile, in the Idiots Act, 1886 (c. 25), s. 17, does not include lunatic, and lunatic does not include idiot or imbecile.

Ill, in 11 & 12 Vict. c. 42, s. 17, does not necessarily apply to a woman who is pregnant: *R.* v. *Stephenson* (1862), L. & C. 165; but may do so: *R.* v. *Wellings* (1878), 3 Q. B. D. 426.

Illegal, by being in restraint of trade.—See *Swaine* v. *Wilson* (1889), 24 Q. B. D. 257.

Immediate approach, in 8 & 9 Vict. c. 20, s. 46, does not apply to that part of a highway which has been lowered for the purpose of carrying a railway bridge over it. *London & N. W. Rail. Co.* v. *Skerton* (1864), 5 B. & S. 559; see also Irish cases cited in judgment.

Immediately after, in 6 Geo. 4, c. 50, s. 34, means "within a reasonable time." *Christie* v. *Richardson* (1842), 10 M. & W. 688; and see *Grace* v. *Clinch* (1843), 4 Q. B. 609; *Toms* v. *Wilson* (1863), 4 B. & S. 453; also see *Forthwith*.

Implied condition, in 48 & 49 Vict. c. 62, s. 12 (Housing of the Working Classes), does not mean a mere warranty. *Walker* v. *Hobbs* (1889), 23 Q. B. D. 458.

Imported.—See *Carried into*.

Improvements.—See *Re Mundy's Estates* (1891), 1 Ch. 399.

Include, in 24 & 25 Vict. c. 99, s. 1, "is not identical with, or put for," the word "mean." Per Lord Coleridge, *R.* v. *Hermann* (1879), 4 Q. B. D. 288.

Incombustible material, in 18 & 19 Vict. c. 122 (Building Act), s. 19, sub-s. 1, means wholly incombustible, and not partly combustible and partly incombustible, however safe in fact as a roofing the material may be. *Payne* v. *Wright* (1892), 1 Q. B. 104.

Income, in the New Brunswick Act, 31 Vict. c. 36, s. 4, must be construed "in its natural and commonly accepted sense as the balance of gain over loss": *Lawless* v. *Sullivan* (1881), 6 App. Cas. 384; and as used in Bankruptcy Act, 1869, s. 90, does not include "professional earnings": *Ex parte Benwell* (1884), 14 Q. B. D. 309; bue see *Ex parte Shine* (1892), 1 Q. B. 522.

„ does not include the advantage of occupying a house *virtute officii*, unless the occupant has power to let the house. *Tennant* v. *Smith* (1892), A. C. 150.

INCOMPLETENESS, in 5 & 6 Vict. c. 55, s. 6, is not confined merely to what is "not finished," but may be used as to "anything imperfect or incomplete." *Att.-Gen.* v. *Great Western Rail. Co.* (1876), 4 Ch. D. 739.

INDICTMENT, in 24 & 25 Vict. c. 190, s. 6, applies to coroners' inquisitions. *R.* v. *Ingham* (1864), 5 B. & S. 272.

„ in 26 & 27 Vict. c. 29, s. 7, does not include an *ex officio* information filed by the Attorney-General. *R.* v. *Slator* (1881), 8 Q. B. D. 267. *Vide ante*, pp. 184, 441.

INDORSE.—Equivalent to "sign" in County Court Rules, 1888. *Vide R.* v. *Cowper* (1890), 24 Q. B. D. 62; see Int. Act, 1889.

INFORMATION, in 11 & 12 Vict. c. 43, is not substantially different from "complaint": *Blake* v. *Beech* (1876), 1 Ex. D. 320; *R.* v. *Paget* (1881), 8 Q. B. D. at p. 155 (Field, J.); but is usually defined as applying to charges of a criminal character and complaint to civil proceedings before magistrate.

NOTE.—In 11 & 12 Vict. c. 42, the term "complaint" cannot refer to a civil proceeding.

INHABITANT, in 11 Geo. 3, c. 29, means a "resiant occupier." *Downe* v. *Martyr* (1828), 8 B. & C. 69; *R.* v. *Nicholson* (1810), 12 East 342.

„ synonymous with "occupier." *R.* v. *Tunstead* (1790), 3 T. R. 523. In 2 Inst. 702, Lord Coke says that under 22 Hen. 8, c. 5, the word "inhabitants" includes those who occupy lands in the county though they do not reside there. See also *R.* v. *Hall* (1822), 1 B. & C. 136.

INHABITED DWELLING-HOUSE, in 14 & 15 Vict. c. 36, s. 1, does not apply to a house only occupied during the day and where no one sleeps at night. Per Kelly, C.B., in *Riley* v. *Read* (1879), 4 Ex. D. 102.

INJURIOUSLY AFFECTED.—Lands Clauses Act, s. 68; Railways Clauses Act, s. 6 (16), *in pari materiâ*. See *Cowper Essex* v. *Acton L. B.* (1889), 14 App. Cas. 153; *Re L. T. & S. Ry. Co.* (1889), 24 Q. B. D. 44; Cripps on Compensation (3rd ed.), p. 145.

INSOLVENT, in 33 Geo. 3, c. 54, s. 10, does not mean "a person who has made a mere assignment for the benefit of his creditors, but a person who has taken the benefit of an Insolvent Debtors Act." Per Shadwell, V.C., *Re Birmingham Benefit Society* (1830), 3 Sim. 423.

INSOLVENT CIRCUMSTANCES, in 19 Geo. 2, c. 32, s. 1, does not necessarily mean a state of complete insolvency, but is used in the popular sense, and means "in tottering circumstances." *Teale* v. *Younge* (1825), 1 M'Cl. & Younge 497.

INSTRUMENT, in 1889, c. 30 (Trust Investment, England and Ireland), s. 9, includes "a private Act of Parliament."

INTENDED TO BE DONE, in Public Health Act, 1875, s. 204, means, not intended to be done in the future, but done in supposed conformity with the provisions of the Act. *Chapman* v. *Auckland Guardians* (1889), 23 Q. B. D. 303 (Bowen, L.J.). This same construction is applied to all Acts as to notice of action. Where the words are not inserted the Court will imply them.

INTEREST IN LAND, in the Mortmain Act (9 Geo. 2, c. 36), includes bonds issued by harbour trustees and secured on "rates, tolls, and rents": *In re David* (1890), 43 Ch. D. 27; but not a charge on a borough fund: *Re Thompson* (1890), 45 Ch. D. 161.

INTERRUPTION, in s. 2 of the Prescription Act (2 & 3 Will. 4, c. 71), does not mean "cessation," but such interruption as is mentioned in s. 4 of the Act. *Hollins* v. *Verney* (1884), 13 Q. B. D. 304, at p. 307 (Lindley, L.J.).

INVENTED WORD, in the Patents Act, 1888, s. 64, does not include a descriptive word—*i.e.*, a word referring to the quality or nature of the article to which it is applied. *Meyerstein's Trade Mark* (1890), 43 Ch. D. 604.

INVESTMENT, in 17 & 18 Vict. c. 34, ss. 1, 2. *Vide Clerical, &c., Assurance Co.* v. *Carter* (1889), 22 Q. B. D. 444.

ISSUE OF BANKNOTES, in 7 & 8 Vict. c. 32, s. 11, means "the delivery of the notes to the persons who are willing to receive them in exchange for value in gold, bills, or otherwise; the person who delivers them being prepared to take them up when they are presented for payment. *Per Cur.*, *Att.-Gen.* v. *Birkbeck* (1884), 12 Q. B. D. 611.

" OF SHARES, in 30 & 31 Vict. c. 131, s. 25, "must be taken as meaning something distinct from allotment, and as importing that some subsequent act has been done whereby the title of the allottee becomes complete." *Clarke's case* (1878), 8 Ch. D. 638.

ISSUED.—See *Shares issued.*

JEWELLERS' WORKS, in 12 Geo. 2, c. 26 (Gold and Silver Wares), defined (s. 2) as "any gold or silver wherein any jewels or other stones are or shall be set (other than mourning rings)."

JUDGMENT.—"In Acts of Parliament there is a well-known distinction between a 'judgment' and an 'order.'" *Ex parte Chinery* (1884), 12 Q. B. D. 345.

„ in 1 Will. 4, c. 21, s. 1, is used in its technical sense—*i.e.*, a judgment on pleadings, not a mere decision of a Court upon a rule. *Ex parte Everton* (1871), L. R. 6 C. P. 246.

„ in 1 & 2 Vict. c. 110, s. 17, means such judgments as were then (1838) known—*i.e.*, those of the superior courts of common law and of such inferior courts of common law as then (1838) existed—and does not include the judgments of county courts as reconstructed by the County Courts Act of 1846 (9 & 10 Vict. c. 95). *R.* v. *County Court Judge of Essex* (1887), 18 Q. B. D. 704.

„ in s. 47 of the Judicature Act, means any decision, and not merely final judgment, in criminal cases. *R.* v. *Foote* (1882), 10 Q. B. D. at p. 380 (Jessel, M.R.).

JURISDICTION.—The right to adjudicate on a given point.

„ The local extent within which the High Court can and does exercise the right when ascertained. See 6 Law Quarterly Review, 295; R. S. C. 1883, Ord. 11, r. 1.

JUST.—"Shall have the power, if he shall think just, to order a new trial," in the County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 93. These words do not give a county court judge an absolute power of granting new trials. His power under the section is subject to the rules and limitations as to the granting of new trials which are binding upon the High Court, the Court of Appeal, and the House of Lords. *Murtagh* v. *Barry* (1890), 44 Ch. D. 632 (Lord Coleridge, C.J.). The crucial word in the phrase is "just," which imparts a judicial, and not an absolute power.

JUSTICE.—"Best calculated to answer the ends of justice," in 17 & 18 Vict. c. 82, s. 8, means to attain what is right and proper in the circumstances. *Smith* v. *Cooke* (1891), A. C. 297, 45 Ch. D. 38.

KEEP implies habitual, and not mere occasional, use for the purpose prohibited by statute. *R.* v. *Strugnell* (1866), L. R. 1 Q. B. 93.

„ in 6 & 7 Vict. c. 68, s. 2 (against unlicensed theatres), is not synonymous with have, but does not imply habitual use. Keeping a house for one day for unlicensed stage plays is a contravention of the Act. *Shelley* v. *Bethell* (1884), 12 Q. B. D. 11, 15.

LABOURER, in 29 Chas. 2, c. 7, s. 1, does not include a farmer who works for himself, but, *semble*, it includes an agricultural labourer. *R.* v. *Cleworth* (1864), 4 B. & S. 927.

LABOURER, in Employers and Workmen Act, 1875, does not include an omnibus conductor or driver. *Morgan* v. *London Gen. Omnibus Co.* (1883), 12 Q. B. D. 206.

LABOURING CLASS (Standing Orders of the House of Commons, Private Business, 38, 183 a) includes mechanics, artisans, labourers, and others working for wages, hawkers, costermongers, persons not working for wages but working for some trade or handicraft without employing others except members of their own family, and persons other than domestic servants whose income does not exceed an average of 30*s.* a week, and the families of any such persons who may be residing with them. See Housing of Working Classes Act, 1890, s. 53.

LAND.—In all Acts passed after 1850, unless the contrary intention appears in the Act, the expression "land" includes messuages, tenements, and hereditaments, houses and buildings, of any tenure. Int. Act, 1889 (52 & 53 Vict. c. 63), s. 3. 13 & 14 Vict. c. 21, s. 4, is repealed as from January 1, 1890. The substituted enactment applies also to all Acts passed subsequently to the Int. Act, 1890.

„ in the Conveyancing Act, 1881, c. 41, s. 2 (ii.), and Settled Land Act, 1882. See 5 Law Quarterly Review, 376.

„ See *Hereditament.*

„ CHARGES, in the Land Charges Act, 1888, does not include expenses incurred by local authorities under the Public Health Acts, although they may in certain events become charges on property. *R.* v. *Vice-Registrar of Land Registry* (1890), 24 Q. B. D. 178.

„ See *Owners of land.*

LAW OF PARLIAMENT, in 2 Will. 4, c. 45, s. 36, means the law as administered at the time of the passing of that Act by committees of the House of Commons. *Harrison* v. *Carter* (1876), 2 C. P. D. 35.

LAWFUL PURPOSE, in 39 & 40 Vict. c. 45 (Industrial and Provident Societies), means a purpose lawful by reference to public law and the rules and constitution of the society. *Warburton* v. *Huddersfield Industrial Society* (1891), 8 Times L. R. 26.

LEGACY DUTY.—A tax on property falling to the successors of a deceased person, leviable when the enjoyment accrues. *Blackwood* v. *R.* (1882), 8 App. Cas. 90.

LIABILITY, "incapable of being estimated," in the Bankruptcy Act, 1869, s. 31. See *Hardy* v. *Fothergill* (1888), 13 App. Cas. 351.

„ in Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 37, includes liability under a covenant to pay money out of the estate of the covenantor six months after his death. *Barnett* v. *King* (1891), 1 Ch. 4.

„ TO COSTS, construed in *Stubbs* v. *Director of Public Prosecutions* (1890), 24 Q. B. D. 577, with reference to the Public Prosecutor and Vexatious Indictments Act.

LICENSED HOUSE, in the Idiots Act, 1886, "means any house licensed by the Commissioners in Lunacy, or by the justices of any county or borough, for the reception, care, education, and training of idiots and imbeciles" (s. 17).

LIFEBOAT SERVICE, in the Removal of Wrecks Acts, 1877 and 1889, "means the saving or attempted saving of vessels, or of life or property on board vessels, wrecked, or aground, or sunk, or in danger of being wrecked, or getting aground, or sinking." 52 Vict. c. 5, s. 3.

LIGHT RAILWAY (IRELAND), in 1889, c. 66 (by s. 11), "includes tramway as that word is used in the Tramways (Ireland) Acts."

LITERARY AND ARTISTIC WORK, in the International Copyright Act, 1886, "unless the context otherwise requires, means every book, print, lithograph, article of sculpture, dramatic piece, musical composition, painting, drawing, photograph, and other work of literature and art to which the Copyright Acts or the International Copyright Acts, as the case requires, extend." 49 & 50 Vict. c. 33, s. 11.

LOCAL AUTHORITY, for purposes of the Technical Instruction Act, 1889 (c. 76), means (s. 4) the council of any county or borough and any *urban* sanitary authority within the meaning of the Public Health Acts.

„ in the Infectious Diseases Act, 1889 (c. 72), s. 16, means each of the following authorities:—

(a) The Commissioners of Sewers of the City of London.

(b) The vestry under the Metropolis Management Act, 1855, of a parish in schedule A., and the district board of a district in schedule B., to the Metropolis Management Act, 1855, as amended by the Metropolis Management Amendment Act, 1885, and the Metropolis Management (Battersea and Westminster) Act, 1887.

(c) An urban or rural sanitary authority in England within the meaning of the Public Health Acts.

(d) The port sanitary authority of any port sanitary district in England.

LODGER, under the Rating Acts, means every person occupying part of a house who is not a householder. *Stamper* v. *Sunderland Overseers* (1868), L. R. 3 C. P. 388.

„ under the Franchise Acts, means a person residing in the house of another over which the latter exercises some control, such as by having a servant in the house to look after it for him. *Bradley* v. *Baylis* (1881), 8 Q. B. D. at p. 241, per Cotton, L.J.

„ in the Lodgers' Goods Protection Act, 1871 (34 & 35 Vict. c. 79), ss. 1, 2, means one who lives and sleeps on the premises in question, and does not include persons who occupy rooms for business purposes in the daytime. *Heawood* v. *Bone* (1884), 13 Q. B. D. 179.

LOOSE, in 2 & 3 Vict. c. 47, s. 54, in the expression "every person who shall turn loose any horse or cattle," does not mean "physically loose," as the enactment only requires that the cattle shall be under the care and control of their owner. *Sherborn* v. *Wells* (1862), 3 B. & S. 786.

LORD LIEUTENANT, with reference to Ireland, means "the Lord Lieutenant of Ireland or other chief governors or governor" (usually Lords Justices) "of Ireland for the time being." Int. Act, 1889 (c. 63), s. 12 (9).

LOTTERY, in s. 2 of 42 Geo. 3, c. 119, means "a distribution of prizes by lot or chance." *Taylor* v. *Smetten* (1883), 11 Q. B. D. 207, at p. 211, per Hawkins, J.

LUNATIC, in 8 & 9 Vict. c. 100, s. 44, includes "every person whose mind is so affected by disease that it is necessary for his own good to put him under restraint." *R.* v. *Bishop* (1880), 5 Q. B. D. 259.

MAINTENANCE OF A MAIN ROAD, within the Highways and Locomotives Amendment Act, 1878 (41 & 42 Vict. c. 77), s. 13, includes the removal of snow when it makes the road impassable. *Guardians of Amesbury* v. *Justices of Wilts* (1883), 10 Q. B. D. 480.

„ OF A PRISONER, in 40 & 41 Vict. c. 21, ss. 4, 57, includes the expenses of inquiring into the mental state of a prisoner

who becomes insane, and of removing him to a county lunatic asylum, and maintaining him there during the currency of his sentence. *Mews* v. *R.* (1882), 8 App. Cas. 339.

MAKE A VALUABLE SECURITY, in 24 & 25 Vict. c. 96, s. 90, inserted to include instruments which were not valuable securities prior to delivery, and to get rid of *R.* v. *Dangar* (1859), 1 D. & B. 303, decided on the earlier Act 7 & 8 Geo. 4, c. 29, s. 53. *R.* v. *Gordon* (1889), 23 Q. B. D. 359 (C. C. R.).

MALICIOUS, in 24 & 25 Vict. c. 97, s. 51, means "where a person wilfully does an act injurious to another without lawful excuse." Per Blackburn, J., in *R.* v. *Pembliton* (1874), L. R. 2 C. C. R. 122.

MANUAL INSTRUCTION, in 1889, c. 76 (by s. 8), means "instruction in the use of tools, processes of agriculture, and modelling in clay, wood, or other material."

„ LABOUR, in Employers and Workmen Act, 1875, s. 10, does not mean the mere user of the hands in matters incidental to the employment, but the user of the hands as the real and substantial part of the employment. *Bound* v. *Laurence* (1892), 1 Q. B. 226; *cf. Morgan* v. *London General Omnibus Co.* (1884), 13 Q. B. D. 832.

MARRIAGE SETTLEMENT, in s. 4 of the Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), includes an informal memorandum of agreement for a marriage settlement. *Wenman* v. *Lyon* (1891), 1 Q. B. 634.

MARRIED WOMEN'S PROPERTY.—S. 1 (1) of the Act of 1882, c. 75, is to be read and construed with sub-ss. 2 and 5. *Re Cuno* (1890), 43 Ch. D. 12 (C. A.) *Vide Accordance.*

MARRY, in 24 & 25 Vict. c. 100, s. 57 (bigamy), means "go through the form of marriage." The statute is equally contravened whether the second marriage is a valid one or not. *R.* v. *Allen* (1872), 1 C. C. R. 367. *Vide ante*, p. 186.

MASCULINE.—*Vide ante*, p. 175. As to Irish criminal statutes, *vide* 9 Geo. 4, c. 54, s. 35.

MAY.—*Vide ante*, p. 179.

„ in rules of court, has been held to mean may or may not—to give a discretion which is called a judicial discretion, but which still is a discretion. *Att.-Gen.* v. *Emerson* (1889), 24 Q. B. D. 58.

„ = shall in Public Health Act, 1875, s. 211. *R.* v. *Barclay* (1881), 8 Q. B. D. 306, 486.

MAY = must in Arbitration Act, 1889, s. 5. *Re Eyre and Corporation of Leicester* (1892), 1 Q. B. 136.

„ Cotton, L.J., in *Nichols* v. *Baker* (1890), 44 Ch. D. at p. 270: "I think that great misconception is caused by saying that in some cases 'may' means must (or shall). It never can mean 'must' as long as the English language retains its meaning; but it gives a power, and then it may be a question in what cases, where a judge has a power given him by the word 'may,' it becomes his duty to exercise it"—*i.e.*, whether the discretion is judicial or absolute, fettered or unfettered.

„ in the Companies Act, 1862, s. 69, does not give an absolute, but only a judicial discretion. And its exercise is regulated by judicial decisions and the *cursus curiæ*—*i.e.*, the fetters which the Courts have imposed on themselves. *Accidental Marine Co.* v. *Mercati* (1866), L. R. 3 Eq. 200; *Northampton Coal and Iron Co.* v. *Midland Waggon Co.* (1878), 7 Ch. D. 500; *City of Moscow Gas Co.* v. *International Financial Society* (1872), 7 Ch. App. 225; *Western Canada Oil, &c., Co.* v. *Walker* (1875), 10 Ch. App. 628 (*contra*); *Pure Spirit Co.* v. *Fowler* (June 23, 1890, Q. B. D.).

MEASURE.—*Vide Mile.*

MEASURING INSTRUMENT, in the Weights and Measures Act, 1889 (c. 21), s. 35, unless the context otherwise requires, includes "any instrument for the measurement of length, capacity, volume, temperature, pressure, or gravity, or for the measurement or determination of electrical quantities."

MEETING, in 32 & 33 Vict. c. 19, s. 4, does not apply to acts done by a single person, as the *primâ facie* meaning of the word is "the coming together of more than one person." *Sharp* v. *Dawes* (1876), 2 Q. B. D. 29.

METROPOLITAN POLICE FUND, in 49 & 50 Vict. c. 22 (Met. Pol. Act, 1886), s. 7, "means the rates, contributions, and funds for the time being applicable for defraying the expenses of the Metropolitan Police Force."

MILE.—When a distance is mentioned in an Act passed prior to 1890, without defining how it is to be measured,(*a*) it is to be measured "as the crow flies," and not by the nearest mode of practicable access. Formerly it was considered that miles should be computed according to the English manner, allowing 5280 feet or 1760

(*a*) *Vide ante*, p. 177, and 6 & 7 Vict. c. 18, s. 76.

yards to each mile, and that the same shall be reckoned, not by straight lines as a bird or arrow may fly, but according to the nearest and most usual way.(*b*) This method of measurement was first called in question by Parke, J., in *Leigh* v. *Hind* (1829), 9 B. & C. 779 (which, however, was a case upon the construction of a contract, and not of a statute), and his opinion was followed by the Queen's Bench in *R.* v. *Saffron Walden* (1846), 9 Q. B. 79, where Patteson, J., said: "We have nothing to guide us except the words of the statute, 'ten miles.' We must therefore lay down an arbitrary rule, and I think the best rule will be to take the distance as the crow flies." This decision was acted upon in *Lake* v. *Butler* (1854), 5 E. & B. 99, where Crompton, J., said, "If this question were quite new, the convenience would be all in favour of construing the distance as that measured in a straight line, and the recent authorities being all in favour of this construction, we ought to adhere to it, so that the Legislature may know how such general words in an Act will be construed by the Courts." *Vide ante*, p. 177.

MINERAL CONTRACTED TO BE GOTTEN, in 35 & 36 Vict. c. 76 (Mines), s. 17, in a coal-mine includes *slack*. *Netherseal Co.* v. *Bourne* (1889), 14 App. Cas. 247.

MINERALS, as used in the Act of Settlement passed in the Isle of Man, 1704, is used in its "more limited and popular meaning, which would not embrace such substances as clay and sand, though doubtless the word in its scientific and widest sense may include substances of this nature, and when unexplained by the context, or by the nature and circumstances of the transaction, or by usage, would, in most cases, do so." Per Jud. Comm. in *Att.-Gen.* v. *Mylchreest* (1879), 4 App. Cas. 305.

MINES, MINERALS, as used in 8 Vict. c. 20, s. 77, includes minerals whether got by underground or by open workings, although "the primary meaning of the word 'mine' standing alone is an underground excavation made for the purpose of getting minerals." Per Kay, J., in *Midland Ry.* v. *Haunchwood Brick, &c., Co.* (1882), 20 Ch. D. 555.

