CHAPTER 13

INTENTIONS ATTRIBUTED TO THE LEGISLATURE WHEN IT EXPRESSES NONE

1. IMPERATIVE AND DIRECTORY ENACTMENTS

PASSING from the interpretation of the *language* of statutes, it remains to consider what intentions are to be attributed to the legislature on questions necessarily arising out of its enactments and on which it has remained silent.

The first such question is: when a statute requires that something shall be done, or done in a particular manner or form, without expressly declaring what shall be the consequence of non-compliance, is the requirement to be regarded as imperative (or mandatory) or merely as directory (or permissive)? In some cases, the conditions or forms prescribed by the statute have been regarded as essential to the act or thing regulated by it, and their omission has been held fatal to its validity. In others, such prescriptions have been considered as merely directory, the neglect of them involving nothing more than liability to a penalty, if any were imposed, for breach of the enactment. "An absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially."[1]

It is impossible to lay down any general rule for determining whether a provision is imperative or directory.[2] "No universal rule," said Lord Campbell L.C., "can be laid down for the construction of statutes, as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. 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."[3] And Lord Penzance said: "I believe, as far as any rule is concerned, you cannot safely go further than that

[1] *Woodward* v. *Sarsons* (1875) L.R. 10 C.P. 733, *per* Lord Coleridge C.J. at p. 746.

[2] But see *Montreal Street Rly. Co.* v. *Normandin* [1917] A.C. 170, *per* Sir Arthur Channell (requirements *re* performance of public duty, the invalidation of which performance would work serious general inconvenience, usually held directory). *Cf. Maxwell*, 11th ed., pp. 362–364; *Cullimore* v. *Lyme Regis Corporation* [1962] 1 Q.B. 718.

[3] *Liverpool Borough Bank* v. *Turner* (1860) 2 De G.F. & J. 502, at pp. 507, 508.

in each case you must look to the subject-matter; consider the importance of the provision that has been disregarded, 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 matter is what is called imperative or only directory."[4]

So, in *B.* v. *B.*,[5] Scarman J. had to decided whether a provision (s. 2 (1) of the Matrimonial Proceedings (Children) Act 1958) that in matrimonial proceedings "the court shall not make absolute any decree for divorce or nullity of marriage . . . unless and until the court is satisfied" as to specified matters relating to the care and upbringing of the children of the marriage, which were set out in the subsection, was mandatory or directory. In the latter case, a decree made by a divorce commissioner in disregard of the subsection would remain valid until some interested person took the proper steps to set it aside; in the former case, the decree would be a nullity. "I agree," said the learned judge (at p. 397), "that prior authority on other statutes is not of great assistance to the court in determining the intention of the legislature when this section was enacted. It seems to me that it is my duty to look at this statute, to look at the circumstances in which it was enacted and the purposes that it was intended to serve, and then to come to a conclusion whether the purposes intended this requirement as to the court's action before making a decree absolute to be something without which the parties should have no decree absolute or merely a beneficial requirement which, if ignored by the parties (of course in all innocence), could thereafter be ignored by the law of the land."

A provision may be mandatory as to one person and permissive as to another. Thus, a provision in the Magistrates' Courts Rules that "at the conclusion of the evidence for the complainant the defendant may address the court" is a permission given to the defendant or his advocate, but obliges the justices to hear him if he wished to avail of this permission.[6]

Cases in which statutory requirements have been held to be mandatory

Where the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did

[4] *Howard* v. *Bodington* (1877) 2 P.D. 203, at p. 211.
[5] [1961] 2 All E.R. 396.
[6] *Disher* v. *Disher* [1965] P. 31.

not imply a prohibition on doing it in any other, no doubt can be entertained as to the intention. The enactment, for instance, of section 12 of, and the first Schedule to, the Metropolitan Building Act 1855, that the walls of buildings should be constructed of brick, stone or other incombustible material, though containing no prohibitory words, obviously prohibited by implication and made illegal their construction with any other.[7] The directions in the rubrics of the Prayer Book for the performance of the rites and ceremonies of the Church are likewise imperative in prohibiting all omissions and additions.[8]

The Engraving Copyright Act 1734 gave to the designers of prints the sole right of printing them for fourteen years after the day of publication, "which [day] shall be truly engraved, with the name of the proprietor, on each plate." Neglect to comply with this last provision was fatal to the copyright.[9]

In *Spice* v. *Bacon*,[10] it was held that an innkeeper whose common law liability for the goods of his guests was limited if he posted up a notice as required by the Innkeepers' Liability Act 1863 did not obtain the statutory exoneration if his notice was inaccurate in any material particular.

An Act which, in authorising the confinement of lunatics, prohibited their reception in asylums without medical certificates in a given form setting forth several particulars, one of which was the street and number of the house where each supposed lunatic was examined, made a strict compliance with these provisions imperative, so that a certificate which omitted the street and number of the house where the examination took place was held insufficient to justify the detention of the lunatic.[11]

Where it was enacted that a person who objected to a voter's qualification might be heard in support of his objection if he had given notice to the voter and it was provided that, besides the ordinary way of serving it, the notice might be sent by post addressed to his place of abode "as described" in the list of voters prepared by the clerk of the peace, it was held that to send by post a notice, not to the address so given—which happened to be

[7] *Stevens* v. *Gourley* (1859) 29 L.J.C.P. 1.
[8] *Westerton* v. *Liddell* (1857) 1 Jur. 1178; *Martin* v. *Mackonochie* (1868) L.R. 2 P.C. 365.
[9] *Newton* v. *Cowie* (1827) 5 L.J.(O.S.)C.P. 159; *Avanzo* v. *Mudie* (1854) 10 Ex. 203.
[10] (1877) 2 Ex.D. 463. *Cf. Gregson* v. *Potter* (1879) 4 Ex.D. 142.
[11] *R.* v. *Pinder* (1855) 24 L.J.Q.B. 148. *Cf. Re Shuttleworth* (1846) 9 Q.B. 651.

incorrect, but to the true address, was not a compliance with the Act.[12]

By the Local Government Act 1933, Sched. 3, Pt. II, para. 3 (1): "At a meeting of the council of a borough the mayor, if present, shall preside." Glyn-Jones and Thesiger JJ. held in effect that this provision was mandatory so that where, at an aldermanic election, the mayor took part in the proceedings from the floor, another member of the council taking the chair, a casting vote exercised by the latter was void, for he was given a casting vote only on the assumption that the mayor was not present at the meeting.[13]

In *B.* v. *B.*,[14] a case which has already been referred to, Scarman J. held that the statutory requirement that a court should consider the arrangements for the care and upbringing of the children of a marriage before making a decree of divorce absolute was mandatory, so that a decree made without complying with this requirement was a nullity.

By section 22 (1) of the Housing Act 1957: "Where a demolition order under this Part of the Act has become operative, the local authority shall serve on the occupier of any building, or any part of any building, to which the order relates a notice—(*a*) stating the effect of the order, and (*b*) specifying the date by which the order requires the building to be vacated, and (*c*) requiring him to quit the building before the said date or before the expiration of twenty-eight days from the service of the notice, whichever may be the later." This provision imposes a mandatory obligation on the local authority: moreover, it is not a duty which the authority in its discretion may fulfil at a period convenient for itself, but "the clear intention of section 22 is that the notice should be served in time to require the tenants to move and give them time to move before the expiration of the period fixed by the demolition order itself."[15]

By section 130 (1) of the Local Government Act 1933, a person who has been surcharged may apply to a tribunal for a declaration that he acted reasonably or in the belief that his action was authorised by law, and the tribunal "if satisfied that there is proper ground for doing so, may make a declaration to that effect." Lord Parker C.J.

[12] *Noseworthy* v. *Overseers of Buckland-in-the-Moor* (1873) L.R. 9 C.P. 233.
[13] *Re Wolverhampton Borough Council's Aldermanic Election* [1962] 2 Q.B. 460.
[14] [1961] 2 All E.R. 396; *ante*, p. 315.
[15] *R.* v. *Epsom and Ewell Corporation, ex p. R.B. Property Investments (Eastern), Ltd.* [1964] 1 W.L.R. 1060, *per* Lord Parker C.J. at p. 1063.

has said that the word "may" here should probably be construed as "must."[16]

Cases in which statutory requirements have been held to be directory

The Riot Act 1411, which required justices to try rioters "within a month" after the riot, was held not to limit the authority of the justices to that space of time, but only to render them liable to a penalty for neglect.[17]

The regulations for the conduct of elections under the Ballot Act 1872 were held to be so far directory only that an election was not invalidated by the non-observance of them unless it was of a character contrary to the principle of an election by ballot and was so great that it might have affected the result of the election.[18] Under the same Act, the requirement that the presiding officer should stamp his official mark on the face of each ballot paper delivered to a voter was directory, while a like requirement as regards the mark on the back of the paper may have been imperative.[19]

The acts of aldermen who had been in office for several years without re-election were held valid until their successors were appointed, the provision that they should be elected annually being regarded as merely directory.[20]

The Revenue (No. 2) Act 1861, s. 34, which enacted that no copy of a bill of sale should be filed in any court unless the original was produced to the officer duly stamped, did not invalidate the registration if the bill was not duly stamped when so produced. The object of the enactment was to protect the Revenue, and this was thought to be sufficiently attained if the deed was afterwards duly stamped without going to the extreme of holding the registration void.[21]

Section 230 (2) of the Local Government Act 1933 provides that where a tribunal makes a declaration under section 230 (1) that a person surcharged has acted reasonably, the tribunal "may, if satisfied that the person surcharged ought fairly to be excused, relieve him

[16] *Annison* v. *District Auditor for the Metropolitan Borough of St. Pancras* [1962] 1 Q.B. 489, at p. 497.
[17] *R.* v. *Ingram* (1697) 2 Salk. 593.
[18] *Woodward* v. *Sarsons* (1875) L.R. 10 C.P. 733; *Phillips* v. *Goff* (1886) 17 Q.B.D. 805.
[19] See *Ackers* v. *Howard* (1886) 16 Q.B.D. 739.
[20] *Foot* v. *Truro* (1725) 1 Stra. 625.
[21] *Bellamy* v. *Saull* (1863) 32 L.J.Q.B. 366.

either wholly or in part from personal liability in respect of the surcharge." Unlike section 230 (1),[22] this has been held to confer on the tribunal a "wide discretion."[23]

By section 3 of the Newfoundland Carriage of Goods by Sea Act 1932: "Every bill of lading or similar document of title issued in this Dominion which contains or is evidence of any contract to which the [Hague] rules apply shall contain an express statement that it is to have effect subject to the provisions of the said rules as expressed in this Act." Having considered the purpose of the Act (which was to give the Hague Rules the force of law with a view to establishing the rights and liabilities of carriers under bills of lading), and the inconvenience which would follow from any other conclusion, the Judicial Committee held that section 3 was directory only. Therefore a bill of lading which did not contain the "clause paramount" demanded by section 3 was not an illegal document, nor was the contract contained in the bill rendered a nullity.[24]

Article 8 of the first Schedule to the Carriage by Air Act 1932 provided: "The air consignment note shall contain the following particulars . . . (*q*) a statement that the carriage is subject to the rules relating to liability established by this [Warsaw] Convention." Lord Denning M.R. has said in the Court of Appeal that article 8 (*q*) should not be given "so rigid an interpretation as to hamper the conduct of business. I do not interpret the article as meaning that the waybill must contain the statement *verbatim*. It is sufficient if it contains a statement to the like effect."[25]

Section 2 (1) of the Statutory Instruments Act 1946 provides that immediately after a statutory instrument is made copies shall be printed and sold by the Queen's printer of Acts of Parliament, except in such cases as shall be provided for by statute or prescribed by regulations. This provision has been held to be directory only, so that once a statutory instrument has been made by the Minister concerned and laid before Parliament it becomes a valid statutory instrument within the Act, the requirements of the Act and of the Statutory Instruments Regulations 1948 being merely matters of procedure which do not affect the validity of the instrument.[26]

[22] *Ante*, pp. 317–318.
[23] *Annison* v. *District Auditor for the Metropolitan Borough of St. Pancras* [1962] 1 Q.B. 489.
[24] *Vita Food Products, Inc.* v. *Unus Shipping Co., Ltd.* [1939] A.C. 277.
[25] *Samuel Montagu & Co., Ltd.* v. *Swiss Air Transport Co., Ltd.* [1966] 2 Q.B. 306. *Cf. Westminster Bank, Ltd.* v. *Imperial Airways, Ltd.* [1936] 2 All E.R. 890.
[26] *R.* v. *Sheer Metalcraft, Ltd.* [1954] 1 Q.B. 586.

Section 33 (1) of the Caravan Sites and Control of Development Act 1960 provided for an appeal against the service of an enforcement notice on any of seven specified grounds. By section 33 (4): "An appeal under this section shall be made to the Minister by a written notice which shall indicate the grounds on which the appeal is brought." The Divisional Court held that, having regard to the general scheme of the legislation, section 33 (4) was directory only, so that an appellant was not confined once and for all to whichever ground or grounds he had specified in his notice of appeal. In other words, the grounds notified did not circumscribe the jurisdiction of the Minister, but were merely informative.[27]

Rules of procedure

Enactments regulating the procedure in courts are usually construed as imperative,[28] even where the observance of the formalities in question is not a condition exacted from the party seeking the benefit of the statute, but a duty imposed on a court or public officer when no general inconvenience or injustice seems to call for a different construction.

Thus, the statute 5 Elizabeth 1, c. 23, requiring that the writ *de contumace capiendo* should be brought into the Queen's Bench and there opened in the presence of the judges, the omission of this apparently idle ceremony was deemed fatal to the validity of an arrest made in pursuance of the writ, even though it had been enrolled in the Crown Office.[29]

An enactment which provided that every warrant issued by a court should be under its seal was equally imperative. Not only was a commitment under an unsealed warrant invalid (even though it was signed by a judge) but the person who had obtained it without taking care that the court performed the duty of sealing it was held liable in damages to the person arrested under it.[30]

The Residence in Benefices (England) Act 1817, which required that no action should be brought against a clergyman for any penalty incurred under it until notice had been delivered to him and also to the bishop "by leaving the same at the registry of the diocese" was held, with perhaps extreme rigour, not to be complied with by a

[27] *Chelmsford R.D.C.* v. *Powell* [1963] 1 W.L.R. 123.

[28] *R.* v. *Justices of Oxfordshire* (1813) 1 M. & S. 446; *Fox* v. *Wallis* (1877) 2 C.P.D. 45; *Aspinall* v. *Sutton* [1894] 2 Q.B. 349; *Secretary of State for Defence* v. *Warn* [1968] 3 W.L.R. 609. But see *contra R.* v. *Brush* [1968] 1 W.L.R. 1740; *Brown* v. *Dyerson* [1969] 1 Q.B. 45.

[29] *Dale's Case* (1881) 6 Q.B.D. 376. [30] *Ex p. Van Sandau* (1846) 15 L.J.Bk. 13.

delivery to the deputy registrar at his house, the deputy registrar taking it to the registry next day.[31]

A county court rule which required that in action, to recover land the summons should be delivered to the bailiff at least forty days before the return day, and be served within thirty-five days before that day, was similarly held imperative so that, if the summons were not delivered to the bailiff in due time, even though the latter should serve it in the prescribed time, the judge would have no jurisdiction to try the case.[32]

By section 4 (1) of the Malaysian Geneva Conventions Act 1962: "The court before which a protected prisoner of war is brought up for trial for any offence . . . shall not proceed with the trial until it is proved to the satisfaction of the court that" certain notices have been served on the protecting power and on the accused and the prisoners' representative. The Judicial Committee, citing *Maxwell*, has held that this "direction not to proceed with the trial . . . is mandatory, that is to say imperative in character. It seems that enactments regulating the procedure to be followed in courts are usually imperative and not merely directory."[33]

Notwithstanding that the Rules of the Supreme Court provide that non-compliance with the Rules shall not render proceedings void unless the court so directs,[34] in several cases it has been held that a defect in following the procedure laid down by the Rules may be so grave that it renders the entire proceedings a nullity, not curable by any order of the court. Thus, judgment signed before the expiry of the time limited for defence is bad;[35] the service of a writ which was not indorsed as required by the rules within three days of service,[36] and the service of the writ itself upon a foreigner abroad instead of giving him notice of the writ,[37] have both been held to be nullities; and so has the issue of an originating summons out of a District Registry of the High Court instead of the Central Office with the

[31] *Vaux* v. *Vollans* (1833) 2 L.J.K.B. 87. [32] *Barker* v. *Palmer* (1881) 8 Q.B.D. 9.

