CHAPTER 1

PRELIMINARY MATTERS

1. INTRODUCTORY

A STATUTE has been defined in previous editions of this work simply as "the will of the legislature,"[1] and this definition, it is submitted, remains sufficient provided that it is understood that the will of the legislature must be expressed either by the agreement of its three parts (Queen, Lords and Commons) or by the agreement of the Queen and Commons in accordance with the Parliament Acts 1911 and 1949.

Granted that a document which is presented to it as a statute is an authentic expression of the legislative will,[2] the function of a court is to interpret that document "according to the intent of them that made it."[3] From that function the court may not resile: however ambiguous or difficult of application the words of an Act of Parliament may be, the court is bound to endeavour to place some meaning upon them.[4] In so doing it gives effect, as the judges have repeatedly declared, to the intention of Parliament,[5] but it may only elicit that intention from the actual words of the statute.[6] "If," said Lord Greene M.R., "there is one rule of construction for statutes and other documents, it is that you must not imply anything in them which is inconsistent with the words expressly used."[7] If language is clear and explicit, the court must give effect to it, "for in that case the words of the statute speak the intention of the Legislature."[8] And in so doing it must bear in mind that its function is *jus dicere*, not *jus*

[1] *Maxwell*, 11th ed., p. 1.

[2] For cases in which the judges have had to adjudicate upon the authenticity as statutes of old documents, see *Merttens* v. *Hill* [1901] 1 Ch. 842; *Swaffer* v. *Mulcahy* [1934] 1 K.B. 608. Any defect in the procedure by which a modern "Act" is passed is more likely to be cured by immediate legislative action, rather than to be canvassed in the courts: for examples, see May, *Parliamentary Practice*, 17th ed., pp. 597–600.

[3] Coke, 4 *Institutes* 330.

[4] See *Fawcett Properties, Ltd.* v. *Buckingham County Council* [1961] A.C. 636; *J. & C. Moores, Ltd.* v. *Commissioners of Customs & Excise* [1964] 1 W.L.R. 817; *I.R.C.* v. *Bates* [1968] A.C. 483; *I.R.C.* v. *Park Investments, Ltd.* [1966] Ch. 701.

[5] See, *e.g.*, *Sussex Peerage Claim* (1844) 11 Cl. & F. 85, *per* Tindal C.J.

[6] Even if the court is aware that it is thereby defeating the plain "intention" of Parliament: see *Bradbury* v. *Enfield London Borough Council* [1967] 1 W.L.R. 1311, *per* Diplock L.J.

[7] *Re A Debtor* (*No. 335 of 1947*) [1948] 2 All E.R. 533, at p. 536.

[8] *Warburton* v. *Loveland* (1832) 2 D. & Cl. 480, *per* Tindal C.J. at p. 489.

dare: the words of a statute must not be overruled by the judges, but reform of the law must be left in the hands of Parliament.[9]

This work attempts to set out the main principles which the judges apply in carrying out their task of construing statutes. After some preliminary matters have been disposed of in this chapter, the general principles of interpretation will be considered in the next, and the remainder of the work consists of a discussion (which proceeds largely by way of examples) of the application of those principles and of other rules and presumptions to the interpretation of statutes.[10]

Numbering and citation of statutes

Acts of Parliament are generally cited by their short title,[11] but more correctly by the year of their passing and their "chapter number" as well. As soon as an Act has received the Royal Assent, a print of it is prepared in the Public Bill Office of the House of Lords, where "the date on which the Royal Assent was signified is inserted after the title, and the Act is given a chapter number. Acts are numbered serially throughout each calendar year in the order in which they receive the Royal Assent. Public General Acts form one series and are numbered in large Arabic characters; Provisional Order Confirmation Acts and Local Acts form a second series and are numbered in small Roman characters; and Personal Acts, if printed, form a third series and are numbered in small italicised Arabic figures."[12]

Statutes passed before 1963, however, were not numbered according to the calendar year, but according to the session of Parliament in which they received the Royal Assent, the session being indicated by its regnal year or years. So that, while the Universities and College Estates Act 1964 is numbered simply as "1964, c. 51", the statute of the same name passed in 1925 is "15 & 16 Geo. 5, c. 24."

Public and private Acts

Modern statutes[13] are either public or private, a public Act (which may be either general, or local or personal, according to the extent of

[9] See *Cheney* v. *Conn* [1968] 1 W.L.R. 242, also *Eastwood* v. *Herrod* [1968] 2 Q.B. 932.
[10] Most of which apply also to subordinate legislation.
[11] As to long and short titles, see *post*, pp. 3–6.
[12] May, *Parliamentary Practice*, 17th ed., p. 597; Acts of Parliament Numbering and Citation Act 1962.
[13] For the classification of old statutes, see *Craies on Statute Law*, 6th ed., pp. 56–58. The distinction mentioned here is not the same as that which the Standing Orders of the Houses of Parliament make between public and private Bills, as to which see *Craies*, *op. cit.*, p. 58, and May, *op. cit.*, pp. 490–491.

its application) being one which relates to some matter of public policy, while a private Act relates to the affairs of some individual or body in a matter which is not of public concern.[14] The importance of the distinction is that public Acts do not have to be formally proved in court. With private Acts, if they have been printed for sale, proof is by production of a copy printed under royal authority,[15] while if they have not been printed they must be "proved by an exemplification, transcript, or an examined or certified copy of the original from the Record Office or the Clerk of the Parliaments."[16] By section 9 of the Interpretation Act 1889: "Every Act passed after the year one thousand eight hundred and fifty . . . shall be a public Act and shall be judicially noticed as such, unless the contrary is expressly provided by the Act."