" in 8 & 9 Vict. c. 20 (English Railway Clauses), s. 77, in 8 & 9 Vict. c. 33 (Scotch Railway Clauses), s. 70, and in 10 & 11 Vict. c. 17

(*b*) See Hawkins, Pleas of the Crown (4th ed.), book i. ch. xii. s. 15; *Wing* v. *Earle* (1599), Cro. Eliz. 212, 267.

(Waterworks Clauses, 1847), are not definite or scientific terms in an Act, but are susceptible of limitation or expansion according to the intention with which they are used. *Lord Provost of Glasgow* v. *Farie* (1888), 13 App. Cas. at p. 675 (Watson). And see *Midland Ry. Co.* v. *Robinson* (1889), 15 App. Cas. 19.

Mines.—The policy of Acts in excepting minerals from conveyances to compulsory takers of land favours a liberal and not a limited construction of the reservation to the seller. *Glasgow* v. *Farie* (1888), 13 App. Cas. at p. 676.

„ **of coal.**—Used by the Legislature to denote the minerals *in situ* without reference to the manner in which they can be worked. (Same case, per Lord Watson.)

Minister, in 5 & 6 Will. 4, c. 76, s. 68, is the "most comprehensive" term for describing persons who perform religious duties. *R.* v. *Liverpool* (1838), 8 A. & E. 181.

Misdemeanour, in Acts extending or applied to Scotland, means sometimes "crime and offence" (*e.g.*, 1889, c. 69, s. 8), sometimes "offence" only. Int. Act, 1889 (c. 63), s. 28.

Mistake, in R. S. C. 1875, Ord. 16, r. 2, means mistake of law or fact. *Duckett* v. *Gover* (1877), 6 Ch. D. 86.

Model, unless the context otherwise requires, "includes design, pattern, and specimen." Official Secrets Act, 1889 (c. 52), s. 8 (imp.).

Money expended, in Naval Defence Act, 1889 (c. 8), s. 8, "includes the value of stores issued from stock, and used in the construction or completion of the vessels to be built under the Act."

Month.—*Vide ante*, p. 177.

„ "The term 'a calendar month,'" said Brett, L.J., in *Migotti* v. *Colvill* (1879), 4 C. P. D. 238, "is a legal and technical term, meaning that, in computing time by calendar months, the time must be reckoned by looking at the calendar and not by counting days, so that one calendar month's imprisonment is to be calculated from the day of imprisonment to the day numerically corresponding to that day in the following month, less one." "The calendar month," said Cockburn, C.J., in *Freeman* v. *Read* (1863), 4 B. & S. 184, "is complete when, starting from a given day in the first month, you come to the corresponding day in the succeeding month, whatever be the length of either. . . . . You cannot, in reckoning a calendar month, include two days of the same number."

MONTH, in 24 Geo. 2, c. 44, s. 1, which enacts that "no writ shall be sued out against any justice of the peace for anything done in the execution of his office, until notice in writing of such intended writ shall have been delivered to him . . . . at least one calendar month before the suing out the same," means one month exclusive of the day on which the notice is given. "Where," said Alderson, B., in *Young* v. *Higgon* (1840), 6 M. & W. 54, "there is given to a party a certain space of time to do some act, which space of time is included between two other acts to be done by another person, both the days of doing those acts ought to be excluded, in order to insure to him the whole of that space of time. . . . . The Act of Parliament allows him a month as an intervening period within which he may deliberate whether he will do a certain act—viz., tender amends; and unless you exclude both the first and the last day, you do not give him a whole month for that purpose." Unless it is expressly enacted to the contrary, "where an Act of Parliament gives a given number of days for doing a particular act, and says nothing about Sunday, the days mentioned are to be taken as consecutive days, including Sunday." *Ex parte Simkin* (1864), 2 E. & E. 392. *Vide Radcliffe* v. *Bartholomew* (1892), 1 Q. B. 161.

MUNICIPAL BOROUGH, in England, means a borough within the Municipal Corporation Act, 1882. References to boroughs include cities.

„ in Ireland, means any place subject to 3 & 4 Vict. c. 108.

„ in Acts applied to Scotland, means any "burgh." See 52 & 53 Vict. c. 69, s. 8.

MUTUAL DEALINGS means obligations arising between the parties themselves, perhaps in the same rights. *Peat* v. *Jones* (1881), 8 Q. B. D. 147, per Brett and Cotton, L.JJ.

„ DEBTS AND CREDITS, in 32 & 33 Vict. c. 71 (Bankruptcy), s. 39, (= 45 & 46 Vict. c. 52, s. 38), comprises all ordinary transactions between two persons in their individual capacities, and was added to get rid of questions which might arise whether a transaction would or would not end in a debt. (Same case.)

NATIONAL DEBT COMMISSIONERS, in all Acts, means "the Commissioners for the time being for the Reduction of the National Debt." Int. Act, 1889 (c. 63), s. 12 (17).

NEAR, in 19 Geo. 2, c. 34, s. 2, does not necessarily mean "next," but there must be a reasonable vicinity. *R.* v. *Hervey* (1747), 1 W. Bl. 20.

Nearest public thoroughfare, in 37 & 38 Vict. c. 49, s. 10, is an expression not necessarily restricted to a road, but may mean a way by water where there is a public ferry. *Coulbert* v. *Troke* (1875), 1 Q. B. D. 3.

Necessaries, in 3 & 4 Vict. c. 65, s. 6, is to be understood in its common law sense of "whatever is fit and proper for the service on which a vessel is engaged, and what the owner of the vessel, as a prudent man, would have ordered if present at the time." *The Riga* (1872), L. R. 3 Adm. & E. 522.

„ in 24 Vict. c. 10, s. 5, does not include the expenses of a witness in a collision suit. *The Bonne Amélie* (1866), L. R. 1 Adm. & E. 20.

New building, in a local improvement Act, Hastings, 1885 (c. cxcvi.), s. 111, held to include a bedroom built upon the site of a conservatory previously attached to a house, and occupying no greater space than the conservatory. *Meadows* v. *Taylor* (1890), 24 Q. B. D. 718.

Next, in 13 & 14 Chas. 2, c. 12, s. 2, giving power to appeal to the next sessions, means "the next possible." *R.* v. *Yorkshire* (1779), 1 Doug. 192, cited in *R.* v. *Sussex* (1864), 4 B. & S. 977.

„ **appointed day**, in the Welsh Sunday Closing Act (44 & 45 Vict. c. 61), s. 3, means the day which shall after the passing of the Act be next appointed. *Richards* v. *McBride* (1881), 8 Q. B. D. 119.

Note, in the Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), ss. 1, 64, 89, does not include a Bank of England note. *Leeds Bank* v. *Walker* (1883), 11 Q. B. D. 84.

Notice, in Employers' Liability Act, 1880 (43 & 44 Vict. c. 42), s. 7, means a written notice. *Moyle* v. *Jenkins* (1881), 8 Q. B. D. 116; *Keen* v. *Millwall Dock Co.* (1882), 8 Q. B. D. 482.

Not Negotiable, in 45 & 46 Vict. c. 42 (Bills of Exchange), ss. 8, 73, 76. See *National Bank* v. *Silke* (1891), 1 Q. B. 435.

Noxious thing, in 24 & 25 Vict. c. 100, s. 58, includes a thing like oil of juniper, which is not noxious unless taken in large quantities. *R.* v. *Cramp* (1880), 5 Q. B. D. 307.

Nuisance, in Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 47, "is used in the ordinary legal sense of the word, and includes, in addition to matters injurious to health, matters substantially offensive to the senses." Per Grove, J., *Banbury* v. *Page* (1881), 8 Q. B. D. 98.

NUISANCE OR INJURIOUS TO HEALTH, in s. 91 of the Public Health Act, 1875, means a nuisance either interfering with personal comfort or injurious to health. *Bishop Auckland L. B.* v. *Bishop Auckland Iron Co.* (1882), 10 Q. B. D. 138.

NULL.—See *Void.*

OATH.—*Vide ante*, p. 178.

„ in the Commissioners of Oaths Act, 1889 (c. 10), s. 11, "includes affirmation or declaration."

OCCUPATION, in 41 & 42 Vict. c. 31, s. 10 (2), means (per Kelly, C.B.), "the trade or calling by which a man ordinarily seeks to get his living," and (per Martin, B.) "the business in which a man is usually engaged to the knowledge of his neighbours." Baggallay, L.J., in *Ex parte National Mercantile Bank* (1880), 15 Ch. D. 54.

OCCUPIER, in Infectious Diseases (Notification) Act, 1889 (c. 72), s. 16, includes (1) a person having the charge, management, or control of a building or part of a building, or of the part of a building in which a patient is; (2) in the case of a lodging-house the whole of which is let to lodgers, the person receiving the rent payable by the tenants or lodgers either on his own account or as the agent of another person; and (3) in the case of a ship, vessel, or boat, the master or other person in charge thereof.

OFFICE OF PROFIT.—*Vide ante*, p. 189.

„ UNDER HER MAJESTY THE QUEEN, unless the context otherwise requires, (1) "includes any offices or employment in or under any department of the Government of the United Kingdom;" and (2), "so far as regards any document, sketch, plan, model, or information relating to the naval or military affairs of her Majesty, includes any office or employment in or under any department of the Government of any of her Majesty's possessions." Official Secrets Act, 1889 (c. 52), s. 8.

OFFICIATING CLERGYMAN, in 16 & 17 Vict. c. 97, s. 87, means, in the absence of the vicar, the curate of the parish. *R.* v. *Pemberton* (1869), L. R. 5 Q. B. 95.

OLD MARKS, in the Patents, &c., Act, 1883, s. 69. See *Re Meeus* (1891), 1 Ch. 41.

OMNIBUS, in the Towns Police Clauses Acts, 1847 and 1889, includes every omnibus, char-à-bancs, waggonette, brake, stage coach, and other carriage plying or standing for hire or used to carry passengers at separate fares to, from, or in any part of the prescribed distance.

ON, in 20 & 21 Vict. c. 85, s. 32, in the expression "on any such decree," is "an elastic expression, which, so far from excluding the idea of its meaning *after*, is more consistent with that signification than any other." *Bradley* v. *Bradley* (1878), 3 P. D. 50. "Still," said Jessel, M.R., in *Robertson* v. *Robertson* (1883), 8 P. D. 96, "it is not to be conceived that a period of more than a year can be included in the word 'on.'"

OPEN AND PUBLIC PLACE TO WHICH THE PUBLIC HAVE OR ARE PERMITTED TO HAVE ACCESS, in the Vagrant Act Amendment Act, 1873 (36 & 37 Vict. c. 38), s. 3, includes a railway carriage. *Langrish* v. *Archer* (1882), 10 Q. B. D. 44.

OR, as used in 25 & 26 Vict. c. 102, s. 98, means "nor." *Metropolitan Board* v. *Steed* (1882), 8 Q. B. D. 445.

„ in some cases read as "and." See *Mersey Docks Board* v. *Henderson* (1888), 13 App. Cas. 595 (Halsbury, L.C.).

„ in 1 Jas. 1, c. 15, is to be read as if it was "and;" which, said Lord Kenyon, "is frequently done in legal instruments where the sense requires it." *Fowler* v. *Padget* (1798), 7 T. R. 514. "'Or' never does mean 'and,' unless there is a context which shows it is used for 'and' by mistake." *Morgan* v. *Thomas* (1882), 9 Q. B. D. 693.

„ in 3 & 4 Vict. c. 86, s. 20, in the expression "every suit or proceeding," means "and." *Ditcher* v. *Denison* (1857), 11 Moore P. C. at p. 338.

„ in 25 & 26 Vict. c. 102 (Metropolis Local Management), s. 98, relating to the formation of streets, is used conjunctively = nor (or and), and not disjunctively or alternatively, its ordinary grammatical sense. *Metropolitan Board of Works* v. *Steed* (1881), 8 Q. B. D. 445 (Grove and Lopes, JJ.).

ORDER, in the Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 19, applies to the decision of the Queen's Bench Division upon a case stated by consent under Baines' Act (11 & 12 Vict. c. 45), s. 11, as the opinion of the Queen's Bench Division is an adjudication binding on the parties to the case. *Peterborough* v. *Wilsthorpe Overseers* (1883), 12 Q. B. D. 1.

ORDINARY LANGUAGE, as used in 43 & 44 Vict. c. 42, s. 4, means a man's "own untutored language." *Stone* v. *Hyde* (1882), 9 Q. B. D. 77.

ORE, in 5 & 6 Will. & Mar. c. 6, s. 3, means metal in its crude state

separated from the rock. *Att.-Gen.* v. *Morgan* (1891), 1 Ch. 432, 462 (Kay, L.J.).

OWNER.—See *Adjoining owner.*

„ in Public Health Act, 1875, s. 275, includes the trustees of a Nonconformist chapel: *Hornsey L. B.* v. *Brewis* (1891), 60 L. J. M. C. 48; but, in s. 4 of the Act, not a receiver appointed by the High Court: *Bacup Corporation* v. *Smith* (1890), 44 Ch. D. 395. See *Williams* v. *The Wandsworth Board of Works* (1884), 13 Q. B. D. 211; *Lightbound* v. *Higher Bebington L. B.* (1885), 14 Q. B. D. 849.

„ Defined in Advertising Stations (Rating) Act, 1889 (c. 27), s. 2; Tithe Act, 1836; Inclosure Act, 1845, s. 16; Land Drainage Act, 1861; Improvement of Land Act, 1864; Public Health Act, 1875; Ancient Monuments Protection Act, 1882; Housing of Working Classes Act, 1890.

„ OF LAND, as used in 18 & 19 Vict. c. 120, s. 250, and in 25 & 26 Vict. c. 102, s. 77, does not apply to a land company who have irrevocably dedicated their land to the public. *Plumstead Board* v. *British Land Company* (1875), L. R. 10 Q. B. 203.

„ OF STRUCTURE, as used in 18 & 19 Vict. c. 122, s. 72, does not apply to an incumbent of a district church in the metropolis, although the freehold of the church is vested in him by statute. *R.* v. *Lee* (1879), 4 Q. B. D. 75.

„ OF THE LAND, in 5 & 6 Will. 4, c. 50, s. 65, means the person in actual occupation of the land. *Woodward* v. *Billericay* (1878), 11 Ch. D. 217.

PAINTINGS, in 11 Geo. 4, c. 68, s. 1, does not include "everything which has painting done upon it by a workman; it must mean something of value as a painting (value being necessary to make the statute applicable) and something on which skill has been bestowed in producing it." *Woodward* v. *London and North-Western Railway* (1878), 3 Ex. D. 124.

PAPER, in 2 & 3 Vict. c. 23, ss. 1, 56, is not confined to the manufacture of vegetable matter, but may include an article made of animal matter. *Att.-Gen.* v. *Barry* (1859), 4 H. & N. 470.

PARDON.—See *Hay* v. *Justices of Tower* (1890), 24 Q. B. D. 563.

PARER.—*Vide ante*, p. 189.

„ includes guardian and every person who is liable to maintain or

has the actual custody of a child. Welsh Intermediate Education, 1889 (c. 40), s. 17.

Parent, used as a compendious term for any person liable to maintain a child or entitled to its custody. 54 Vict. c. 3, s. 5.

Parish.—*Vide ante*, p. 178.

„ in 39 & 40 Vict. c. 61, s. 34, means "parish" only, and does not mean "union." *Plomesgate* v. *West Ham* (1880), 6 Q. B. D. 576.

Parliament.—See *Law of Parliament.*

Partner.—See *Co-partnership.*

Part of a volume, in 5 & 6 Vict. c. 45, ss. 2, 13, does not apply to the mere title of a work which was not actually in existence at the time of the registration, so as to give a copyright in that one word as the title of a book to be hereafter written : *Maxwell* v. *Hogg* (1867), 2 Ch. App. 317 ; but *aliter*, if the work was actually in existence : *Weldon* v. *Dicks* (1879), 10 Ch. D. 247.

Party to an action, in the Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 100, does not include a guardian *ad litem*. *Ingram* v. *Little* (1883), 11 Q. B. D. 241.

Note.—In this case the definition of the term in the Act was wide enough to include a guardian *ad litem*, and so to bring him within the rules as to discovery ; but it was held that provisions showing a contrary intention were to be found in the rules.

Passenger.—*Vide ante*, p. 188.

„ **ship**, in s. 52 of the Passengers Act, 1855 (c. 119), and in s. 15 of the amending Act of 1863 (c. 51), means "every description of sea-going vessel carrying one or more passenger or passengers on any voyage *from* any place in her Majesty's dominions to any place whatever." 1889, c. 29, s. 2.

Pauper, in 39 & 40 Vict. c. 61 (Divided Parishes), s. 36, means a person who was a pauper at the commencement of the Act. *Brighton* v. *Strand Union* (1891), 2 Q. B. 156.

Peace, in the expression "peace and welfare of this kingdom" in the preamble of the Foreign Enlistment Act (59 Geo. 3, c. 69), does not refer to "peace with foreign nations, but that tranquillity which is in the care of the magistracy." Per Pollock, C.B., in *Att.-Gen.* v. *Sillem* (1862), 2 H. & C. 512.

PEERAGE, in the Union Act (39 & 40 Geo. 3, c. 67), art. iv. cl. 5, means the status and condition of a peer. *Lord Fermoy's case* (1856), 5 H. L. C. 716.

PENALTY, in 24 & 25 Vict. c. 134, s. 230, extends to any penal consequences whatever, and is not restricted to a pecuniary penalty only. *R.* v. *Smith* (1862), L. & C. 131.

PENDING, in 32 & 33 Vict. c. 83, s. 15, is used with respect to "a cause in a court of justice when any proceeding can be taken in it." Per Jessel, M.R., in *Fordham* v. *Clagett* (1882), 20 Ch. D. 653.

PER, the Latin preposition, as used in 8 & 9 Vict. c. clxix. s. 104, in the expression "a penny per ton per mile," properly and primarily signifies the distribution of the charge over the whole aggregate weight of goods for the whole aggregate distance they may be conveyed, tons and miles being mentioned only as common measures of weight and distance convenient for the purpose of measurement." *Pryce* v. *Monmouthshire Canal, &c., Co.* (1879), 4 App. Cas. 216, per Lord Selborne.

PEREMPTORY, in a rule of Court which has effect of statute, R. S. C. Ord. 19, r. 8. See *Falck* v. *Axthelm* (1890), 24 Q. B. D. 174.

PERFORMED AND PERFORMANCE, in 1886, c. 33 (Int. Copyright), s. 11, and similar words, include "representation" and similar words.

PERIODICAL WORK, in 5 & 6 Vict. c. 45, s. 18, includes a newspaper. Per Jessel, M.R., in *Walter* v. *Howe* (1881), 17 Ch. D. 710.

PERMANENT SICKNESS, in 1 Will. 4, c. 22, s. 10, "implies something more than such a degree of sickness as would prevent the attendance of a witness at a particular trial." *Duke of Beaufort* v. *Crawshay* (1866), L. R. 1 C. P. 714.

PERMIT DRUNKENNESS, in 25 & 26 Vict. c. 94, s. 13, does not include the case of a person getting drunk himself. *Warden* v. *Tye* (1877), 2 C. P. D. 74.

PERQUISITES, in an Act (31 Geo. 2, c. 22) imposing duties on pensions = "such profits of offices and employments in Great Britain as arise from fees established by custom or authority, and payable either by the Crown or the subjects in consideration of business done from time to time in the course of executing such offices and employments." 32 Geo. 2, c. 33; 2 Rev. Statt. (2nd ed.) p. 329.

NOTE.—These enactments are repealed as to England, and payment by fees is almost extinct, except in the case of clerks to justices.

Person.—*Vide ante*, p. 176.

„ in 1 & 2 Will. 4, c. lxxvi. s. 85, does not include a corporation. *Shoreditch* v. *Franklin* (1878), 3 C. P. D. 380.

„ in 25 Vict. No. 1 (New South Wales), s. 13, is not necessarily restricted to persons above twenty-one years of age. *O'Shannessy* v. *Joachim* (1876), 1 App. Cas. 90.

„ **belonging to such ship**, in 17 & 18 Vict. c. 104, s. 458, includes passengers as well as master and crew. *The Fusilier* (1865), 3 Moore P. C. N. S. 51.

Personate, in 22 Vict. c. 35, s. 9, "means to pretend to be a particular person . . . . and it is not necessary that a person should by his personation succeed in giving a vote." Per Crompton, J., in *R.* v. *Hayne* (1864), 4 B. & S. 720.

Petty sessional court.—Defined in the Int. Act, 1889 (c. 63), s. 13 (12).

„ „ **court-house.**—Defined in the Int. Act, 1889 (c. 63), s. 13 (13).

Piracy, in 6 & 7 Vict. c. 76, s. 1, means such an offence as by the municipal laws of the United States is constituted piracy, and is within the exclusive jurisdiction of the United States. *Re Ferman* (1864), 33 L. J. M. C. 201. See also same case, reported as *Re Tivnan*, 5 B. & S. 645, especially *note* (*a*) at p. 696.

Place, in 3 & 4 Vict. c. 61, s. 15, is not confined to one parish, but means "any aggregation of houses and inhabitants which has received a separate name." *Rice* v. *Slee* (1872), L. R. 7 C. P. 381, following *R.* v. *Charlesworth* (1851), 20 L. J. M. C. 181.

„ in 16 & 17 Vict. c. 119 (Betting Houses), s. 3, does not mean place in the nature of "a house, office, or room," but means any (not absolutely) fixed and ascertained spot, piece of ground, or structure appropriated or used by a person offering to make bets. *Gallaway* v. *Maries* (1881), 8 Q. B. D. 275; *Hornsby* v. *Raggett* (1892), 1 Q. B. 20.

„ **belonging to her Majesty the Queen**, in 1889, c. 52, s. 8, includes a place belonging to any department of the Government of the United Kingdom, or of any of her Majesty's possessions, whether the place is or is not actually vested in her Majesty.

„ **having a known or defined boundary**, in 21 & 22 Vict. c. 98, s. 12, does not necessarily mean a legal district having a legal boundary, but it is sufficient if the place have an actual known boundary, or one which is "physical, visible, and notorious." *R.* v.

Local Government Board (1873), L. R. 8 Q. B. 227, and *Eastwood* v. *Miller* (1874), L. R. 9 Q. B. 443.

PLACE OF SAFETY, in the Prevention of Cruelty to Children Act, 1889 (c. 44), s. 17, includes "a workhouse and any place certified by a local authority by bye-law" under the Act for the purposes of the Act.

" OF WORSHIP.—See *Usual place of worship.*

" WHERE A COMPANY CARRIES ON OR EXERCISES A TRADE OR BUSINESS, (1) with reference to the place where a company may be sued, means where its place of management is; (2) in the Income Tax Acts, the place where its profit is made, regardless of the position of the head office or place of management. *Erichsen* v. *Last* 1881), 8 Q. B. D. 414.

PLEDGE.—In the Factors Act, 1889 (c. 45), includes any contract pledging or giving a lien or security on goods, whether in consideration of an original advance or of any further or continuing advance or of any pecuniary liability. S. 1 (5).

PLURAL.—*Vide ante*, p. 175.

POINT, as used in the Rules for the Navigation of the Thames, "is not to be construed mathematically, for the rule is a nautical one, framed in nautical language, and means what I may term the whole of the point, and not its mere apex." Per Brett, M.R., in *The Margaret* (1885), 9 P. D. 48.

POLICE AREA.—Defined, Police Act, 1890 (c. 45), s. 33.

" DISTRICT.—Defined in Riot Damage Act, 1886 (c. 38), s. 9.

" RECEIVER = receiver of the Metropolitan Police District. 49 Vict. c. 22 (Metropolitan Police Act, 1886), s. 7.

POLICY OF INSURANCE AGAINST ACCIDENT.—Defined in Revenue Act, 1891 (c. 42), s. 20 (a).

POLITICAL CHARACTER, in Extradition Act, 1870 (33 & 34 Vict. c. 52), s. 3 (1).—This term, as applied to an offence, means "incidental to, and forming part of, political disturbances." *Re Castioni* (1891), 1 Q. B. 149.