[33] *Public Prosecutor* v. *Koi* [1968] A.C. 829, at p. 852. *Cf. R.* v. *Kettering JJ., ex p. Patmore* [1968] 1 W.L.R. 1436.

[34] R.S.C., Ord. 2, r. 1 (1), (2): the learned editors of the *Supreme Court Practice 1967*, vol. 1, p. 7, maintain that the rule in its new form gives rise to the disappearance of the old distinction between nullity and irregularity. Since, however, this has yet to be established by judicial decision, several of the cases on the rule in its old form are discussed, *infra*. *Cf. Annual Practice 1964*, pp. 11–13.

[35] *Anlaby* v. *Praetorius* (1888) 20 Q.B.D. 764.

[36] *Hamp-Adams* v. *Hall* [1911] 2 K.B. 942.

[37] *Hewitson* v. *Fabre* (1888) 21 Q.B.D. 6, doubted by Diplock L.J. in *Gohoho* v. *Guinea Press, Ltd.* [1963] 1 Q.B. 948.

result that, the six months allowed for commencing proceedings under the Inheritance (Family Provision) Act 1938 having expired, the plaintiff's claim was gone beyond recall.[38] On the other hand, failure to indicate the Division of the High Court in which the action is being brought in the title of the writ,[39] and the delivery of a statement of claim in the long vacation,[40] have been held to be mere irregularities.[40a]

2. Absolute and Qualified Duties

When a statute imposes an obligation for breach of which a civil action for damages will lie,[41] this obligation may be either absolute or qualified. In the case of an absolute obligation, it will be no defence for the person bound by the obligation to say that he took all reasonable steps to fulfil it: if the obligation is not absolute, at least some of the defences which would be available in a negligence action will be open to the person sued.[42] The question in every case depends on the wording of the Act. A provision which requires "reasonably practicable" steps to be taken clearly imposes an obligation which is considerably less than absolute.[43] So far as statutes which contain no such indication are concerned, the decisions show that duties imposed on employers in relation to their employees are more likely to be held to be absolute, while duties imposed on public bodies towards the community at large have more commonly been held to be qualified. Stable J. has said that: "An examination of the reported cases where the duty has been held to be absolute shows that, speaking broadly, they fall into one of two classes. The first class is statutes where certain means are directed to secure a particular end. Examples of this class can be found in the legislation designed to ensure the safety of persons working in mines and factories and the like where the statute directs that certain means to secure those ends must be adopted. In those cases, there is no obligation on the owner of the factory or the mine to carry on business, but, if he does so, the means which the statute enjoins for the safety of his workpeople must be observed, and the duty is absolute. The second class is where the statute enjoins the end but

[38] *Re Pritchard* [1963] Ch. 502. [39] *Brady* v. *Barrow Steelworks*, [1965] 2 Q.B. 182.
[40] *MacFoy* v. *United Africa Co., Ltd.* [1962] A.C. 152.
[40a] See *Chapman* v. *Earl* [1968] 1 W.L.R. 1315 (proceedings before tribunals).
[41] For the cases in which such an action will lie, see, *post*, pp. 339–346.
[42] See *Salmond on Torts*, 15th ed., Chap. 10; *Winfield on Tort*, 8th ed., Chap. 8.
[43] See, *e.g.*, *Braham* v. *J. Lyons & Co., Ltd.* [1962] 1 W.L.R. 1048.

not the means,"[44] but this concerns criminal liability, which has been discussed earlier in this work.[45] The corollary of Stable J.'s analysis of the cases is that where the statute prescribes both end and means, leaving little latitude to the person or persons subjected to the duty, that duty might reasonably be regarded as a qualified one.

Cases in which statutory duties have been held to be absolute

By section 14 (1) of the Factories Act 1961: "Every dangerous part of any machinery, other than prime movers and transmission machinery, shall be securely fenced unless it is in such a position or of such construction as to be as safe to every person employed or working on the premises as it would be if securely fenced." This is the classic example of an absolute statutory duty. To qualify the words of the Act by saying that the machinery should be fenced so far as practicable, or so long as it can be fenced consistently with its being used for the purpose for which it was intended, would be "an illegitimate method of interpretation of a statute, whose dominant purpose is to protect the workman." It follows that if machinery cannot be used in accordance with section 14 (1), it cannot lawfully be used at all.[46]

Likewise, the requirement that "every hoist or lift shall be . . . properly maintained" has been held by the House of Lords to impose an absolute and continuing obligation on the occupier of a factory, there being nothing in the context or the general intention of the Factories Act to support an inference that there should be any qualification of that obligation. "Maintained" was defined in the statute as including "maintained . . . in efficient working order," so that once a plaintiff proved that the mechanism of a lift had failed to work efficiently and that the failure had caused an accident, he had made out his case.[47]

Certain obligations under the Building Regulations have similarly been held to be absolute.[48]

In *Smith* v. *Cammell Laird and Co., Ltd.*,[49] it was held that a requirement that "all staging" in a shipbuilding yard "shall be maintained in such condition as to ensure the safety of all persons

[44] *Read* v. *Croydon Corporation* [1938] 4 All E.R. 631, at p. 650.
[45] *Ante*, pp. 123 *et seq.*
[46] *John Summers & Sons, Ltd.* v. *Frost* [1955] A.C. 740, *per* Viscount Simonds at p. 751.
[47] *Galashiels Gas Co., Ltd.* v. *O'Donnell* [1949] A.C. 275.
[48] *Potts or Riddell* v. *Reid* [1943] A.C. 1; *Curran* v. *William Neill & Son (St. Helens), Ltd.* [1961] 1 W.L.R. 1069.
[49] [1940] A.C. 242.

employed" could not be satisfied by the taking of all reasonable care to maintain the staging properly. "The wording," said Lord Russell of Killowen (at p. 263) "is too strong to justify the milder view."

The Peak Forest Canal Act 1794, s. 15, imposed on canal undertakers liability for damage done to lands or buildings through the escape of water in various specified ways "or from any other accident." This was held to impose on the undertakers an absolute obligation so that, when water escaped, they could not even raise the defence of Act of God. "This canal," said Lord Greene M.R. (at p. 473) "could not be built without the authority of Parliament, and it was open to Parliament to impose whatever terms it thought fit for the protection of landowners, and, indeed, this section is nothing more nor less than a protective section. I can find nothing unlikely in the suggestion that in 1794 Parliament decided to impose an absolute liability as a condition of the franchise it was being asked to grant."[50]

Cases in which statutory duties have been held to be qualified

By section 48 (1) of the Mines and Quarries Act 1954: "It shall be the duty of the manager of every mine to take, with respect to every road and working place in the mine, such steps by way of controlling movement of the strata in the mine and supporting the roof and sides of the road or working place as may be necessary for keeping the road or working place secure." The House of Lords has held that, although this imposes on the manager the duty of exercising the highest degree of care and skill, it does not impose on him an absolute obligation to prevent a fall in the mine. Lord Radcliffe said that a fall did not necessarily show that the roof was not "secure," for there may be certain causes of collapse which are not inconsistent with the roof having been secure the moment before: moreover, section 48 (2) cast on the manager the duty of obtaining the information necessary for him to discharge efficiently his duty under the preceding subsection, and "it seems plain to me that if a manager's duty is to ask himself from time to time 'What steps are required now to keep the roadway secure?' he can only pose and answer that question in the light of the best obtainable information as to the circumstances, geophysical or otherwise, that he is to deal with and knowledge of skilled and up-to-date engineering science and practice. If he answers the question in those terms and acts accord-

[50] *J. & J. Makin, Ltd.* v. *London and North Eastern Ry. Co.* [1943] K.B. 467.

ingly he cannot, in my view, be said to be in breach of his duty, even though there is a state of insecurity or a roof fall."[51]

Similarly, the duty which section 108 of the same statute imposes on the manager of a quarry, to ensure that quarrying operations are so carried on as to avoid danger from falls, though high, is not an absolute one.[52] On the other hand, the requirement that machinery used in a mine "shall be of good construction, suitable material, adequate strength and free from patent defect, and shall be properly maintained" has been held to be absolute.[53]

In *Hammond* v. *Vestry of St. Pancras*,[54] the defendants were obliged by section 72 of the Metropolis Local Management Act 1855 to cause the sewers vested in them to be covered, constructed and kept so as not to be a nuisance or injurious to health, and to be properly cleared, cleansed and emptied. An old drain, the existence of which was unknown to the vestry, became choked. No negligence was alleged or found, and it was held (in the words of Brett J., at p. 322) that the defendants' obligation was not "to guarantee that the sewers shall be at all times kept cleansed." "It would seem to me," he said (at p. 322), "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 and skill could obviate."

Section 19 of the Public Health Act 1875 provided: "Every local authority shall cause the sewers belonging to them to be constructed, covered, ventilated, and kept so as not to be a nuisance or injurious to health, and to be properly cleansed and emptied." This was similarly held not to impose any liability in the absence of proof of negligence on the part of the authority.[55]

Again, the statutory duty of water undertakers to supply "pure and wholesome water" (Waterworks Clauses Act 1847, s. 35) "is limited to the exercise of all reasonable care and skill to ensure that the water provided accords with the provisions of the Act," and an authority is not "liable for the consequences of the presence in the water supplied by it at the point where it reaches the consumer of some impurity which no care or skill could have prevented."[56]

[51] *Brown* v. *N.C.B.* [1962] A.C. 574, at pp. 591, 192. *Cf. Robson* v. *N.C.B.* [1968] 3 All E.R. 159.

[52] *Brazier* v. *Skipton Rock Co.* [1962] 1 W.L.R. 471.

[53] *Hamilton* v. *National Coal Board* [1960] A.C. 633; *Sanderson* v. *National Coal Board* [1961] 2 Q.B. 244.

[54] (1874) L.R. 9 C.P. 316. *Cf. Bateman* v. *Poplar District Board of Works (No. 2)* (1887) 37 Ch.D. 272.

[55] *Stretton's Derby Brewery* v. *Mayor of Derby* [1894] 1 Ch. 431.

[56] *Read* v. *Croydon Corporation* [1938] 4 All E.R. 631, *per* Stable J. at p. 651.

By section 74 of the Harbours, Docks and Piers Clauses Act 1847: "The owner of every vessel . . . shall be answerable to the undertakers for any damage done by such vessel . . . or by any person employed about the same, to the harbour, dock, or pier, or the quays or works connected therewith." This was held by the House of Lords in one of the leading cases on statutory interpretation, *River Wear Commissioners* v. *Adamson*,[57] to apply only when the damage complained of has been brought about by a ship under the control of its owner or his agents. It therefore did not give rise to a right of action in respect of damage done by a ship which had been abandoned by the crew in a storm and been driven by the wind against a pier. But in the later case of *The Mostyn*,[58] the House of Lords held that, subject to this exception, the liability imposed by the section was absolute so that, where a ship was manned at the time the damage was done, the owners were liable without proof of negligence. The section is, therefore, an example of a provision which lies somewhere between "absolute" and "qualified": it might perhaps be regarded as "absolute, subject to the defence of Act of God."

3. Impossibility of Compliance

Enactments which impose duties upon conditions are, when these are not construed as conditions precedent to the exercise of a jurisdiction, subject to the maxim, *lex non cogit ad impossibilia*. They are understood as dispensing with the performance of what is prescribed when performance of it is impossible.

Thus, where an Act provided that an appellant should send notice to the respondent of his having entered into a recognisance, in default of which the appeal should not be allowed, it was held that the death of the respondent was not fatal to the appeal, but dispensed with the service.[59]

In the same way, the provision of the Summary Jurisdiction Act 1857, s. 2, which made the transmission by an appellant of a case stated by the justices to the superior court named in his application within three days of receiving it a condition precedent to the hearing of the appeal, was held to be dispensed with when the court was closed during those three days, compliance being impossible.[60]

[57] (1877) 2 App.Cas. 743: as explained by Viscount Haldane in *The Mostyn*, *infra* at pp. 71–72.
[58] *Great Western Ry. Co.* v. *Owners of S.S. Mostyn* [1928] A.C. 57.
[59] *R.* v. *Leicestershire Justices* (1850) 15 Q.B. 88.
[60] *Mayer* v. *Harding* (1867) L.R. 2 Q.B. 410.

In *Harding* v. *Price*,[61] the trailer of a vehicle collided with and damaged a stationary car: owing to the noise made by the vehicle the driver was unaware that the accident had happened, and so he did not report it to the police as required by section 22 (2) of the Road Traffic Act 1930. He was held to be not guilty of an offence under the subsection. "If, apart from authority," said Lord Goddard C.J. (at p. 701), "one seeks to find a principle applicable to this matter it may be thus stated. If a statute contains an absolute prohibition against the doing of some act, as a general rule *mens rea* is not a constituent of the offence, but there is all the difference between prohibiting an act and imposing a duty to do something on the happening of a certain event. Unless a man knows that the event has happened, how can he carry out the duty imposed? If the duty be to report, he cannot report something of which he has no knowledge. . . . Any other view would lead to calling on a man to do the impossible."

By section 44 of the Black Sluice Drainage Act 1765: "The said commissioners . . . shall, out of the money arising by virtue of this Act, scour out, deepen, and embank . . . from time to time and at all times hereafter" certain drains, dykes and becks. In a case in which the Court of Appeal held that this provision imposed a positive duty to use reasonable care to keep the dykes in repair, Lord Denning M.R. said *obiter* (at p. 1354): "If the commissioners could show that, despite all reasonable steps on their part, there was no money available for the purpose, they might be excused."[62]

These cases dealing with duties must be distinguished from one in which a statute imposes a pecuniary liability. In *River Wear Commissioners* v. *Adamson*,[63] Lord Cairns L.C. said (at p. 750): "If 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. There is nothing impossible in that which, on such an hypothesis, he has contracted to do, or which he is by the statute ordered to do, namely, to be liable for the damages." So, where an Act made the proprietors of a canal liable for any damage to lands or buildings "by the breach of any reservoir . . . or any of the locks or works . . . or from any

[61] [1948] 1 K.B. 695. *Cf. Nichols* v. *Hall* (1873) L.R. 8 C.P. 322.
[62] *Rippingale Farms, Ltd.* v. *Black Sluice Internal Drainage Board* [1963] 1 W.L.R. 1347.
[63] (1877) 2 App.Cas. 743.

other accident," it was held by the Court of Appeal that the Act imposed a liability on the proprietors even for damage caused by an act of God which they could not have foreseen and could have done nothing to prevent.[64]

Conditions precedent to the jurisdiction

Where the act or thing required by the statute is a condition precedent to the jurisdiction of a tribunal, compliance cannot be dispensed with and, if it be impossible, the jurisdiction fails. It would not be competent to a court to dispense with what the legislature has made the indispensable foundation of its jurisdiction.

So a provision that justices, at the hearing of a bastardy summons, "shall hear the evidence" of the mother and such other evidence as she might adduce, and which authorised them to make an affiliation order "if the mother's evidence be corroborated in some material particular by other testimony," made the evidence of the mother so essential to the jurisdiction that no order could be made without it, even though the woman died before the hearing.[65]

Under section 13 of the Admiralty Court Act 1861, which gave the Court of Admiralty the same powers when a vessel or its proceeds were under arrest as the Court of Chancery had under the Merchant Shipping Act 1854 over suits for limiting the liability of shipowners, no jurisdiction could be exercised by the former court when the ship was lost. Jurisdiction was dependent on the ship or the proceeds of its sale being under arrest, and the shipowner could not confer jurisdiction by paying into court a sum equivalent to its value.[66]

4. Waiver

Everyone has a right to waive and to agree to waive the advantage of a law made solely for the benefit and protection of the individual in his private capacity, which may be dispensed with without infringing any public right or public policy.[67] *Cuilibet licet renuntiare juri pro se introducto.*

So a person may agree to waive the benefit of the Limitation Act.[68]

The trustees of a turnpike road may, in demising the tolls, waive

[64] *J. & J. Makin, Ltd.* v. *London & North Eastern Ry. Co.* [1943] K.B. 467.
[65] *R.* v. *Armitage* (1872) L.R. 7 Q.B. 773.
[66] *James* v. *South Western Ry. Co.* (1872) L.R. 7 Ex. 287.
[67] See *Great Eastern Ry. Co.* v. *Goldsmid* (1884) 9 App.Cas. 927.
[68] *East India Co.* v. *Paul* (1849) 7 Moo.P.C. 85, *per* Lord Campbell; *Lubovsky* v. *Snelling* [1944] K.B. 44.

a statutory requirement that the demise should be signed by the sureties of the lessee.[69]

A railway passenger may waive the benefit of an enactment which entitles him to carry with him so many pounds of luggage, and he does so by taking a ticket with the express condition that he shall carry no luggage.[70] The only person intended to be benefited by such an enactment is the passenger himself, and no consideration of public policy is involved.