Traditionally, private Acts have been construed in a more restrictive spirit than public statutes: this will be discussed later in this work.[17]

2. The Different Parts of a Statute

Besides its ordinary sections, a statute has a number of other parts. We must now enumerate some of these and consider what (if any) effect they may have on the interpretation of those parts of the statute which unequivocally set out to make law.

Title

Nearly all modern Acts have both a long and a short title.

The *long title* is set out at the head of the statute and gives a fairly full description of the general purpose of the Act: for instance, "An Act to make fresh provision with respect to investment by trustees and persons having the investment powers of trustees, and by local authorities, and for purposes connected therewith" (Trustee Investments Act 1961), or "An Act to modify the law of England and Wales relating to the avoidance of future interests in property on grounds of remoteness and governing accumulations of income from property" (Perpetuities and Accumulations Act 1964).

Although for several centuries the title of a statute has been attached to it by Parliament, until quite recently it was not

[14] This is an attempt to reduce to one sentence the complex problem of classification of statutes for a full discussion of which see *Craies, op. cit.*, pp. 557–565.
[15] Evidence Act 1845, s. 3; Documentary Evidence Act 1882, s. 2.
[16] *Craies on Statute Law*, 6th ed., p. 40.
[17] *Post*, pp. 262–263.

considered a part of the statute and was on this ground held to be excluded from consideration in construing the statute. In 1848, Pollock C. B. said: "The title . . . although it has occasionally been referred to as aiding in the construction of an act . . . is certainly no part of the law, and, in strictness, ought not to be taken into consideration at all."[18] But the modern view, which seems to have emerged gradually during the nineteenth century, is different, and it is now settled law that the title of the statute is an important part of the Act and may be referred to for the purpose of ascertaining its general scope,[19] and of throwing light upon its construction.[20] "I read the title advisedly," said Lindley M.R. in 1899, "because now and for some years past the title of an Act of Parliament has been part of the Act. In old days it used not to be so, and in the old law books we were told not so to regard it; but now the title is an important part of the Act, and is so treated in both Houses of Parliament."[21]

There are several recent examples of the use of the long title as an aid to construction.

In *Fisher* v. *Raven*,[22] the House of Lords held that the obtaining of credit referred to in section 13 (1) of the Debtors Act 1869 was the obtaining of credit in respect of the payment or repayment of money only, and that the receipt of money on a promise to render services or deliver goods in the future was not such an obtaining of credit. Lord Dilhorne L.C. said (at pp. 232, 233) that the long title of the Act, "An Act for the Abolition of Imprisonment for Debt, for the punishment of fraudulent debtors, and for other purposes" supported the view "that the Act was only intended to deal with those who owe money, debtors in the ordinary sense of the word, and the view that 'obtained credit' in section 13 means, and only means, credit for the payment of money."

By section 2 (1) of the Matrimonial Causes Act 1963, "adultery . . . shall not be deemed to have been condoned by reason only of a

[18] *Salkeld* v. *Johnson* (1848) 2 Ex. 256. And see *Powlter's Case* (1610) 11 Rep. 29a, *per* Sir Edward Coke; *Att-Gen.* v. *Weymouth* (1743) Ambl. 20 *per* Lord Hardwicke L.C.; *R.* v. *Wilcock* (1845) 7 Q.B. 317, *per* Lord Denman C.J.; and *Claydon* v. *Green* (1868) L.R. 3 C.P. 511, *per* Willes J.

[19] *Jones* v. *Shervington* [1908] 2 K.B. 539, *per* Sutton J.; *Jeremiah Ambler & Sons, Ltd.* v. *Bradford Corporation* [1902] 2 Ch. 585, *per* Romer L.J.

[20] *Fenton* v. *J. Thorley & Co., Ltd.* [1903] A.C. 443, *per* Lord Macnaghten; *L.C.C.* v. *Bermondsey Bioscope Co., Ltd.* [1911] 1 K.B. 445, *per* Lord Alverstone C.J.; *Watkinson* v. *Hollington* [1944] K.B. 16, *per* Scott L.J.

[21] *Fielding* v. *Morley Corporation* [1899] 1 Ch. 1, at pp. 3, 4.