POOR LAW UNION.—*Vide ante*, p. 178.

PORT, in 54 Geo. 3, c. 159, is used, not in its geographical sense, but in its legal and proper sense, as denoting a place to which ships resort for loading and discharging. *Nicholson* v. *Williams* (1871), L. R. 6 Q. B. 642.

Port, as fixed for fiscal purposes, by statutes or Treasury warrant or royal prerogative (*i.e.*, charter), and proof of *de facto* user as the port: for Customs, port dues, &c. See *Hunter* v. *Northern Marine* (1888), 13 App. Cas. 717.

„ in its commercial sense, as understood by shippers, owners, and underwriters, = a place of more or less shelter for a ship while goods are being loaded or unloaded, including a roadstead. *Sea Insurance Co.* v. *Gavin* (1835), 4 W. & S. 17 (H. L.); *Garston Sailing Ship Co.* v. *Hickie* (1885), 15 Q. B. D. 588.

Possession, as used in 27 Hen. 8, c. 10, and 2 Will. 4, c. 45, s. 26, has a technical meaning. *Heelis* v. *Blain* (1865), 18 C. B. N. S. 107.

Postmaster-General means her Majesty's Postmaster-General for the time being. Int. Act, 1889 (c. 63), s. 12 (11).

Precedence, in 5 & 6 Will. 4, c. 76, s. 57, which enacts that "the mayor for the time being of every borough shall . . . . have precedence in all places within the borough," applies only to the social, not to the magisterial precedence. *Ex parte Mayor of Birmingham* (1860), 3 E. & E. 222.

Preference shares.—Defined in Companies Clauses Act, 1863 (26 & 27 Vict. c. 118), s. 14.

„ in Railway Companies Act, 1867, ss. 12, 17, does not apply to split ordinary shares, so that the holders of the preferred halves of such shares are not, by virtue of that Act, entitled, in a winding up, to any priority over the holders of the deferred halves. *Re Brighton and Dyke Rail. Co.* (1890), 44 Ch. D. 28.

Preferred, in 13 Geo. 3, c. 84, s. 33, in the expression "before whom such indictment shall be preferred," means "tried." *R.* v. *Pembridge* (1842), 3 Q. B. 906.

Premises, in 35 & 36 Vict. c. 94 (Licensing), s. 45, means premises for which an "on" licence is sought, and does not apply to "off" licences under 32 & 33 Vict. c. 27 (Wine and Beer Houses).

Prescribed means prescribed by rules and orders under the Act in which it is used. 52 & 53 Vict. c. 48 (County Court Appeals, Ireland), s. 18 (1).

Presume, in 22 Geo. 3, c. 45, s. 9, implies, "not a mere ignorant act, but an act in which a person knowingly takes upon himself to do that which the law says shall not be done under the circumstances." *Royse* v. *Birley* (1869), L. R. 4 C. P. 315.

PRINCIPLES, in 31 & 32 Vict. c. 125, s. 26, although "a large and comprehensive word, means nothing more in this [particular] section than 'practice' or 'procedure.'" Per Keating, J., in *Earl Beauchamp* v. *Madresfield* (1873), L. R. 8 C. P. 253.

PRISON SERVICE, in the Prison Act of 1877, includes (1) service in a military prison under Army Act, 1879, or the Army Act (1881); (2) service in a naval prison under the Naval Discipline Act. See Prison Officers' Superannuation Act, 1886 (c. 9).

PRIVY COUNCIL means (1) "the Lords and others for the time being of her Majesty's Most Honourable Privy Council;" (2) when used with reference to Ireland only, "the Privy Council of Ireland for the time being"—1889, c. 63, s. 12 (5); (3) in the British North America Act, 1867, and amending Acts, the Privy Council for Canada for the time being.

PROBATE DUTY.—A tax on the property to which the probate gives title. *Blackwood* v. *The Queen* (1882), 8 App. Cas. 90.

PROCEEDING, in 25 & 26 Vict. c. 102, s. 106, means "something in the nature of a writ or process, a proceeding of a hostile character." *Delany* v. *Metropolitan Board* (1867), L. R. 2 C. P. 532.

„ in 46 & 47 Vict. c. 52 (Bankruptcy), s. 55. See *In re Proctor* (1891), 2 Q. B. 433.

„ in Railway and Canal Traffic Act, 1854.—Defined in *L. & Y. Rail. Co.* v. *Greenwood* (1888), 21 Q. B. D. 215.

PRODUCED, with reference to copyright (1886, c. 33, s. 11), "means, as the case requires, published or made or performed or represented, and the expression 'production' is to be construed accordingly." Copyright Act.

PROFIT (GROSS), ITEMS TO BE TATEN INTO ACCOUNT IN ESTIMATING.—See *Merthyr Tydfil L. B.* v. *Merthyr Union* (1891), 1 Q. B. 186.

PROFITS, in 16 & 17 Vict. c. 34, sch. D., means "the incomings of the concern after deducting the expenses of earning them." Per Lord Selborne in *Mersey Docks* v. *Lucas* (1883), 8 App. Cas. 903.

„ in Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 100, means "the surplus by which the receipts from the trade or business exceed the expenditure necessary for earning these receipts." *Russell* v. *Town and Country Bank* (1888), 13 App. Cas. 418, 424. It includes the surplus over expenditure of the receipts of a

burial board, although by 15 & 16 Vict. c. 85, the surplus has to be applied in reduction of the poor-rate. *Paddington Burial Board* v. *Commissioners of Inland Revenue* (1884), 13 Q. B. D. 9.

PROPERTY, in 25 & 26 Vict. c. 87, s. 6, is "not a term of art, but a common English word," and includes "all rights which the trustees were holding in trust . . . . whether then existing complete in them, or such as would subsequently accrue by virtue of a then existing title." *Queensbury* v. *Pickles* (1865), L. R. 1 Ex. 1. *Vide ante*, p. 186.

" in Bankruptcy Act, 1883, s. 4 (1, a), means the *whole*, or substantially the *whole*, of the property as distinguished from the property referred to in sub-s. 1 (6). *Re Spackman* (1890), 24 Q. B. D. 741 (Fry, L.J.).

" REAL OR PERSONAL, in 24 & 25 Vict. c. 97 (Malicious Damage), s. 52, means something real and tangible, and does not include a mere legal right, nor an incorporeal hereditament such as a herbage right in a town moor. *Laws* v. *Eltringham* (1881), 8 Q. B. D. 283 (Grove and Lopes, JJ.).

" WHICH SHALL NOT BE REDUCED INTO MONEY, in 36 Geo. 3, c. 52, ss. 6, 22, must be read as if the words "in the course of the administration of the estate," and therefore includes pictures bequeathed *in specie*, but sold by the executors. *Att.-Gen.* v. *Dardier* (1883), 11 Q. B. D. 16.

PROSECUTE.—"With due diligence commences and prosecutes," in the Patents, &c., Act, 1883 (c. 47), s. 32, does not mean prosecuting to a successful result. "Due diligence" in the phrase is consequently consistent with failure in, or discontinuance of, an action for infringement of a patent. *Colley* v. *Hart* (1890), 44 Ch. D. 179 (North, J.).

PUBLIC BODY, in the Public Bodies Corrupt Practices Act, 1889 (s. 7), "means any council of a county or county of a city or town, any council of a municipal borough, also any board, commissioners, select vestry, or other body which has power to act under and for the purposes of any Act relating to local government or the public health, or to poor law, or otherwise to administer money raised by rates in pursuance of any *public general Act*, but does not include any public body as above defined existing elsewhere than in the United Kingdom."

" COMPANY, WHETHER INCORPORATED OR NOT, in 1 & 2 Vict. c. 110, s. 14, is an expression not known to the law as a legal term with

a definite legal meaning. *McIntyre* v. *Connell* (1851), 20 L. J. Ch. 284.

PUBLIC OFFICE "means any office or employment of a person as a member, officer, or servant of such public body." 52 & 53 Vict. c. 69, s. 7.

„ SERVICE, in 24 & 25 Vict. c. 96, s. 70, does not include a bailiff of the high bailiff of the county court, who is appointed, paid, and dismissible by the high bailiff. *R.* v. *Parsons* (1888), 16 Cox 489; *R.* v. *Graham* (1875), 13 Cox 57; *R.* v. *Glover* (1864), 9 Cox 501.

„ THOROUGHFARE.—See *Nearest public thoroughfare.*

PUBLISH, in 7 Vict. c. 12, s. 19, means "make public" in any way, and is not confined to publishing by printing. *Boucicault* v. *Chatterton* (1877), 5 Ch. D. 279.

PURCHASE, in 34 & 35 Vict. c. 31 (Trade Unions), s. 7, means "to buy," and not "to acquire otherwise than by descent or escheat." *In re Amos, Carrier* v. *Price* (1891), 3 Ch. 157.

PURCHASER, as used in 32 & 33 Vict. c. 71, s. 91, "means a buyer in the ordinary commercial sense, and not a purchaser in the legal sense." Per Jessel, M.R., in *Ex parte Hillman* (1879), 10 Ch. D. 625.

PURE AND WHOLESOME, in a water Act, means "pure and wholesome in the mains or supply pipes of the undertakers." *Milnes* v. *Mayor of Huddersfield* (1882), 10 Q. B. D. 124, 12 Q. B. D. 443.

QUARRY, in 5 & 6 Vict. c. 35, s. 60, sch. A., No. III., r. 1, means "a place where the material is got out in a large shape, like blocks, and not where it is got in small pieces, like coal and ironstone." *Jones* v. *Cwmorthen Slate Co.* (1880), 5 Ex. D. 95.

QUARTER SESSIONS.—The expression "quarter sessions," when used in Acts prior to 1889, is usually, but superfluously, defined as including general sessions—*e.g.*, Weights and Measures Act, 1878 (c. 49), s. 70. *Vide* p. 295. The only effect of the inclusion is to exclude special and petty sessions.

„ COURT OF, as to administrative business, must be construed as meaning council of an administrative county or county borough, as the case may require.

„ as to judicial business and other matters not taken away from the court of quarter sessions by the Local Government Act of 1888, means the justices of any county, riding, parts, division,

or liberty of a county (at large), or of any county of a city or county of a town in general, or quarter sessions assembled, and includes the court of the recorder of a municipal borough having a separate court of quarter sessions. Int. Act, 1889 (c. 63), s. 13 (14).

Counties with more than one commission of the peace:—

Yorkshire, three—one for each riding, North, East, and West; also separate commissions for the liberties of Ripon, and Cawood and Ottley.

Lincolnshire, three—one for each of its parts, Lindsey, Holland, and Kesteven.

Cambridgeshire, two—one for the liberty of the Isle of Ely, the other for the rest of the county.

Northamptonshire, two—one for the soke of Peterborough, the other for the rest of the county.

Essex, two—one for the liberty of Havering-atte-Bower (as to which see 46 & 47 Vict. c. 18, s. 18), the other for the rest of the county.

Suffolk and Sussex have one commission, but two divisions, which, for judicial purposes, are separate counties all but in name.

All cities which are counties in themselves are also municipal boroughs, and their justices, for quarter sessions purposes (except in the City of London), are superseded by the recorder or his deputy or assistant barrister. Mun. Corp. Act, 1882, ss. 162–169.

QUEEN ANNE'S BOUNTY means "The Governors of the Bounty of Queen Anne for the augmentation of the maintenance of the poor clergy." Int. Act, 1889 (c. 63), s. 12 (16).

RAILWAY, in 43 & 44 Vict. c. 42, s. 1 (5), "is used in its popular sense—viz., as meaning a way upon which trains pass by means of rails," and is not confined to "a railway worked by a railway company under statutory powers." *Doughty* v. *Firbank* (1883), 10 Q. B. D. 358.

RATEABLE VALUE, in 30 & 31 Vict. c. 102, s. 6 (2), means "real rateable value," and does not mean the same as "rated at." *Cooke* v. *Butler* (1872), L. R. 8 C. P. 256.

RATES MADE, in 30 & 31 Vict. c. 102, s. 3, means rates made duly and formally, and not merely allowed. *Jones* v. *Bubb* (1869), L. R. 4 C. P. 358.

REASONABLE EXCUSE, in the Bills of Sale Act, 1878, Amendment Act,

1882 (45 & 46 Vict. c. 43), s. 7.—See *Ex parte Cotton* (1883), 11 Q. B. D. 301.

RECOGNIZANCE.—Where a statute requires a recognizance to be entered into within a time limited by the Act as a condition precedent to a right of appeal, a recognizance entered into after the time limited is not void, and can be estreated even in a case where the appeal has been successfully objected to on the ground that the recognizance was entered into too late. *R.* v. *Glamorganshire Justices* (1890), 24 Q. B. D. 675. A recognizance not good enough to give right of appeal is still estreatable for non-payment of costs of appeal actually prosecuted.

RECOVERED OR PRESERVED, in the Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 28, includes money paid into court as a condition of leave to defend an action, even in a case where the parties to the action compromise it behind the plaintiff's solicitor's back and agree that it shall be taken out of court by the defendant. *Moxon* v. *Sheppard* (1890), 24 Q. B. D. 627. *Quære*—Does "recovered" mean recovered out of opponent's estate? Does "preserved" mean preserved out of the client's estate? See *Berrie* v. *Howitt* (1869), L. R. 9 Eq. 1; *Clover* v. *Adams* (1880), 6 Q. B. D. 622; *Twynam* v. *Porter* (1870), L. R. 11 Eq. 181; *Pinkerton* v. *Easton* (1873), L. R. 16 Eq. 492.

REDUCTION OF SHARE.—*Re Gatling Gun, Ltd.* (1890), 43 Ch. D. 628. *Quære*, whether Act empowers Court to sanction reduction of all shares only, or of some and not the rest. *Contra*, *Union Plate Glass Co.* (1889), 42 Ch. D. 513; *Barrow Hæmatite Co.* (1888), 39 Ch. D. 582; *Quebrada Land Co.* (1889), 40 Ch. D. 363.

REFUSE OF TRADE, MANUFACTURE, OR BUSINESS does not include clinkers from a hotel furnace. *St. Martin's Vestry* v. *Gordon* (1891), 1 Q. B. 61.

REGISTRATION, in the Patents Act, 1883, s. 65, does not mean general registration in respect of all goods as to which a trade-mark can be registered, but registration for particular goods or classes of goods, and the power to register is limited to goods in any particular class upon which the person applying for registration has in fact used the mark. *Hart* v. *Colley* (1890), 44 Ch. D. 193 (North, J.).

REMUNERATION, in 31 & 32 Vict. c. 110, s. 8 (7), means a *quid pro quo*, and is a wider term than "salary," though not (per Quain, J.) so wide a term as "emolument." *R.* v. *Postmaster-General* (1876), 1 Q. B. D. 665, 3 Q. B. D. 431.

Rent, in 16 Vict. c. xxii. s. 79, means actual "annual value." *Sheffield Water Co.* v. *Bennett* (1872), L. R. 7 Ex. at p. 421, affirmed (1873) L. R. 8 Ex. 196. *Vide ante*, p. 186.

„ **payable**, in 30 & 31 Vict. c. 142, s. 11, means the rent payable as between the litigant parties, and not any rent that might be paid by a sub-lessee. *Brown* v. *Cocking* (1868), L. R. 3 Q. B. 672.

Repairs, in 58 Geo. 3, c. 45, s. 70, is not to be construed in the strict sense of repairs to the fabric of the church, but includes expenses necessary for the proper and decent performance of divine service. *R.* v. *Consistorial Court of London* (1861), 2 B. & S. 361.

Repeal, in 46 Geo. 3, c. 139, s. 1, is not used in its ordinary sense, but means merely "suspend the operation of." *R.* v. *Rogers* (1809), 10 East 573.

Reputed thief, in 3 Geo. 4, c. 55, s. 21, applies to persons generally reputed to be thieves, and not to persons suspected of any particular felony. *Cowles* v. *Dunbar* (1827), 2 C. & P. 567.

Reside, in 7 & 8 Vict. c. 101, s. 2, does not mean "coming to a place for the purpose of applying to another tribunal." *R.* v. *Myott* (1863), 32 L. J. M. C. 138.

Residence, in a statute, "has no actual definite technical meaning, but you may construe it in every case in accordance with the object and intent of the Act in which it occurs." *Ex parte Breull* (1881), L. R. 16 Ch. D. 487, per James, L.J.

„ in 9 & 10 Vict. c. 66, s. 1, and 24 & 25 Vict. c. 55, s. 1, "does not, more than the word 'living,' imply occupation of a given house and sleeping in it. . . . . If [a person] remained in a parish, sleeping in the open air, that would be a residence within the meaning of these statutes." *R.* v. *St. Leonard* (1865), 6 B. & S. 788, per Cockburn, C.J.

„ in Bills of Sale Act (41 & 42 Vict. c. 31), s. 10, generally = the place where a man lives with his family, where he may be expected to be when his business does not call him away, where he passes the night, and in respect of which he pays rates. *Greenham* v. *Child* (1889), 24 Q. B. D. 29.

„ means domicile or home, but does not include place of business. *Lambe* v. *Smythe* (1846), 15 M. & W. 433; *Maybury* v. *Mudie* (1847), 5 C. B. 283.

REVERSION, in 2 & 3 Will. 4, c. 71, s. 8, is a well-known legal expression, and its meaning, and the distinction between it and a remainder, are clearly pointed out in Williams on Real Property (14th ed.), p. 255. *Symons* v. *Leaker* (1885), L. R. 15 Q. B. D. 632, per Field, J.

REVOCATION, what is, within Wills Act (1 Vict. c. 26), s. 20. *Mills* v. *Millward* (1889), 15 P. D. 20 (Butt, J.).

RIGHT ACQUIRED, in s. 169 of the Bankruptcy Act, 1883, does not mean a right to obtain an adjudication of bankruptcy, but such rights as a right to issue an *elegit*.

ROAD, in 41 & 42 Vict. c. 77 (Highways and Locomotives), s. 13, means any portion of a road, as well as a whole road, and not exclusively the whole of any road subject to a turnpike trust. *Rochdale Corporation* v. *Lancashire Justices* (1883), 8 App. Cas. 494, reversing same case, 8 Q. B. D. 12.

ROAD-SIDE WASTES, in the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 11 (1), are strips of grass bordering the metalled parts of a main road, as distinguished from the road itself. *Curtis* v. *Kesteven C. C.* (1890), 45 Ch. D. 504.

ROYALTIES, in s. 109 of the British North America Act, 1867, includes all revenues arising from the prerogative rights of the Crown in connection with lands, mines, and minerals. *Att.-Gen. of Ontario* v. *Mercer* (1883), 8 App. Cas. 767, as interpreted in *Cooper* v. *Stuart* (1889), 14 App. Cas. 305.

RULES OF COURT, in Acts passed after 1889, means rules made by the authority having for the time being power to make rules or orders regulating the practice and procedure of any Court, and as regards Scotland includes acts of sederunt and acts of adjournal. Int. Act, 1889 (c. 63), s. 14.

SAFE CUSTODY, in s. 76 of the Larceny Act, 1861 (24 & 25 Vict. c. 96), does not include "investment." Money entrusted for investment is money entrusted for a specific purpose under s. 75 of the Act. *R.* v. *Newman* (1882), 8 Q. B. D. 706.

SALARY.—*Vide ante*, p. 200.

SALE BY RETAIL, in the Licensing Act, 1872 (c. 94), s. 3, does not apply to the supply at a fixed price by the manager of a *bonâ fide* club (not licensed for the sale of intoxicating liquors) to a member for consumption off the club premises. *Graff* v. *Evans* (1882), 8 Q. B. D. 373.

Saleable underwoods, in 43 Eliz. c. 2, s. 1, applies to any succession of profitable crops cut from the same roots, whatever the description of tree may be, and whatever may be the intervals that elapse between the cutting of the successive crops. *Fitzhardinge* v. *Pritchett* (1867), L. R. 2 Q. B. 135.

Same.—See *Such*.

„ **street (in the)**, in the Public Health (Buildings in Streets) Act, 1888 (51 & 52 Vict. c. 52), s. 3, is not to be decided by the postal direction, but by the distance of the house from the roadway, and its situation. *Att.-Gen.* v. *Edwards* (1891), 1 Ch. 194.

Scholarship, in the Welsh Intermediate Education Act, 1889 (c. 40), s. 17, includes "exhibition or other educational emolument."

Science, in the Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 11, does not mean only universal science, or science generally, but includes mechanical science, as employed in civil engineering. *Commissioners of Inland Revenue* v. *Forrest* (1890), 15 App. Cas. at p. 354, per Lord Macnaghten. The exemption in the Act referred to extends to societies of professional men formed for the extension of the particular branch of science with which their profession is concerned.

Sea, in 48 Geo. 3, c. 75, s. 1, does not include navigable tidal rivers. *Woolwich* v. *Robertson* (1881), 6 Q. B. D. 654.

Secretary of State means one of her Majesty's principal Secretaries of State. Int. Act, 1889 (c. 63), s. 12 (3), transfers to a general Act this abbreviation, which previously was inserted in the interpretation clause of any Act giving authorities or duties to any Secretary of State. In some Acts the meaning is restricted by definition (1869 (Diplomatic Salaries), c. 43, s. 3) to the principal Secretary who is entrusted with the seals, or performs the duties, of the department for Foreign Affairs.

Secured creditor, in Bankruptcy Act, 1883 (c. 52), ss. 9, 168, does not include a judgment creditor who has obtained the appointment of a receiver of the property of the judgment debtor. *Re Dickinson* (1889), 22 Q. B. D. 187.

Security for payment of money, in 24 & 25 Vict. c. 96, s. 75, includes acceptances delivered for purposes of discount in which the drawer's name is not filled in. *R.* v. *Bowerman* (1891), 1 Q. B. 112. And see *Valuable security* and *Chattel or valuable security*.

Sell, in Pharmacy Act, 1868, s. 15, refers to the actual conduct and management of the sale of the poisons mentioned in the Act,

and excludes selling by an unqualified assistant unless upon each sale he acts under the personal superintendence (and not merely the general authority) of a qualified employer or his qualified assistant. *Pharmaceutical Society* v. *London and Provincial Supply Association* (1880), 5 App. Cas. 857 (Lord Selborne); *Same* v. *Wheeldon* (1890), 24 Q. B. D. 683 (Hawkins, J.).

NOTE.—"Sell" refers to the particular transaction; "keep open shop for" would strike the master only, and the offence would be completed without proof of sale.

SELLER, in the Pharmacy Act, 1868 (c. 121), s. 17, is "the person who actually conducts and controls the business of sale, although not necessarily the person by whose hand the sale is made." It does not include a chemist whose name is on the poison sold, unless he retails the article. *Templeman* v. *Trafford* (1881), 8 Q. B. D. 397.

SEPARATE BUILDING, in 18 & 19 Vict. c. 122, s. 27, sch. 2, pt. 1, is a single block of brick or stone work covered in by a roof. Flats and chambers under one roof are not separate buildings. *Moir* v. *Williams* (1892), 1 Q. B. 264.

SEQUESTRATION, in the Companies Act, 1862, s. 163, includes sequestration in the Scotch as well as in the English legal meaning of the word. *Re Wanzer, Ltd.* (1891), 1 Ch. 305.

SERVANT, in the Wages Attachment Abolition Act, 1870 (33 & 34 Vict. c. 30), s. 1, does not include the secretary of a trading company. *Gordon* v. *Jennings* (1882), 9 Q. B. D. 45.

„ in 17 & 18 Vict. c. 31, s. 7, embraces not merely servants of a railway company properly so called, but also the agents whom a company employs to do for it what it has contracted to do. *Doolan* v. *Midland Rail. Co.* (1877), 2 App. Cas. 810.

SESSIONS.—See GENERAL SESSIONS.

SETTLEMENT.—Whether an instrument falls within the Stamp Act, 1870 (33 & 34 Vict. c. 97), s. 3, does not depend on the definiteness, vesting, or contingency of the interest dealt with by the instrument in question, but on the definiteness and certainty of the sum of stock dealt with by the instrument. *Onslow* v. *Commissioners of Inland Revenue* (1891), 1 Q. B. 239.