In *Corporation of Toronto* v. *Russell*,[71] the Judicial Committee held that where a notice in writing of intention to purchase compulsorily was required to be given to the owner of lands, the provision being entirely for his benefit, he might waive it.

The regulations governing the practice and procedure of civil courts may in the same way, when not going to the jurisdiction, be waived by those for whose protection they were intended.

Thus, in a case under the County Courts Act 1850, s. 14, which gave an appeal from a county court provided that the appellant, within ten days, gave notice of appeal and security for costs, and (by s. 16) enacted that no judgment of a county court judge should be removed into any other court except in the manner so laid down, it was held that want of due notice and security might be waived. The provision was intended for the benefit of the respondent, and was not a matter of public concern.[72]

Similarly, where a statute required justices to make known to a party his right of appeal and the steps necessary to carry out this right, it was held that the party might waive this provision: and he did so by declaring that he did not intend to appeal.[73]

Service of an originating summons, not being one to which appearance has to be entered, is required by the Rules of the Supreme Court in the interests of defendants. They may, therefore, waive service and, when they take out a summons to dismiss the originating summons for want of prosecution, the plaintiffs will not be heard to say that, by reason of the non-service of the originating summons, the defendants have no *locus standi* in relation to it.[74]

[69] *Markham* v. *Stanford* (1863) 14 C.B. (N.S.) 376.
[70] *Rumsey* v. *North Eastern Ry.* (1863) 14 C.B. (N.S.) 641.
[71] [1908] A.C. 493.
[72] *Park Gate Iron Co., Ltd.* v. *Coates* (1870) L.R. 5 C.P. 634.
[73] *R.* v. *Justices of West Riding of Yorkshire* (1815) 3 M. & S. 493.
[74] *Pike* v. *Michael Nairn & Co., Ltd.* [1960] Ch. 553, applying *Fell* v. *Christ's College, Cambridge* (1787) 2 Bro.C.C. 278, and *Oulton* v. *Radcliffe* (1874) L.R. 9 C.P. 189.

In *Stylo Shoes, Ltd.* v. *Prices Tailors, Ltd.*,[75] a notice to determine an existing tenancy under the Landlord and Tenant Act 1954 had not, it was argued, been served "by leaving it for [the tenants] at [their] last known place of abode in England" as required by section 23 (1) of the Act. The tenants had in fact received the notice, had intimated to the landlords that they would not be willing to give up possession of the premises, and had issued an originating summons for a new tenancy. On the facts, Wynn-Parry J. held that the notice had been properly served: but he added that, even if it had not been duly served, the tenants must in the circumstances be taken to have waived any invalidity in the service.

Full knowledge of the relevant facts is necessary if there is to be a valid waiver.[76] But once a person has waived the benefit of a law he cannot recall the concession after it had been acted upon. A tenant, for instance, whose goods had been distrained might waive the provision of the Distress for Rent Act 1689 which required an appraisement before the sale of the goods, and he could not be heard to complain after the sale that no appraisement had been made.[77]

It is for the individual intended to be benefited by the statutory rule in question to waive the performance of it, and it is not open to another person to insist that the rule be observed. Thus, where a witness was privileged by statute not to answer questions on a certain matter, he was the only person at whose behest evidence of the matter would be excluded and, once he had waived his privilege, no other party could invoke the rule.[78]

There can be no waiver of a statutory requirement which is imposed in the public interest. It has, for instance, been said that a prisoner cannot consent to waive what the law requires in the course of his trial.[79] *Privatorum conventio juri publico non derogat.*[80]

By section 64 of the Life Assurance Act 1908 (New Zealand): "No policy shall become void by non-payment of premium so long as the premiums and interest in arrear are not in excess of the surrender values as declared by the company issuing the same." "Their Lordships," said Lord Dunedin in the Judicial Committee (at p. 595)

[75] [1960] Ch. 396.
[76] *Chapman* v. *Michaelson* [1908] 2 Ch. 612, *per* Eve J. at p. 622: the party must be in a position "to appreciate what his true legal rights were."
[77] *Bishop* v. *Bryant* (1834) 6 C. & P. 484. *Cf. Atkins* v. *Kilby* (1840) 11 A. & E. 777.
[78] *Hebblethwaite* v. *Hebblethwaite* (1869) L.R. 2 P. & D. 29.
[79] *Per cur., Att.-Gen. for New South Wales* v. *Bertrand* (1867) L.R. 1 P.C. 520; *Park Gate Iron Co., Ltd.* v. *Coates* (1870) L.R. 5 C.P. 634, *per* Montague Smith J.
[80] Dig. 50.17.45.

"have no doubt that this is a section intended to lay down a rule of public policy, and that it is impossible for either an assured or an assurer to contract himself out of it or to waive its effect."[81]

In *Guardians of Salford Union* v. *Dewhurst*,[82] the House of Lords held that a poor law officer could not enter into a contract with the guardians by which the latters' statutory obligation to pay him a pension could be avoided. In the Court of Appeal, Sir Ernest Pollock M.R. said (at pp. 664, 665): "I do not think that it is possible to read the [Poor Law Officers' Superannuation] Act of 1896 as being intended to confer what might be called a private and personal benefit upon individual officers which they can at their will and pleasure renounce. It seems to me that the intention was to put the poor law officers in the same position in which police officers, asylums officers and many other persons have been placed in the interests of the community at large, and that the public should be safeguarded from the melancholy spectacle of seeing a man who had done work and been in a responsible position during years of his life, suffering from poverty and distress by reason of the fact that no adequate provision has been made to enable him to spend his latter years in reasonable comfort."[83]

The Courts (Emergency Powers) Act 1939 provided that certain remedies (such as the execution of a judgment for the payment of a sum of money, and the taking of possession of, or the appointment of a receiver over, any property) could be exercised only with the leave of the appropriate court. This enactment was held to be in the general interest, so that a debtor could not waive his rights under the Act and dispense with the requirement that his creditor make application to the court.[84]

The Gold Coast Concessions Ordinance, s. 12, lays down the procedure which must be followed by a person desiring to obtain a concession in an area situate in Ashanti: *inter alia*, application must be made to the chief concerned, and notice of the application given to the Chief Regional Officer. These requirements have been held to be imposed for the public good, and a waiver of any of them is impossible.[85]

[81] *Equitable Life Assurance Society of the U.S.* v. *Reed* [1914] A.C. 587.
[82] [1926] A.C. 619. [83] [1925] Ch. 655.
[84] *Soho Square Syndicate, Ltd.* v. *E. Pollard & Co., Ltd.* [1940] Ch. 638; *Bowmaker, Ltd.* v. *Tabor* [1941] 2 K.B. 1.
[85] *Edward Ramia, Ltd.* v *African Woods, Ltd.* [1960] 1 W.L.R. 86. But see *Kidd* v. *Kidd* [1968] 3 W.L.R. 734 (*quaere* as to waiver by conduct of statutory provisions relating to blood specimens).

Jurisdiction by consent

Consent cannot give jurisdiction,[86] and therefore any statutory objection which goes to the jurisdiction does not admit of waiver.

Thus, rules made under section 33 of the Summary Jurisdiction Act 1879, which empowered either party after the determination of an information by justices to apply to the court to state a case, required that the application should be made to all who heard it, and the objection that the case was stated by some only of them could not be waived, because it went to the jurisdiction.[87]

By section 12 (7) of the Rent and Mortgage Interest (Restrictions) Act 1920: "Where the rent payable in respect of any tenancy of any dwelling-house is less than two-thirds of the rateable value thereof, this Act shall not apply to that rent or tenancy." A landlord and tenant of such a dwelling-house could not, by taking part in proceedings before a county court, confer on it a jurisdiction which it did not possess by reason of this provision. "It is idle to suggest," said Lord Thankerton (at p. 216), "that either estoppel or *res judicata* can give the court a jurisdiction under the Rent Restrictions Acts, which the statute says it is not to have."[88]

In *Essex County Council* v. *Essex Incorporated Church Union*,[89] the House of Lords held that, since the jurisdiction of the Lands Tribunal is dependent upon statute, it cannot be extended, even by the consent of the parties.

Justices granting a licence under the Betting and Gaming Act 1960 were held to have no jurisdiction to attach to the grant of the licence conditions other than those set out in the statute.[90]

In *Re Hooker's Settlement*,[91] Danckwerts J. (at p. 58) held that "an ordinary person has not the power, which the legislature has, of course, to impose upon a judge of the Chancery Division a jurisdiction which is not given him by the procedure of the courts or by any statute." Otherwise, however suitable some matters (in this case consent to the exercise of a power of revocation contained in a settle-

[86] *Heyting* v. *Dupont* [1963] 1 W.L.R. 1192, *per* Plowman J., citing *Re Aylmer, ex p. Bischoffsheim* (1888) 20 Q.B.D. 258, *per* Lord Esher M.R.; *London Corporation* v. *Cox* (1867) L.R. 2 H.L. 239, *per* Willes J.

[87] *Westmore* v. *Paine* [1891] 1 Q.B. 482.

[88] *J. & F. Stone Lighting & Radio, Ltd.* v. *Levitt* [1947] A.C. 209. *Cf. Griffiths* v. *Davies* [1943] K.B. 618; *Langford Property Co., Ltd.* v. *Goldrich* [1949] 1 K.B. 511.

[89] [1963] A.C. 808.

[90] *Hewison* v. *Skegness U.D.C.* [1963] 1 Q.B. 584.

[91] [1955] Ch. 55.

ment) might be for determination in this way, the jurisdiction would be "capable of greater extension in a very undesirable and improper manner. . . . A judge could be compelled to act as arbitrator in commercial disputes or even in a question about a race."

Estoppel

"Estoppel cannot operate to prevent or hinder the performance of a statutory duty or the exercise of a statutory discretion which is intended to be performed or exercised for the benefit of the public or a section of the public."[92] "Their Lordships," said Lord Maugham in a Privy Council case (at p. 621), "are unable to see how the court can admit an estoppel which would have the effect *pro tanto* and in the particular case of repealing the statute."[93] As regards estoppel by deed, it was long ago held that, if the deed were executed in contravention of a statute, there could be no estoppel.[94]

In *Re a Bankruptcy Notice*,[95] the main question was whether a party could be estopped, by a letter of assent acted upon by the recipient, from contending that a certain agreement was void for want of registration under the Deeds of Arrangement Act 1914. Atkin L.J. said (at p. 97): "Whatever the principle may be [referring to a contention regarding approbation and reprobation], it appears to me that it does not apply to this case, for it seems to me well established that it is impossible in law for a person to allege any kind of principle which precludes him from alleging the invalidity of that which the statute has, on grounds of general public policy, enacted shall be invalid."

In another case, where a life assurance policy was attacked on the ground of a lack of insurable interest within the meaning of the Civil Code of Lower Canada, a condition in the policy was relied on and estoppel was pleaded. The plea was not allowed, and Lord Watson said (at p. 609): "The rule of the Code appears to [their Lordships] to be one which rests upon general principles of public policy or expediency, and which cannot be defeated by the private convention of the parties."[96]

The New Brunswick Public Utilities Act prohibited any public

[92] *Southend-on-Sea Corporation* v. *Hodgson* (*Wickford*), *Ltd.* [1962] 1 Q.B. 416 *per* Lord Parker C.J. at p. 422, outlining the successful submission of counsel.
[93] *Maritime Electric Co., Ltd.* v. *General Dairies, Ltd.* [1937] A.C. 610.
[94] *Doe d. Chandler* v. *Ford* (1835) 3 A. & E. 649.
[95] [1924] 2 Ch. 76.
[96] *Anctil* v. *Manufacturers' Life Insurance Co.* [1899] A.C. 604.

utility company from making any greater or less charge for its services than that prescribed for the time being under the Act. By the negligence of its servants, an electricity company rendered and was paid an account based upon erroneous meter readings, so that consumers were charged for only one-tenth of the electricity actually used. In an action to recover the balance of nine-tenths a plea of estoppel was rejected. "Where, as here, the statute imposes a duty of a positive kind, not avoidable by the performance of any formality, for the doing of the very act which the plaintiff seeks to do, it is not open to the defendant to set up an estoppel to prevent it. This conclusion must follow from the circumstance that an estoppel is only a rule of evidence which, under certain special circumstances, can be invoked by a party to an action; it cannot, therefore, avail, in such a case, to release the plaintiff from an obligation to obey such a statute, nor can it enable the defendant to escape from a statutory obligation of such a kind on his part. It is immaterial whether the obligation is onerous or otherwise to the party suing. The duty of each party is to obey the law."[97]

Similarly, a statement made by an officer of a planning authority that certain land has an existing user right does not estop the authority from subsequently exercising its statutory discretion to serve an enforcement notice in respect of the user;[98] and the affirming by a Divisional Court of a decision of justices exercising their matrimonial jurisdiction will not effect an estoppel *per rem judicatam* which will prevent the Divorce Court, in a subsequent divorce suit between the parties, from carrying out its statutory obligation to inquire, as far as possible, into the truth of the facts alleged in the petition.[99]

5. Public and Private Remedies

When a statute creates a new obligation or makes unlawful that which was lawful before, a corresponding right may thereby be impliedly given, either to the public or to individuals injured by the breach of the enactment.

Indictment

"It seems to be a good general ground that wherever a statute prohibits a matter of a public grievance to the liberties and security

[97] *Maritime Electric Co., Ltd.* v. *General Dairies, Ltd.* [1937] A.C. 610, *per* Lord Maugham at p. 620.
[98] *Southend-on-Sea Corporation* v. *Hodgson* (*Wickford*), *Ltd.* [1962] 1 Q.B. 416.
[99] *Hudson* v. *Hudson* [1948] P. 292. *Cf. Bright* v. *Bright* [1954] P. 270.

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 this contempt of the statute, unless such method of proceeding do manifestly appear to be excluded by it."[1]

Most of the examples of the enforcement of a statutory duty by means of indictment are from old cases, and the procedure is never used today. Thus refusal or neglect by the father of a child to furnish the particulars required by the Births and Deaths Registration Act 1836 was held to be an indictable misdemeanour,[2] and so was disobedience to an order made by the King in Council under the Quarantine Acts.[3]

If the matter dealt with by the statute was found to be of concern only to particular individuals, for instance, those who had the right to use a private road,[4] disobedience to the statute would not be indictable.

Where the statute creating the obligation contained in the same section or passage a specific means for enforcing it, no other method could normally be resorted to for that purpose: thus no indictment would lie against the overseer of a parish who wilfully inserted the names of unqualified persons and omitted those of qualified persons when compiling the voters' list, since section 51 of the Parliamentary Voters Registration Act 1843 specified a particular penalty for these offences and thereby impliedly excluded all others.[5] On the other hand, where the prohibition was general and not contained in a section specifying only particular remedies for infringement, such infringement might be subject to the common law procedure and punishment, even though a particular remedy was given in a later part of the Act.[6] So where a statute prohibited the erection or maintenance of a building within ten feet of a road, declaring such an erection to be a common nuisance, and in another section authorised two justices to convict the proprietor and remove the structure, it was held that an indictment also lay for the nuisance.[7]

[1] 2 *Hawkins*, ch. 25, sect. 4, cited *R.* v. *Hall* [1891] 1 Q.B. 747, at p. 753.
[2] *R.* v. *Price* (1840) 11 A. & E. 727.
[3] *R.* v. *Harris* (1791) 4 T.R. 202.
[4] *R.* v. *Richards* (1800) 8 T.R. 634.
[5] *R.* v. *Hall* [1891] 1 Q.B. 747.
[6] *R.* v. *Buchanan* (1846) 8 Q.B. 883, *per* Lord Denman C.J.
[7] *R.* v. *Gregory* (1833) 5 B. & Ad. 555.