[22] [1964] A.C. 210.

continuation or resumption of cohabitation between the parties for one period not exceeding three months . . . if it is proved that cohabitation was continued or resumed . . . with a view to effecting a reconciliation." Did this cover cases where the continuation or resumption was in consequence of reconciliation, or only those in which the continuation or resumption was with a view to reconciliation? Sir Jocelyn Simon P. referred to the long title, which showed that the purpose of the Act was to facilitate reconciliation. If the first construction mentioned were adopted, the Act "would be withdrawing the sanction and support of the law from reconciliation": therefore, the second construction was correct and the statute did not create a three-months period during which a wronged spouse who had been fully reconciled to the wrongdoer could recall the decision.[23]

Harman L. J. began a discussion of Part 1 of the Landlord and Tenant Act 1954 by saying: "It is to be observed that the long title starts in these words: 'An Act to provide security of tenure for occupying tenants under certain leases of residential property at low rents.' In other words, it was intended to help people who had residences at low rents of leasehold property and, as is well known, was intended to give some security of tenure to those who held under long leases."[24]

Regulations may be construed in the light of the long title of the Act under which they were made.[25]

But the long title of an Act is looked at only to help resolve an ambiguity, and "may not be looked at to modify the interpretation of plain language."[26] In *Ward* v. *Holman*[27] a person who had been shouting abuse at another on the highway was charged with insulting behaviour under section 5 of the Public Order Act 1936. It was argued that section 5 was limited in scope to political meetings and the like, and did not extend to the case of two neighbours quarrelling on the road,[28] for by the long title the Act was "to prohibit the wearing of uniforms in connexion with political objects and the

[23] *Brown* v. *Brown* [1967] P. 105, at p. 110.
[24] *Haines* v. *Herbert* [1963] 1 W.L.R. 1401, at p. 1404.
[25] *Jacks* v. *Wilkie* [1961] P. 135. Other recent cases in which the long title has been taken into account in construing a statute are *Re Harpur's Will Trusts* [1962] Ch. 78; *Crittenden (Warren Park), Ltd.* v. *Surrey County Council* [1966] 1 W.L.R. 25; *Re Holt's Settlement* [1969] 1 Ch. 100.
[26] *Re Wykes, decd.* [1961] Ch. 229, *per* Buckley J. at p. 242.
[27] [1964] 2 Q.B. 580.
[28] See *Wilson* v. *Skeock* [1949] W.N. 203, *per* Lord Goddard C.J.

maintenance by private persons of associations of military or similar character; and to make further provision for the preservation of public order on the occasion of public processions and meetings and in public places." Lord Parker C.J. refused to accept this argument, and gave a literal interpretation to the wide and "completely unambiguous" words of section 5.[29]

The *short title* of a modern statute is generally found in a section near the end of the Act: by section 15 (1) of the statute numbered 1964, c. 55, for instance, "this Act may be cited as the Perpetuities and Accumulations Act 1964." The purpose of having a short title is simply ease of reference, and many old statutes have had short titles given to them by the Short Titles Act 1896 and the Statute Law Revision Act 1948.

On balance, the authorities suggest that the short title may not be taken into account in construing a statute. Though it stands in the body of the statute, it is, said Lord Moulton, "a title given to the Act solely for the purpose of facility of reference. If I may use the phrase, it is a statutory nickname to obviate the necessity of always referring to the Act under its full and descriptive title. . . . Its object is identification and not description."[30] Therefore, the fact that the statute which Lord Moulton was considering had, for its short title, the description "The Trade Disputes Act 1906" could not limit the immunity from actions in tort which section 4 (1) conferred on trade unions to torts connected with trade disputes. And, in considering whether the Vexatious Actions Act 1896 applied to criminal proceedings, Buckley L.J. set wholly out of consideration the fact that the word "actions" appeared in the short title. "As to title," he said, "the matter is governed by the title placed at the head of the Act, and that is 'An Act to prevent Abuse of the Process of the High Court or other Courts by the Institution of Vexatious Legal Proceedings.'"[31]

Preamble

Many old statutes have preambles in which the main objects of the Act are set out, and these are legitimate aids in construing the

[29] See also *Chandler* v. *D.P.P.* [1964] A.C. 763.

[30] *Vacher & Sons, Ltd.* v. *London Society of Compositors* [1913] A.C. 107, at pp. 128, 129. See also *National Telephone Co., Ltd.* v. *Postmaster-General* [1913] A.C. 546, *per* Lord Moulton.

[31] *Re Boaler* [1915] 1 K.B. 21. *Contra, Att.-Gen.* v. *Margate Pier and Harbour Co.* [1900] 1 Ch. 749, *per* Kekewich J., holding that a company incorporated by statute for the purpose of earning profits as well as that of performing duties of public utility was not entitled to the benefit of the Public Authorities Protection Act 1893.

enacting parts.[32] But considerably less space will be devoted here to the use of the preamble in construction than in previous editions of this work, for two reasons. First, hardly any modern statutes have preambles, so that the importance of the preamble as an aid to construction is constantly declining.[33] Secondly, the office of the preamble in interpretation has been authoritatively stated by the House of Lords in *Att.-Gen.* v. *H.R.H. Prince Ernest Augustus of Hanover*.[34]