SEVERED, in the Lands Clauses Act, 1845, ss. 49, 63, does not mean that the part taken and the part left were in actual contiguity, but that the land taken can no longer be treated by the landowner as

part of the tenements which until it was taken he held along with it. *Cowper Essex* v. *Acton L. B.* (1889), 14 App. Cas. at p. 167 (Lord Watson).

SHALL.—*Vide ante*, p. 179.

SHARES.—See *Issue of shares.*

„ ISSUED, in 34 Vict. c. 4, s. 2, applies to "the period when the company [which issues the shares] parts with the control or power over the shares, the period in fact when the property vests in the allottee." *Grenfell* v. *Inland Revenue* (1876), 1 Ex. D. 250.

SHERIFF, in 46 & 47 Vict. c. 52, s. 168, does not include his man in possession. *Bellyse* v. *M'Ginn* (1891), 2 Q. B. 227.

„ as respects Scotland, includes sheriff substitute. Int. Act, 1889 (c. 63), s. 28.

„ CLERK, in Acts relating to Scotland, includes steward clerk. Int. Act, 1889 (c. 63), s. 7.

SHERIFFDOM, SHIRE, in Acts relating to Scotland, includes stewartry. Int. Act, 1889 (c. 63).

SHIP.—Defined (1) Merchant Shipping Act, 1854, s. 7; (2) Foreign Enlistment Act, 1870.

SHOP, in 10 Vict. c. 14, s. 13, "imports something more than a mere place for sale; it imports a place for storing also, where the nature of the commodities admits of storing." *Pope* v. *Whalley* (1865), 34 L. J. M. C. 78.

SICKNESS.—See *Permanent sickness.*

SIGNATURE, in the Wills Act (7 Will. 4 & 1 Vict. c. 26), s. 21, includes subscription by initials only. *Re Blewitt* (1880), 5 P. D. 116.

SIGNED, in 6 Vict. c. 18, s. 17, means "affixing a signature, not by the hand alone, but by the hand coupled with some instrument," and there is "no distinction between using a pen or a pencil and using a stamp." *Bennett* v. *Brumfitt* (1867), L. R. 3 C. P. 31. But see *R.* v. *Cowper* (1890), 24 Q. B. D. 533.

„ in 5 & 6 Will. 4, c. 76, s. 32, does not necessitate the Christian names being written in full, but initials are sufficient. *R.* v. *Avery* (1852), 18 Q. B. 584. And see *Writing*, *ante*, p. 177.

SILVER.—See *Gold or silver.*

SINGLE WOMAN, in 7 & 8 Vict. c. 101, s. 2, extends to a married woman who is living apart from her husband. *R.* v. *Pilkington* (1853), 2 E. & B. 546.

SINGULAR.—*Vide ante*, p. 175.

SITE, as used in a bylaw made under 41 & 42 Vict. c. 32, s. 16, means "the space which will necessarily be taken up when the house and walls come to be built." *Blashill* v. *Chambers* (1885), 14 Q. B. D. 485.

SKETCH, unless the context otherwise requires, "includes any photograph or other mode of representation of any place or thing." Official Secrets Act, 1889 (c. 52), s. 8.

SOIL, in 45 Geo. 3, c. xcii., is used as distinct from the word "land," and is equivalent to "surface," though *primâ facie* "soil" would include everything above or below it. *Pretty* v. *Solly* (1859), 26 Beav. 612.

SOLE TRUSTEE, as used in 13 & 14 Vict. c. 60, s. 23, is not confined to a single trustee, but means "any number of trustees who are solely entitled to any trust property." Per Chitty, J., in *Hyatt's Trusts* (1882), 21 Ch. D. 849.

SOLEMNLY, as used in 29 Vict. c. 19, s. 3, does not mean "religiously," but means "with due solemnities." Per Brett, M.R., in *Att.-Gen.* v. *Bradlaugh* (1885), 14 Q. B. D. 701.

SOLICITOR (ACTING AS), in the Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 2, does not include the case of a law stationer, confidential agent, or process server who settles an affidavit. *In re Louis* (1891), 1 Q. B. 649.

SPIRITS.—*Vide ante*, p. 181.

SQUARED, as used in 27 Geo. 3, c. 28, s. 5, is to be understood, not in the strict, but in the common, acceptation, and means cut into rectangular, but not necessarily equilateral, figures. *Att.-Gen.* v. *Cast Plate Co.* (1792), 1 Anstr. 39.

STAB, CUT, OR WOUND, as used in 9 Geo. 4, c. 31, s. 12, only apply to an injury caused by an instrument when the skin is broken. *R.* v. *Harris* (1836), 7 C. & P. 446; *R.* v. *Wood* (1830), 4 C. & P. 381. But see *R.* v. *Bullock* (1868), 11 Cox 125.

STATUTES, in 11 & 12 Vict. c. 43, s. 35, is equivalent to "enactments." *R.* v. *Bakewell* (1857), 7 E. & B. 851. *Vide ante*, p. 62.

STOCK, in the Trust Investment Act, 1889 (c. 32), includes "fully paid-up shares."

STORY (TOPMOST), in the Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), ss. 83, 85, sch. 1, need not necessarily mean a room enclosed by four vertical walls, but includes floors built in a sloping roof. *Foot* v. *Hodgson* (1890), 25 Q. B. D. 160. Some local Acts—*e.g.*, Hastings Improvement Act, 1885 (c. cxcvi.)—contain a special definition to make this clear.

STREET, in 21 & 22 Vict. c. 98, s. 34, means "not only a roadway over which passengers and vehicles might pass, but also that which in popular language is part of the street, namely, the houses on both sides." *Baker* v. *Mayor of Portsmouth* (1878), 3 Ex. D. 9, 160.

„ in Public Health Act, 1875 (c. 55), "must receive the popular meaning existing at the time when the Act passed. With regard to the width, it is the width between the houses. With regard to the depth, it is what may be called the area of ordinary user existing at that time, and nothing beyond or below it." Per Brett, M.R., in *Wandsworth L. B.* v. *United Telephone Co.* (1884), 13 Q. B. D. 914.

„ in s. 149, means the public highway, whether footway or carriageway.

„ in s. 157, means a roadway with buildings on each side, discontinuous or not.

„ "includes any highway or other public place, whether a thoroughfare or not." 52 & 53 Vict. c. 44 (Protection of Children), s. 17.

„ See definitions in Towns Police Clauses Act, 1847; Telegraph Act, 1863; Metropolitan Streets Act, 1867; Electric Lighting Act, 1882; Housing of Working Classes Act, 1890.

„ (NEW).—A roadway beside which buildings have for the first time been constructed on one or both sides. *Robinson* v. *Barton-Eccles L. B.* (1883), 9 App. Cas. 803.

SUBJECT TO THE PAYMENT OF DUTIES, in 8 Anne, c. 7, s. 17, applies to any articles, whether taxed at the time of the passing of that Act, or subsequently. *Att.-Gen.* v. *Saggers* (1814), 1 Price 182.

SUBMISSION, in the Arbitration Act, 1889 (c. 49), s. 27, "unless the contrary intention appears," means "a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not."

SUCH.—There is no special rule as to the way in which words of reference, like "such" or "same," should be understood when used in statutes. "It is an ordinary rule," said Blackburn, J., in *Eastern Counties Ry.* v. *Marriage* (1861), 9 H. L. C. 32, at p. 37, "not so much of law as of the grammatical construction of the English language, that words of relation *primâ facie* refer to the nearest antecedent." The word "*idem*," it is said by Lord Coke in Inst. 20 b, "*semper proximo antecedenti refertur.*" But, said Channell, B., at p. 43, "no meaning of this sort has been give to the word 'such,' and the notion of confining the reference made by the use of that word to the particular use described in the immediate antecedent has not been followed, even where, by so confining the words, no violence would have been done to the context, nor any repugnancy have arisen." So, Lord Coke, in his reading of the Statute of Marlbridge, 2 Inst. c. 6, s. 6, when commenting upon the words "*per hujusmodi fraudem*," says, "By these words is to be understood 'such in mischief and such in inconvenience, and therefore all other fraudulent feoffments tending to the same end are within the statute' . . . . and so is this word [such] oftentimes taken in other statutes." Thus, in *Re Betts' Patent* (1862), 1 Moore P. C. N. S. 49, it was held that the word "such" in the proviso to s. 25 of 15 & 16 Vict. c. 83 (which enacted that, "provided always no letters patent for any invention for which any *such* patent shall have been obtained in any foreign country . . . ."), "referred to the entire description of the patents mentioned in the foregoing part of the section," and not merely to the last-mentioned of them. (*Cf. Re Blake's Patent* (1873), L. R. 4 P. C. 537.) And in *Stone* v. *Mayor, &c., of Yeovil* (1876), 2 C. P. D. 99, it was held that, when by 8 & 9 Vict. c. 18, s. 9, it is enacted that "the compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity . . . . and the compensation to be paid for any permanent damage or injury to any *such* lands, shall," &c., the words "such lands" related to "any lands belonging to parties under disability."

SUFFER, in a statute creating an offence, includes cases in which the act forbidden is done through the negligence or by the connivance of the person charged, although direct knowledge by him of the contravention of the statute is not proved. *Bond* v. *Evans* (1888), 21 Q. B. D. 249.

„ is the same as "permit" in the Licensing Act, 1872 (35 & 36 Vict. c. 94), ss. 13, 16, 17. (Same case.)

SUIT DEPENDING, used in 5 & 6 Will. 4, c. 54, s. 1, is not used in the technical sense of *lis pendens*, and "is not to be understood in any other than its ordinary and popular sense." *Sherwood* v *Ray* (1837), 1 Moore P. C. 395.

„ OR PROCEEDING, in Charity Trusts Act, 1853, s. 17, does not apply (1) to actions brought to enforce common law rights in contract or tort, such as an action for wrongful dismissal by the master of a charity school; nor (2) to suits intended only to obtain equitable relief in respect of common law rights. Bowen, L.J., in *Rendall* v. *Blair* (1890), 45 Ch. D. 139. [The words are "suit, petition, or other proceeding."]

SUITS.—See *Actions and suits.*

SUMMARY JURISDICTION (COURT OF), means any justice or justices of the peace or other magistrate, by whatever name called, to whom jurisdiction is given by, or who is authorized to act under, the sections of Acts in England, Wales, or Ireland, and whether acting under Summary Jurisdiction Acts or any of them, or under any other Act, or by virtue of his commission, or under the common law. Int. Act, 1889 (c. 63), s. 13 (11).

„ includes justices acting under the Licensing Acts. *R.* v. *Glamorganshire* (1892), 1 Q. B. 621. See, however, *Royal Aquarium Co.* v. *Parkinson* (1892), 1 Q. B. 431; *R.* v. *London County Council* (1892), 1 Q. B. 190.

SUNDAY is not a *dies non* in computing time in accordance with an Act of Parliament. "Where," said Hill, J., in *Ex parte Simkins* (1859), 2 E. & E. 396, "an Act of Parliament gives a specified number of days for doing a particular act, and says nothing about Sunday, the days are consecutive days, including Sunday." But see *Peacock* v. *R.* (1858), 4 C. B. N. S. 268, *note* (*a*).

„ in the Sunday Closing (Wales) Act, 1881 (44 & 45 Vict. c. 61), s. 1, has its ordinary meaning, and not that given to it by s. 3 of the Licensing Act, 1872 (36 & 37 Vict. c. 94). *Forsdyke* v. *Colquhoun* (1883), 11 Q. B. D. 71.

SUPERFLUOUS LANDS, in 8 & 9 Vict. c. 18, s. 127, means "land not required for the purposes of the undertaking"—that is to say, *not* "land not demanded," but "land no longer necessary." *Great Western Railway* v. *May* (1875), L. R. 7 H. L. 283. In *Re Metropolitan Railway and Cosh* (1880), 13 Ch. D. 617, it was held that "land" mentioned in this s. 127 "means land properly

and ordinarily so called, and does not apply to a mere easement or a slice of land taken horizontally."

SWEAR.—See *Oath.*

TAKEN FOR THE PURPOSES OF THE WORKS, in Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), ss. 2, 133, applies to houses purchased outside the limits of deviation and not under the provisions of a private railway Act, but in order to buy off opposition to the passing of the Act. *Putney Overseers* v. *L. & S. W. R.* (1891), 1 Q. B. 182.

TAXED CART, in 15 & 16 Vict. c. cliv. s. 27, means a taxed cart as defined by 43 Geo. 3, c. 161, sch. D., No. 4, and does not include *any* cart upon which a tax has been paid. *Williams* v. *Lear* (1872), L. R. 7 Q. B. 285.

TEAM, in 5 & 6 Will. 4, c. 50, ss. 35, 46, does not imply, besides horses, a cart or vehicle of some kind. *Vide per Curiam* (Mellor, J., *diss.*), *Duke of Marlborough* v. *Osborn* (1864), 5 B. & S. 73.

TECHNICAL INSTRUCTION, in the Technical Education Act, 1889 (c. 76), s. 8, means "instruction in the principles of science and art applicable to industries, and in the application of special branches of science and art to specific industries or employments." It does not "include the practice of any trade or employment, but, save as aforesaid," includes "instruction in the branches of science and art with respect to which grants are for the time being made by the department of Science and Art, and any other form of instruction (including modern languages and commercial and agricultural subjects) which may for the time be sanctioned by that department by a minute laid before Parliament and made on the representation of a local authority that such a form of instruction is required by the circumstances of its district."

TELEGRAPH, in the Telegraph Acts, 1863, 1869, is "wide enough to cover every instrument which may ever be invented which employs electricity transmitted by a wire as a means for conveying information." Per Pollock, B., and Stephen, J., in *Att.-Gen.* v. *Edison* (1881), 6 Q. B. D. 254.

TENEMENT, in 8 Hen. 6, c. 7, includes a toll. *Wadmore* v. *Dear* (1872), L. R. 7 C. P. 224.

„ in 48 Geo. 3, c. 55 (Inhabited House Duty), and 41 Vict. c. 15, s. 13, means a legal house as distinguished from an ordinary

house, and includes a set of chambers or a flat. *Yorkshire Insurance Co.* v. *Clayton* (1881), 8 Q. B. D. 421; *Evans and Finch's case* (1637), Cro. Car. 473.

TENEMENT, in the Franchise Acts (2 & 3 Will. 4, c. 45, s. 27, and 48 & 49 Vict. c. 3, s. 5), includes stalls and stands in a market for which rent is paid, if the areas for which the rent is paid are fixed. *Hall* v. *Metcalf* (1892), 1 Q. B. 208.

TERM, meaning the periods into which the legal year used to be divided, was frequently used before the passing of the Judicature Acts (by which this division of the year was abolished) "as a measure for determining the time at which an act should be done," and, consequently, this division of the year (although now abolished) "may continue to be referred to for the same or a like purpose." *College of Christ* v. *Martin* (1877), 3 Q. B. D. 18.

THIEF.—See *Reputed thief.*

THINGS IN ACTION, as used in 46 & 47 Vict. c. 52, s. 44 (iii.).—Meaning of term discussed, *Colonial Bank* v. *Whinney* (1885), 30 Ch. D. 261.

TIDAL LANDS.—Defined, 26 & 27 Vict. c. 92, s. 3.

TIME, when mentioned in a statute, is to be reckoned, said Denman, J., from the first day "any part of which is occupied in the particular business which is to endure for a certain number of days in order to fulfil any requirement of the law." *Migotti* v. *Colvill* (1879), 4 C. P. D. 234. For "the doctrine," said the Court in *Edwards* v. *R.* (1854), 9 Ex. 631, "that judicial acts are to be taken always to date from the earliest minute of the day in which they are done, stands upon ancient and clear authority." See also *Day; Month; Sunday.*

„ OF DAY.—"The true time at any place," said Pollock, C.B., in *Curtis* v. *Marsh* (1858), 28 L. J. Ex. 38, "is the 'mean time' (as astronomers say) at that place, not Greenwich time, and it is not competent to the authorities of a place to determine that the true time for legal purposes shall be the time at any other place."

„ By 43 & 44 Vict. c. 9, time, when mentioned in any Act of Parliament, deed, or legal instrument, shall mean Greenwich mean time in England and Dublin mean time in Ireland.

„ TO TIME (FROM).—See *Benyon* v. *Benyon* (1890), 15 P. D. 54, 57.

TITHES, in 1 & 2 Vict. c. 110, s. 13, is confined to lay tithes. *Hawkins* v. *Gathercole* (1855), 24 L. J. Ch. 322.

TITLE, ADDITION, OR DESCRIPTION, in the Dentists Act, 1878, are declared by the Medical Act, 1886 (c. 48), s. 26, to "include any title, addition to a name, designation, or description, whether expressed in words or by letters, or partly in one way and partly in the other."

TOLL, in the Railways Clauses Act, 1845, s. 90, does not apply to a sum charged by a railway company for cartage. *Evershed* v. *London and N. W. Railway* (1878), 3 Q. B. D. 141.

TOLLS, in 8 & 9 Vict. c. 20, s. 97, means "money charged for the use of a railway by persons carrying goods in their own carriages," and does not include charges for the conveyance of goods by the railway company as carriers. *Wallis* v. *S. W. Railway* (1870), L. R. 5 Ex. 63.

TOWN, in 3 Geo. 4, c. lviii., is not limited to the town as it stood at the passing of the Act, but means the town for the time being. *Collier* v. *Worth* (1876), 1 Ex. D. 468.

„ in 8 & 9 Vict. c. 18, s. 128, means a collection of houses so near to one another that the inhabitants may reasonably be considered as dwelling together. *L. & S. W. Railway* v. *Blackmore* (1872), L. R. 4 H. L. 615.

„ as used in 1 Vict. c. ii. s. 35, means "a continuous series of houses, not necessarily contiguous, but sufficiently so to form a congregation of human habitations." Per Cockburn, C.J., in *Commissioners of Milton* v. *Faversham* (1869), 10 B. & S. 552.

TRADE, in 57 Geo. 3, c. 25, s. 1, is not limited to the business of buying and selling, but extends to the business of a telegraph company. *Bank of India* v. *Wilson* (1878), 3 Ex. D. 113.

„ DESCRIPTION, in the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 2, is distinct from "trade-mark," and is not confined to the physical application of a trade label to the articles sold, but extends to the description of the article in the invoice accompanying it. *Budd* v. *Lucas* (1891), 1 Q. B. 408.

„ REFUSE.—See *Refuse of trade.*

TRADER, in the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), s. 87, does not include a man over whose business a receiver has been appointed in an action for the dissolution of partnership, and who has not entered into any other business. *Dawe* v. *Vergara* (1883), 11 Q. B. D. 241.

TRADING INWARDS, TRADING OUTWARDS, in Mersey Docks, &c., Act, 1858 (21 & 22 Vict. c. xcii.), s. 230, has the same sense as in Customs Consolidation Act, 1876, s. 101. The same rule would be doubtless applied to like phrases in all local Acts authorizing the taking of dock dues, tolls, or tonnage dues, having regard, of course, to the Customs law in force when the local Act was passed, and to the question whether Customs or other Acts had affected or altered the local Act. *Mersey Docks Co.* v. *Henderson* (1888), 13 App. Cas. 595.

TRAIN, in the Employers' Liability Act, 1880 (43 & 44 Vict. c. 42), s. 1, includes trucks in a siding, even though they are being moved by hydraulic and not by steam power. *Cox* v. *G. W. R.* (1882), 9 Q. B. D. 109.

TRANSMISSION OF SHARES = devolution of title to shares otherwise than by transfer by act *inter vivos*; used in contradistinction to transfer, includes devolution by death, marriage, or bankruptcy, or any other way than transfer. *Barton* v. *L. & N. W. R.* (1890), 24 Q. B. D. 88 (Lindley, L.J.).

TREASURY means, in all Acts, unless the contrary intention appears, the Lord High Treasurer for the time being, or the Commissioners for the time being, of her Majesty's Treasury. Stat. 1889, c. 63, s. 12 (2). This provision supersedes numerous like enactments in prior statutes, which are in almost identical terms with those used in the Interpretation Act, 1889.

TREATIES, embodied in Acts of Parliament, become part of the municipal jurisprudence of this country, and, consequently, the statutes in which they are embodied must be construed according to the rules of British law. *Re Tivnan* (1864), 5 B. & S. 696, *note* (*a*).

TREATY, in Slave Trade Act, 1873, c. 88, s. 2, "includes any convention, agreement, engagement, or arrangement."

TRENCHES.—See *Drains*.

TRIAL, as used in R. S. C. 1875, Ord. 38, r. 4, is a technical word, and will not include a proceeding before a chief clerk. *Re Knight* (1884), 25 Ch. D. 300.

TRIBUTARY, in the Salmon Fishery Act, 1865 (28 & 29 Vict. c. 121), s. 3, means something in the nature of a stream running into another stream, and does not include a reservoir. *Harbottle* v. *Terry* (1882), 10 Q. B. D. 131.

TRUSTEE.—See *Bare trustee*.

TRUSTEE in the Trust Investment Act, 1889 (c. 32), s. 9, includes "executor or administrator, and a trustee whose trust arises by construction or implication of law, as well as an express trustee."

UNDERWOODS.—See *Saleable underwoods.*

UNION.—*Vide Poor Law union, ante*, p. 178.

UNMARRIED, as used in 3 & 4 Will. & Mar. c. 11, means "without having at the time husband or wife": per Bayley, J., in *Doe* v. *Rawding* (1819), 2 B. & Ald. 449; but the ordinary meaning of the word is "without ever having been married": *Dalrymple* v. *Hall* (1881), 16 Ch. D. 716.

UPON HIS ADMISSION, as used in 9 Geo. 4, c. 17, s. 2, "does not mean after the admission has taken place, but upon the occasion of or at the time of his admission." *Paynter* v. *James* (1867), L. R. 2 C. P. 354.

„ MARRIAGE, as used in 18 & 19 Vict. c. 43, s. 1, may mean immediately after marriage. Per Lord Selborne, C., and Fry, L.J. (*dub.* Cotton, L.J.), in *Re Sampson and Wall* (1884), 25 Ch. D. 483.

„ THE TRIAL, as used in 20 & 21 Vict. c. clvii. s. 8, means at or immediately after the trial, and *not* within a reasonable time after. *Folkard* v. *Metropolitan Railway* (1873), L. R. 8 C. P. 470. See *At the trial.*

USUAL PLACE OF WORSHIP, as used in 3 Geo. 4, c. 126, s. 32, includes a chapel at which a Nonconformist minister had agreed to preach once every three months. *Smith* v. *Barnett* (1870), L. R. 6 Q. B. 35.

VALUABLE SECURITY, in 12 & 13 Vict. c. 10, s. 16, includes a judgment recovered: *West Ham Union* v. *Ovens* (1872), L. R. 8 Ex. 37; but does not include a policy of insurance which has become due: *R.* v. *Tatlock* (1877), 2 Q. B. D. 163.

VALUE.—See *Rateable value.*

VEHICLE, in the Weights and Measures Act, 1889 (c. 21), s. 35, means, unless the context otherwise requires, "any carriage, cart, waggon, truck, barrow, or other means of carrying coal by land, in whatever manner the same may be drawn or propelled; but does not include a railway truck or waggon."

„ in the Fugitive Offenders Act, 1881 (c. 69), s. 21, has a wider signification.

VESSEL, in Slave Trade Act, 1873 (c. 88), s. 2, means "any vessel used in navigation."

Vest, in 38 & 39 Vict. c. 55, s. 149, in the expression "all streets . . . . shall vest in . . . . the urban authority," means that "the space and the street itself, so far as it is ordinarily used in the way in which streets are used, shall vest in the" urban authority. Per Bramwell, L.J., in *Coverdale* v. *Charlton* (1879), 4 Q. B. D. 117.

Void, in several Acts relating to the Poor Law, has been held to mean "voidable;" but as used in 54 Geo. 3, c. cxxiv. s. 28, means "void" in the ordinary sense of the word. *Pearse* v. *Morrice* (1834), 2 A. & E. 84.