Penalties

In the well-known case of *Bradlaugh* v. *Clarke*,[8] it was held that where a penalty is imposed with nothing said as to who may recover it, and the offence is one not against an individual, the penalty belongs to the Crown which alone can maintain a suit for it. Most of the law on penalties has become of antiquarian interest only since the passing of the Common Informers Act 1951.

Injunctions

Breach of a provision in a statute will usually be restrained by an injunction granted at the suit of the Attorney-General, who "represents the whole public in this sense, that he asks that right may be done and the law observed. . . . The question is, whether what has been done has been done in accordance with the law; if not, the Attorney-General strictly represents the whole of the public in saying that the law shall be observed."[9] The action is frequently brought on the relation of an individual or local authority, but "it is not the less the Attorney-General's action because it is on the relation of the urban district council, who are joined as relators merely in order to hold them liable for costs."[10]

So, in 1900, a railway company was restrained from exceeding a speed limit, imposed by statute, of four miles per hour over a level crossing.[11]

In another case, an injunction was granted against a statutory body to restrain interference with a public highway and a public navigable stream by illegal acts of obstruction.[12]

Persons who have been refused licences to operate public transport services, but have nevertheless at considerable profit to themselves defied the statutory prohibitions on running such services without a licence, have similarly been restrained by injunction.[13]

So, too, injunctions have been granted to stop the infringement of bye-laws made by a local authority under the Public Health Act,[14] to

[8] (1883) 8 App.Cas. 354.
[9] *Att.-Gen.* v. *Ely, Haddenham & Sutton Ry. Co.* (1869) L.R. 4 Ch.App. 194, *per* Lord Hatherley L.C. at p. 199.
[10] *Att.-Gen.* v. *Wimbledon House Estate Co., Ltd.* [1904] 2 Ch. 34, *per* Farwell J. at p. 39.
[11] *Att.-Gen.* v. *London & North Western Ry. Co.* [1900] 1 Q.B. 78.
[12] *Att.-Gen.* v. *Shrewsbury (Kingsland) Bridge Co.* (1882) 21 Ch.D. 752.
[13] *Att.-Gen.* v. *Sharp* [1931] 1 Ch. 121; *Att.-Gen.* v. *Premier Line, Ltd.* [1932] 1 Ch. 303.
[14] *Att.-Gen.* v. *Ashborne Recreation Ground Co.* [1903] 1 Ch. 101.

restrain persistent breaches of enforcement notices served under the Town and Country Planning Act,[15] and to order the demolition of a building which has been erected in contravention of a bye-law so as to project beyond the building line.[16]

In the leading modern case, *Att.-Gen.* v. *Harris*,[17] injunctions were granted restraining a husband and wife who had been convicted on more than two hundred summonses in three years of offences against section 102 of the Manchester Police Regulation Act 1844, for using a flower- and fruit-stall on the pavement outside a cemetery, and for exposing flowers for sale and thereby obstructing the footway. Sellers L.J. said (at p. 86): "It cannot, in my opinion, be anything other than a public detriment for the law to be defied, week by week, and the offender to find it profitable to pay the fine and continue to flout the law. The matter becomes no more favourable when it is shown that by so defying the law the offender is reaping an advantage over his competitors who are complying with it."

Whether to proceed for an injunction in respect of a breach of statutory provisions "is a question which the law of this country has made to reside in the Attorney-General,"[18] and the exercise of his discretion in this matter is not a matter which can be canvassed in court. Moreover, once he has decided to apply for an injunction, and a clear breach of the law has been shown, the court will be slow to refuse to grant the redress which he seeks.[19] "The Attorney-General," Devlin J. has said, "being the first law officer of the Crown, is primarily responsible for the enforcement of the law. If he considers it necessary to come by way of a relator action to ask for the assistance of the court in enforcing obedience to a clear provision of the law, the court, although retaining its discretion, ought to be slow to say that the Attorney-General should first have exhausted other remedies. In any doubtful case . . . the court would be slow to interfere with the decision, which the Attorney-General must have made in authorising this action, that it was a case where the ordinary remedies would no longer prevail."[20]

In particular, then, the existence of other available remedies will

[15] *Att.-Gen.* v. *Bastow* [1957] 1 Q.B. 514; *Att.-Gen.* v. *Smith* [1958] 2 Q.B. 173.
[16] *Att.-Gen.* v. *Wimbledon House Estate Co., Ltd.* [1904] 2 Ch. 34.
[17] [1961] 1 Q.B. 74.
[18] *L.C.C.* v. *Att.-Gen.* [1902] A.C. 165, *per* Lord Halsbury L.C. at p. 169.
[19] *Att.-Gen.* v. *Westminster City Council* [1924] 2 Ch. 416; *Att.-Gen.* v. *Harris* [1961] 1 Q.B. 74.
[20] *Att.-Gen.* v. *Bastow* [1957] 1 Q.B. 514, at p. 521.

not bar the grant of an injunction.[21] "The general rule is that where an Act creates an offence and provides a remedy the only remedy is that provided by the statute . . . [But] the public is concerned in seeing that Acts of Parliament are obeyed, and if those who are acting in breach of them persist in so doing, notwithstanding the infliction of the punishment prescribed by the Act, the public at large is sufficiently interested in the dispute to warrant the Attorney-General intervening for the purpose of asserting public rights, and if he does so the general rule no longer operates; the dispute is no longer one between individuals, it is one between the public and a small section of the public refusing to abide by the law of the land."[22]

The mere fact that the law is being broken is sufficient public detriment to support the Attorney-General's action, and the court will not refuse an injunction on the ground that the persistent breaches of the law being committed by the defendant are trivial or that they in fact confer a material benefit on the public.[23]

In *Thorne* v. *British Broadcasting Corporation*,[24] the plaintiff sought an injunction to restrain the Corporation from broadcasting alleged propaganda against people of German origin contrary to section 6 of the Race Relations Act 1965. He failed on two grounds. First, "it is a fundamental rule that the court will only grant an injunction at the suit of a private individual to support a legal right,"[25] and the plaintiff was unable to show that he had any legal right personally in this matter. Secondly, from various sections of the Race Relations Act it was apparent that Parliament had intended the remedies provided by the Act to be under the control of the Attorney-General and not available to one private citizen for the purpose of attacking other members of the community.

Mandamus

The prerogative order of *mandamus* will lie at the discretion of the court to compel the performance of a statutory duty of a public kind: for instance, to compel the Revenue Commissioners to make orders for repayment of tax overpaid in accordance with the Income Tax

[21] *Att.-Gen.* v. *Wimbledon House Estate Co., Ltd.* [1902] 2 Ch. 34; *Att.-Gen.* v. *Bastow. supra; Att.-Gen.* v. *Smith* [1958] 2 Q.B. 173; *Att.-Gen.* v. *Harris, supra.*
[22] *Att.-Gen.* v. *Premier Line, Ltd.* [1932] 1 Ch. 303, *per* Eve J. at p. 313.
[23] *Att.-Gen.* v. *Harris* [1961] 1 Q.B. 74.
[24] [1967] 1 W.L.R. 1104.
[25] *Per* Lord Denning M.R. [1967] 1 W.L.R. 1104 at p. 1109, citing *Montgomery* v. *Montgomery* [1965] P. 46, *per* Ormrod J. at p. 50.

Act;[26] or a local authority to levy a rate and make the statutory payments to the county council;[27] or a licensing committee to hear and determine an application in accordance with the provisions of the Theatres Act 1843;[28] or a housing authority to serve (as required by section 22 (1) of the Housing Act 1957) a notice to quit on the occupiers of premises in respect of which a demolition order has become operative.[29] It will not, however, lie in respect of the exercise of a discretion which has been duly exercised.[30] Thus, once the Attorney-General had considered an application for a certificate authorising an appeal to the House of Lords under section 1 (6) of the Criminal Appeal Act 1907 and had refused to grant the certificate, his duty under the Act was done and *mandamus* would not lie to compel him to consider the same application again.[31] And where a railway company was authorised (but not required) by statute to lay down and maintain a track, *mandamus* would not issue to compel it to keep the track in repair.[32]

Action for breach of statutory duty

One of the problems of construction which most often comes before the courts is this: does a statute which creates a duty binding on one person, in addition to any penalty which may be prescribed for breach of that duty, also confer by implication a right of action for damages at the suit of a person injured by the breach?[33] "Whereever," said Holt C.J., "a statute enacts anything, or prohibits anything, for the advantage of any person, that person shall have remedy to recover the advantage given him, or to have satisfaction for the injury done him contrary to the law by the same statute; for it would be a fine thing to make a law by which one has a right, but no remedy but in equity."[34] It is not, however, the breach of every statute which will give rise to a civil action, and the leading modern cases[35] show

[26] *R.* v. *Income Tax Special Purposes Commissioners* (1888) 21 Q.B.D. 313.
[27] See *R.* v. *Poplar Metropolitan Borough Council (No. 2)* [1922] 1 K.B. 95.
[28] *R.* v. *Flint County Council Licensing Committee, ex p. Barrett* [1957] 1 Q.B. 350.
[29] *R.* v. *Epsom and Ewell Corp., ex p. R.B. Property Investments (Eastern), Ltd.* [1964] 1 W.L.R. 1060.
[30] *Allcroft* v. *Bishop of London* [1891] A.C. 666.
[31] *Ex p. Blackburn* [1956] 1 W.L.R. 1193.
[32] *R.* v. *Great Western Ry. Co.* (1893) 69 L.T. 572.
[33] See, generally, *Salmond on Torts*, 15th ed., Chap. 4; *Winfield on Tort*, 8th ed., Chap. 8.
[34] *Anon.* (1704) 6 Mod. 26. *Cf. Ashby* v. *White* (1703) 2 Ld.Raym. 938.
[35] *Phillips* v. *Britannia Hygienic Laundry Co., Ltd.* [1923] 2 K.B. 832; *Cutler* v. *Wandsworth Stadium, Ltd.* [1949] A.C. 398; *Solomons* v. *R. Gertzenstein, Ltd.* [1954] 2 Q.B. 243.

that the question can only be answered by a consideration of the enactment in question as a whole. "To a person unversed in the science or art of legislation it may well seem strange that Parliament has not by now made it a rule to state explicitly what its intention is in a matter which is often of no little importance, instead of leaving it to the courts to discover, by a careful examination and analysis of what is expressly said, what that intention may be supposed probably to be."[36] "I do not propose," said Lord Simonds, "to try to formulate any rules by reference to which such a question can infallibly be answered. The only rule which in all circumstances is valid is that the answer must depend on a consideration of the whole Act and the circumstances, including the pre-existing law, in which it was enacted."[37]

But, as the cases which are about to be discussed show, there are indications from which the intention of Parliament may be gathered.[38] One is whether the duty imposed by the statute is created in favour of the public generally, or in favour of an ascertainable class of persons: if the latter, breach of that duty is more likely to give rise to an action at the suit of an injured individual. Another is whether the statute itself imposes a specific penalty for breach of the duty: if it does, it is less likely that the party at fault is also to be liable to an action for damages.

Statutes which have been held to give rise to a civil action for breach

In the famous case of *Ashby* v. *White*,[39] it was held that a voter had a right of action against a returning officer who had wrongfully rejected his vote at an election.

Where an Act required the owner of a ship to keep on board a sufficient supply of medicines, it was held that he was liable to an action by a seaman for compensation for the special damage which he had sustained as a result of the shipowner's failure to comply with the statute.[40] But this decision has been doubted,[41] for the Act also provided for a penalty of £20 recoverable at the suit of any person and divisible between him and the Seamen's Hospital.

In *Groves* v. *Lord Wimborne*,[42] it was held that an action lay at the

[36] *Cutler* v. *Wandsworth Stadium, Ltd.* [1949] A.C. 398, *per* Lord Du Parcq at p. 410.
[37] *Ibid.* at p. 407.
[38] See, *e.g.*, *Reffell* v. *Surrey County Council* [1964] 1 W.L.R. 358, *per* Veale J.
[39] (1703) 2 Ld.Raym. 938.
[40] *Couch* v. *Steel* (1854) 3 E. & B. 402.
[41] *Atkinson* v. *Newcastle & Gateshead Waterworks Co.* (1877) 2 Ex.D. 441.
[42] [1898] 2 Q.B. 402.

suit of an injured workman for the damage suffered by him through the failure of the occupier of the factory in which he worked to fulfil his statutory duty of fencing dangerous machinery. The legislation in question was passed for the benefit of a particular class of persons, namely, those working in factories: and, said Vaughan Williams L.J. (at pp. 415, 416), "it cannot be doubted that, where a statute provides for the performance by certain persons of a particular duty, and some one belong to a class of persons for whose benefit and protection the statute imposes the duty is injured by failure to perform it, prima facie, and, if there be nothing to the contrary, an action by the person so injured will lie against the person who has so failed to perform the duty." The statute in this case did provide for a fine of up to £100 for breach of the duty, but the Court of Appeal pointed out that this fine was not recoverable by the injured person or his representatives, that there was no necessity that the fine should be paid by the employer himself (for it might be exacted from the person immediately responsible for the breach, the master himself obtaining exemption from the penalty), and that the legislature could not have seriously intended that whether the workman suffered death or mutilation the liability of the master should never exceed £100.[43]

Similarly, actions for breach of statutory duty lie at the suit of workers in mines,[44] in the construction industry,[45] on the railways,[46] or in the docks,[47] for injuries sustained through breach of the relevant statutes or statutory regulations.

By section 10 (2) of the Education Act 1944, "it shall be the duty of a local education authority to secure that the premises of every school maintained by them conform to the standards prescribed for schools of the description to which the school belongs." Regulation 51 of the Standards for School Premises Regulations 1959 provides that "in all parts of the buildings of every school . . . the properties of the materials shall be such that the health and safety of the occupants . . . shall be reasonably assured." Veale J. has held that this duty is enforceable by an action for damages brought by a child injured as a result of the authority's failure to comply with regulation 51. He emphasised that the child was a member of the class of

[43] *Per* Rigby L.J., *ibid.*, at pp. 414–415.
[44] *Butler* (*or Black*) v. *Fife Coal Co., Ltd.* [1912] A.C. 149.
[45] *Kearns* v. *Gee, Walker & Slater, Ltd.* [1937] 1 K.B. 187.
[46] *Hicks* v. *British Transport Commission* [1958] 1 W.L.R. 493 (where, however, the duty was held, on the facts, not to have been broken).
[47] *Hawkins* v. *Thames Stevedore Co., Ltd.* [1936] 2 All E.R. 472.

persons which the statute set out to protect, and that no penalty at all was prescribed by the statute for breach of the regulation.[48]

In *Solomons* v. *R. Gertzenstein, Ltd.*,[49] the Court of Appeal held that the duty imposed on owners of premises by section 133 (2) of the London Building Acts (Amendment) Act 1939, to maintain means of escape from fire in good condition and efficient working order, was imposed principally for the benefit of a definable class of persons, namely, those who were in the building in question, and that such persons had a right of action for breach of the regulations, notwithstanding the provision made by the Act for penalising non-compliance with its provisions. Romer L.J. said (at pp. 264, 265) that although "the general purpose of the London Building Acts was to promote the welfare and interests of the very considerable section of the English community which lives in London," the principal purpose of the particular subsection under consideration here was to provide for the safety of individuals as distinct from promoting the welfare of the general community. "It is a matter of general sorrow to hear of persons who have been trapped in a burning house without any means of escape; but it is death to the victims themselves."

Regulations prescribing the manner in which drivers should approach pedestrian crossings,[50] or park their vehicles,[51] would give rise to rights of action on the part of those injured through non-observance.