In that case, Lord Normand said (at pp. 467, 468): "When there is a preamble it is generally in its recitals that the mischief to be remedied and the scope of the Act are described. It is therefore clearly permissible to have recourse to it as an aid to construing the enacting provisions. The preamble is not, however, of the same weight as an aid to construction of a section of the Act as are other relevant enacting words to be found elsewhere in the Act or even in related Acts. There may be no exact correspondence between preamble and enactment, and the enactment may go beyond, or it may fall short of the indications that may be gathered from the preamble. Again, the preamble cannot be of much or any assistance in construing provisions which embody qualifications or exceptions from the operation of the general purpose of the Act. It is only when it conveys a clear and definite meaning in comparison with relatively obscure or indefinite enacting words that the preamble may legitimately prevail. The courts are concerned with the practical business of deciding a *lis*, and when the plaintiff puts forward one construction of an enactment and the defendant another, it is the court's business in any case of some difficulty, after informing itself of what I have called the legal and factual context including the preamble, to consider in the light of this knowledge whether the enacting words admit of both the rival constructions put forward. If they admit of only one construction, that construction will receive effect even if it is inconsistent with the preamble, but if the enacting words are capable of either of the constructions offered by the parties, the construction which fits the preamble may be preferred."

[32] *Sussex Peerage Claim* (1844) 11 Cl. & F. 85; *Turquand* v. *Board of Trade* (1886) 11 App. Cas. 286, *per* Lord Selborne L.C.; *Powell* v. *Kempton Park Racecourse Co., Ltd.* [1899] A.C. 143.

[33] "I . . . regret that the practice of inserting preambles in Acts of Parliament has been discontinued as they were often of great assistance to the courts in construing the Acts"; *L.C.C.* v. *Bermondsey Bioscope Co., Ltd.* [1911] 1 K.B. 445, *per* Lord Alverstone C.J. at p. 451. An exception is the Matrimonial Causes Act 1937.

[34] [1957] A.C. 436.

Some examples will now be given of the working of these propositions in practice.

Eton College v. *Minister of Agriculture*[35] was a case in which the enacting words were unambiguous and so could not be controlled by the preamble. Section 3 of the Ecclesiastical Leases Act 1571 made void certain leases made "by any master and fellows of any college, dean and chapter of any cathedral or collegiate church, master or guardian of any hospital, parson, vicar, or any other having any spiritual or ecclesiastical living." The question was whether the section was limited to church property. Its preamble indicated that it was intended to be so restricted, "for that long and unreasonable leases made by colleges, dean and chapters, parsons, vicars and other having spiritual promotions be the chiefest causes of the dilapidations and the decay of all spiritual livings and hospitality and the utter impoverishing of all successors incumbents in the same." But Wilberforce J. held that, as the words of the section were clear, the preamble could have no effect, and the enactment therefore applied to Eton College.

In *Prince Ernest's Case*,[36] the enacting words were reasonably capable of one construction and not reasonably capable of another, and so could not be affected by a preamble which was itself vague and ambiguous. 4 & 5 Anne, c. 16 enacted "That the said Princess Sophia, Electress and Duchess Dowager of Hanover, and the issue of her body and all persons lineally descending from her, born or hereafter to be born" should be deemed "natural born subjects of this Kingdom." It was held that this should be given its wide and literal meaning, applying to all descendants of the Princess, and not only to those born in her lifetime. The preamble, which stated as an object of the Act, "that they [the Princess and her issue] in Your Majesty's life time (whom God long preserve) should be naturalised," could not control the enacting words.

But in the following cases, the preamble has been of relevance.

Section 18 of the Quarter Sessions Act 1849, which enacted that "any order" of quarter sessions might be removed to the Queen's Bench for enforcement, was confined to orders in appeal cases by the preamble which, in reciting that it was expedient that the law should be made uniform in cases of appeal, showed the limited scope of the Act.[37]

[35] [1964] Ch. 274.
[36] [1957] A.C. 436.
[37] *R.* v. *Bateman* (1858) 27 L.J.M.C. 95.

The enactment of the Wills Act 1751 that beneficiaries who attested "any will" should be good witnesses, but that the gifts to them should be void, was held to be restricted to wills of land. The enacting words were elucidated by the preamble which referred to doubts having arisen as to who were to be accounted legal witnesses to wills of land under the provisions of the Statute of Frauds.[38]

Dealing with the Truck Act 1831, Lord Russell of Killowen said: "For myself I feel at the outset pressed by the fact that the Act, by its title and preamble, declares that its object is to effect something which it says is necessary, namely, to prohibit the payment in certain trades of wages in goods, or otherwise than in current coin of the realm; and it being the avowed object of the Act to effect that necessary reform, it would in my opinion require words plain, and incapable of any other construction, to justify the view that by section 23 the very evil which the Act says it is necessary to prohibit is permitted to continue even to a comparatively limited extent."[39]