Voidable, in s. 1 of the Infants' Relief Act, 1874 (37 & 38 Vict. c. 62), means valid until repudiated, and not invalid until confirmed. *Duncan* v. *Dixon* (1889), 44 Ch. D. at p. 213 (Kekewich, J.). *Vide ante*, p. 269.

Volume.—See *Part of a volume.*

Voluntarily, in the older Bankruptcy statutes, meant "with the view of giving such creditor preference over the other creditors;" which words were substituted for the word "voluntarily" in 32 & 33 Vict. c. 71, s. 92. *Ex parte Bolland* (1872), 7 Ch. App. 27.

Voluntary contribution, in the Customs and Inland Revenue Act, 1885 (c. 51), s. 11 (6), does not mean "a thing which you cannot be compelled by law to do," but a thing which you gain nothing by making—*i.e.*, a gift. *Re New University Club* (1887), 18 Q. B. D. 720.

Wages, in 1 & 2 Will. 4, c. 37 (the Truck Act), in s. 25 is defined to be "any money or other thing had or contracted to be paid, delivered, or given as a recompense, reward, or remuneration for any labour done or to be done, whether within a certain time or to a certain amount, or for a time or an amount uncertain." See *Archer* v. *James* (1861), 2 B. & S. 74.

„ in 33 & 34 Vict. c. 30, which enacts that "no order for the attachment of the wages of any servant, labourer, or workman shall," &c., is used in its popular and not in its etymological sense, and does not include the salary of a secretary to a company. *Gordon* v. *Jennings* (1882), 9 Q. B. D. 45.

Wandering abroad, in the Vagrant Act, 1824 (5 Geo. 4, c. 83), s. 3, means wandering abroad as a habit and mode of life, and not for a certain specific purpose intended to be answered and not

again resorted to. So, solicitation of alms by men on strike is not within the section. *Pointon* v. *Hill* (1884), 12 Q. B. D. 306.

WARRANT FOR THE DELIVERY OF GOODS, in 7 & 8 Geo. 4, c. 29, s. 5, includes a pawnbroker's ticket. *Morrison's case* (1859), Bell C. C. 159.

WARRANTY (WRITTEN), in s. 25 of the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), does not include a written contract to supply eighty-six gallons of good and pure milk daily for six months, although an action for breach of warranty would lie on the contract. *Harris* v. *May* (1883), 12 Q. B. D. 97. The warranty within the section to protect the seller must be specific in respect to the article sold, and discovered not to be of the nature, substance, and quality demanded.

WATERCOURSE.—See *Drain*.

WAY, in the Employers' Liability Act, 1880 (43 & 44 Vict. c. 42), s. 1, sub-s. 1, means not a right of way, but some material thing which may be used within or in connection with the business of the employer. *McGiffen* v. *Palmer's Shipbuilding Co.* (1882), 10 Q. B. D. 5, 8.

„ (CONDITION OF A), in the same Act, does not refer to obstacles on the way, but to the state of the way itself. (Same case.) See *Brannigan* v. *Robinson* (1892), 1 Q. B. 344.

WEIGHING INSTRUMENT, in the Weights and Measures Act, 1889 (c. 21), s. 35, unless the context otherwise requires, includes "scales with the weights belonging thereto, scale beams, balances, spring balances, steel-yards, weighing machines, and other instruments for weighing." This is not a definition, but a statutory abbreviation.

„ MACHINE, in the Weights and Measures Act, 1878 (c. 49), ss. 25, 26, 27, 48, includes any "weighing instrument" as defined by the Weights and Measures Act, 1889 (c. 21), s. 35.

WHOLESALE, in the Licensing Acts, means a sale of liquor in quantities of not less than four and a half gallons. *R.* v. *Jenkins* (1891), 8 Times L. R. 163.

WIDTH, in Public Health Act, 1875, s. 157, means width of roadway, not distance between the fronts of houses on each side of a street. *Robinson* v. *Barton-Eccles L. B.* (1883), 9 App. Cas. 798.

WILL.—*Vide ante*, p. 224.

Woods (Commissioners of, *or* of Woods and Forests) means the Commissioners of her Majesty's Woods, Forests, and Land Revenues for the time being. Int. Act, 1889 (c. 63), s. 12 (12).

Works (Commissioners of), in all Acts, means "the Commissioners of her Majesty's Works and Public Buildings for the time being." Int. Act, 1889 (c. 63), s. 12 (13).

Worship.—See *Usual place of worship.*

Wound.—See *Stab, cut, or wound.*

Wreck.—In Merchant Shipping Act, 1854 (c. 104), s. 187, includes "jetsam, flotsam, lagan, and derelict, found in or on the shores of the sea or of any tidal water."

Writ, in the Sheriffs Act, 1887 (c. 55), s. 38, "includes any process" unless the context otherwise requires.

Writing.—*Vide ante*, pp. 177, 178.

Year.—By the Style Act (24 Geo. 2, c. 23), s. 1, it is enacted "that the first day of January . . . . shall be reckoned, taken, deemed, and accounted to be the first day of the year . . . . and that each new year shall commence and begin to be reckoned from the first day of every . . . . month of January . . . ." By s. 2 it is enacted what years are to be leap years. By 40 Hen. 3 (21 Hen. 3, Ruffh.) it was enacted "that in leap year the intercalary day with the day preceding it shall be accounted as one day," but this enactment has been repealed by 42 & 43 Vict. c. 59. *R.* v. *Worminghall* (1817), 6 M. & S. 351.

„ (financial).—*Vide ante*, p. 177.

APPENDIX B.

POPULAR OR SHORT TITLES OF STATUTES.

THIS appendix contains popular titles of Acts and statutory short titles given to single Acts or to sets of Acts by some other Act. It does not contain a short title given to any Act by one of its own sections.

Where the Act referred to is prior to the present reign and is still in force, a reference is added to the Revised Statutes (second edition), in which are noted the main differences in the numbering of the chapters from that used in Ruffhead's edition.

Statutes of the present reign subsequent to 1861 usually have statutory short titles given them by one of the earlier or later sections. When such title exists, it is usually denoted in the first column of the Chronological Table of Statutes prefixed to the Digest of 1889.

The Short Titles Act, 1892 (Royal Assent, 20 May 1892), gives statutory short titles to many of the Acts included in this appendix, and in some cases adopts the popular titles herein given. Acts marked with a * are repealed. Short titles marked † are included in the Short Titles Act, 1892.

By the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 35 (1), it is provided that in any Act, instrument, or document an Act may, without prejudice to any other mode of citation, be cited (*a*) by reference to the (statutory) short title, if any, of the Act, either with or without a reference to the chapter; or (*b*) by reference to the regnal year in which the Act was passed; and (*c*), where there are more sessions than one in the same regnal year, by reference to the statute or the session, as the case may require, and where there are more chapters than one, by reference to the chapter; and any enactment may be cited by reference to the section or sub-section of the Act in which the enactment is contained.

†Accessories Act, 1861 (24 & 25 Vict. c. 94).
Additions, Statute of (1 Hen. 5, c. 5). See 2 Reeves, Hist. Eng. Law, 520, and 46 & 47 Vict. c. 59, s. 7.
Admiralty Offences (Colonial Act), 1849 (12 & 13 Vict. c. 96); and „ „ „ 1860 (23 & 24 Vict. c. 122); by 53 & 54 Vict. c. 37, s. 19 (2).
†Alehouse Act, 1828 (9 Geo. 4, c. 61).
Alien Acts (33 Geo. 3, c. 4; 45 Geo. 3, c. 155; 55 Geo. 3, c. 54). See 6 Law Quarterly Review, p. 37.
„ Act (6 & 7 Will. 4, c. 11) *Loc. cit.* p. 39.
„ „ (11 & 12 Vict. c. 20); expired, but revived for a time by 45 & 46 Vict. c. 25, s. 15.
Allotments Acts, 1887 and 1890 (50 & 51 Vict. c. 48, and 53 & 54 Vict. c. 65); by s. 1 of latter Act.
Anatomy Act, 1832 (2 & 3 Will. 4, c. 75); by 34 Vict. c. 16, s. 1.
†Apportionment Act, 1834 (4 & 5 Will. 4, c. 22).
Army Act (44 & 45 Vict. c. 58); by 53 Vict. c. 4, s. 4.
†Arsenic Act, 1851 (14 & 15 Vict. c. 13).
†Art Unions Act, 1846 (9 & 10 Vict. c. 48).
Articuli Cleri, 1315 (9 Edw. 2, stat. 1); 1 Rev. Statt. 65.
„ Superchartas, 1300 (28 Edw. 1); 1 Rev. Statt. 57.
Ashbourne's (Lord) Act (44 & 45 Vict. c. 49).
*Assize, Statute of (21 Edw. 1).
†Australian Courts Act, 1828 (9 Geo. 4, c. 83).

Baines' Act (12 & 13 Vict. c. 45).
Bankruptcy Acts, 1883 and 1890 (46 & 47 Vict. c. 52; 53 & 54 Vict. c. 71); by s. 1 of latter Act.
*Bankrupts, Statute of (34 & 35 Hen. 8, c. 4).
*Barnard's (Sir John) Act (7 Geo. 2, c. 8).
Bass' Act (27 & 28 Vict. c. 55).
†Bastardy Act, 1845 (7 & 8 Vict. c. 108).
†Beerhouse Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 64).
„ 1834 (4 & 5 Will. 4, c. 85).
„ 1840 (3 & 4 Vict. c. 61).
Betting Act, 1853 (16 & 17 Vict. c. 119); by 37 & 38 Vict. c. 15, s. 1.
„ House Act (17 & 18 Vict. c. 38).
†Bigamy, Statute of (4 Edw. 1, stat. 3).
†Bills of Lading Act, 1855 (18 & 19 Vict. c. 111).
†Black Act (9 Geo. 1, c. 22). See 1 Lecky, Hist. Eng. p. 488.
„ Acts (Sc.). The editions of the Scottish Acts published between 1566 and 1597. *Vide* 1 Statt. Realm, p. xliv.

Blandford's (Lord) Act (21 & 22 Vict. c. 24). See *Hughes* v. *Lloyd*, 1889, 22 Q. B. D. 159.
Boiler Explosions Acts, 1882 and 1890 (45 & 46 Vict. c. 22, and 53 & 54 Vict. c. 35); by s. 1 of latter Act.
Bourne's (Sturges) Act (59 Geo. 3, c. 12).
*Bovill's Act (25 & 26 Vict. c. 86).
†Bread Act, 1836 (6 & 7 Will. 4, c. 37).
British Law Ascertainment Act, 1859 (22 & 23 Vict. c. 63); by 53 & 54 Vict. c. 37, s. 19 (2).
Bryce's Act (49 & 50 Vict. c. 27).
†Burials Act, 1853 (16 & 17 Vict. c. 134);
„ 1854 (17 & 18 Vict. c. 87);
„ 1857 (20 & 21 Vict. c. 87);
„ 1859 (22 Vict. c. 1); and
„ 1860 (23 & 24 Vict. c. 64); by 34 & 35 Vict. c. 33, s. 2.

Cairns' (Lord) Act (21 & 22 Vict. c. 27).
Calendar Act, 1751 (25 Geo. 2, c. 30).
Campbell's (Lord) Act (6 & 7 Vict. c. 96: Libel); by 9 & 10 Vict. c. 92.
Carlisle, Statute of (15 Edw. 2).
Carriers' Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 68).
Catallis Felonum, Statutum de (*temp. incert.*); 1 Rev. Statt. 84.
Catholic Emancipation Act (10 Geo. 4, c. 7).
Central Criminal Court Act, 1834 (4 & 5 Will. 4, c. 36); by 44 & 45 Vict. c. 68).
† „ „ 1837 (7 Will. 4 & 1 Vict. c. 77).
† „ „ 1856 (19 & 20 Vict. c. 16).
†Champerty, Statute of (33 Edw. 1, stat. 1).
Chancery of Lancaster Acts, 1850 to 1890 (13 & 14 Vict. c. 43; 17 & 18 Vict. c. 82; 53 & 54 Vict. c. 23).
Charitable Uses, Statute of (21 Jas. 1, c. 1).
Charta de Forestâ (25 Edw. 1).
†Church Discipline Act, 1840 (3 & 4 Vict. c. 86).
Circumspecte Agatis, 1285 (13 Edw. 1); 1 Rev. Statt. 37.
Clarendon, Constitutions of, 1164 (10 Hen. 2). See 1 Reeves, Eng. Law, p. 126.
†Coinage Offences Act, 1861 (24 & 25 Vict. c. 99).
Companies Acts, 1862 to 1890; by 53 & 54 Vict. c. 63, s. 35 (2).
Confirmatio Chartorum, 1297 (25 Edw. 1); 1 Rev. Statt. 53.
Conspiratoribus, Ordinatio de (33 Edw. 1, stat. 1).
Consular Marriage Act, 1849 (12 & 13 Vict. c. 68); by 53 & 54 Vict. c. 45, s. 1 (2).

Contagious Diseases (Animals) Acts, 1878 to 1890; short title given by 53 & 54 Vict. c. 14, s. 8 (2).
†Contempt of Court Act, 1832 (2 & 3 Will. 4, c. 58).
Copyhold Act, 1841 (4 & 5 Vict. c. 35); by 15 & 16 Vict. c. 51, s. 54.
Copyright Acts.—Short titles are given to all the prior Copyright Acts by 49 & 50 Vict. c. 33.
County and Borough Police Act, 1856 (19 & 20 Vict. c. 69);
„ „ „ †1857 (20 Vict. c. 2); and
„ „ „ 1859 (22 & 23 Vict. c. 32); by 53 & 54 Vict. c. 45, s. 38 (2).
„ Juries Act, 1825 (6 Geo. 4, c. 50); by 33 & 34 Vict. c. 77, s. 3.
„ Police Act, 1839 (2 & 3 Vict. c. 96).
„ „ 1840 (3 & 4 Vict. c. 88).
„ „ 1857 (20 Vict. c. 2).
„ Property Act, 1858 (21 & 22 Vict. c. 92); by 34 Vict. c. 14, s. 3.
„ „ Acts, 1858, 1871 (21 & 22 Vict. c. 92, and 34 Vict. c. 14); by s. 3 of latter Act.
† „ Rates Act, 1852 (15 & 16 Vict. c. 81).
*Coventry's (Sir John) Act (22 & 23 Chas. 2, c. 1).
Cozens Hardy's Act (54 & 55 Vict. c. 73).
Cranworth's (Lord) Act (23 & 24 Vict. c. 145).
Criminal Justice Administration Act, 1851 (14 & 15 Vict. c. 55); by 37 & 38 Vict. c. 7, s. 1.
† „ Law Act, 1826 (7 Geo. 4, c. 64).
„ Procedure Act, 1851 (14 & 15 Vict. c. 100).
Cross' Act (38 & 39 Vict. c. 36).
†Crown Cases Act, 1848 (11 & 12 Vict. c. 78).
† „ Lands Act, 1829 (10 Geo. 4, c. 50); by 48 & 49 Vict. c. 79, s. 1.
† „ Suits Act, 1855 (18 & 19 Vict. c. 90).

†Defence Act, 1859 (22 Vict. c. 12).
†Disorderly Houses Act, 1751 (25 Geo. 2, c. 36).
†Distribution, Statute of, 1670 (22 & 23 Chas. 2, c. 10); 1 Rev. Statt. 657.
†Dockyards, &c., Protection Act, 1772 (12 Geo. 3, c. 24). *Vide* 2 Steph. Cr. Law, p. 293.
†Domicile Act, 1861 (24 & 25 Vict. c. 121).
Donis Conditionalibus, de (3 Edw. 1, stat. West. 2nd, c. 1); 1 Rev. Statt. 18.
†Dower Act, 1833 (3 & 4 Will. 4, c. 105).

Dramatic Copyright Act, 1833 (3 & 4 Will. 4, c. 15); by 49 & 50 Vict. c. 33, s. 1.

Elementary Education Acts, 1870 to 1890 (33 & 34 Vict. c. 75; 39 & 40 Vict. c. 79; 43 & 44 Vict. c. 23; 53 & 54 Vict. c. 22); by s. 3 (2) of last-named Act.
Essoins, Statute of (12 Edw. 2, stat. 2).
Evidence Act, 1851 (14 & 15 Vict. c. 99); by 53 & 54 Vict. c. 37, s. 19 (2).
„ by Commission Act, 1859 (22 Vict. c. 20); by 53 & 54 Vict. c. 37, s. 19 (2).
Extenta Manerii (4 Edw. 1).

*Factors Acts. See Schedule to Factors Act, 1889.
Factory and Workshops Acts, 1878 to 1891. See 54 & 55 Vict. c. 75, s. 41 (2).
†Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74).
„ „ „ (Ireland), 1834 (4 & 5 Will. 4, c. 92).
„ Statute of, } (27 Edw. 1). See 2 Reeves, Eng. Law,
Finibus Levatis, Statutum de, } p. 131.
Finlay's Act (53 & 54 Vict. c. 44).
Forcible Entries, Statutes of (5 Rich. 2, c. 7; 15 Rich. 2, c. 2).
Foreign Law Ascertainment Act, 1861 (24 & 25 Vict. c. 11). See 53 & 54 Vict. c. 37, s. 19 (2).
„ Marriage Acts. See 54 & 55 Vict. c. 74, s. 1.
„ Tribunals Evidence Act, 1856 (19 & 20 Vict. c. 113). See same Act.
†Forestâ, Charta de (25 Edw. 1).
„ Ordinatio de (34 Edw. 1).
†Forgery Act, 1861 (24 & 25 Vict. c. 98).
Fox's Act (32 Geo. 3, c. 60).
†Frauds, Statute of, 1677 (29 Chas. 2, c. 3); 1 Rev. Statt. 663.

Gambling Act (14 Geo. 3, c. 48).
†Game Act, 1831 (1 & 2 Will. 4, c. 32).
†Gaming Act, 1744 (18 Geo. 2, c. 34).
„ „ 1835 (5 & 6 Will. 4, c. 41).
„ „ 1845 (8 & 9 Vict. c. 109).
„ Houses Act, 1854 (17 & 18 Vict. c. 119).
*Gavelet, Statute of (10 Edw. 2).
Gloucester, Statute of (6 Edw. 1).
Grand Jury Act (6 & 7 Will. 4, c. 116, I.).

Habeas Corpus Act, 1679 (31 Chas. 2, c. 2); 1 Rev. Statt. 672.
„ „ 1803 (43 Geo. 3, c. 140).
„ „ 1804 (44 Geo. 3, c. 102).
„ „ 1816 (56 Geo. 3, c. 100).
Hardwicke's (Lord) Act (26 Geo. 2, c. 33). See *Re McLoughlin's Estate*, 1 L. R. Ir. 421.
Herring Fishery (Scotland) Acts, in 52 & 53 Vict. c. 23, means the Acts in sch. 1 of 45 & 46 Vict. c. 78, and any enactments amending these Acts or any of them.
Hiberniæ, Ordinatio pro Statu (31 Edw. 3, stat. 4).
„ de Coheredibus (20 Hen. 3).
Highway Act, 1835 (5 & 6 Will. 4, c. 50); by 27 & 28 Vict. c. 101, s. 1.
Hinde Palmer's Act (32 & 33 Vict. c. 46). *Vide ante*, p. 223.
†Hosiery Act, 1843 (6 & 7 Vict. c. 40).
†House Tax Act, 1851 (14 & 15 Vict. c. 36).

†Inciting to Mutiny Act, 1797 (37 Geo. 3, c. 70). *Vide* 2 Steph. Cr Law, p. 293.
Inclosure Act, 1845 (8 & 9 Vict. c. 118);
„ 1846 (9 & 10 Vict. c. 70);
„ 1847 (10 & 11 Vict. c. 111);
„ 1849 (11 & 12 Vict. c. 99);
„ 1849 (12 & 13 Vict. c. 83);
„ 1852 (15 & 16 Vict. c. 79);
„ 1854 (17 & 18 Vict. c. 97); and
„ 1857 (20 & 21 Vict. c. 31); by 39 & 40 Vict. c. 56, s. 37.
Income Tax Act, 1842 (5 & 6 Vict. c. 35); and
„ „ 1853 (16 & 17 Vict. c. 34); by 54 & 55 Vict. c. 8, s. 12 (5).
†Indictable Offences Act, 1848 (11 & 12 Vict. c. 42); by 31 & 32 Vict. c. 107, s. 1.
†Inheritance Act, 1833 (3 & 4 Will. 4, c. 106).
Irish Valuation Acts.—The Acts relating to the valuation of rateable property in Ireland. Int. Act, 1889 (c. 63), s. 24.

Jeofails, Statutes of (22 Edw. 4, c. 50; 32 Hen. 8, c. 30; 37 Hen. 8, c. 6). See 3 Reeves, Hist. Eng. Law, p. 309.
Jervis' Acts (11 & 12 Vict. cc. 42, 43, 44).
Jewry, Statutes of (de Judaismo). *Vide ante*, p. 35.
Juries Act, 1825 (6 Geo. 4, c. 50).
†Justices Protection Act, 1848 (11 & 12 Vict. c. 44).

Justiciariis Assignates Statutum (*incert. temp.*). See 2 Reeves, Eng. Law, p. 197.

†Kenilworth, Statute of (51 & 52 Hen. 3).
Kidnapping Act, 1872, short title of 35 & 36 Vict. c. 19 (s. 1), repealed by 38 & 39 Vict. c. 51, s. 11, and new title substituted by s. 1.
Kingsdown's (Lord) Act (24 & 25 Vict. c. 114).
†Knackers Act, 1786 (26 Geo. 3, c. 71).

Labourers, Statute of (23 Edw. 3). See Reeves, Hist. Eng. Law, vol. 2, p. 455; vol. 3, p. 587.
†Land Drainage Act, 1847 (10 & 11 Vict. c. 38).
† „ Tax Act, 1797 (38 Geo. 3, c. 5).
„ „ 1831 (1 & 2 Will. 4, c. 21).
†Lands Clauses Acts, in all Statutes passed after 1889:
(1) As to England and Wales, 8 & 9 Vict. c. 18; 23 & 24 Vict. c. 106; 32 & 33 Vict. c. 18; 46 & 47 Vict. c. 15; and any Act for the time being in force amending them.
(2) As to Scotland, 8 & 9 Vict. c. 19; 23 & 24 Vict. c. 106; and any Act for the time being in force amending them.
(3) As to Ireland, 8 & 9 Vict. c. 18; 23 & 24 Vict. c. 97; 14 & 15 Vict. c. 70; 27 & 28 Vict. c. 71; 31 & 32 Vict. c. 70; and any Act for the time being in force amending them. Int. Act, 1889 (c. 63), s. 23.
†Larceny Act, 1861 (24 & 25 Vict. c. 96); by 39 & 40 Vict. c. 21, s. 7.
† „ 1868 (31 & 32 Vict. c. 116).
Leeman's Act (30 & 31 Vict. c. 29). See *Perry* v. *Barnett* (1885), 14 Q. B. D. 467.
†Levy of Fines Act, 1822 (3 Geo. 4, c. 46).
„ „ 1823 (4 Geo. 4, c. 37).
†Libel Act, 1792 (32 Geo. 3, c. 10).
„ 1843 (6 & 7 Vict. c. 96).
„ 1845 (7 & 8 Vict. c. 75).
†Limitation Act, 1623 (21 Jas. 1, c. 16); 1 Rev. Statt. 577.
„ „ 1833 (3 & 4 Will. 4, c. 27).
„ „ 1874 (37 & 38 Vict. c. 57).
Limitations, Statute of (21 Jas. 1, c. 16).
Locke King's Act (17 & 18 Vict. c. 113). See *Dowdall* v. *McCartan*, 5 L. R. (Ir.) 642.
„ „ Amendment Acts (30 & 31 Vict. c. 69; 40 & 41 Vict. c. 34).
Lord's Day Act, 1677 (29 Chas. 2, c. 7); 1 Rev. Statt. 666. Now entitled †the Sunday Observance Act, 1677.