Lawton J. has held that where a river board is enjoined by statute to maintain certain embankments, it will be liable in damages to a farmer whose land has been flooded as a result of its failure to fulfil its statutory duty.[52]

Section 35 (1) of the Road Traffic Act 1930 made it unlawful to permit a vehicle to be used unless there was in force in relation to the user a third-party insurance policy. In *Monks* v. *Warbey*,[53] the Court of Appeal held that where a car was driven negligently by a person who had the permission of the owner to drive, and who was uninsured, a person injured as a result of the driver's negligence had an action against the owner for breach of his duty under section 35 (1). "There is," said Maugham L.J. (at pp. 85, 86), "sufficient

[48] *Reffell* v. *Surrey County Council* [1964] 1 W.L.R. 358.
[49] [1954] 2 Q.B. 243.
[50] *London Passenger Transport Board* v. *Upson* [1949] A.C. 155 (a case on contributory negligence by a pedestrian, thus reducing the damages recoverable from the driver).
[51] *Kelly* v. *W.R.N. Contracting, Ltd.* [1968] 1 W.L.R. 921.
[52] *Sephton* v. *Lancashire River Board* [1962] 1 W.L.R. 623.
[53] [1935] 1 K.B. 75. *Cf. Corfield* v. *Groves* [1950] 1 All E.R. 488.

ground for coming to the conclusion that section 35 was passed for the purpose of giving a remedy to third persons who might suffer injury by the negligence of the impecunious driver of a car. . . . It was within the knowledge of the Legislature that negligence in the driving of cars was so common an occurrence with the likelihood of injury to third persons that it was necessary in the public interest to provide machinery whereby those third persons might recover damages" for the injuries they sustained, although the driver of the car might be a person of no means.

Statutes which have been held not to give rise to any action for breach

Section 42 of the Waterworks Clauses Act 1847 obliged water undertakers to keep their pipes charged with water at a specified pressure and to allow all persons to use such water for extinguishing fire: section 43 prescribed a penalty of £10 for neglect of this duty. In *Atkinson* v. *Newcastle Waterworks Co.*,[54] it was held that no action for damages lay at the suit of a person whose premises had been destroyed by fire owing to the pressure in the defendants' pipes being insufficient. The Court of Appeal relied principally on the provision in section 43 of a penalty for breach of the duty, Lord Cairns L.C. (at p. 446) stigmatising as startling the proposition that, in addition to this penalty, the undertakers should be "virtually . . . gratuitous insurers of the safety from fire, so far as water is capable of producing that safety, of all the houses within" their district.

A similar case was that of *Pasmore* v. *Oswaldtwistle Urban District Council*,[55] in which the House of Lords held that the sole remedy for breach of a local authority's obligation to provide "such sewers as may be necessary for effectually draining their district" (Public Health Act 1875, s. 15) was that provided by statute, namely, a complaint to the Local Government Board. The Earl of Halsbury L.C. said that the principle was applicable to the case was that stated by Lord Tenterden C.J. in 1831: "Where an Act creates an obligation, and enforces the performance in a specified manner, we take it to be a general rule that performance cannot be enforced in any other manner."[56]

In several cases, failure to comply with provisions regarding the construction and use of motor vehicles has been held not to give rise

[54] (1877) 2 Ex.D. 441.
[55] [1898] A.C. 387: a case in which the remedy sought was an order of *mandamus*.
[56] *Doe d. Bishop of Rochester* v. *Bridges* (1831) 1 B. & Ad. 847, at p. 859.

to an action for damages.[57] These cases have been decided chiefly on the ground that the provisions in question create a public duty for breach of which they prescribe a sufficient penalty, and also on the unlikelihood "that the Legislature, in empowering a department to make regulations for the use and construction of motor cars, permitted the department to impose new duties in favour of individuals and new causes of action for breach of them in addition to the obligations already well provided for and regulated by the common law of those who bring vehicles upon highways. In particular it is not likely that the Legislature intended by these means to impose on the owners of vehicles an absolute obligation to have them roadworthy in all events even in the absence of negligence."[58]

The Merchandise Marks Acts can be enforced only in the manner therein provided (though an injunction can be obtained in the case of repeated violations), and no civil action for damages lies for breach of their provisions.[59]

In *Square* v. *Model Farm Dairies (Bournemouth), Ltd.*,[60] the Court of Appeal held that plaintiffs who had been infected with typhoid fever through milk supplied by the defendants had no action for breach of the statutory duty under section 2 of the Food and Drugs (Adulteration) Act 1928, which required sellers of food to supply food of the nature, substance and quality demanded. The chief reason for the decision was that, considering "the general purview and purpose of the sanctions . . . provided" in the statute, it did not appear that the legislature intended to confer, in addition, a civil action for damages on persons injured by breach of its provision. Furthermore, where a duty is imposed by statute, a civil action must be "brought by a person pointed out on a fair construction of the Act as being one whom the Legislature desired to protect,"[61] and this statute appeared to be for the protection of purchasers, not of consumers in general.

Likewise, a provision in the Betting and Lotteries Act 1934, s. 11 (2), that the occupier of a dog-racing track should not exclude any person from the track "by reason only that he proposes to carry on bookmaking on the track" and should take steps to provide space on

[57] *Phillips* v. *Britannia Hygienic Laundry Co., Ltd.* [1923] 2 K.B. 832; *Badham* v. *Lambs, Ltd.* [1946] K.B. 45; *Clarke* v. *Brims* [1947] K.B. 497.
[58] *Phillips* v. *Britannia Hygienic Laundry Co., Ltd.* [1923] 2 K.B. 832, *per* Atkin L.J. at p. 842.
[59] *London Armoury Co., Ltd.* v. *Ever Ready Co.* (*Great Britain*), *Ltd.* [1941] 1 K.B. 742; *J. Bollinger* v. *Costa Brava Wine Co., Ltd.* [1960] Ch. 262.
[60] [1939] 2 K.B. 365, *per* Slesser L.J.
[61] *Monks* v. *Warbey* [1935] 1 K.B. 75, *per* Maugham L.J. at p. 85.

which bookmakers could conveniently operate was held by the House of Lords to be intended for the benefit of the public who resorted to the track, not for that of bookmakers in particular. Therefore, if a bookmaker were wrongfully excluded from a track, the only liability of the occupier would be to the penalties prescribed by the statute, and the bookmaker would have no action against him for breach of statutory duty.[62]

Section 8 (1) of the Public Utilities Street Works Act 1950 requires certain undertakers to secure "that, so long as the street . . . is open or broken up . . . it is adequately fenced and guarded, and lighted in such manner as to give proper warning to the public during the hours of darkness." Waller J. said: "Having regard to the nature of the whole of the Act of 1950, having regard to the small part which this section plays in the whole Act and having regard to the fact that it is imposing specific ways of complying with the common law duty [to take care] and is imposing provisions for enforcement which are to be found in section 30, I have come to the conclusion that it was not the intention when this section of the Act of 1950 was imposed to create a cause of action for breach of statutory duty."[63]

Actions for breach of statutory duty limited by the mischief of the Act

An action for breach of statutory duty lies only in respect of the kind of harm contemplated by the provision in question.

In the leading case of *Gorris* v. *Scott*,[64] an order made under the Contagious Diseases (Animals) Act 1869 required sheep and cattle being brought from any foreign port to Great Britain to be kept on the ship in pens of certain dimensions. As a result of the neglect of the order, the plaintiff suffered the loss of a number of sheep, not because they contracted a disease, but because they were washed overboard. It was held that he could not recover. Pollock B. said (at p. 131): "The Act of Parliament was passed *alio intuitu*. . . . Suppose, then, that the precautions directed are useful and advantageous for preventing animals from being washed overboard, yet they were never intended for that purpose, and a loss of that kind caused by their neglect cannot give a cause of action."

Section 14 (1) of the Factories Act, which deals with the fencing of machinery, is intended to prevent the body of the operator from

[62] *Cutler* v. *Wandsworth Stadium, Ltd.* [1949] A.C. 398.
[63] *Keating* v. *Elvan Reinforced Concrete Co., Ltd.* [1967] 3 All E.R. 611, at p. 613, affirmed [1968] 1 W.L.R. 722.
[64] (1874) L.R. 9 Ex. 125.

coming into contact with the machine, and in several cases which have already been discussed,[65] the House of Lords has held that no action lies in respect of other kinds of harm suffered through breach of the section.

"Any place on the site of the operations at which any person is habitually employed shall be covered in such manner as to protect any person who is working in that place from being struck by any falling material or article": Building (Safety, Health and Welfare) Regulations 1948, reg. 90. This regulation was held by the Court of Appeal to be directed to things such as bricks, tools and scaffold materials and to the ordinary builders' debris: although the words of the regulation might be literally satisfied where material which had become part of the structure of the building caused injury, no action lay for breach of statutory duty in respect of such injury.[66]

On the other hand, the duty under section 49 of the Coal Mines Act 1911 to make the roof and sides of every travelling road and working place secure has been held by the House of Lords not to be limited to a class of injuries caused in some particular way: Lord Reid said that he could see no reason why the section should not extend to the (hypothetical) case of a widespread fall of the roof so that men were cut off and suffocated.[67]

Absolute and qualified duties

Where an action lies for breach of statutory duty, the duty may be either absolute or something less than absolute. This matter has been discussed earlier in this chapter.[68]

[65] *Ante*, p. 111. *Cf. Kilgollan* v. *W. Cooke & Co., Ltd.* [1956] 1 W.L.R. 527.
[66] *Bailey* v. *Ayr Engineering & Constructional Co., Ltd.* [1959] 1 Q.B. 183.
[67] *Grant* v. *National Coal Board* [1956] A.C. 649. *Cf. Gatehouse* v. *John Summers & Sons, Ltd.* [1953] 1 W.L.R. 742.
[68] *Ante*, pp. 322–326.

APPENDIX

INTERPRETATION ACT, 1889

(52 & 53 VICT. c. 63)[1]

An Act for consolidating enactments relating to the Construction of Acts of Parliament and for further shortening the Language used in Acts of Parliament.

[30th August, 1889]

Re-enactment of existing Rules

Rules as to gender and number

1.—(1) In this Act and in every Act[2] passed after the year one thousand eight hundred and fifty,[3] whether before or after the commencement of this Act, unless the contrary intention appears,—

(*a*) words importing the masculine gender shall include females[4]; and

(*b*) words in the singular shall include the plural, and words in the plural shall include the singular.[5]

(2) The same rules shall be observed in the construction of every enactment relating to an offence punishable on indictment or on summary conviction, when the enactment is contained in an Act passed in or before the year one thousand eight hundred and fifty.

Application of penal Acts to bodies corporate

2.—(1) 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 the commencement of this Act, the

[1] Applied (except s. 5) to Church Assembly measures: see Interpretation Measure 1925 (No. 1), s. 1, *post*, p. 366. This Act no longer applies to Northern Ireland: Interpretation Act 1954 (N.I.), s. 48 (2).

[2] Subs. (1) governs special Articles of Association used with Table A of the Companies Acts: *Fell* v. *Derby Leather Co.* [1931] 2 Ch. 252. When the secretary of state in framing regulations uses the language of the Act he must be taken to have intended a construction identical with the statutory construction: *Potts or Riddell* v. *Reid* [1943] A.C. 1, 8.

[3] 1850 is the date of Lord Brougham's Act; repealed by s. 41 of this Act, and re-enacted by other sections.

[4] See the text, *ante*, pp. 306–307 and cases there cited; also *Hope* v. *Sandhurst* (1889) 23 Q.B.D. 79; *De Souza* v. *Cobden* [1891] 1 Q.B. 687; Sex Disqualification (Removal) Act 1919. Note that words in the feminine gender do not include the masculine.

[5] See the text, *ante*, pp. 306–308, and cases there cited; also *Greaves* v. *Greaves* (1872) L.R. 2 P. & D. 423 and the Marriage Act 1949, s. 25; *Dealex Properties, Ltd.* v. *Brooks* [1966] 1 Q.B. 542.

expression "person" shall, unless the contrary intention appears, include a body corporate.[6]

(2) Where under any Act, whether passed before or after the commencement of this Act, 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.

Meanings of "month," "land," "oath," "affidavit"

3. In every Act passed after the year one thousand eight hundred and fifty,[7] whether before or after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them; namely,—

The expression "month" shall mean calendar month:[8]

The expression "land" shall include messuages, tenements, and hereditaments, houses, and buildings of any tenure:

The expressions "oath" and "affidavit" shall, in the case of persons for the time being allowed by law to affirm or declare instead of swearing, include affirmation and declaration, and the expression "swear" shall, in the like case, include affirm and declare.

"County"

4. In every Act passed after the year one thousand eight hundred and fifty and before the commencement of this Act the expression "county" shall, unless the contrary intention appears, be construed as including a county of a city and a county of a town.

"Parish"

5. *In every Act passed after the year one thousand eight hundred and sixty-six,*[9] *whether before or after the commencement of this Act, the expression "parish" shall, unless the contrary intention appears, mean, as respects England and Wales, a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed.*[10]

Meaning of "county court"

6. In this Act, and in every Act or order in council passed or made after the year one thousand eight hundred and forty-six,[11] whether before

[6] See also s. 19, which is wider in scope: *Davey* v. *Shawcroft* [1948] 1 All E.R. 827. Contrary intention was found in the Solicitors Act 1932, s. 46: *Law Society* v. *United Services Bureau* [1934] 1 K.B. 343 (but see Solicitors Act 1934, s. 1), and may be inferred from inability to impose a fine as alternative to imprisonment (see, *e.g.*, *R.* v. *Ascanio Puck & Co. and Price* (1912) 76 J.P. 487).

[7] See note 3, *supra*, p. 347.

[8] In legal documents the primary meaning of month is lunar month: *Bruner* v. *Moore* [1904] 1 Ch. 305, *per* Farwell J. But in deeds, contracts, wills, orders or other instruments executed, made or coming into operation on or after January 1, 1926, unless the context otherwise requires "month" means calendar month: Law of Property Act 1925, s. 61. See also the text, *ante*, pp. 308–309.

[9] 1866 is the date of the Poor Law Amendment Act 1866 of which part of s. 18, defining "parish" as in this section, is repealed by this Act.

[10] Repealed by Rating and Valuation Act 1925, ss. 69, 70, Sched. VIII (except as to London); by S.R. & O. 1927 No. 59 (as to Scilly Isles); and by London Government Act 1963, s. 93 and Sched. 18 (as to London).

[11] 1846 is the date of the passing of the first County Courts Act.

or after the commencement of this Act, the expression "county court" shall, unless the contrary intention appears, mean as respects England and Wales a court under the County Courts Act, 1888.[12]

Meaning of "sheriff clerk," etc., in Scotch Acts

7. In every Act relating to Scotland, whether passed before or after the commencement of this Act, unless the contrary intention appears—

The expression "sheriff clerk" shall include steward clerk;

The expressions "shire," "sheriffdom," and "county" shall include any stewartry in Scotland.

Sections to be substantive enactments

8. Every section of an Act shall have effect as a substantive enactment without introductory words.

Acts to be public Acts

9. Every Act passed after the year one thousand eight hundred and fifty,[13] whether before or after the commencement of this Act, shall be a public Act and shall be judicially noticed as such, unless the contrary is expressly provided by the Act.

Repeal of Acts in same session

10. Any Act may be altered, amended, or repealed in the same session of Parliament.

Repeal of repealing Acts, no revivor

11.—(1) Where an Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, repeals a repealing enactment, it shall not be construed as reviving any enactment previously repealed, unless words are added reviving that enactment.[14]

(2) Where an Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, repeals wholly or partially any former enactment and substitutes provisions for the enactment repealed, the repealed enactment shall remain in force until the substituted provisions come into operation.

New General Rules of Construction

Official definitions in past and future Acts

12. In this Act, and in every other Act whether passed before or after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:—

[12] See now County Courts Act 1959.
[13] See note 3, *supra*, p. 347.
[14] See the text, *ante*, pp. 19–20.

"Lord Chancellor"

(1) The expression "the Lord Chancellor" shall, except when used with reference to Ireland only, mean the Lord High Chancellor of Great Britain for the time being, and when used with reference to Ireland only shall mean the Lord Chancellor of Ireland[15] for the time being.

"Treasury"

(2) The expression "the Treasury" shall mean the Lord High Treasurer for the time being or the Commissioners for the time being of Her Majesty's Treasury.