And Lord Parker C.J., in considering the mischief aimed at section 12 of the Criminal Procedure Act 1851, referred to the preamble which recited that "offenders frequently escape conviction on their trials by reason of the technical strictness of criminal proceedings in matters not material to the merits of the case."[40]

According to A. L. Smith L.J., a preamble which has been repealed is still relevant to the construction of the unrepealed operative parts of the Act.[41]

Facts recited in a preamble are admissible in evidence as prima facie proof of their truth.[42]

Marginal notes

The notes often found printed at the side of sections in an Act, which purport to summarise the effect of the sections, have sometimes been used as an aid to construction.[43] But the weight of the authorities is to the effect that they are not parts of the statute and

[38] *Emanuel* v. *Constable* (1827) 3 Russ. 436.
[39] *Pratt* v. *Cook, Son & Co. (St. Paul's), Ltd.* [1940] A.C. 437, at p. 448.
[40] *R.* v. *Males* [1962] 2 Q.B. 500, at p. 505.
[41] *Powell* v. *Kempton Park Racecourse Co.* [1897] 2 Q.B. 242: the preamble to the Betting Act 1853 had been repealed by s. 1 of the Statute Law Revision Act 1892.
[42] *R.* v. *Sutton* (1816) 4 M. & S. 532; *Att.-Gen.* v. *Foundling Hospital* [1914] 2 Ch. 154. And see *Craies on Statute Law*, 6th ed., pp. 42–44.
[43] *Nicholson* v. *Fields* (1862) 31 L.J. Ex. 233; *Sheffield Waterworks Co.* v. *Bennett* (1872) L.R. 7 Ex. 409; *Bushell* v. *Hammond* [1904] 2 K.B. 563; *Stephens* v. *Cuckfield R.D.C.* [1960] 2 Q.B. 373.

so should not be considered,[44] for they are "inserted not by Parliament nor under the authority of Parliament, but by irresponsible persons."[45]

This latter view was confirmed by the House of Lords in *Chandler* v. *D.P.P.*,[46] where the side-note ("Penalties for spying") to section 1 of the Official Secrets Act 1911 was held not to restrict the wide words of the section, which made it an offence for any person for any purpose prejudicial to the safety or the interests of the State to approach or be in the neighbourhood of or enter any prohibited place. The offence could, therefore, be committed by demonstrators who had no intention of spying. Lord Reid said (at pp. 789, 790): "In my view side notes cannot be used as an aid to construction. They are mere catchwords and I have never heard of it being supposed in recent times that an amendment to alter a side note could be proposed in either House of Parliament. Side notes in the original Bill are inserted by the draftsman. During the passage of the Bill through its various stages amendments to it or other reasons may make it desirable to alter a side note. In that event I have reason to believe that alteration is made by the appropriate officer of the House—no doubt in consultation with the draftsman. So side notes cannot be said to be enacted in the same sense as the long title or any part of the body of the Act."

Sometimes a marginal note will in any case be inaccurate, and it will then be "on its own merits of no assistance whatever."[47]

Previously the courts appear to have been less unwilling to use marginal notes in construing a local or personal Act than in construing a public general statute,[48] but whether this attitude will survive *Chandler* v. *D.P.P.*[49] remains to be seen.

[44] *Sutton* v. *Sutton* (1883) 22 Ch.D. 511, *per* Jessel M.R.; *Wilkes* v. *Goodwin* [1923] 2 K.B. 86, *per* Scrutton L.J.; *Nixon* v. *Att.-Gen.* [1930] 1 Ch. 566; *Longdon-Griffiths* v. *Smith* [1951] 1 K.B. 295; *Re Cohen, A Bankrupt* [1961] Ch. 246; *Parsons* v. *B. N. M. Laboratories, Ltd.* [1964] 1 Q.B. 95; *Uddin* v. *Associated Portland Cement Manufacturers, Ltd.* [1965] 2 Q.B. 582.

[45] *Re Woking Urban Council (Basingstoke Canal) Act 1911* [1914] 1 Ch. 300, *per* Phillimore L.J. at p. 322.

[46] [1964] A.C. 763.

[47] *Britt* v. *Buckinghamshire County Council* [1964] 1 Q.B. 77, *per* Pearson L.J. at pp. 93, 94.

[48] *Re Woking Urban Council (Basingstoke Canal) Act 1911* [1914] 1 Ch. 300; *Dormer* v. *Newcastle-upon-Tyne Corporation* [1940] 2 K.B. 204. In the latter case s. 65 of the Newcastle-upon-Tyne Improvement Act 1865 provided that nothing in the Act should authorise the corporation to commit a nuisance. This was one of a group of sections commencing with s. 62, which had a marginal note, "Sewers—Sanitary arrangements." It was held that s. 65 did not restrict the statutory powers of the Corporation in general, but only its powers under the group of sections dealing with sewers and sanitary arrangements.

[49] [1964] A.C. 763.