Magna Charta (1) (9 Hen. 3, c. 16).
„ „ (2) 1297 (25 Edw. 1); 1 Rev. Statt. 44.
†Malicious Damage Act, 1861 (24 & 25 Vict. c. 97).
Malins' Act (20 & 21 Vict. c. 57).
Markets and Fairs Clauses Act, 1847 (10 & 11 Vict. c. 11).
Marlbridge, or Marlborough, Statute of, 1267 (52 Hen. 3); 1 Rev. Statt. 5.
†Marriage Act, 1823 (4 Geo. 4, c. 76).
„ 1824 (5 Geo. 4, c. 32).
„ 1835 (5 & 6 Will. 4, c. 57).
„ 1840 (3 & 4 Vict. c. 72).
†Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85).
„ „ „ 1858 (21 & 22 Vict. c. 108).
„ „ „ 1859 (22 & 23 Vict. c. 61); by 36 & 37 Vict. c. 31, s. 2.
Medical Act, 1859 (22 Vict. c. 21).
„ Acts = Medical Act, 1858, and any amending Act passed before June 25, 1886; by the Medical Act, 1886 (49 & 50 Vict. c. 48), s. 27.
Mercatoribus, Statutum de (11 Edw. 1).
†Merchant Shipping Acts, 1854 to 1890.
Merchants, Statute of (13 Edw. 1, stat. 3).
Merton, Provisions of, 1235 (20 Hen. 3); 1 Rev. Statt. 1.
†Metropolitan Police Acts, 1829 (10 Geo. 4, c. 44) and 1839 (2 & 3 Vict. c. 71).
„ „ „ 1829 to 1887 = the above Acts and 53 & 54 Vict. c. 45; by s. 38 (3) of the last-mentioned Act.
Michael Angelo Taylor's Act, Metropolis (57 Geo. 3, c. xxix.).
†Middlesex Registry Act, 1708 (7 Anne, c. 20); 1 Rev. Statt. 843; by Middlesex Registry Act, 1891 (54 & 55 Vict. c. 10), s. 2. And see 54 & 55 Vict. c. 64.
Modus Levandi Fines (18 Edw. 1, stat. 4).
Moneta, Statutum de (20 Edw. 1, stat. 4).
„ „ Parvum (20 Edw. 1, stat. 6).
„ Falso, Statutum de (27 Edw. 1).
Monopolies, Statute of, 1623 (21 Jas. 1, c. 3); 1 Rev. Statt. 566.
*Mortmain Act (9 Geo. 2, c. 36). See 51 & 52 Vict. c. 42.
* „ Statute of (20 Edw. 1).
†Municipal Corporations Act, 1852 (15 & 16 Vict. c. 5).

†Naval Deserters Act, 1847 (10 & 11 Vict. c. 61).
†New Forest Act, 1851 (14 & 15 Vict. c. 76).

†Night Poaching Act, 1828 (9 Geo. 4, c. 69).
„ „ „ 1844 (7 & 8 Vict. c. 29).
Nisi Prius, Statute of (27 Edw. 1, stat. 1, c. 4).
Northampton, Statute of, 1328 (2 Edw. 3); 1 Rev. Statt. 87.

†Obscene Publications Act, 1857 (20 & 21 Vict. c. 83).
†Offences against the Person Act, 1861 (24 & 25 Vict. c. 100).
*Officio Coronatoris, Statutum de (4 Edw. 1).
O'Hagan's (Lord) Act (39 & 40 Vict. c. 21).
Open Spaces Acts, 1887 to 1890; short title given to 40 & 41 Vict. c. 35; 44 & 45 Vict. c. 34; 50 & 51 Vict. c. 32; and 53 & 54 Vict. c. 15; by s. 1 of the last-named Act.
Osborne Morgan's Act (43 & 44 Vict. c. 41).

Pacific Islanders' Protection Act, 1872; Pacific Islanders' Protection Acts, 1872 and 1875; Pacific Islanders' Protection Act, 1875; short titles given to 35 & 36 Vict. c. 19, and 38 & 39 Vict. c. 51, s. 1.
NOTE.—35 & 36 Vict. c. 19, had hitherto, by s. 1 thereof, as short title "The Kidnapping Act, 1872."
†Palmer Act, The (19 & 20 Vict. c. 16), now †the Central Criminal Court Act, 1856.
Patent Medicines Act (42 Geo. 3, c. 56).
*Penal Laws (Ireland) enumerated. See Lecky, Hist. Ireland, vol. 1, p. 284, *note*.
„ Servitude Act, 1857 (20 & 21 Vict. c. 3); by 27 & 28 Vict. c. 47, s. 1.
†Petty Sessions Act, 1849 (12 & 13 Vict. c. 18).
†Piracy Act, 1837 (7 Will. 4 & 1 Vict. c. 88).
„ 1850 (13 & 14 Vict. c. 26).
Pitt-Lewis' Act (Forged Transfers Act, 1891) (54 & 55 Vict. c. 43).
Plimsoll's Act (the Merchant Shipping Act, 1876) (39 & 40 Vict. c. 80).
Pluralities Act, 1838 (1 & 2 Vict. c. 106); by 50 & 51 Vict. c. 68, s. 2.
† „ 1850 (13 & 14 Vict. c. 98).
Police (England) Acts (2 & 3 Vict. c. 93; 3 & 4 Vict. c. 88; 19 & 20 Vict. c. 99; 20 Vict. c. 2; 22 & 23 Vict. c. 32; 28 & 29 Vict. c. 35; 45 & 46 Vict. c. 150, ss. 90–194); by 53 & 54 Vict. c. 45, s. 38 (2).
„ Acts, 1839 to 1890 = the Acts above-mentioned, and 53 & 54 Vict. c. 45; by 53 & 54 Vict. c. 45, s. 38 (4).
Pollock's (Sir Frederick) Act (5 & 6 Vict. c. 47).
Poor Law Act (Scotland) (8 & 9 Vict. c. 83); by 49 Vict. c. 15, s. 3.
„ „ Amendment Act, 1834 (4 & 5 Will. 4, c. 76); by 30 & 31 Vict. c. 106.
† „ Relief Act, 1601 43 Eliz. c. 2).

Post Office (Duties) Act, 1840 (3 & 4 Vict. c. 96).
„ (Management) Act, 1837 (7 Will. 4 & 1 Vict. c. 33).
„ (Offences) Act, 1837 (7 Will. 4 & 1 Vict. c. 36); by 44 & 45 Vict. c. 20, s. 1.
„ Savings Banks Acts, 1861 to 1891; by Savings Banks Act, 1891 (54 & 55 Vict. c. 21), s. 19 (3).
Poynings' Law, 1495 (10 Hen. 7, c. 4, I.). See Irish Statt. Rev. App. and *note*.
Præmunire, Statute of, 1392 (16 Rich. 2, c. 5); 1 Rev. Statt. 173.
Prerogativa Regis (*incert. temp.*); 1 Rev. Statt. 80.
Prescription Act, 1832 (2 & 3 Will. 4, c. 71).
Profane Oaths Act, 1745 (19 Geo. 2, c. 21).
Provisors, Statute of, 1350 (25 Edw. 3, stat. 4); 1 Rev. Statt. 100.
Public Health Acts. See 53 & 54 Vict. c. 59, s. 2.
„ Libraries (England) Acts, 1855 to 1890; by 53 & 54 Vict. c. 68, s. 12.
„ Notaries Act, 1833 (3 & 4 Will. 4, c. 70).
„ „ „ 1842 (6 & 7 Vict. c. 90).

Quarantine Act, 1825 (6 Geo. 4, c. 78).
Quarter Sessions Act, 1849 (12 & 13 Vict. c. 45).
Quia Emptores, 1289 (18 Edw. 1, stat. 1); 1 Rev. Statt. 40.
Quo Warranto, Statute of (18 Edw. 1, stat. 2).

Ragman, Statute of (4 Edw. 1). See 2 Reeves, Eng. Law, p. 169.
Railway Regulation Act, 1840 (3 & 4 Vict. c. 97);
„ „ 1842 (5 & 6 Vict. c. 55); and
„ „ 1844 (7 & 8 Vict. c. 85); by 36 & 37 Vict. c. 76, s. 1.
Real Property Act, 1845 (8 & 9 Vict. c. 106).
† „ Limitation Act, 1833 (3 & 4 Will. 4, c. 27).
„ „ „ 1837 (7 Will. 4 & 1 Vict. c. 28).
†Refreshment Houses Act, 1860 (23 & 24 Vict. c. 27).
Regiam Majestatem.—The oldest preserved Scottish Act. Acts of Parliament of Scotland, vol. 1, p. 233. See Bell, Dict. Law Scotland, p. 815.
Registration Acts.—The Acts relating to the registration of parliamentary voters in Ireland; by 1886, c. 43, s. 3.
„ „ The enactments for the time being in force in England, Scotland, and Ireland respectively, relating to the registration of persons entitled to vote at elections for counties and boroughs, inclusive of the Rating Acts; 47 & 48 Vict. c. 3,

s. 8 (2). Each expression is to be read distributively with reference to each of those parts of the United Kingdom.

Religiosis De, Statutum (7 Edw. 1, stat. 1).

Representation of the People Acts.—The enactments for the time being in force in England, Scotland, and Ireland respectively relating to the representation of the people, inclusive of the Registration Acts (47 & 48 Vict. c. 3, s. 8).

Right, Petition of, 1627 (3 Chas. 1, c. 1); 1 Rev. Statt. 585.

†Rights, Bill of, 1688 (1 Will. & Mar. ss. 2, c. 2); 1 Rev. Statt. 690.

†Riot Act (1 Geo. 1, stat. 2, c. 5). See 1 Steph. Cr. Law, p. 292.

Rolt's Act (25 & 26 Vict. c. 42.)

†Roman Catholic Relief Act, 1819 (10 Geo. 4, c. 7).

Romilly's (Sir Samuel) Act (52 Geo. 3, c. 101).

†Royal Marriages Act, 1772 (12 Geo. 3, c. 11). See 1 Steph. Hist. Cr. Law, p. 291.

„ Supremacy Act, 1558 (1 Eliz. c. 1); 1 Rev. Statt. 463.

Russell Gurney's Act (30 & 31 Vict. c. 35).

Rutherford's (Lord) Act (11 & 12 Vict. c. 36).

St. Leonards' (Lord) Act (22 & 23 Vict. c. 35).

Septennial Act (1 Geo. 1, stat. 2, c. 38); 2 Rev. Statt. 16.

Settled Land Acts, 1882 to 1890, see 53 & 54 Vict. c. 69, s. 2.

†Settlement, Act of (12 & 13 Will. 3, c. 2); 2 Rev. Statt. 785.

†Sewers Act, 1833 (3 & 4 Will. 4, c. 22); 1 Rev. Statt. 259.

„ „ 1841 (4 & 5 Vict. c. 45).

„ „ 1849 (12 & 13 Vict. c. 50).

„ Statute of (23 Hen. 8, c. 5).

Shaftesbury's (Lord) Acts.—The Common Lodging House Acts.

†Simony Act, 1590 (31 Eliz. c. 6).

„ 1713 (13 Anne, c. 11).

Slave Trade Act, 1824 (5 Geo. 4, c. 113).

„ „ 1843 (6 & 7 Vict. c. 98).

„ „ 1864 (27 & 28 Vict. c. 24).

„ „ 1873 (36 & 37 Vict. c. 88).

„ „ 1876 (39 & 40 Vict. c. 46).

„ „ 1879 (42 & 43 Vict. c. 38).

†Special Constables Act, 1831 (1 & 2 Will. 4, c. 41).

„ „ „ 1835 (5 & 6 Will. 4, c. 43).

Stabbing, Statute of (1 Jas. 1, c. 8).

†Stage Carriages Act, 1832 (2 & 3 Will. 4, c. 120).

†Stamp Act, 1815 (55 Geo. 3, c. 184).

Stamp Duties Act, 1845 (8 & 9 Vict. c. 76).
†Staple, Statute of the (27 Edw. 3, stat. 2).
Statutory Declarations Act, 1835 (5 & 6 Will. 4, c. 62); by 44 & 45 Vict. c. 41, s. 68.
Sturges Bourne's Act (59 Geo. 3, c. 12); 4 Rev. Statt. 214.
Style Act, The (24 Geo. 2, c. 23). See 2 Rev. Statt. (2nd ed.) 285. Now called the †Calendar (New Style) Act, 1750.
Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43); by Int. Act, 1889, c. 63, s. 13 (6).
„ „ Acts, defined Int. Act, 1889, s. 13 (7), (8), (9), (10).
†Sunday Observance Act, 1625 (1 Chas. 1, c. 1).
„ „ 1677 (29 Chas. 2, c. 7).
„ „ 1780 (21 Geo. 3, c. 49).

Talfourd's (Serjeant) Act (2 & 3 Vict. c. 54).
Tallagio non Concedendo, Statutum de, 1297 (25 Edw. 1); 1 Rev. Statt. 56.
Taylor's (Michael Angelo) Act (Metropolis Paving) (57 Geo. 3, c. xxix.).
Tenterden's (Lord) Act (9 Geo. 4, c 14); 4 Rev. Statt. 755.
†Theatres Act, 1843 (6 & 7 Vict. c. 68).
Thellusson Act (39 & 40 Geo. 3, c. 98); 2 Rev. Statt. 912.
†Thirlage Act, 1799 (39 Geo. 3, c. 55) (Scotland). See 8 Rettie (Sc.) 514.
Tippling Act (24 Geo. 2, c. 40, s. 12); 2 Rev. Statt. 275.
Tithe Acts = 6 & 7 Will. 4, c. 71, and enactments amending the same passed prior to 1891.
† „ Act, 1836 (6 & 7 Will. 4, c. 71);
„ „ 1837 (7 Will. 4 & 1 Vict. c. 769);
„ „ 1838 (1 & 2 Vict. c. 64);
„ „ 1839 (2 & 3 Vict. c. 62);
„ „ 1840 (3 & 4 Vict. c. 15);
„ „ 1842 (5 & 6 Vict. c. 54);
„ „ 1846 (9 & 10 Vict. c. 73);
„ „ 1847 (10 & 11 Vict. c. 101); and
„ „ 1860 (23 & 24 Vict. c. 93); by 54 Vict. c. 8, s. 12 (3).
Toleration Act, 1688 (1 Will. & Mar. c. 18); 1 Rev. Statt. 684.
Torrens' Act (31 & 32 Vict. c. 130), merged in the Housing of the Working Classes Act, 1890.
Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89).
Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34).

†Trafalgar Square Act, 1844 (7 & 8 Vict. c. 60).
Trailbaston, Statute of (*incert. temp.*). *Vide* 2 Reeves, Hist. Eng. Law, p. 169.
†Transportation Act, 1824 (5 Geo. 4, c. 84); 4 Rev. Statt. 472.
†Treason Act, 1351; (25 Edw. 3 Stat. 5, c. 2); 1 Rev. Statt. 109.
† „ „ 1695 (7 & 8 Will. 3, c. 3); 1 Rev. Statt. 720.
† „ Felony Act, 1848 (11 & 12 Vict. c. 12).
Treasons, Statute of, 1351 (25 Edw. 3, stat. 5, c. 2).
*Triennial Act, 1664 (16 Chas. 2, c. 4).
†Truck Act, 1831 (1 & 2 Will. 4, c. 37).
†Trustee Act, 1852 (15 & 16 Vict. c. 55).
„ Savings Banks Acts, 1863 to 1891; by Savings Banks Act, 1891 (54 & 55 Vict. c. 21), s. 19 (2).
Trustees' Appointment Acts, 1850 to 1890 = 13 & 14 Vict. c. 28; 32 & 33 Vict. c. 26; 53 & 54 Vict. c. 19; by s. 1 of the last-named Act.
Tumultuous Petitioning, Act against (13 Chas. 2, c. 5). See 1 Steph. Hist. Cr. Law, p. 291.

Uniformity, Act of (1) 1558 (1 Eliz. c. 2); 1 Rev. Statt. 469.
„ „ (2) 1662 (14 Chas. 2, c. 4); 1 Rev. Statt. 631.
Union, Act of, (1) with Scotland, 1707 (6 Anne, c. 40); 1 Rev. Statt. 806.
„ „ (2) with Ireland (39 & 40 Geo. 3, c. 67); 3 Rev. Statt. 872.
†Unlawful Oaths Act, 1797 (37 Geo. 3, c. 123).
† „ „ 1812 (52 Geo. 3, c. 104).
„ Societies Act, 1799 (39 Geo. 3, c. 79).
„ „ 1817 (57 Geo. 3, c. 19).
†Uses, Statute of (27 Hen. 8, c. 10); 1 Rev. Statt. 328.

†Vagrant Act, 1824 (5 Geo. 4, c. 83). See 1 Steph. Hist. Cr. Law, 294.
Valuation Acts (Ireland). See Int. Act, 1889, c. 63, s. 24.
„ „ (Scotland), "17 & 18 Vict. c. 91, and any Acts extending the same." See 49 Vict. c. 15, s. 2.
†Vestries Act, 1818 (58 Geo. 3, c. 69).
„ 1819 (58 Geo. 3, c. 85).
„ 1837 (7 Will. 4 & 1 Vict. c. 45).
„ 1850 (13 & 14 Vict. c. 57).
„ 1853 (16 & 17 Vict. c. 65).
†Vexatious Indictments Act, 1859 (22 & 23 Vict. c. 17).
*Vouchers, Statute of (20 Edw. 1, stat. 1).

Wagering Act (8 & 9 Vict. c. 109).
Wales, Statute of (27 Hen. 8, c, 26); 1 Rev. Statt. 337.
Walliæ, Statutum (12 Edw. 1).
Waltham Black Act (9 Geo. 1, c. 22). See *Davis' case* (1783), 1 Leach C. C. 2nd ed. 228.
Wards, Statute of (28 Edw. 1, stat. 1).
*Waste, Statute of (20 Edw. 1, stat. 2).
Westminster, Statute of (1) 1275 (3 Edw. 1); 1 Rev. Statt. 9;
„ „ (2) 1285 (13 Edw. 1); 1 Rev. Statt. 17.
Whiteboy Acts (I.) (1); 15 & 16 Geo. 3, c. 21, (I.); 17 & 18 Geo. 3, c. 36; 36 Geo. 3, c. 32; Rev. Statt. Ireland, 540, 551, 704.
„ „ (2) (1 & 2 Will. 4, c. 44). See *Reg.* v. *Barrett*, 18 L. R. (Ir.) 430.
†Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26).
* „ Statute of (34 & 35 Hen. 8, c. 5).
*Winchester, Statute of (13 Edw. 1, stat. 2).

*York, Statute of (12 Edw. 2, stat. 1).

INDEX.

Words included in Appendix A. are not specified in the Index.

ABSOLUTE ENACTMENT
- defined, 73
- same as "imperative," 73
- in enabling Act, 273–284
- giving jurisdiction to Court, 281
- same compared with directory, 281
- as to marriage is, 277

ABSURDITY,
- when equivalent to repugnancy, 103
- construction causing, to be avoided, 8, 93, 100–104

ACT OF CONGRESS. *See* AMERICAN STATUTES.

ACT OF GOD,
- when it will excuse breach of statute, 257

ACTION
- for neglect of statutory duty, when it lies, 252–256
- when taken away by statute, 323, 324

ADDING WORDS
- to make sense, 121
- limitations on, 129

AFFIRMATIVE ENACTMENT,
- what is, 348
- in enabling Act, 276–280
- effect of, on common law, 324
- may repeal prior enactment, 346–348

AGREEMENT. *See* PRIVATE ACT. CONTRACT.

ALDERNEY. *See* CHANNEL ISLANDS.

ALTERNATIVE CONSTRUCTIONS,
- rules for selecting from, 77

ALTERNATIVE PENALTIES,
- rule as to, 325, 492

AMBIGUITY. *See* OBSCURITY.

AMERICAN STATUTES,
rules for construing, 11
authentication of, 43
mistakes in, 470

ANCIENT STATUTES
defined, 64
free construction of, 64
sometimes relieved against in equity, 86

ANNOYANCE. *See* NUISANCE.

ANOMALY. *See* ABSURDITY.

APPENDIX A.,
decisions on words collected in, 530–603

APPENDIX B.,
short and popular titles of Acts, 604

ASSENT,
words of, 41, 45
sufficiency of words of, 41
date of, indorsed on modern Acts, 41
not indorsed on ancient, 46
by Commission, 46

ASSIGNMENT
of statutory powers not allowed, 299

ASSURANCE,
private Acts resorted to as a mode of, 509

AUTHENTICATION OF STATUTES
discussed, 40–55
inquiry by judges, 41
as to words of assent, 45, 46
preambles, 47
United States rule, 43, 45
judicial notice, 40
its limits, 49
effect of irregularities in Parliament, 41
of private Acts, 42
of printed copies, 44
of original Acts, 51
of Statute Roll, 50
of vellum prints, 51
of text of statutes, 50–52
of English Acts in Ireland, 36
of Irish Acts in England, 36
of colonial laws, 37
of subordinate legislation, 37–39

BERWICK-ON-TWEED,
part of England, 443

BOROUGH
defined, 178

BREVIATE. *See* MEMORANDUM.

BRITISH COLUMBIA,
English law in, 459, *note*

BRITISH SHIPS,
effect of statutes on, 429

BRITISH STATUTES
construed somewhat differently from Scottish Acts, 5, 6
colonial Acts, 5
circulation in colonies, 37
extent to colonies, 446–460

BRITISH SUBJECT. *See* TERRITORIAL EFFECT OF STATUTES.

BYLAW,
manorial, 310, *note*
statutory, power to make, 300–314
cannot override law, 307, 312
must not be *ultra vires*, 307
must not be repugnant, 308
must be reasonable, 308
inquiry into reasonableness, 311
how enforced, 307
terms used in, 312
divisibility of, 309
municipal, 306, 310
trading companies, of, 306, 308

CANONS OF CONSTRUCTION. *See* RULES. MAXIMS.

CASE-LAW
preferred to text-book law, 2
as to statutes, classified, 11
how far relevant in construction, 12, 193
old, how far binding, 96, 170
Parliament presumed to know, 193, 194

CASUISTRY
in construction, 3

CASUS OMISSUS,
statutes not extended to, 82–86

CENSURE. *See* ECCLESIASTICAL COURT.

CERTIORARI,
effect of Act taking away, 281

CHANCERY, COURT OF. *See* EQUITY.

CHANNEL ISLANDS,
registration of Acts in, 37, 446
extent of Acts to, 446

CHARGE,
express language necessary to impose, 133

CITATION,
old mode, 57
present mode, 58
effect of Interpretation Act, 58
erroneous, effect of, 59
old rule, 59
present rule, 59

CIVIL CODE,
of Mauritius, 6
of France, prohibits retrospectivity of statutes, 370

CLAIM OF RIGHT
as a defence to charges under Penal Acts, 488

CLASSIFICATION
of statutes, 62–75
of cases on statutes, 11–13
of contents of private Acts, 516

CLAUSE,
meaning of term, 238
effect of one upon another, 238–246
repugnant, 239
of private Act, *particular*, 517
general, 517

CLERGY. *See* ECCLESIASTICAL COURT.
privileges of, 209

CLERK OF THE PARLIAMENTS,
duties of, as to statutes, 51

CODIFICATION
defined, 343
construction of Acts effecting, 343

COLONIAL STATUTES
in conquered colonies, 6, 7, 453
adopting British Acts, 6, *note*, 459
rule as to statutes *in pari materiâ* applies to, 459
territorial effect of, 37, 456, 459

COLONIAL STATUTES—*continued.*
repugnant to English law, 37, 459
construing, 37, 459
authenticating, 37, *note*
language of, 96, 459
when unconstitutional, 81, *note*, 458
term "marriage" in, 94
as to taxation, 460
as to crime, 457

COLONIES,
Acts extending to, 446–460
taxing Acts in, 447
effect of British statutes on, 447
if conquered or ceded, 453
if planted, 451

COMMENCEMENT
of statutes, present rule, 60, 177, 365
former rule, 60, 366
of continuing Acts, 60, 368
of modifying Acts, 368
of provisions postponing, 377
anticipating, 366

COMMISSIONERS,
reports of, how far a guide to meaning of statute, 144, 145

COMMON LAW
considered in construction, 112
supplements statutes, 136
no implied change in, by statutes, 138, 208
terms of, imported into statutes, 193
power by, to make rules, 321
effect on, of statutes, 320–330
effect of statutes on right of action given by, 321
affirmative statutes do not take away, 324
remedy, when it co-exists with statutory remedy, 324
rights, possessed by statutory corporations, 329
penalty, when cumulative, 326

COMPANY,
statutory powers of, 290–300, 315, 319
by laws of, 306
excess of authority of, 290–292. *See* PRIVATE ACT. ENABLING ACT. ULTRA VIRES.