"Secretary of State"

(3) The expression "Secretary of State" shall mean one of Her Majesty's Principal Secretaries of State for the time being.

"Admiralty"

(4) *The expression "the Admiralty" shall mean the Lord High Admiral of the United Kingdom for the time being, or the Commissioners for the time being for executing the office of Lord High Admiral of the United Kingdom.*[16]

"Privy Council"

(5) The expression "the Privy Council" shall, except when used with reference to Ireland only, mean the Lords and others for the time being of Her Majesty's Most Honourable Privy Council, and when used with reference to Ireland only, shall mean the Privy Council of Ireland for the time being.[17]

"Education Department"

(6) The expression "the Education Department" shall mean the Lords of the Committee for the time being of the Privy Council appointed for Education.[18]

"Scotch Education Department"

(7) The expression "the Scotch Education Department" shall mean the Lords of the Committee for the time being of the Privy Council appointed for Education in Scotland.[19]

[15] The office of Lord Chancellor of Ireland was abolished by the Irish Free State (Consequential Provisions) Act 1922, s. 2, Sched. II, Pt. 2. References in certain enactments to the Lord Chancellor of Ireland are to be construed as references to the Lord Chief Justice of Northern Ireland: S.R. & O. 1921 Nos. 1802, 1804.

[16] Repealed by the Defence (Transfer of Functions) (No. 1) Order 1964, (S.I. No. 488), art. 2, Sched. 1, Pt. II.

[17] The Privy Council of Northern Ireland has the powers of the former Privy Council of Ireland: Irish Free State (Consequential Provisions) Act 1922, s. 1, Sched. I.

[18] Under the Education Act 1944, s. 2 (1), references to the Education Department or to the Board of Education apply to the Minister or the Ministry of Education. The Minister is now entitled Secretary of State for Education and Science: (The Secretary of State for Education and Science) Order 1964, S.I. No. 490, art. 3 and Sched., Pt. I.

[19] See now Reorganisation of Offices (Scotland) Act 1939.

"Board of Trade"

(8) The expression "the Board of Trade" shall mean 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.

"Lord Lieutenant"

(9) The expression "Lord Lieutenant" when used with reference to Ireland, shall mean the Lord Lieutenant of Ireland or other Chief Governors or Governor of Ireland for the time being.[20]

"Chief Secretary"

(10) The expression "Chief Secretary" when used with reference to Ireland, shall mean the Chief Secretary to the Lord Lieutenant for the time being.[21]

"Postmaster General"

(11) The expression "Postmaster General" shall mean Her Majesty's Postmaster General for the time being.

"Commissioners of Woods and Forests"

(12) The expression "Commissioners of Woods" or "Commissioners of Woods and Forests" shall mean the Commissioners of Her Majesty's Woods, Forests, and Land Revenues for the time being.[22]

"Commissioners of Works"

(13) The expression "Commissioners of Works" shall mean the Commissioners of Her Majesty's Works and Public Buildings for the time being.[23]

"Charity Commissioners"

(14) The expression "Charity Commissioners" shall mean the Charity Commissioners for England and Wales for the time being.[24]

"Ecclesiastical Commissioners"

(15) The expression "Ecclesiastical Commissioners" shall mean the Ecclesiastical Commissioners for England for the time being.[25]

[20] Now the Governor of Northern Ireland: Irish Free State (Consequential Provisions) Act 1922 (Session 2), s. 1 (1), Sched. I, art. 1 (1).
[21] Now the appropriate Minister of Northern Ireland: S.R. & O. 1921 No. 1804, art. 4.
[22] Now the Crown Estate Commissioners: see Crown Estate Act 1961, s. 1.
[23] Now the Minister of Public Building and Works: The Minister of Works (Change of Style and Title) Order 1962, S.I. No. 1549, art. 2 (1).
[24] See also Charities Act 1960, s. 2.
[25] The Ecclesiastical Commissioners and Queen Anne's Bounty are now amalgamated as the Church Commissioners for England: Church Commissioners Measure 1947 (No. 2), s. 2.

"Queen Anne's Bounty"

(16) The expression "Queen Anne's Bounty" shall mean the Governors of the Bounty of Queen Anne for the augmentation of the maintenance of the poor clergy.[25]

"National Debt Commissioners"

(17) The expression "National Debt Commissioners" shall mean the Commissioners for the time being for the reduction of the National Debt.

"Bank of England"

(18) The expression "the Bank of England" shall mean, as circumstances require, the Governor and Company of the Bank of England or the bank of the Governor and Company of the Bank of England.

"Bank of Ireland"

(19) The expression "the Bank of Ireland" shall mean, as circumstances require, the Governor and Company of the Bank of Ireland, or the bank of the Governor and Company of the Bank of Ireland.[26]

"Consular officer"

(20) The expression "Consular officer" shall include consul-general, consul, vice-consul, consular agent, and any person for the time authorised to discharge the duties of consul-general, consul, or vice-consul.

Judicial definitions in past and future Acts

13. In this Act and in every other Act whether passed before or after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:—

"Supreme Court"

(1) The expression "Supreme Court," when used with reference to England or Ireland,[27] shall mean the Supreme Court of Judicature in England or Ireland, as the case may be, or either branch thereof.

"Court of Appeal"

(2) The expression "Court of Appeal," when used with reference to England or Ireland,[27] shall mean Her Majesty's Court of Appeal in England or Ireland, as the case may be.

[26] See Irish Free State (Consequential Provisions) Act 1922 (Session 2), s. 6 (1) (*d*), (2), (3) and S.R. & O. 1923 Nos. 227, 228, 453.

[27] Now the Supreme Court of Northern Ireland: Government of Ireland Act 1920, ss. 38, 40 (1). References to the Supreme Court, Court of Appeal, High Court and High Court of Appeal in relation to Northern Ireland are, respectively, to the Supreme Court of Northern Ireland, H.M. Court of Appeal in Northern Ireland, H.M. High Court of Justice in Northern Ireland and High Court of Appeal for Ireland: Interpretation Act 1921 (Northern Ireland), s. 1 and Schedule.

"High Court"

(3) The expression "High Court," when used with reference to England or Ireland,[27] shall mean Her Majesty's High Court of Justice in England or Ireland, as the case may be.

"Court of Assize"

(4) The expression "Court of Assize" shall, as respects England, Wales and Ireland,[28] mean a court of assize, a court of oyer and terminer, and a court of gaol delivery, or any of them, and shall, as respects England and Wales, include the Central Criminal Court.[29]

"Assizes"

(5) The expression "Assizes," as respects England, Wales and Ireland,[28] shall mean the courts of assize usually held in every year, and shall include the sessions of the Central Criminal Court, but shall not include any court of assize held by virtue of any special commission, or, as respects Ireland,[28] any court held by virtue of the powers conferred by section sixty-three of the Supreme Court of Judicature Act (Ireland), 1877.

"Summary Jurisdiction Act, 1848"

(6) The expression "Summary Jurisdiction Act, 1848" shall mean the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders."[30]

"Summary Jurisdiction (England) Acts," etc.

(7) The expression "the Summary Jurisdiction (England) Acts" and the expression "the Summary Jurisdiction (English) Acts" shall respectively mean the Summary Jurisdiction Act, 1848, and the Summary Jurisdiction Act, 1879, and any Act, past or future, amending those Acts or either of them.[31]

(8) The expression "the Summary Jurisdiction (Scotland) Acts" shall mean the Summary Jurisdiction (Scotland) Acts, 1864 and 1881, and any Act, past or future, amending those Acts or either of them.[32]

(9) *The expression "the Summary Jurisdiction (Ireland) Acts" shall mean, as respects the Dublin Metropolitan Police District, the Acts regulating the powers and duties of justices of the peace or of the police of that district,*

[28] Now Northern Ireland only: Irish Free State (Consequential Adaptation of Enactments) Order 1923, S.R. & O. 1923 No. 405.

[29] It also includes the Crown Courts of Liverpool and Manchester: Criminal Justice Administration Act 1956, s. 1 (4).

[30] Commonly called "Jervis's Act." The Act has been repealed (except s. 30) and consolidated by the Magistrates' Courts Act 1952, s. 132, Sched. VI.

[31] See now the Magistrates' Courts Act 1952.

[32] See now Summary Jurisdiction (Scotland) Act 1908 as amended by later statutes.

and as respects any other part of Ireland, the Petty Sessions (Ireland) Act, 1851, and any Act, past or future, amending the same.[33]

(10) The expression "the Summary Jurisdiction Acts" when used in relation to England or Wales shall mean the Summary Jurisdiction (England) Acts, and when used in relation to Scotland the Summary Jurisdiction (Scotland) Acts, *and when used in relation to Ireland the Summary Jurisdiction (Ireland) Acts.*[33a]

"Court of summary jurisdiction"

(11) The expression "court of summary jurisdiction" shall mean any justice or justices of the peace, or other magistrate, by whatever name called, to whom jurisdiction is given by, or who is authorised to act under, the Summary Jurisdiction Acts, whether in England, Wales, *or Ireland*,[33] and whether acting under the Summary Jurisdiction Acts or any of them, or under any other Act, or by virtue of his commission, or under the common law.[34]

"Petty sessional court"

(12) The expression "petty sessional court" shall, as respects England or Wales, mean a court of summary jurisdiction consisting of two or more justices when sitting in a petty sessional court-house, and shall include *the Lord Mayor of the city of London, and any alderman of that city, and* any metropolitan or borough police magistrate or other stipendiary magistrate when sitting in a court-house or place at which he is authorised by law to do alone any act authorised to be done by more than one justice of the peace.[34a]

"Petty sessional court-house"

(13) The expression "petty sessional court-house" shall, as respects England or Wales, mean a court-house or other place at which justices are accustomed to assemble for holding special or petty sessions, or which is for the time being appointed as a substitute for such a court-house or place, and where the justices are accustomed to assemble for either special or petty sessions at more than one court-house or place in a petty sessional division, shall mean any such court-house or place. The expression shall also include any court-house or place at which *the Lord Mayor of the city of London or any alderman of that city, or* any metropolitan or borough police magistrate or other stipendiary magistrate is

[33] Repealed by the Northern Ireland Act 1962, s. 30 and Sched. 4. This Act expunges all references to Ireland from subsections (9)–(11). Under s. 27 of the Northern Ireland Act, the expressions defined in these subsections of the Interpretation Act shall mean, when used in United Kingdom statutes, the same as they mean in Northern Ireland statutes, for which see Interpretation Act 1954 (Northern Ireland).

[33a] See notes 31–33, *supra*.

[34] The expression "court of summary jurisdiction" is less commonly used nowadays than the term "magistrates' court"; see the definition in the Magistrates' Courts Act 1952, s. 124 (1).

[34a] As amended by Justices of the Peace Act 1968, s. 8 (2) and Sched. 5

authorised by law to do alone any act authorised to be done by more than one justice of the peace.[34a]

"Court of quarter sessions"

(14) The expression "court of quarter sessions" shall mean the justices of any county, riding, parts, division, or liberty of a county, or of any county of a city, or county of a town, in general or quarter sessions assembled, and shall include the court of the recorder of a municipal borough having a separate court of quarter sessions.

Meaning of "rules of court"

14. In every Act passed after the commencement of this Act, unless the contrary intention appears, the expression "rules of court" when used in relation to any court shall mean rules made by the authority having for the time being power to make rules or orders regulating the practice and procedure of such court, and as regards Scotland shall include acts of adjournal and acts of sederunt.

The power of the said authority to make rules of court as above defined shall include a power to make rules of court for the purpose of any Act passed after the commencement of this Act, and directing or authorising anything to be done by rules of court.

Meaning of "borough"

15. In this Act and in every Act passed after the commencement of this Act the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:

"Municipal borough"

(1) The expression "municipal borough" shall mean, as respects England and Wales, any place for the time being subject to the Municipal Corporations Act, 1882, and any reference to the mayor, aldermen, and burgesses of a borough shall include a reference to the mayor, aldermen, and citizens of a city, and any reference to the powers, duties, liabilities or property of the council of a borough shall be construed as a reference to the powers, duties, liabilities, or property of the mayor, aldermen, and burgesses of the borough acting by the council.[35]

(2) The expression "municipal borough" shall mean, as respects Ireland, any place for the time being subject to the Act of the session of the third and fourth years of the reign of Her present Majesty, chapter one hundred and eight, intituled "An Act for the regulation of municipal corporations in Ireland."[36]

"Parliamentary borough"

(3) *The expression "parliamentary borough" shall mean any borough, burgh, place or combination of places returning a member or members to*

[35] Now including, except where the context otherwise requires, London Boroughs: London Government Act 1963, s. 1 (6).

[36] Northern Ireland only: Irish Free State (Consequential Adaptation of Enactments) Order 1923, S.R. & O. 1923 No. 405.

serve in Parliament, and not being either a county or division of a county, or a university, or a combination of universities.[37]

"Borough"

(4) The expression "borough" when used in relation to local government shall mean a municipal borough as above defined, *and when used in relation to parliamentary elections or the registration of parliamentary electors shall mean a parliamentary borough as above defined.*[37]

Meaning of guardians and union

16. In this Act and in every Act passed after the commencement of this Act the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:

(1) The expression "board of guardians" shall, as respects England and Wales, mean a board of guardians elected under the Poor Law Amendment Act, 1834, and the Acts amending the same, and shall include a board of guardians or other body of persons performing under any local Act the like functions to a board of guardians under the Poor Law Amendment Act, 1834.[38]

(2) The expression "poor law union" shall, as respects England and Wales, mean any parish or union of parishes for which there is a separate board of guardians.

(3) The expression "board of guardians" shall, as respects Ireland, mean a board of guardians elected under the Act of the session of the first and second years of the reign of Her present Majesty, chapter fifty-six, intituled "An Act for the more effectual relief of the destitute poor in Ireland," and the Acts amending the same, and shall include any body of persons appointed by the Local Government Board for Ireland to carry into execution the provisions of those Acts.[39]

(4) The expression "poor law union" shall, as respects Ireland, mean any townland or place or union, or townlands or places, for which there is a separate board of guardians.[39]

Definitions relating to elections

17. In every Act passed after the commencement of this Act the following expression shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:—

(1) The expression "parliamentary election" shall mean the election of a member *or members*[40] to serve in Parliament for a county or division of a county, or parliamentary borough or division of a parliamentary borough, or for a university or combination of universities.

(2) *The expression "parliamentary register of electors" shall mean a register of persons entitled to vote at any parliamentary election.*[40]

(3) *The expression "local government register of electors" shall mean*

[37] Repealed, Representation of the People Act 1948, s. 80, Sched. XIII.
[38] References to boards of guardians to be read as references to the councils of county and county boroughs: Local Government Act 1929, Sched. X, para. 1.
[39] See n. 36 *ante*.
[40] Repealed, Representation of the People Act 1948, s. 80, Sched. XIII.

as respects an administrative county in England or Wales other than a county borough, the county register, and as respects a county borough or other municipal borough, the burgess roll.[40]

Geographical and colonial definitions in future Acts

18. In this Act, and in every Act passed after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:—

"British Islands"

(1) The expression "British Islands" shall mean the United Kingdom,[41] the Channel Islands, and the Isle of Man.

"British possession"

(2) The expression "British possession" shall mean any part of Her Majesty's dominions exclusive of the United Kingdom,[41] and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one British possession.

"Colony"

(3) The expression "colony" shall mean any part of Her Majesty's dominions exclusive of the British Islands, and of British India, and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one colony.[42]

[41] The expression "United Kingdom" means, unless the context otherwise requires, Great Britain and Northern Ireland: Royal and Parliamentary Titles Act 1927, s. 2 (1) (repealed S. L. R. Act 1950). And in any statute "England" means England, Wales and Berwick-on-Tweed: Wales and Berwick Act 1746, s. 3, as amended, Statute Law Revision Act 1948. See also Inland Revenue Regulation Act 1890, s. 38 (1).