Headings

The headings prefixed to sections or sets of sections in some modern statutes are regarded as preambles to those sections.[50] They cannot control the plain words of the statute,[51] but they may explain ambiguous words,[52] a rule which, whatever the assistance which it may render in construction, cannot stand logically with the exclusion of marginal notes, for headings like marginal notes are—as Avory J. pointed out in *R.* v. *Hare*[53]—"not voted on or passed by Parliament, but are inserted after the Bill has become law."

In *Fisher* v. *Raven*,[54] Lord Dilhorne said that it should be noted that section 13 of the Debtors Act 1869 was included in Part 2 of the Act which was headed "Punishment of Fraudulent Debtors."

In holding that, on the true construction of section 217 (1) of the Road Traffic Act 1960 as amended (allowing oneself to be carried in a motor vehicle which had been taken and driven away without the owner's consent), an offence was committed by passengers in a vehicle known to have been stolen as well as in one known to have been taken without *animus furandi*, Winn J. said at p. 358 that it was "material to note" that section 217 was the first section of Part 7 of the Act which was headed "Miscellaneous and General," and was sub-headed "Penalisation of Taking Motor Vehicles Without Authority."[55]

But "while the court is entitled to look at the headings in an Act of Parliament to resolve any doubt they may have as to ambiguous words, the law is quite clear that you cannot use such headings to give a different effect to clear words in the section, where there cannot be any doubt as to their ordinary meaning."[56] Section 164 of the Companies Act 1948 empowered the Board of Trade to appoint an inspector to investigate the affairs of a company, while under section 165 (*a*) (i) the Board "shall appoint one or more competent inspectors

[50] This statement was approved by Farwell L.J. in *Fletcher* v. *Birkenhead Corporation* [1907] 1 K.B. 205.

[51] *Re Lord Penryhn's Settlement Trusts* [1923] 1 Ch. 143, *per* P. O. Lawrence J.

[52] *Union S.S. Co. of New Zealand, Ltd.* v. *Melbourne Harbour Trust Commissioners* (1884) 9 App. Cas. 365; *Inglis* v. *Robertson* [1898] A.C. 616; *Martins* v. *Fowler* [1926] A.C. 746.

[53] [1934] 1 K.B. 354, at p. 355.

[54] [1964] A.C. 210, *ante*, p. 4.

[55] *Tolley* v. *Giddings* [1964] 2 Q.B. 354. And see *Re Pilkington's Will Trusts* [1964] A.C. 612; *Bulmer* v. *I.R.C.* [1967] Ch. 145; *D.P.P.* v. *Ottewell* [1968] 3 W.L.R. 621.

[56] *R.* v. *Surrey* (*North-Eastern Area*) *Assessment Committee* [1948] 1 K.B. 29, *per* Lord Goddard C.J. at pp. 32, 33.

to investigate the affairs of a company" if a special resolution of the company was passed or the court made an order declaring that the affairs of the company ought to be investigated. It was argued that "affairs" were limited to affairs of the company under its own management, and did not extend to any kind of management by a receiver. These sections appeared in Part 4 of the Act which was headed "Management and Administration," while the Part of the Act dealing specifically with situations arising out of the appointment of a receiver, Part 6, was headed "Receivers and Managers." As a matter of construction it was to be expected that the Parts dealt with unassociated matters, and so any kind of management by a receiver should be deemed not to be management for the purposes of Part 4. But Winn J. said: "Whilst fully accepting that it is legitimate and indeed proper to have recourse to the sub-headings in a statute to find guidance for the construction of ambiguous terms, I am unable myself to think that there is any ambiguity about the expression which falls to be construed such as would lead to the adoption of that process of construction in this case."[57] Nevertheless, the heading to a group of sections may, to some extent, have the effect of divorcing sections from each other, and so of modifying the principle that an Act is to be construed as a whole.[58]

A heading to one group of sections cannot be used to interpret another group of sections.[59]

Schedules

Schedules to statutes are as much part of an Act as any other, and may be used in construing provisions in the body of the Act.[60] Similarly, provisions in a schedule will be construed in the light of what is enacted in the sections.[61]

In *Flower Freight Co., Ltd.* v. *Hammond*,[62] the court had to consider the definition of "goods vehicle" as a motor vehicle "constructed or adapted for use for the carriage of goods": Road Traffic Act 1960, s. 191(1). "In a sense," said Lord Parker C.J. (at p. 282) "every

[57] *R.* v. *Board of Trade, ex p. St. Martins Preserving Co., Ltd.* [1965] 1 Q.B. 603, at p. 619.
[58] *Britt* v. *Buckinghamshire County Council* [1964] 1 Q.B. 77.
[59] *Shelley* v. *L.C.C.* [1949] A.C. 56, *per* Lord Uthwatt.
[60] *R.* v. *Legal Aid Committee No. 1 (London) Legal Aid Area. ex p. Rondel* [1967] 2 Q.B. 482; *cf. Lloyd* v. *Blassey* [1969] 2 W.L.R. 310, *per* Salman J. at p. 316.
[61] *I.R.C.* v. *Littlewoods Mail Order Stores, Ltd.* [1963] A.C. 135.
[62] [1963] 1 Q.B. 275.