COMPULSORY. *See* OBLIGATORY.

CONDITIONS,
compliance with, 287

CONSOLIDATION ACTS
defined, 342
construing, 193, 342
effect of, 193

CONSTITUTIONAL LAW,
American rules, 11
British Acts not *ultra vires*, 81, 447
Colonial Acts may be *ultra vires*, 457, 458

CONSTRUCTION
of Scotch statutes, 6
of colonial statutes, 6
of wills, 9
of contracts, 7, 96
of deeds, 9
of statutes, difficulties as to,
strict and liberal,
general rules as to, 76, 171
not quite grammatical sometimes adopted, 98–100
ex visceribus actus, 114
by practice of conveyancers, 97
by the equity, 86
golden rule of, what it is, 100
long acquiesced in, when followed, 95, 96
of ancient documents, 94
of words used in statutes, 172, 209
of one part of a statute by another, 210–246
of bylaws, 300–314
of rules of court, 300–314
materials available for, 142–171
of penal statutes, rules for. *See* PENAL ACT.
of general words, 198
of private Acts, rules for. *See* PRIVATE ACT.

CONTEMPORANEA EXPOSITIO
discussed, 93–108
punctuation treated as, 218
subordinate to plain meaning, 95, 169

CONTEMPORANEOUS ACTS
not relevant to construe each other, 150
unless *in pari materiâ*, 147

CONTEMPORARY MEANING
of words, 95

CONTEXT,
phrase to be construed by, 93–98, 164–171
words to be construed by, 172

CONTINUATION
of expiring Act, discussed, 390

CONTRACT
effect of statutes on, 86, 263–269
penal laws on, 494–497
setting up illegality of, 266
when void, 263–266
contrary to policy of statute, 267
ultra vires, 292. *See* PRIVATE ACT.
not a guide to construe statute, 90, 171. *See* USAGE.
statutory rules as to, not waived, 266, 494
partial avoidance of, 268
by infant, 269
under seal, 113

CONTRARIANT ACTS. *See* REPUGNANCY.

CONTRARY INTENTION,
evidences of, 187

CONVEYANCE,
private Act, when construed as, 509

CONVEYANCERS,
practice of, aids construction, 97
interpretation of words, 184, *note*

CORPORATION,
statutory, 290
exercise of statutory powers by, 290–299
common law powers and duties of, 329
effect of penal Acts on, 493

COSTS,
Crown not bound by statutes relating to, 419
effect of general or special Acts as to,

COUNTY COURTS,
rules of, 306

COURTS,
temporal, right of, to interpret statutes, 16
when and how obtained, 16
power of, over ecclesiastical, 17, 19
jurisdiction of, not altered by implication, 139
statutes giving jurisdiction to, absolute, 281
cannot enforce performance of statutory duty by Crown, 419
procedure of, permissive language as to, held obligatory, 281
statutes held retrospective which regulate, 376
inferior, jurisdiction of, ousted by *bonâ fide* claim of right, 488. *See* ECCLESIASTICAL COURTS.
new jurisdiction rarely given to, by private Acts, 526

COVENANT,
when repealed by statute, 383, 494

CRIMINAL STATUTE. *See* PENAL ACT.
CRIME,
political, what is, 175
CROWN,
construction in favour of, 402, *note*
statutory power granted to, exercise of, 314
effect of statutes on, 401–421
statutes for benefit of, 402
presumed not to be bound by statutes, 403
rights of, not barred, 404
when bound by statutes, 403, 413–421
private rights of, 404
public purposes of, 402
demise of, 401
references to, in Acts, 401
prerogative of, as to toll, 408
mines, 413
colonial appeals, 413
penalties, 407, 4
prescription, 411
Crown debts, 410
taxes, 407
rates, 410
costs, 410
pleading, 410
entails, 411
patents, 412
may avail itself of any statute, 413
performance of statutory duty by, not enforced in court of law, 419, 420
CUMULATIVE,
statutory remedies, when, 325
penalty, when, 327, 492
CUSTOM,
effect of statute on, 324
private Act on, 508
attempt to presume a lost statute in support of, 510
CY-PRÈS,
doctrine of, 9

DAMAGE,
from neglect of statutory duty, when actionable, 252, 419
DEBATES
in Parliament, not a guide in construction, 143
DECISIONS
on words used in statutes, collected in Appendix A., 530–603

DECLARATORY ACT
defined, 69
when retrospective, 380

DEEDS,
construction of, 5, 7, 8
Elphinstone's rules for construing, 7, 8
extrinsic aids to construing, 7

DEFICIENCY. *See* CASUS OMISSUS. MISTAKE.
when corrected, 82
from misprint, 4

DEFINITIONS. *See* INTERPRETATION CLAUSE. APPENDIX A.

DEPARTMENTAL ORDERS. *See* RULES.

DESUETUDE,
of Scottish Acts, 5, 6, 385, *note*

DICTIONARIES,
how far an aid in construction, 173, 174

DIRECTORY ENACTMENT
defined, 73
sometimes synonymous with "mandatory," 73, *note*
what is, 261
in enabling Act, 275–280
enactment may be in part, and absolute in part, 281
relating to marriage not, 277
opinion of Sedgwick as to, 276, *note*

DIRECT TAXATION
defined, 175

DISCRETION. *See* JUDICIAL DISCRETION.

DISTANCE,
measurement of, 177. *See* APPENDIX A., 569

DISTRIBUTIONS, STATUTE OF
construing terms in, 192

DOCK DUES,
express language necessary to impose, 132

DOMICILE,
of owner of English land immaterial, 426
of testator, affects liability to legacy and succession duty, 427

DONOR,
Crown bound by statutes tending to perform will of, 418

DRAFTING OF STATUTES,
aids in, 32
legislation by reference, 29–32
defects in classified, 27

DRAFTING OF STATUTES —*continued.*
slips in, 28
ignorance in, 28. *See* MISTAKE.
defective, construction in case of, 124
no special form of words needed, 20
by judges, 20
by conveyancers, 21
present methods as to, 27
criticisms on, 22, 23, 33
of acts as to crimes, 24
difficulties of, 24–26, 29
effect of Indian experience on, 26
suggested remedies for defects in, 26–32
Statute Law Committee, 26, 27
Select Committee on, 27
revised statutes, 32
chronological index, 33
books on, 33

DURATION
of statutes, 385–392

DUTIES. *See* TAXES.

DUTY,
statutory, considered, 247–269
rule of Interpretation Act as to discharging, 248
sanction for non-performance, 248
indictment, 248
action, 252–257, 260
if ministerial, 254
if judicial, 254
mandamus, 250
equitable relief, 251
specific, 259
excuses for non-performance, 257
specific performance of, 251
performance of, by Crown, 420
by public bodies, 254

EARLIER ACTS,
how far construed by later, 155–161
later, how far construed by, 161, 162, 331–336. *See* REPEAL.

ECCLESIASTICAL COURTS,
controlled by temporal Courts in construing statutes, 15, 16
censure by offence punishable by temporal Courts, 326, *note*

ECCLESIASTICAL LAW,
construed by temporal Courts, 16–19

EDITIONS OF THE STATUTES,
abridged, 63
at large, 39, 52, 63
by record commission, 51
revised, 32, 53
early, 52

EFFECT OF STATUTES
creating duties, 247–269
enabling, 270–319
on common law, 320–330
on Crown, 401–421
on prior enactments, 331–363
territorial, 422–460
penal, 481–497
private, 498–530
temporary, 74, 387, 400
expired, 338, 389
declaratory, 380
revision, 336
continuing, 62, 387, 390
consolidating, 342
codifying, 343
commencement of, 369
duration of, 385
spent, 338
obsolete, 338
repealed, 339
modifying, 368

EJUSDEM GENERIS RULE
stated, 199

ELLIPTICAL EXPRESSIONS,
construing, 182

ENABLING ACTS
defined, 71
classified, 271
supplying omissions, 130, 271
general rules as to, 270–319
when absolute, 281–287
when directory, 281
effect of distinction, 281
compliance with, 284
discretionary powers given by, 256, *note*, 287
when obligatory, 315–319
when permissive, 315–317

ENACTING CLAUSE,
effect of preamble on, 223

ENACTMENT
each section now a distinct, 237
repugnancy between general and specific, 243, 360
retrospective when, 370, 374
revivor of repealed, 242
general, repeal of, by implication, 353
special, repeal of, by implication, 357–360
imperative, 73
in enabling Act, 315–319
in part, and directory in part, 281–287
obligatory, 73
obscure, 110, *note*
words of, 173

ENGLISH,
when first used in statutes, 55

ENGLISH ACTS,
proof in Ireland, 36
in Scotland, 36
Poyning's law as to, 445

ENLARGING ACT,
meaning of, 71

ENTAIL,
effect on Crown of statutes as to, 411

EQUITY,
effect of statutes on, 320–330
no relief against express statutory provision, 86, 87
relief against misinterpretation by Courts of law, 88
specific performance of statutory duty, 251
treatment of Statute of Frauds in, 87
in criminal law, 477. *See* PRIVATE ACT.

EQUITY OF THE STATUTE
discussed, 12, *note*, 118–121

ESTATE ACTS,
effect of general Acts on, 361–363
referred to judges, 220, 465

ESTOPPEL,
none against a statute, 286

EVASION
of a statute defined, 88
considered, 88–90
successful, 92

EVIDENCE
of statutes of record, 50
not of record, 50
public, 40, 500
private, 42, 500
Irish, 36, 55
colonial, 37
American, 43

EXCEPTION. *See* PROVISO. SAVING CLAUSE.

EXCUSE
for non-performance of statutory duty, 257
ignorance of passing of statute not, 367
ignorance of true construction not, 4, 5

EXEMPTIONS. *See* CROWN. PROVISO. PRIVATE ACT. SAVING.

EXPIRATION
of temporary Act, 338

EXPIRED ACT
defined, 338

EXPLANATORY ACT,
construing, 161, 342
retrospectivity of, 380

EXPOSITIO CONTEMPORANEA
discussed, 93-108
punctuation of statute treated as, 218
applies only where meaning not plain, 95, 169

EXPOSITION,
parliamentary, of meaning of statute, 161
by text writers an aid in construction, 162, 163

EX POST FACTO,
meaning of, as applied to a statute, 370

EXPRESS LANGUAGE,
equity will not relieve against, 86, 119
when necessary, 131-139
to alter common law, 208, 322
impose charges, 131-135
confer or take away rights, 136, 137
alter legal principle, 138
increase or take away jurisdiction, 139
alter effect of document, 143
make a statute retrospective, 371
revive repealed Act, 399

EXTENT,
classification by, 64
presumption as to, 440. *See* TERRITORIAL EFFECT.

EXTRINSIC EVIDENCE
as an aid to construe deeds, 3
statutes, 142–171

EX VISCERIBUS ACTÛS,
rule of construction discussed, 114–118
applied to private Acts, 515

FACT,
misstatement of, in statute, 463–465

FALSE RECITALS
not corrected by judges, 81, 463

FELONY,
statutory, subject to common law incidents, 328

FINANCIAL YEAR
defined, 177

FOREIGNER,
real estate of, if in England, bound by all British statutes, except as to succession duty, 206
while within realm, subject to its laws, 429
if resident, entitled to privileges given by our laws, 432
out of British jurisdiction, not subject to British statutes, 205, 433
may take advantage of British statutes, 206, 435
effect on, of British statute which purports to bind, 436
property of, not affected by British statutes, 436. *See* TERRITORIAL EFFECT OF STATUTES.

FORFEITURES,
Crown not bound by Acts creating, 407
in Acts presumed to enure to Crown, 407, 489. *See* PENAL ACT.

FOUNDER,
effect on Crown of statutes which tend to perform will of, 418, 419

FRANCHISE,
words in statute conferring the, 191

FRAUD
upon an Act, 90, 91
private Act obtained by, 525

FRAUDS, STATUTE OF,
equitable construction of, 87

GENDER,
rules as to, 175, 176

GENERAL ENACTMENT,
implied repeal of, by special, 353, 523
special when impliedly repealed by, 357, 522
in private Acts, 507

GENERAL WORDS,
how limited, 192, 193, 198–209
following particular, 202

GIBRALTAR,
common law runs in, 449

GOVERNING INTENTION *or* GOVERNING SENSE
discussed, 80, 88

GRAMMAR. *See* PRIMARY MEANING.

GRENADA,
Mortmain Act does not run in, 453

GUERNSEY. *See* CHANNEL ISLANDS.

HEADINGS
to parts of Acts discussed, 226–229
when part of an Act, 226
may clear up obscurity, 228
subordinate, 230

HEYDON'S CASE,
rules in, 112

IGNORANCE. *See* EXCUSE.

IMPERATIVE. *See* ABSOLUTE.

IMPERIAL ACT,
suspensory clause in, 448, 458
effect on colonies, 446–453
British subjects abroad, 423
land in colonies, 449
foreign States, 424
foreigners, 429–439
personalty abroad, 425
in planted colonies, 453
in ceded colonies, 453
in India, 455

IMPLICATION,
what may be supplied by, 127–141
what may not be supplied by, in statute, 131–141
charge may not be imposed by, 131
rights are not affected by, 131–138
clear principle of law not altered by, 138
jurisdiction of Courts not altered by, 139
effect of written instrument not cut down by, 141
statute held retrospective by, 382
revival by, 242
repeal of statute by, 334, 338, 345
crime not created by, 130

INCLOSURE ACTS
read as private agreements, 509

INCONSISTENCY,
construction which avoids, to be chosen, 108
in case of, later repeals prior Act, 351
apparent, 322
between common law and statute, 324, 326
of special enactment with subsequent general enactment, 243, 360, 523. *See* REPUGNANCY.

INCORPORATION
of two Acts, 244
effect of, on construction, 341
by reference, 246
effect of repeal on, 341. *See* REPUGNANCY.

INCORRECT CONSTRUCTION. *See* CONTEMPORANEA EXPOSITIO.

INDEX
to statute book, 33

INDIA
effect of British statutes in, 455

INDICTMENT
for neglect of statutory duty, 248, 256

INDIRECT TAXATION
defined, 94

INFRINGEMENT
of an Act, 89

INJUNCTION
right to, affected by enactments as to notice of action, 120

INJURY
expressly authorized by statute, 323
common law, right of action for, when ousted, 323, 324
if legalised by statute, must be mitigated, 293, 324

INJUSTICE,
construction to avoid, 102, 111

IN PARI MATERIÂ
statutes, construction of, 145–155
what statutes are, 146, 147
rule as to, when useful, 146
applies to colonial Acts, 149
rarely applies to local Acts, 149, 517
difficulty in applying, 151
provisions in, not to be applied to other statutes, 153, 154

INSENSIBLE LANGUAGE,
presumption against use of, 111
Courts may not give a meaning to, 83, *note*, 107

INSTRUMENTS, WRITTEN,
rules for construing, 115, *note*, 121
drawing, 155
effect of, not cut down by implication, 141. *See* WILL. CONTRACT.

INSURANCE COMPANIES,
provisions inserted in statutes for the sake of, 122, *note*

INTENTION
of the Legislature to be considered in construction, 119
old cases go beyond, 77
some modern fall short of, 78
if manifest, must not be defeated, 119, 124
as to enabling Acts being absolute or directory, 273
as to a statute being retrospective, 370
not to be guessed at, 87
limits of inquiry as to, 79

INTERNATIONAL LAW,
Legislature not bound by, 78, *note*, 433
presumed not to override, 82, 434, 438

INTERPRETATION ACT, 1889,
adopts distinction between rules of law and of construction, 3. *See* TABLE OF STATUTES.

INTERPRETATION CLAUSES,
effect of, 231–236
is a modern innovation, 233, *note*
in previous Act, effect of, 232, *note*
does not take away natural meaning of word, 233
sometimes inserted *ex abundanti cautelâ*, 235
when inapplicable, 236

IRELAND,
primâ facie every Act since Union applies to, 445
effect of English statutes in, 445
a place beyond the seas, 446

IRISH ACTS,
editions of, 54
proof of, in Great Britain, 36, 55

JAMAICA,
common law runs in, 453

JERSEY. *See* CHANNEL ISLANDS.

JUDICIAL DECISIONS. *See* CASE LAW.

JUDICIAL DISCRETION,
meaning of, 288, 289
in construing wills, 9
under enabling Act, 281, 287
not absolute, 288, 289

JUDICIAL DUTIES
to know all public Acts, 42, 500
to administer and not to make laws, 19
not to modify language of statute, 254

JUDICIAL NOTICE,
theoretic obligation as to, 16
extent of, 40, 43
as to local and private Acts, 42, 500
effect of Brougham's Act on, 41
limits of, 49
of commencement and duration of Parliament, 60
of procedure of, 41, 42
United States, rules as to, 43–45

JURISDICTION OF COURTS,
not altered by implication, 139–141
statutes giving, to Courts, always held absolute, 281
presumably local, 424
limits of, 228
inferior, ousted by *bonâ fide* claim of right, 488

JUS,
meaning of, 5, *note*

KNOWLEDGE. *See* MENS REA.

LAGOS,
Bankruptcy Act, 1883, extends to land in, 449

LANDS CLAUSES ACTS
discussed, 245

LANGUAGE OF STATUTES
not to be modified by judges, 105
for what purposes it must be express, 131–141
negative in enabling Act, inference from, 276
affirmative, inference from, 276
comparison of, in different Acts, 156
presumptions from difference in, 156

LATER ACT.
how far an aid in construing earlier, 1. *See* PARLIAMENTARY EXPOSITION.

LATIN,
early Acts in, 55

LAW,
rules of, distinct from rules of interpretation, 2, 3
ignorance of, will not excuse, 5, 367
not altered by implication, 322
misstatement of proposition of, in a statute, effect of, 465
recital of proposition of, in statute, 465

LEARNING,
Crown bound by statutes for maintenance of, 414

LEASEHOLDS,
in England, bound by all English statutes, 427

LEGACY DUTY,
liability to, how affected by domicile, 427

LEGAL TERMS
in statutes, 193

LEGISLATIVE
declaration, 161. *See* PARLIAMENTARY EXPOSITION. DECLARATORY.

LEGISLATURE. *See* PARLIAMENT.

LIBERAL CONSTRUCTION
of statutes, rules as to, 13, 70, 476

LIMITATION
of meaning, 198–209

LIMITATION ACTS
do not bind Crown, 411

LITERAL MEANING. *See* PRIMARY MEANING.

LOCAL ACTS,
judicial notice of, 500, 501

LOCAL AND PERSONAL ACT
defined, 65. *See* PRIVATE ACT.

LOCAL INTERPRETATION
of statutes not allowed, 51

LOST GRANT,
presumption as to, inapplicable to statutes, 51

MALICIOUSLY. *See* MENS REA.

MAN, ISLE OF,
effect of British statutes in, 446

MANDAMUS,
remedy for disobeying statute, 250

MANDATORY ACT
defined, 73
Irish view as to, 74

MARGINAL NOTES,
effect of, 216
not part of statute, 216
how settled in House of Commons, 217

MARRIAGE,
common law as to, 209
meaning of word in English Acts, 93
Acts relating to, held absolute, 277
when retrospective, 372
royal, Acts as to, 423, 497

MAURITIUS,
Civil Code of, how construed, 6

MAXIMS,
actus non facit reum nisi mens sit rea, 481–488
boni judicis est jus dicere, non jus dare, 106
communis error facit jus, inapplicable to statutes, 96, 164
contemporanea expositio est fortissima in lege, 164
ecclesia ecclesiæ decimas solvere non debet, 322
expressio unius est exclusio alterius, 28, 127, 273
generalia specialibus non derogant, 357
ignorantia juris excusat neminem, 5, 367
lex non cogit ad impossibilia, 284
nemo tenetur ad impossibilia, 86
noscitur a sociis, 191
optima legum interpres consuetudo, 164
quilibet juri renunciare potest pro se introducto, 285
ratio legis est anima legis, 98, 119
reddendo singula singulis, 218

MAXIMS—*continued.*
ubi aliquid conceditur, conceditur etiam id sine quo res ipsa non esse potest, 271
ut res magis valeat quam pereat, 82, 121
verba generalia restringuntur ad habilitatem rei vel personæ, 200
verbis plane expressis omnino standum est, 77
volenti non fit injuria, 3

MEANING
of instruments in writing, how ascertained, 5–9
of contract, how ascertained, 7–9
of statute, if plain, rules as to, 76
real and grammatical,
if obscure, rules as to, 110–141
what sources of information outside statute may throw light on, 142–171
parliamentary exposition of, discussed, 161
effect upon, of expositions of textwriter, 162, 163
usage, 164, 169
title, 211–213
marginal notes, 216
punctuation, 218
preamble, 219–226
headings, 226–229
interpretation clause, 231–236
schedules, 236
repugnant clauses, 239–246
non-user, 6, 385

MEMORANDUM
to parliamentary Bills, 145

MENS REA
defined, 483–485
when necessary to incur liability to penalty, 481–488

MERCANTILE CONTRACTS,
construction of, 7

MINISTERIAL DUTIES
considered, 254

MISCHIEF OF THE STATUTE,
how far to be considered, 114, 117, *note*

MISDEMEANOUR,
when disobedience to statute is, 248, 475
statutory, common law incidents attach to, 328

MISPRINT
in an Act, 467–470

MISTAKE,
presumption against, 462
examples of, 461
correcting, 462, 467–470
as to fact, 463–465
law, 465–467
in printing, 467
in private Act, 464
in schedule, 470
in American Acts, 471

MODIFICATION
of Act short of repeal, 354

MONTH
defined, 177

MORTMAIN,
law as to, inapplicable to colonies, 453

MORTMAIN ACT
does not extend to colonies, 449, 453

NATURAL. *See* PRIMARY.

NEGATIVE LANGUAGE,
in enabling Act, effect of, 276–280

NEGLECT
of statutory duty, liabilities for, 247–252
excuses for, 257, 284

NEW SOUTH WALES,
Mortmain Act does not run in, 449

NON-COMPLIANCE,
when excused, 284, 285

NON-USER,
repeal by, not possible in England, 385
possible in Scotland, 386, *note*
effect of, 385

NORMAN FRENCH
used in early Acts, 55

NOTICE
of exercise of statutory powers, 290
of introduction into Parliament, of private Act, effect of, 520, 521
judicial, of private Act. *See* JUDICIAL NOTICE.

NOTICE OF ACTION,
construction of enactments requiring, 120
injunctions obtained without, 120

NOVA SCOTIA,
common law runs in, 446

NOVA STATUTA
defined, 64

NUISANCE,
how far legalised by statute, 293–295

OATH,
meaning of term in modern Acts, 178

OBJECT. *See* INTENTION. POLICY.

OBLIGATORY ENACTMENT
defined, 73, 315
when enabling Act is, 315–319

OBSCURITY,
rules to be applied in case of, 110–125
external aids to construction in case of, 142–171
what may be implied in case of, 127–141
examples of, 110, *note*

OBSOLETE,
English Acts do not become, 338, 385
Scottish Acts may become, 385

OFFENCES,
statutory, how punishable, 248
penalty for, when cumulative, 141, 327, 492
censurable by spiritual Court may be punished by temporal Court, 326, *note*
penalty for, when alternative, 325, 492
mens rea, when necessary to constitute, 481–487

OMISSION,
deliberate, a guide to construction, 125
of insensible words, 127
accidental, 128, 468, 470
of details in enabling Acts, 130
in taxing Acts, 131
of words, if obvious, may throw light on meaning of statute, 12
supplied by implication, 127–131
Act passed to remedy, relates back, 380
if in schedule, may be corrected, 470
in Act of Congress in America, may not be corrected, 470

OPERATION. *See* COMMENCEMENT.