[42] In the Statute of Westminster 1931, the expression "Dominion" means the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State (now Eire) and Newfoundland: see s. 1. But the Dominion status of Newfoundland has been suspended: Newfoundland Act 1933. In any Act passed after December 11, 1931, the expression "Colony" does not include a Dominion nor any part of a Dominion nor does it include Ceylon in the Burma Independence Act 1947, or in any Act passed after February 5, 1948: Ceylon Independence Act 1947, s. 4 (2); nor Ghana in any Act passed after March 6, 1957: Ghana Independence Act 1957, s. 4 (2); nor Kenya after December 12, 1963: Kenya Independence Act 1963, s. 4 (1); nor Nigeria after October 1, 1960: Nigeria Independence Act 1960, s. 3 (1); nor Sierra Leone after April 27, 1961: Sierra Leone Independence Act 1961, s. 3 (1); nor Tanganyika after December 9, 1961: Tanganyika Independence Act 1961, s. 3 (1); nor Jamaica after August 6, 1962: Jamaica Independence Act 1962, s. 3 (1); nor Trinidad and Tobago after August 31, 1962: Trinidad and Tobago Independence Act 1962, s. 3 (1); nor Uganda after October 9, 1962: Uganda Independence Act 1962, s. 3 (1); nor Malawi after July 6, 1964: Malawi Independence Act 1964, s. 4 (1); nor Malta after September 21, 1964: Malta Independence Act 1964, s. 4 (1); nor Gambia after February 18, 1965: Gambia Independence Act 1964, s. 4 (1); nor Guyana after May 26, 1966: Guyana Independence Act 1966, s. 5 (1); nor Barbados after November 30, 1966: Barbados Independence Act 1966, s. 4 (1); nor Mauritius after February 29, 1968: Mauritius Independence Act 1968, s. (4) (1).

"British India"

(4) *The expression "British India" shall mean all territories and places within Her Majesty's dominions which are for the time being governed by Her Majesty through the Governor-General of India or through any governor or other officer subordinate to the Governor-General of India.*[43]

"India"

(5) *The expression "India" shall mean British India together with any territories of any native prince or chief under the suzerainty of Her Majesty exercised through the Governor-General of India, or through any governor or other officer subordinate to the Governor-General of India.*[43]

"Governor"

(6) The expression "governor" shall, as respects Canada *and India*[43], mean the Governor-General, and include any person who for the time being has the powers of the Governor-General, as respects any other British possession [outside British India],[43] shall include the officer for the time being administering the government of that possession.

"Colonial legislature"

(7) The expression "colonial legislature" and the expression "legislature," when used with reference to a British possession, shall respectively mean the authority, other than the Imperial Parliament or Her Majesty the Queen in council, competent to make laws for a British possession.

Special definitions relating to India

18A.—(1) In this Act and in every other Act, whether passed before or after the commencement of this Act,—

(i) the expression "British possession," when used in relation to British territories in India, shall, unless the contrary intention appears, mean British India as a whole, and references, in whatever words, to territories of the Crown abroad shall as respects India be construed accordingly;

(ii) the expression "Governor" shall, when used in relation to British India as a whole or to India as a whole, mean the Governor-General;

(iii) the expression "Governor-General" shall, when used in relation to British India or to India—

(*a*) in relation to the period between the commencement of Part III of the Government of India Act, 1935, and the establishment of the Federation of India, mean the Governor-General in council;

[3] The definitions of "British India" and "India" are to be omitted; in the definition of "Governor" the words "and India" are to be omitted; after the words "any other British possession" there are to be inserted the words "outside British India": Government of India (Adaptation of Acts of Parliament) Order 1937 (S.R. & O. No. 230). Special definitions relating to India are added; see s. 18A below.

(*b*) in relation to any period after the commencement of the said Part III, be construed as including a reference to the Governor of a Province in India acting within the scope of any authority given to him under Part VI of the said Act;

(iv) the expression "Indian legislature" and, when used in relation to British India or to India, the expression "legislature" shall mean the authority, other than the Imperial Parliament, competent to make laws for British India, or for the relevant part of British India.

(2) This section applies for the interpretation of the Government of India (Adaptation of Acts of Parliament) Order, 1937, but it does not apply for the interpretation of the Government of India Act, 1935 *or the Government of Burma Act, 1935*, nor, save as aforesaid, for the interpretation of any Order in Council made under either of those Acts notwithstanding that that Order may provide generally that this Act shall apply for the interpretation thereof as it applies for the interpretation of an Act of Parliament.[44]

"Person" includes "corporation"

19. In this Act and in every Act passed after the commencement of this Act the expression "person" shall, unless the contrary intention appears, include any body of persons corporate or unincorporate.[45]

Meaning of "writing" in past and future Acts

20. In this Act and in every other Act whether passed before or after the commencement of this Act expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form.

"Statutory declaration"

21. In this Act, and in every other Act, whether passed before or after the commencement of this Act, the expression "statutory declaration" shall, unless the contrary intention appears, mean a declaration made by virtue of the Statutory Declarations Act, 1835.

"Financial year"

22. In this Act and in every Act passed after the commencement of this Act the expression "financial year" shall, unless the contrary

[44] Added by the Government of India (Adaptation of Acts of Parliament) Order 1937 (S.R. & O. No. 230). The words in italics in subs. (2) were repealed by the Burma Independence Act 1947, s. 5 (3) and Sched. II, Part I.

[45] See, *e.g. Davey* v. *Shawcroft* [1948] 1 All E.R. 827; *Re Pilkington Brothers* [1953] 2 All E.R. 816; *R.* v. *Minister of Agriculture and Fisheries* [1955] 2 Q.B. 140, C.A. (fluctuating body of persons).

intention appears, mean as respects any matters relating to the Consolidated Fund or moneys provided by Parliament, or to the Exchequer, or to Imperial taxes or finance, the twelve months ending the thirty-first day of March.[46]

Definition of "Lands Clauses Acts"

23. In any Act passed after the commencement of this Act, unless the contrary intention appears,—

The expression "Lands Clauses Acts" shall mean—

(*a*) as respects England and Wales, the Lands Clauses Consolidation Act, 1845, the Lands Clauses Consolidation Acts Amendment Act, 1860, the Lands Clauses Consolidation Act, 1869, and the Lands Clauses (Umpire) Act, 1883, and any Acts for the time being in force amending the same; and

(*b*) as respects Scotland, the Lands Clauses Consolidation (Scotland) Act, 1845, and the Lands Clauses Consolidation Acts Amendment Act, 1860, and any Acts for the time being in force amending the same; and

(*c*) as respects Ireland, the Lands Clauses Consolidation Act, 1845, the Lands Clauses Consolidation Acts Amendment Act, 1860, the Railways Act (Ireland), 1851, the Railways Act (Ireland), 1860, the Railways Act (Ireland), 1864, and the Railways Traverse Act, and any Acts for the time being in force amending the same.

Meaning of "Irish Valuation Acts"

24. In any Act passed before or after the commencement of this Act the expression "Irish Valuation Acts" shall mean the Acts relating to the valuation of rateable property in Ireland.[47]

"Ordnance map"

25. In this Act and in every other Act, whether passed before or after the commencement of this Act, the expression "ordnance map" shall, unless the contrary intention appears, mean a map made under the powers conferred by the Survey (Great Britain) Acts, 1841 to 1870, or by the Survey (Ireland) Acts, 1825 to 1870, and the Acts amending the same respectively.

Meaning of "service by post"

26. Where an Act passed after the commencement of this Act authorises or requires any document to be served by post, whether the expression "serve," or the expression "give" or "send," or any other expression is used, then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying, and

[46] *Quaere, e.g.*, as to the meaning of the expression in s. 15 of the Sea Fish Industry Act 1951, where there is no relation to the Consolidated Fund, etc.

[47] Northern Ireland only: Irish Free State (Consequential Adaptation of Enactments) Order 1923 (S.R. & O. No. 405).

posting[48] a letter containing the document,[49] and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.[50]

Meaning of "committed for trial"

27. In every Act passed after the commencement of this Act, the expression "committed for trial" used in relation to any person shall, unless the contrary intention appears, mean, as respects England and Wales, committed to custody with the view of being tried before a judge and jury, whether the person is committed in pursuance of [section 7 of the Magistrates Courts Act 1952,[51]] or is committed by a court, judge, coroner, or other authority having power to commit a person to any custody with a view to his trial, and shall include a person who is admitted to bail upon a recognisance to appear and take his trial before a judge and jury.

Meanings of "sheriff," "felony," and "misdemeanour" in future Scotch Acts

28. In this Act and in every Act passed after the commencement of this Act, unless the contrary intention appears—

The expression "sheriff" shall, as respects Scotland, include a sheriff substitute:

The expression "felony" shall, as respects Scotland, mean a high crime and offence:

The expression "misdemeanour" shall, as respects Scotland, mean an offence.

Meaning of "county court" in future Irish Acts

29. In every Act passed after the commencement of this Act, unless the contrary intention appears, the expression "county court" shall, as respects Ireland, mean a civil bill court within the meaning of the County Officers and Courts (Ireland) Act, 1877.[52]

References to the Crown

30. In this Act and in every other Act, whether passed before or after the commencement of this Act, references to the Sovereign reigning at the time of the passing of the Act or to the Crown shall, unless the contrary intention appears, be construed as references to the Sovereign for the time being, and this Act shall be binding on the Crown.

[48] See *Re London & Northern Bank, ex p. Jones* [1900] 1 Ch. 220.

[49] But not if it is proved that delivery was never effected: *R.* v. *London Quarter Sessions ex p. Rossi* [1956] 1 Q.B. 682; *White* v. *Weston* [1968] 2 Q.B. 647. *Cf. Layton* v. *Shires* [1960] 2 Q.B. 294; *Moody* v. *Godstone R.D.C.* [1966] 2 All E.R. 696.

[50] To be ascertained by reference to Post Office regulations: *Kemp* v. *Wanklyn* [1894] 1 Q.B. 583.

[51] As amended by the Magistrates' Courts Act 1952, s. 113 and Sched. 5.

[52] Northern Ireland only: Irish Free State (Consequential Adaptation of Enactments Order 1923 (S.R. & O. No. 405).

Construction of statutory rules, etc.

31. Where any Act, whether passed before or after the commencement of this Act, 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 byelaws, expressions used in the instrument, if it is made after the commencement of this Act, shall, unless the contrary intention appears, have the same respective meanings as in the Act conferring the power.

Construction of provisions as to exercise of powers and duties

32.—(1) Where an Act passed after the commencement of this Act confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires.

(2) Where an Act passed after the commencement of this Act confers a power or imposes a duty on the holder of an office, as such, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed by the holder for the time being of the office.

Byelaws

(3) Where an Act passed after the commencement of this Act confers a power to make any rules, regulations, or byelaws, the power shall, unless the contrary intention appears, be construed as including a power, exerciseable in the like manner and subject to the like consent and conditions, if any, to rescind, revoke, amend, or vary the rules, regulations, or byelaws.

Provisions as to offences under two or more laws

33. Where an act or omission constitutes an offence under two or more Acts, or both under an Act and at common law, whether any such Act was passed before or after the commencement of this Act, 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 for the same offence.[53]

Measurement of distances

34. In the measurement of any distance for the purposes of any Act passed after the commencement of this Act, that distance shall, unless the contrary intention appears, be measured in a straight line on a horizontal plane.[53a]

Citation of Acts

35.—(1) In any Act, instrument, or document, an Act may be cited by reference to the short title, if any, of the Act, either with or without

[53] This does not mean that a man may not be punished twice for the same act, but only that he must not suffer twice for the same offence: *R.* v. *Thomas* [1950] 1 K.B. 26, where T was convicted of felonious wounding and subsequently, after his victim's death, of murder. And see the text, *ante*, pp. 195–196.

[53a] See the text, *ante*, pp. 312–133.

a reference to the chapter, or 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 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 subsection of the Act in which the enactment is contained.[53b]

(2) Where any Act passed after the commencement of this Act contains such reference as aforesaid, the reference shall, unless a contrary intention appears, 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 statutes not so included, and passed before the reign of King George the First, 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 Her Majesty's Stationery Office.

(3) In any Act passed after the commencement of this Act a description or citation of a portion of another Act shall, unless the contrary intention appears, be construed as including the word, section, or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

Meaning of "commencement"

36.—(1) In this Act, and in every Act passed either before or after the commencement of this Act, the expression "commencement," when used with reference to an Act, shall mean the time at which the Act comes into operation.

(2) Where an Act passed after the commencement of this Act, or any order in council, order, warrant, scheme, letters patent, rules, regulations, or byelaws, made, granted, or issued, under a power conferred by any such Act is expressed to come into operation on a particular day, the same shall be construed as coming into operation immediately on the expiration of the previous day.[54]

Exercise of statutory powers between passing and commencement of Act

37. Where an Act passed after the commencement of this Act is not to come into operation immediately on the passing thereof, and confers power to make any appointment, to make, grant, or issue any instrument, that is to say, any order in council, order, warrant, scheme, letters patent, rules, regulations, or byelaws, 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[55] at the date of the commencement thereof, subject to this restriction, that any instrument made under the

[53b] See, for statutes passed after 1962, Acts of Parliament Numbering and Citation Act 1962. And see the text, *ante*, p. 2.

[54] See the text, *ante*, pp. 14–16.

[55] These words will be given a liberal interpretation: *Usher* v. *Barlow* [1952] Ch. 255.

power shall not, unless the contrary intention appears in the Act, or the contrary is necessary for bringing the Act into operation, come into operation until the Act comes into operation.[56]

Effect of repeal in future Acts

38.—(1) Where this Act or any Act passed after the commencement of this Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed, shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted.

(2) Where this Act or any Act passed after the commencement of this Act repeals any other enactment, then, unless the contrary intention appears, the repeal shall not—

(*a*) revive anything not in force or existing at the time at which the repeal takes effect[57]; or,

(*b*) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or

(*c*) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or

(*d*) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; or

(*e*) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed, as if the repealing Act had not been passed.[58]

Supplemental

Definition of "Act"

39. In this Act the expression "Act" shall include a local and personal Act and a private Act.

Saving for past Acts

40. The provisions of this Act respecting the construction of Acts passed after the commencement of this Act shall not affect the construction of any Act passed before the commencement of this Act, although it is continued or amended by an Act passed after such commencement.

Repeals

41. [*Repealed*, S. L. R. Act 1908.]

[56] See, *e.g.*, *R.* v. *Minister of Town and Country Planning, ex p. Montague Burton* [1951] 1 K.B. 1.

[57] See the text, *ante*, pp. 19–20.

[58] See the text, *ante*, pp. 17–18. *Cf.* s. 11 (2). This section does not apply to expired Acts: *Wicks* v. *D.P.P.* [1947] A.C. 362.

Commencement of Act

42. This Act shall come into operation on the first day of January one thousand eight hundred and ninety.

Short title

43. This Act may be cited as the Interpretation Act, 1889.

SCHEDULE. [*Repealed*, S.L.R. Act, 1908.]

INTERPRETATION MEASURE, 1925

(15 & 16 GEO. 5, No. 1)

A Measure passed by The National Assembly of the Church of England to provide for the construction of the Constitution of the National Assembly of the Church of England referred to in the Church of England Assembly (Powers) Act, 1919, and for the construction and proof of Measures passed under that Act. [28th May 1925.]

Application of Interpretation Act, 1889, to Measures

1. The Interpretation Act, 1889,[1] except section five thereof (which relates to the meaning of "parish"), shall apply to this Measure, and to all Measures passed by the Church Assembly after this Measure, in like manner as it applies to an Act of Parliament, and as if this Measure and those Measures were Acts of Parliament.

Application of other enactments containing general rules of construction

2. Where by any enactment (other than the Interpretation Act, 1889) a meaning is assigned (unless the contrary intention appears) to any word or expression in all cases where that word or expression is used in Acts of Parliament, or in Acts of Parliament passed after a certain date, that enactment shall apply to this Measure and to all Measures passed by the Church Assembly after this Measure in like manner as it applies to an Act of Parliament, and as if this Measure and those Measures were Acts of Parliament:

Provided that in all such Measures, unless the contrary intention appears—

(*a*) The expression "England" shall include the town of Berwick-upon-Tweed, but shall not include any part of England or Wales to which the Welsh Church Act, 1914, applies; and

(*b*) Notwithstanding anything in such last-mentioned Act, the expression "Church of England" shall not include the Church in Wales.