passenger vehicle fitted with a luggage rack on the roof or at the rear, or, indeed, with a luggage boot, is constructed so that it can carry goods, since 'goods' are defined as 'goods or burden of any description.' Clearly, however, Parliament did not intend such vehicles to be goods vehicles. Schedule I to the Act distinguishes between passenger vehicles and goods vehicles. Passenger vehicles are classified as 'vehicles constructed solely for the carriage of passengers and their effects'—see paragraph 1 of Schedule I. Goods vehicles are classified as 'vehicles constructed or adapted for use for the conveyance of goods or burden of any description'—see paragraph 2 of Schedule I. No doubt the words 'goods or burden of any description' are very wide and but for their context would cover passengers' effects. Since Parliament, however, clearly did not intend vehicles constructed solely for the carriage of passengers and their effects to be goods vehicles, passengers' effects must by necessary implication be excluded from the meaning of the words 'goods or burden of any description.'"

Within a schedule, ambiguous words may be construed by reference to the cross-headings.[63]

Punctuation

Punctuation is disregarded in the construction of statutes, since there was generally no punctuation in old statutes as engrossed on the Parliament Roll, and not all of the modern vellum prints of statutes are punctuated.[64] "In an Act of Parliament there are no such things as brackets any more than there are such things as stops."[65] "Before 1850 there was no punctuation in the manuscript copy of an Act which received the Royal Assent, and it does not appear that the printers had any statutory authority to insert punctuation thereafter. So even if punctuation in more modern Acts can be looked at (which is very doubtful), I do not think that one can have any regard to punctuation in older Acts."[66] In the same way, the manner in which a statute has been printed, the indentation of the paragraphs and so on, is irrelevant.[67]

The irrelevance of punctuation has two consequences.

[63] *Qualter, Hall & Co., Ltd.* v. *Board of Trade* [1962] Ch. 273.
[64] *Craies on Statute Law*, 6th ed., p. 197.
[65] *Duke of Devonshire* v. *O'Connor* (1890) 24 Q.B.D. 468, *per* Lord Esher M.R. at p. 478. *Cf. Barrow* v. *Wadkin* (1857) 24 Beav. 327.
[66] *I.R.C.* v. *Hinchy* [1960] A.C. 748, *per* Lord Reid at p. 765. A different view is taken in Scotland: see *Alexander* v. *Mackenzie*, 1947 S.C.(J.) 155.
[67] *Re Allsop* [1914] 1 Ch. 1.

First, a provision in a statute may be read as though the punctuation which appears on the face of the Act were omitted. By section 113 (4) of the Housing Act 1957, "the local authority shall from time to time review rents and make such changes, either of rents generally or of particular rents, and rebates (if any) as circumstances may require." This is to be read as though there were no comma after "rents" where that word occurs for the third time. "The obligation," said Harman L.J., "is not to make rebates, as grammatically it should be if the comma were there, but to make changes of rebates (if any)."[68]

Secondly, where it is necessary to give a provision a particular construction which is at variance with the way in which the section is punctuated, it may be read as though there were in fact punctuation where none appears on the face of the Act. Section 10 of the Fugitive Offenders Act 1881 conferred on a superior court power to discharge a fugitive where "by reason of the trivial nature of the case, or by reason of the application for the return of a fugitive not being made in good faith in the interests of justice or otherwise . . . it would be unjust or oppressive or too severe a punishment to return" him. It was held that, apart from cases of a trivial nature, the court's discretion to discharge a fugitive could be exercised in any case in which the return of the man would be unjust or oppressive or too severe, and was not confined to cases in which the application appeared not to have been made in good faith. In other words, the section was given a wide construction, as though a comma had been inserted before "or otherwise."[69]

3. Commencement, Repeal and Revival of Legislation

Commencement

Statutes take effect without promulgation or other proclamation, and as soon as Parliament has concluded anything, the law presumes that every person has notice of it at once.[70]

The effect of section 38 (2) of the Interpretation Act 1889 is that where an Act is expressed to come into operation on a particular day, it is to be construed as coming into operation at the first moment of that day. Where a British statute is effective in different countries and a date is named in the Act on which it is to come into effect, it is operative at the first moment of the date named in each country,

[68] *Luby* v. *Newcastle-under-Lyme Corporation* [1965] 1 Q.B. 214, at p. 229.
[69] *Re Naranjan Singh* [1962] 1 Q.B. 211.
[70] *R.* v. *Bailey* (1800) Russ. & R. 1.

notwithstanding that (the place being East of Greenwich) it is still the day before in the United Kingdom.[71]

By a legal fiction according to which the whole of a session of Parliament was regarded as having being held on its first day, statutes were, in the absence of provision to the contrary, construed as taking effect from the first day of the session. This meant that if a statute, passed on the last day of the session, made a previously innocent act criminal or even capital, all who had been doing it during the session, while it was still innocent, would be liable to suffer the punishment imposed.[72] The rule was abolished by the Acts of Parliament (Commencement) Act 1793, under which the Clerk of the Parliaments is to indorse on every Act, immediately after its title, the date of its passing and receiving the Royal Assent. This indorsement is part of the Act and is the date of its commencement when no other time is provided.[73] The words "after the passing of this Act" refer to the date so indorsed, and not the date of commencement, where that date differs from the date of passing.[74]