ORDER IN COUNCIL. *See* STANDING RULES.

ORDINANCE
defined, 62
colonial, 62, *note*
of commonwealth, 45, *note*, 62, *note*

ORIGINAL ACTS,
what are, 51, 461
reference to text of, 462

ORDINARY. *See* PRIMARY.

OVERSIGHT. *See* CASUS OMISSUS. MISTAKE.

PARISH
defined, 178

PARLIAMENT
formerly consulted by Courts on doubtful questions, 17
usage of, not considered by Courts, 41
beginning and end of session judicially noticed, 60
journals not referred to by judges, 41
debates not referred to by judges, 143
presumed to know law, 113
to select clearest mode of expression, 107
not to make mistakes, 462
to remember its own distinctions, 195
language of, modified to avoid absurdity, 93, 104
intention of, if clear, not to be defeated, 81–109
language of, not to be moulded to judicial prejudices, 105
incorrect statement by, of existing law, not binding, 465
introduction into, of private Act, effect of notice of, 500
rules as to, 500

PARLIAMENTARY BARGAIN,
private Acts regarded as, 512, 514

PARLIAMENTARY EXPOSITION,
meaning of, 161

PARLIAMENT ROLL,
vellum prints, 51, 461
punctuation, no, 218

PARTICULAR WORDS
used in statutes, following general words, how construed, 198–207

PARTS OF STATUTES,
what they are, 211
effect of, upon one another, discussed, 211–244

PATENT,
Crown not bound by grant of, 412

PEERS,
Acts as to privilege of, 137

PENAL ACT,
antiquity of term, 473, 474
definition of, 475
how far affected by rules in *Heydon's case*, 114, 476
omission in, 476–480
construction of, 476
rule as to strict construction of, 476
modern rule as to, 477
operation of, 481–497
presumably local, 424, 497
effect of, discussed, 481–49
on corporations, 493
application of rule as to *mens rea* to, 481–487
penalties under,
cumulative, 492
alternative, 492
who may sue for joint liability to, 491
several liability to, 491
effect of claim of right in proceedings under, 488
upon contracts, 494–497

PENALTY
for neglecting statutory duty, 248–256
need of clear words to impose, 492
who may sue for, 489. *See* PENAL ACT.

PERMISSIVE ACT
defined, 73
when enabling Act is, 315–317
when held obligatory, 315
as to public works, 319

PERPETUAL ACT,
every Act presumedly is, 74, 385

PERSON,
meaning of, 176
includes corporation, 176

PERSONAL ACT. *See* LOCAL AND PERSONAL. PRIVATE.

PERSONAL PROPERTY
of foreigners, within realm, effect of British statutes upon, 428, 429

PETITION OF RIGHT,
Crown not bound by statute as to pleading in, 410

PLAIN MEANING
of statutes, 76–109
to be preferred, 101
except when absurd, 101

PLANS
exhibited by promoters of private Bill, how far binding, 515

PLEADING STATUTES,
old rules as to, 55
present rules as to private Acts, 56
title, 57
in civil proceedings, 56
criminal proceedings, 56

POLICY OF AN ACT,
difficulty of ascertaining, 94
contract void if contrary to, 263. *See* PUBLIC POLICY.

POLITICAL CONSEQUENCES
to be disregarded in construction, 78, 79

POLITICAL CRIME,
meaning of, 175

POOR LAW UNION
defined, 78

POOR LAWS,
Crown bound by, 414

POPULAR SENSE. *See* PRIMARY MEANING.

POWERS, STATUTORY,
exercise of, 290–299
to execute public works, 290
by whom exercisable, 290
overriding private rights, 293
for what objects granted, 295
by whom to be exercised, 290
when to be exercised, 299
limitation on exercise, 290
when assignable, 299
effect of exceeding, 292
to make bylaws and rules, 300–314
differ from common law powers, 313
granted to the Crown, 314

POYNING'S LAW,
effect of, 445

PREAMBLE,
rule of Interpretation Act as to excising, 226
does not control enacting part, 222
may limit generality, 223
object of, 219
repeal of, 226, 342
may explain ambiguity, 223

PREAMBLE—*continued.*
effect of, 219–226
in private Acts, 219, 464
integral part of Act, 220
misstatement of fact in, 463
how far statement of fact in, is conclusive, 47, 463
misstatement of law in, 465

PREROGATIVE. *See* CROWN.

PRESENT TENSE,
use in modern Acts, 33 *note*

PRESUMPTION,
rule of interpretation is only, 10
as to meaning not to be pressed too far, 10
as to Acts being perpetual, 387
as to use of clearest language, 107
that Parliament knows the law, 113
as to effect of British statutes without realm, 425, 438

PREVIOUS LAW
may be considered in interpretation, 113
Parliament presumed to know, 113, 195

PRIMARY MEANING
in deeds, 7
defined, 77
may differ from Parliamentary meaning, 98
when to be departed from, 99, 100

PRIOR ENACTMENTS. *See* EARLIER ACTS.

PRIVATE ACTS,
origin of, 498, 499
distinction of, from public, 14, 65, 499–506
proof of, 42
certifying, 43
mistake in, 464
recitals in, 464, 519
on what grounds Acts held, 502–506
when called "local and personal," 506
may be in part public, 507
general rule for construing, 509
construed by reference to public Acts *in pari materiâ*, 523
parliamentary rules as to, 499, 500
definition of, 65, 499
judicial definition of, 65, 500–502
notice of, 501
pleading of, 502
proof of, 501

PRIVATE ACTS—*continued.*
as to railways and canals, 513, 516, 517
for assurance, construed like conveyances, 509
construed in favour of private rights, 510
considered as "contract with the public," 512
when construed like contract, 514
effect of enclosure Acts, 509
general scheme of, not controlled by *particular* clauses, 517
effect of, upon agreement between parties to, 510
local customs, 509
proviso in, how to be construed, 509
do not bind strangers, 519
binds all parties named in it, 520, 521
repeal by, of public Act, 523
of, by public Act, 522
by, of private Act, 525
if obtained by fraud, effect of, 525
effect of fraudulent agreement for obtaining, 526
creation of new jurisdiction by, 528, 529
repeal by general Act, 357–360, 522

PRIVATE RIGHTS,
effect on, of public Acts, 134, 293
of private Acts, 509–512
infraction of, 293
vested, 135, 374, 394

PROBATE DUTY,
liability to, how affected by domicile, 429

PROCEDURE
of Courts, permissive language in statutes as to, held obligatory, 281
statutes held retrospective which regulate, 376
no vested right in, 376

PROCLAMATION OF STATUTES
in England, 35
in Scotland, 35
in Ireland, 36

PROCLAMATIONS,
how proved, 37

PROHIBITION
issued by temporal Courts if statute wrongly interpreted, 16, 17

PROHIBITORY ACT
may not be evaded, 91

PROMULGATION.
of English Acts, 35
of Scotch Acts, 35
of Irish Acts, 36

PROMULGATION—*continued.*
of British Acts, 36
of Acts relating to Channel Islands, 36
colonies, 37

PROMULGATION LIST, 39, 40

PROOF,
onus of, as to exercise of statutory powers, 290

PROPERTY
of British subject, without realm, real, not bound by British statutes, 425
personal, bound by British statutes, 426
of foreigner, when bound by British statutes, 426, 429, 438
private, if interfered with by private Act, how Act should be construed, 510
presumed right to be heard before confiscation of, 136

PROVISO
in a statute, rule for construction of, if repugnant, 239
former rule as to pleading, 241
"except as to acts done under repealed Act," effect of, 396
that nothing in Act shall extend to Scotland or Ireland, effect of, 444
in private Act, how to be construed, 509

PUBLIC ACTS,
wherein they differ from private, 14, 499–500
repeal of, by private Acts, 525

PUBLIC INTEREST,
Acts construed retrospectively in, 381

PUBLIC POLICY,
construction by, 196–198
objections to, 197
words in statute not to be construed according to, 83

PUBLIC WORKS,
Acts authorising, discussed, 290–292
permissive language in statutes permitting, not obligatory, 158, 159
private Act considered as contract with the, 512

PUNCTUATION,
effect of, in statutes, 218
by whom inserted, 218

PURVIEW. *See* INTENTION. POLICY OF AN ACT.

QUEBEC,
English criminal law runs in, 453

QUEEN'S PRINTER,
private Acts printed by, 42
Acts property of, 53
Controller of Stationery Office now, 53
effect of Documentary Evidence Act, 53

RATES,
express language necessary to impose, 133
Crown not bound by Acts as to, 408

REALM,
property of British subject without, effect of British statutes on, 423–425
foreigners, within, liabilities of, 429
rights of, 431
without, not subject to British statutes, 430–433
may take advantage of British statutes, 435
effect of British statutes which purport to bind, 436
property of, not affected by British statutes, 438
limits of, 429, 430

REAL MEANING. *See* PRIMARY. SECONDARY.

REAL PROPERTY
abroad, not bound by British statutes, 426
of foreigner within realm, free from succession duty, 426
leasehold, bound by all British statutes, 426

REASONABLENESS
to prevail in construction necessary in bylaws, 309

RECITALS,
how far binding, 45, 47. *See* PREAMBLE.

RECORD
statutes, Acts of, 50
not of, 50

RECORD COMMISSION,
edition of statutes by, 51

REDDENDO SINGULA SINGULIS,
meaning of term, 218

REFERENCE, LEGISLATION BY,
its disadvantages, judicial, 29, 30
administrative, 31
unsuitable to English statutes, 31
in Clauses Consolidation Acts, 32, 245
in Acts relating to minor offences, 32
inconsistencies in, 244
in incorporating Acts, 246

RELIEF. *See* EQUITY.

RELIGION,
Crown bound by statute for maintaining, 414

REMEDIAL ACT
defined, 70
liberally construed, 70
supplying omission in, 130

REMEDY,
statutory, when alternative, 325, 492
cumulative, 350
exclusive, 349

REPEAL
discussed, 331–348
implied savings on, 130, 242, 336
total, 392
qualified, 335
partial, 354, 393
tacit, 385, *note*
extent of, 333
virtual, 338
express, 332
in general terms, 338
of preambles, 340
rules of Interpretation Act, 1889 : 334
Statute Law Revision Acts, 336–341
does not revive defunct law, 335
by affirmative Act, 346–348
by implication, 345
of general, by special enactment, 353
curtailing operation, not, 354
bare recital in preamble, not, 356
by form in schedule of subsequent Act, 356
if contrary to evident intention of Legislature, 356
of special enactment by general enactment, 357–360
presumption against, when it takes effect, 349
by non-user, none in England, 385
in Scotland, 385, *note*
effect of statutes after, 392–400
of entire Act, 392
of single clause of Act, 393
effect of, upon rights acquired, 394–396
ex abundanti cautelâ, 395
effect of 13 & 14 Vict. c. 21, s. 5 : 399
by temporary Act, 400
revival of prior Acts by, 399
of incorporating Act, 397
by private Act, of public Act, 523
by public Act, of private Act, 357–360, 522
by private Act, of private Act, 525

REPORTS
of commissioners, how far admissible guides in construction, 143, 144

REPUGNANCY
in statutes, 239–246, 351–353
proviso, 240
saving clause, 241
between general and special enactments, 243, 360, 522
incorporated and incorporating Act, 244
bylaw and Act, 307, 308

RESTRAINING ACT,
meaning of, 71

RETROSPECTIVITY
defined, 369
not presumed, 370, 374
cases of, 370
virtual, 382
implied, 374
express provision for, 374
of procedure Acts, 376
of declaratory Acts, 386
French rule as to, 370
of Acts affecting contracts, 382, 383
wills, 372, 384
as to settlement, 371
licensing, 373
marriage, 373
rates, 373
charitable uses, 372

REVENUE
cases, right of Crown to try in Exchequer, 184

REVISED STATUTES,
history of, 32, 40

REVISION ACTS,
saving clauses in, 339
repeal of preambles by, 340

REVIVAL,
by implication, 242
of repealed Act, must *now* be by express enactment, 220

RIGHT
to try revenue cases in Exchequer, 184
petition of. *See* PETITION OF RIGHT.
claim of. *See* CLAIM OF RIGHT.

RIGHT OF CROWN. *See* CROWN. PREROGATIVE.

RIGHTS
not given by implication, 134
not taken away by implication, 134, 135
reserved *ex majori cautelâ*, 137
of Crown. *See* CROWN.
vested, effect of Acts on, 135, 374
acquired under a statute, not lost by its repeal, 394, 395
not augmented by repeal of statute, 394
private, may be interfered with by private Act, 509–512
presumption against confiscation of, 137

ROYAL ASSENT,
date of, part of statute, 365

RULES OF CONSTRUCTION
recognised as legal, 4, *note*
differ from rules of law, 2
how ascertained, 4, 7, 10
in United States, 11
strict and liberal construction, 13, 70, 476
general, if meaning plain, 76–109
if meaning not plain, 110–126
laid down in *Heydon's case*, 112
ex visceribus actûs, 114–118
not to be departed from to satisfy abstract justice, 117
one of the, called "the golden," 100
construction by the equity of a statute, 118
words used in statutes, how to be construed, 172–198
limitation of meaning of, 198–209
how far one clause of statute is affected by rest of statute, 210–244
for construction of penal statute. *See* PENAL ACT.
particular. *See* MAXIMS.

RULES OF COURT,
statutory power to make, 300-314
construction of Acts by, 171
rules for construing, 101, 171
when *ultra vires*, 171
must conform to statute, 302
when to be made, 302, 366
revoking, 303
statutes repealed by, 305
forms annexed to, 305
made by judges, 304

RULES OF LAW
inflexible, 2
do not control construction of statutes, 3

SAVING CLAUSE,
how construed, 240
does not create rights, 240, 241
when implied, 242
Interpretation Act, as to, 242, 334
in Statute Law Revision Acts, 339
pleading, 241

SCHEDULE,
effect of, 236
forms in, 237
of subsequent statute, will not repeal prior enactment, 356
of statute, mistake in, may be corrected, 470

SCHEME,
general, of private Act, distinct from bargains with particular persons, 517

SCOTLAND,
construction of Acts extending to, 441–443
what Acts extend to, 441

SCOTTISH ACTS,
how construed, 5, 6
tacitly repealed by desuetude, 6, 385
proof of, in England, 36

SEAL,
Acts requiring contracts to be under, 113. *See* CONTRACT.

SECONDARY MEANING,
when preferred to primary, 7
put upon statute, 98

SECTIONS
defined, 238
division into, 237
effect of one upon another, 237–244
construction of repugnant, 240, 241

SEDGWICK,
treatise on Statutory Law by, 11

SESSIONAL PUBLICATION,
discussed, 39, 40

SESSIONS OF PARLIAMENT,
describing, or pleading, or citation, 59, 60
commencement judicially noticed, 60

SEX. *See* GENDER.

SPECIAL ACT. *See* LOCAL AND PERSONAL ACT. PRIVATE ACT.
meaning discussed, 65, 66
incorporating general Act, 32
effect on general Act, 245

SPENT ENACTMENTS
defined, 338

SPIRITUAL COURTS
subject to control of temporal Courts in interpreting statutes, 17–19
See ECCLESIASTICAL COURTS.

STAMP DUTY
express language necessary to impose, 133

STATUTE
defined, 62

STATUTE, EQUITY OF THE,
discussed, 12, *note*, 118, 119

STATUTE LAW REVISION,
committee for, 336
methods of, 337
Acts included in, 337, 338
applied to England only, 337
saving clauses, 339
repeal of preambles, 340

STATUTE OF DISTRIBUTIONS,
construing terms in, 192

STATUTE OF FRAUDS,
equitable construction of, 87

STATUTES
at large, defined, 63
classified, 62–75
British, construed by special rules, 5
Scotch or colonial, how construed, 6, 7
cases on, classified, 12
construction of, difficulties as to, 10
interpretation of, province of temporal Courts, 14–16
right of, claimed by James I., 16
by law Courts, when, and how right obtained, 16
wrong, by Courts of inferior jurisdiction, 15, 17
by ecclesiastical Courts, 17–19
drafting of, 20–32
meaning of, if plain, must be adhered to, 73–93
unless absurd, 101
never held void, 80, 447
not extended to *casus omissus*, 82

STATUTES—*continued.*

language of, understood as used in this country, 93
at the time statute was passed, 93
to be construed so as to have some effect rather than none, 110
not to be modified by Judge, 105
meaning of, if obscure, rules as to, 110–126
criminal, how construed, 114
what omissions in, may be supplied by implication, 127–130
for what purposes express language necessary in, 131–141
what sources of information outside may be used for construction, 142–171
in pari materiâ, discussed, 147–155
earlier, may throw light on meaning of later, 155–160
language used in, variance in, 158
later, when an aid to construe earlier, 161
if carelessly drawn, how to be construed, 159
subsequent, may act as "parliamentary exposition of prior statute," 160
incorrect construction of, when to be adhered to, 165–171
words in, interpreting, 172–209
limitation of meaning of, 198, 209
elliptical expressions in, 182
division into parts, effect of, 210–244
title of, 211–216
marginal notes to, 216–217
punctuation of, 218
preamble of, 219–226
effect of repealing, 227
headings to, 226–231
interpretation clauses in, 231–236
schedules to, 236–237
enacting clauses in, 237–247
repugnant, 239–246
creating duties, 247–268
directory or absolute,
as to marriage, 372
licensing, 373
charitable uses, 372
rates, 373
taxes, 132, 407, 443
ex post facto, 370
declaratory, 69
when retrospective, 380
explanatory, 161, 342
temporary, 387–392
expired, 389
disused, 338
forgotten, 386
spent, 338

STATUTES—*continued.*
obsolete, 338, 385
superseded, 338
incorporated, 341
consolidating, 341
codifying, 342
penal, 472–497
perpetual, 385
private, 498, 52
revision of, 336–341
retrospective. *See* RETROSPECTIVITY.
not in force, 337, 386
expiration of, 389
commencement of, 387
old rule, 366
present rule, 365
continuance of, 391
revivor of, 391
duration of, 385–392
repeal of. *See* REPEAL.
effect of, after repeal, 392–400
territorial effect of, 422–460
misprint in. *See* MISTAKE.
sessional publication of, 39
promulgation of, 34–37
editions of, 50–54
text of, 50–54
authentication of, 40–49
citation of, 56–59
pleading of, 55, 56
judicial notice of, 49
proof of public, 36, 40
proof of private, 41, 65
rules made under authority of. *See* RULES OF COURT.

STATUTORY CORPORATION,
powers of, 292. *See* PRIVATE ACT.

STATUTORY RULES. *See* RULES OF COURT.

STRANGERS
not bound by private Act, 518

STRICT CONSTRUCTION,
rules as to, vague and doubtful, 13, 476. *See* PENAL ACT.

SUB-HEADINGS, 229

SUBORDINATE LEGISLATION,
authentication, 37
annual publication of, 37. *See* BYLAWS. RULES OF COURT.

SUBSEQUENT ACTS,
construction of prior by, 161

SUCCESSION DUTY
depends on testator's domicile, 428

SUPERSEDED ENACTMENTS
defined, 338

SUPREME COURT,
construing rules of, 300–314

SURPLUSAGE
often found in statutes, 121
how dealt with, 121–123
rejection of, 124, 160

SUSPENSORY CLAUSES
in Imperial Acts, 448, 528

TACIT REPEAL
of Scotch Acts, 385

TAX,
express language necessary to impose, 132
effect on Crown of Acts as to, 407
construction of Acts as to, 443, 523

TAXATION,
direct, what is, 174
indirect, 94

TAXING ACTS. *See* TAX.

TECHNICAL WORDS,
avoiding in statutes, 183
construing, 184

TEMPORAL COURTS
sole interpreters of statutes, 14–16

TEMPORARY ACT,
what is, 74
continuance of, 62, 387, 390
peculiarities of, 387
expiration of, 389
revivor, 391
repeal, 400

TERMS OF ART,
interpreting, 174

TERRITORIAL EFFECT
of statutes, 422–460

TEXT
of the Statute-Book, 50–53

TEXT-BOOKS,
upon subject of this treatise, 10
English, 10
American, 11

TEXT-WRITERS,
statement of law by, 2
exposition of statutes by, 162, 163

TIME
rule for computing, 177. *And see* CONTEMPORANEA EXPOSITIO.

TITLE OF STATUTE
considered, 211–213
first introduction, 212, *note*
settling in House of Lords, 212
settling in House of Commons, 214
short, 213
citation by, 58
full, 213
may assist construction, 213

TOLL,
express language necessary to impose, 133
Crown not bound by statutes imposing, 407

ULTRA VIRES,
contract void if, 166, 292
bylaws void if, 302

UNCONSTITUTIONAL,
term inapplicable to British Acts, 81
colonial Acts may be, 81, *note*
United States Acts may be, 81, *note*

UNION, ACT OF,
effect as to extent of statutes, 445

UNITED STATES,
Acts of, may be unconstitutional, 81, *note*

UNREASONABLENESS,
ground for avoiding alternative construction, 100–104
not for invalidating statute, 80, 111
ground for invalidating municipal bylaw, 81, 309

USAGE,
construction of obscure Acts by, 164, 169
established, when followed, 165
not followed, 166
practice of conveyancers, 97. *See* CONTEMPORANEA EXPOSITIO.

VALIDITY
of statutes not to be questioned by judges, 81

VELLUM PRINTS. *See* ORIGINAL ACTS.

VENUE,
right to change, 140

VESTED RIGHTS,
express words needed to divest, 135
acts not presumed retrospective as to, 374
none in procedure, 376
not affected by repeals, 394, 395

VETERA STATUTA
defined, 64

VIS MAJOR. *See* ACT OF GOD.

VOID,
statutes once held, 81
not now held, 80, 111
contract, in contravention of statute, 263–269
if *ultra vires*, 292
acts under enabling statutes, when, 262. *See* CONTRACT.

WAIVER
of rights given by statute, 285, 286

WALES,
effect of British statutes in, 442

WILLS,
construction of, 9, 10
Lord Blackburn's view, 9, *note*
cases on, criticised, 10
Crown bound by statutes which tend to perform, 418
effect upon, of statute, apparently retrospective, 372, 384

WORDS
of enactment, 173
in contracts, 7, 8
precise form of, not essential, 20
natural sense of, to be adopted, 78
English meaning, 93
construed as at passing of Act, 93
not to be made insensible, 121
inserted *ex abundanti cautelâ*, 122
obvious omission of, 125. *See* OMISSION.
rules for interpreting, 172, 209
subject and occasion of use of, 187
context as guide to meaning of, 173

WORDS—*continued.*
definitions of, 187
conferring the franchise, 191
judicial interpretation of, 192
designedly distinguished, 195
limitation of meaning, 198–209
used in different senses in same statute, 186
construing, by public policy, 197
used in statutory rules, construction of, 171
legal meaning, 184
scientific meaning, 181
technical meaning, 180, 183, 184
popular meaning, 180
terms of art, 180
reasonable construction of, 182
effect of *ejusdem generis* rule, 199
general, following particular, 199–201
not following particular, 201
apply only to English and not to foreign things, 205
construed so as not to alter the common law, 207
when to be construed *reddendo singula singulis*, 218
particular, interpretation of. *See* APPENDIX A.
express, when necessary, 131–139

WORKS,
public, enactments authorizing, 290–300

WRITING
expressions referring to, 177, 178

WRITTEN INSTRUMENTS,
general rules for construing, 7, 8, 115, *note*
rules for drawing, 155
effect of, not cut down by implication, 143

WRONG,
Crown bound by statutes for suppression of, 414–418

PRINTED BY BALLANTYNE, HANSON AND CO
LONDON AND EDINBURGH