Meaning of certain expressions in Measures

3. In this Measure, and in every Measure passed by the Church Assembly after this Measure, unless the contrary intention appears—

The expression "Act of Uniformity" means the Act of the fourteenth year of the reign of King Charles the Second, chapter four, intituled "An Act for the Uniformity of Public Prayers and Administration of Sacraments and other Rites and Ceremonies, and for establishing the Form of Making, Ordaining and Consecrating Bishops, Priests, and Deacons in the Church of England,"

[1] See *ante*, p. 347.

and includes the enactments confirmed and applied by that Act to the Book of Common Prayer.

The expression "benefice" means a benefice with cure of souls and no other, and shall comprehend all rectories and vicarages with cure of souls, perpetual curacies and endowed public chapels, parochial chapelries and chapelries or districts belonging or reputed to belong or annexed or reputed to be annexed to any church or chapel.

The expression "Bishop" in relation to the diocese of an Archbishop means Archbishop.

The expression "Chancellor of the diocese" means the judge of the consistory or commissary court of the Bishop of the diocese.

The expression "church" means any church or chapel which has been consecrated for the purpose of public worship according to the rites and ceremonies of the Church of England.

The expression "the Constitution" means the Constitution of the Church Assembly set forth in the Appendix to the Addresses presented to His Majesty by the Convocations of Canterbury and York on the tenth day of May, nineteen hundred and nineteen, and laid before both Houses of Parliament, subject to such alterations and additions as have been or may hereafter be made in the said Constitution by any Act of Parliament or Measure.

The expression "Church Assembly" means the National Assembly of the Church of England as provided for by the Constitution.

The expression "Rules for the Representation of the Laity" means the rules for the representation of the laity contained in the Constitution.

The expression "Regulation" when used of a Regulation made by the Church Assembly means a Regulation making provision in regard to matters concerning the Church of England where such provision does not require Parliamentary sanction.

The expression "House of Bishops" means the House of Bishops of the Church Assembly.

The expression "House of Clergy" means the House of Clergy of the Church Assembly.

The expression "House of Laity" means the House of Laity of the Church Assembly.

The expression "Diocesan Conference" means an assembly of Clergy and Laity constituted as a Diocesan Conference in accordance with the Regulations of the Church Assembly for the time being in operation, and containing lay representatives elected in accordance with the Constitution.

The expression "Diocesan Board of Finance" means the body constituted as such for any diocese under the provisions of any Measure, and, pending the passing of such a Measure, the body recognised by the Bishop as the board of finance of the diocese.

The expression "Parochial Church Council" means a Parochial Church Council as provided for by the Constitution.

Meaning of "Diocesan Conference" in the Constitution

4. In the Constitution, the expression "Diocesan Conference" shall include any assembly of clergy and laity recognised by the Bishop as a Diocesan Conference of the diocese, and containing lay representatives elected in accordance with the Constitution.

References to the passing of a Measure

5. In this Measure, and in every Measure passed before or after this Measure, unless the contrary intention appears, references to the passing of a Measure, when used to determine a date, shall be construed as referring to the date on which the Measures receives the Royal Assent.

Proof of Measures

6. The law relating to the proving of Acts of Parliament, and the contents thereof, shall, with the necessary modifications, apply to this Measure and to Measures passed by the Church Assembly before or after this Measure, as it applies to Acts of Parliament.

Short title

7. This Measure may be cited as the "Interpretation Measure, 1925."

STATUTORY INSTRUMENTS ACT, 1946

(9 & 10 GEO. 6, c. 36)

An Act to repeal the Rules Publication Act, 1893, and to make further provision as to the instruments by which statutory powers to make orders, rules, regulations and other subordinate legislation are exercised. [26th March, 1946]

Definition of "Statutory Instrument"

1.—(1) Where by this Act or any Act passed after the commencement of this Act[1] power to make, confirm or approve orders, rules, regulations or other subordinate legislation is conferred on His Majesty in Council or on any Minister of the Crown then, if the power is expressed—

(*a*) in the case of a power conferred on His Majesty, to be exercisable by Order in Council;

(*b*) in the case of a power conferred on a Minister of the Crown, to be exercisable by statutory instrument,

any document by which that power is exercised shall be known as a "statutory instrument" and the provisions of this Act shall apply thereto accordingly.

(2) Where by any Act passed before the commencement of this Act power to make statutory rules within the meaning of the Rules Publication Act, 1893, was conferred on any rule-making authority within the meaning of that Act, any document by which that power is exercised after the commencement of this Act shall, save as is otherwise provided by regulations made under this Act, be known as a "statutory instrument" and the provisions of this Act shall apply thereto accordingly.

Numbering, printing, publication and citation

2.—(1) Immediately after the making of any statutory instrument, it shall be sent to the King's printer of Acts of Parliament and numbered in accordance with the regulations made under this Act, and except in such cases as may be provided by any Act passed after the commencement of this Act or prescribed by regulations made under this Act,[2] copies thereof shall as soon as possible be printed and sold by the King's printer of Acts of Parliament.

(2) Any statutory instrument may, without prejudice to any other mode of citation, be cited by the number given to it in accordance with the provisions of this section, and the calendar year.

[1] January 1, 1948: S.I. 1948 No. 3.

[2] Exceptions are: local instruments, instruments otherwise made available to those affected, temporary instruments, schedules to instruments the publication of which would be unusually lengthy, and instruments the publication of which would be contrary to the public interest. And see *Simmonds* v. *Newell* [1953] 1 W.L.R. 826, and *R.* v. *Sheer Metalcraft* [1954] 1 Q.B. 586.

Supplementary provisions as to publication

3.—(1) Regulations made for the purposes of this Act shall make provision for the publication by His Majesty's Stationery Office of lists showing the date upon which every statutory instrument printed and sold by the King's printer of Acts of Parliament was first issued by that office; and in any legal proceedings a copy of any list so published purporting to bear the imprint of the King's printer shall be received in evidence as a true copy, and an entry therein shall be conclusive evidence of the date on which any statutory instrument was first issued by His Majesty's Stationery Office.

(2) In any proceedings against any person for an offence consisting of a contravention of any such statutory instrument, it shall be a defence to prove that the instrument had not been issued by His Majesty's Stationery Office at the date of the alleged contravention unless it is proved that at that date reasonable steps had been taken for the purpose of bringing the purport of the instrument to the notice of the public, or of persons likely to be affected by it, or of the person charged.[3]

(3) Save as therein otherwise expressly provided, nothing in this section shall affect any enactment or rule of law relating to the time at which any statutory instrument comes into operation.

Statutory Instruments which are required to be laid before Parliament

4.—(1) Where by this Act or any Act passed after the commencement of this Act any statutory instrument is required to be laid before Parliament[4] after being made, a copy of the instrument shall be laid before each House of Parliament and, subject as hereinafter provided, shall be so laid before the instrument comes into operation:

Provided that if it is essential that any such instrument should come into operation before copies thereof can be so laid as aforesaid, the instrument may be made so as to come into operation before it has been so laid; and where any statutory instrument comes into operation before it is laid before Parliament, notification shall forthwith be sent to the Lord Chancellor and to the Speaker of the House of Commons drawing attention to the fact that copies of the instrument have yet to be laid before Parliament and explaining why such copies were not so laid before the instrument came into operation.

(2) Every copy of any such statutory instrument sold by the King's printer of Acts of Parliament shall bear on the face thereof—

(*a*) a statement showing the date on which the statutory instrument came or will come into operation; and

(*b*) either a statement showing the date on which copies thereof were laid before Parliament or a statement that such copies are to be laid before Parliament.

(3) Where any Act passed before the date of the commencement

[3] See *Simmonds* v. *Newell*, *supra*, at p. 830, and *R.* v. *Sheer Metalcraft*, *supra*, at p. 590.

[4] See Laying of Documents before Parliament (Interpretation) Act 1948, s. 1.

of this Act contains provisions requiring that any Order in Council or other document made in exercise of any power conferred by that or any other Act be laid before Parliament after being made, any statutory instrument made in exercise of that power shall by virtue of this Act be laid before Parliament and the foregoing provisions of this section shall apply thereto accordingly in substitution for any such provisions as aforesaid contained in the Act passed before the said date.

Statutory Instruments which are subject to annulment by resolution of either House of Parliament

5.—(1) Where by this Act or any Act passed after the commencement of this Act, it is provided that any statutory instrument shall be subject to annulment in pursuance of resolution of either House of Parliament, the instrument shall be laid before Parliament after being made and the provisions of the last foregoing section shall apply thereto accordingly, and if either House, within the period of forty days beginning with the day on which a copy thereof is laid before it, resolves that an Address be presented to His Majesty praying that the instrument be annulled, no further proceedings shall be taken thereunder after the date of the resolution, and His Majesty may by Order in Council revoke the instrument, so, however, that any such resolution and revocation shall be without prejudice to the validity of anything previously done under the instrument or to the making of a new statutory instrument.

(2) Where any Act passed before the date of the commencement of this Act contains provisions requiring that any Order in Council or other document made in exercise of any power conferred by that or any other Act shall be laid before Parliament after being made and shall cease to be in force or may be annulled, as the case may be, if within a specified period either House presents an address to His Majesty or passes a resolution to that effect, then, subject to the provisions of any Order in Council made under this Act, any statutory instrument made in exercise of the said power shall by virtue of this Act be subject to annulment in pursuance of a resolution of either House of Parliament and the provisions of the last foregoing subsection shall apply thereto accordingly in substitution for any such provisions as aforesaid contained in the Act passed before the said date.[5]

Statutory Instruments of which drafts are to be laid before Parliament

6.—(1) Where by this Act or any Act passed after the commencement of this Act it is provided that a draft of any statutory instrument shall be laid before Parliament, but the Act does not prohibit the making of the instrument without the approval of Parliament, then, in the case of an Order in Council the draft shall not be submitted to His Majesty in Council, and in any other case the statutory instrument shall not be made, until after the expiration of a period of forty days beginning

[5] See s. 9 (2), *post*.

with the day on which a copy of the draft is laid before each House of Parliament, or, if such copies are laid on different days, with the later of the two days, and if within that period either House resolves that the draft be not submitted to His Majesty or that the statutory instrument be not made, as the case may be, no further proceedings shall be taken thereon, but without prejudice to the laying before Parliament of a new draft.

(2) Where any Act passed before the date of the commencement of this Act contains provisions requiring that a draft of any Order in Council or other document to be made in exercise of any power conferred by that or any other Act shall be laid before Parliament before being submitted to His Majesty, or before being made, as the case may be, and that it shall not be so submitted or made if within a specified period either House presents an address to His Majesty or passes a resolution to that effect, then, subject to the provisions of any Order in Council made under this Act, a draft of any statutory instrument made in exercise of the said power shall by virtue of this Act be laid before Parliament and the provisions of the last foregoing subsection shall apply thereto accordingly in substitution for any such provisions as aforesaid contained in the Act passed before the said date.[6]

Supplementary provisions as to ss. 4, 5 and 6

7.—(1) In reckoning for the purposes of either of the last two foregoing sections any period of forty days, no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

(2) In relation to any instrument required by any Act, whether passed before or after the commencement of this Act, to be laid before the House of Commons only, the provisions of the last three foregoing sections shall have effect as if references to that House were therein substituted for references to Parliament and for references to either House and each House thereof.

(3) The provisions of sections four and five of this Act shall not apply to any statutory instrument being an order which is subject to special Parliamentary procedure, or to any other instrument which is required to be laid before Parliament, or before the House of Commons, for any period before it comes into operation.

Regulations

8.—(1) The Treasury may, with the concurrence of the Lord Chancellor and the Speaker of the House of Commons, by statutory instrument make regulations for the purposes of this Act, and such regulations may, in particular:—

(*a*) provide for the different treatment of instruments which are of the nature of a public Act, and of those which are of the nature of a local and personal or private Act;

[6] See s. 9 (2), *post*.

(*b*) make provisions as to the numbering, printing and publication of statutory instruments including provision for postponing the numbering of any such instrument which does not take effect until it has been approved by Parliament, or by the House of Commons, until the instrument has been so approved;

(*c*) provide with respect to any classes or descriptions of statutory instrument that they shall be exempt, either altogether or to such extent as may be determined by or under the regulations, from the requirement of being printed and of being sold by the King's printer of Acts of Parliament, or from either of those requirements:

(*d*) determine the classes of cases in which the exercise of a statutory power by any rule-making authority constitutes or does not constitute the making of such a statutory rule as is referred to in subsection (2) of section one of this Act, and provide for the exclusion from that subsection of any such classes;

(*e*) provide for the determination by a person or persons nominated by the Lord Chancellor and the Speaker of the House of Commons of any question—

(i) as to the numbering, printing, or publication of any statutory instrument or class or description of such instruments:

(ii) whether or to what extent any statutory instrument or class or description of such instruments is, under the regulations, exempt from any such requirement as is mentioned in paragraph (*c*) of this subsection:

(iii) whether any statutory instrument or class or description of such instruments is in the nature of a public Act or of a local and personal or private Act:

(iv) whether the exercise of any power conferred by an Act passed before the commencement of this Act is or is not the exercise of a power to make a statutory rule.

(2) Every statutory instrument made under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Powers to extend Act to other orders, etc., and to modify application of certain provisions thereof

9.—(1) If with respect to any power to confirm or approve orders, rules, regulations or other subordinate legislation conferred on a Minister of the Crown by any Act passed before the commencement of this Act, it appears to His Majesty in Council that, notwithstanding that the exercise of that power did not constitute the making of a statutory rule within the meaning of the Rules Publication Act, 1893, it is expedient that the provisions of this Act should apply to documents by which that power is exercised, His Majesty may by Order in Council direct that any document by which that power is exercised after such date as may

be specified in the Order shall be known as a "statutory instrument" and the provisions of this Act shall apply thereto accordingly.

(2) If with respect to any Act passed before the commencement of this Act it appears to His Majesty in Council that by reason of the exceptional nature of any provisions of that Act the application of subsection (2) of section five or subsection (2) of section six of this Act to statutory instruments made under any provisions of that Act would be inexpedient, His Majesty may by Order in Council direct that those subsections shall not apply to statutory instruments made under those provisions, or shall apply thereto subject to such modifications as may be specified in the Order.

(3) A draft of any Order in Council proposed to be made under this section shall be laid before Parliament.

Commencement of Act

10.—(1) This Act shall come into operation on such date as His Majesty may by Order in Council appoint:[6a]

Provided that, without prejudice to the provisions of section thirty-seven of the Interpretation Act, 1889, the last foregoing section and, in relation to any Order in Council made thereunder, the provisions of sections six and seven of this Act shall come into operation on the passing of this Act.

(2) The Order in Council made under this section shall be laid before Parliament after being made.

Interpretation

11.—(1) For the purposes of this Act, any power to make, confirm or approve orders, rules, regulations or other subordinate legislation conferred on the Treasury, the Board of Trade or any other government department shall be deemed to be conferred on the Minister of the Crown in charge of that department.[7]

(2) If any question arises whether any board, commissioners or other body on whom any such power as aforesaid is conferred are a government department within the meaning of this section, or what Minister of the Crown is in charge of them, that question shall be referred to and determined by the Treasury.

Repeal of 56 & 57 Vict. c. 66 and re-enactment of s. 3 (3) thereof

12.—(1) The Rules Publication Act, 1893, is hereby repealed.

(2) The publication in the London, Edinburgh or Belfast Gazette of a notice stating that a statutory instrument has been made, and specifying the place where copies thereof may be purchased, shall be sufficient compliance with the provisions of any enactment, whether passed before or after the commencement of this Act, requiring that instrument to be published or notified in that Gazette.

[6a] January 1, 1948: S.I. 1948, No. 3.
[7] As amended by S.I. 1964, No. 488.

Short title and extent

13.—(1) This Act may be cited as the Statutory Instruments Act, 1946.

(2) This Act shall supply to any statutory instrument made by His Majesty in Council or by any Minister of the Crown (not being a rule-making authority within the meaning of the Rules Publication Act (Northern Ireland), 1925[8]) in so far as it extends to Northern Ireland, but except as aforesaid this Act shall not extend to Northern Ireland.

[8] Repealed, Statutory Rules Act (N.I.) 1958, s. 8; see now that Act.

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