Where an Act is not to come into effect immediately after it is passed and it confers power to make appointments, issue instruments, give notices, prescribe forms or do any other thing for the purposes of the Act, that power may, in the absence of a contrary intention, "be exercised at any time after the passing of the Act, so far as may be necessary or expedient for the purpose of bringing the Act into operation at the date of the commencement thereof, subject to this restriction, that any instrument made under the 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."[75]

When a Bill to continue an Act which is to expire in the same session does not receive the Royal Assent until the Act has expired, the continuing Act takes effect from the date of the expiration, except that it does not affect any person with any punishment for any breach of the Act so continued between the expiration of the earlier and the passing of the later Act.[76]

According to a decision of Bailhache J., statutory instruments do

[71] *R.* v. *Logan* [1957] 2 Q.B. 589.
[72] *Att.-Gen.* v. *Panter* (1772) 6 Bro. P.C. 486.
[73] *Tomlinson* v. *Bullock* (1879) 4 Q.B.D. 230: the Act becomes law at the first moment of that day.
[74] *Coleridge-Taylor* v. *Novello & Co., Ltd.* [1938] Ch. 608.
[75] Interpretation Act 1889, s. 37.
[76] Acts of Parliament (Expiration) Act 1808.

not come into operation on the day on which they are made, but on the day on which they are first made available or known to the public or to the person whom it is sought to affect by them.[77]

Repeal

A law is not repealed by becoming obsolete: there is no doctrine of desuetude in English law.[78] So until 1844 it was an indictable offence to sell corn in the sheaf before it had been thrashed out and measured, and as late as 1836 insolvents in Scotland were bound to wear a coat and cap half yellow and half brown.[79] The Profane Oaths Act 1745, which punished profane cursing and swearing by fines graded to the social degree of the offender, was still in force in 1966,[80] as were the canonical requirements as to the colour and material of night-caps worn in bed by clergy of the Church of England.[81]

The common law rule was that if an Act expired or was repealed it was regarded, in the absence of provision to the contrary, as having never existed, except as to matters and transactions past and closed.[82] Where, therefore, a penal law was broken, the offender could not be punished under it if it expired before he was convicted, although the prosecution began while the Act was still in force.[83]

Thus, a statute of the reign of William III, which made larceny of above 5 shillings a capital offence, having been repealed on July 20, 1820, by the Stealing in Shops Act 1820, an offence against the earlier Act committed on July 11 could not be punished in the following September. Nor could the offence be dealt with under the later Act, for it was not in force when the theft was committed.[84] And where an Act which authorised the laying of rails on a road was repealed, it was doubted whether the rails could lawfully remain.[85]

[77] *Johnson* v. *Sargant & Sons* [1918] 1 K.B. 101.
[78] *The India* (*No. 2*) (1864) 12 L.T. 316; *Hebbert* v. *Purchas* (1871) L.R. 3 P.C. 605. For the doctrine of desuetude whereby Acts of the Scottish Parliament passed before the Act of Union may become obsolete and repealed by usage to the contrary, see *Craies on Statute Law*, 6th ed., p. 7. *Cf. Earl of Antrim's Petition* [1967] A.C. 691, *per* Lord Reid and Lord Wilberforce.
[79] *Maxwell*, 11th ed., p. 395.
[80] *Law Commission: Proposals to abolish certain ancient Criminal Offences*, p. 5.
[81] Canon 74.
[82] *Surtees* v. *Ellison* (1829) 9 B. & C. 750, *per* Lord Tenterden C.J.; *Churchill* v. *Crease* (1828) 5 Bing. 177; *Simpson* v. *Ready* (1844) 11 M. & W. 344, *per* Parke B.
[83] *R.* v. *London Justices* (1764) 3 Burr. 1456; *R.* v. *Inhabitants of Mawgan* (1838) 8 A. & E. 496.
[84] *R.* v. *M'Kenzie* (1820) Russ. & R. 429.
[85] *R.* v. *Morris* (1830) 1 B. & Ad. 441.

The effect of repealing Acts passed after August 30, 1889, is now dealt with by section 38 (2) of the Interpretation Act. Such repealing Acts[86] are, unless the contrary intention appears, not to "(*b*) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed;[87] 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."

Paragraph (*c*) was discussed by the Court of Appeal in *Hamilton Gell* v. *White*.[88] Atkin L.J. said (at p. 431) that "that provision was not intended to preserve the abstract rights conferred by the repealed Act. . . . It only applies to the specific rights given to an individual upon the happening of one or other of the events specified in the statute." Thus a tenant's general right to compensation for disturbance would not survive the repeal of the Agricultural Holdings Act 1908: if it were to do so, the "repealing" would in fact be ineffective. But the Court held that where a landlord, before the repeal, had given his tenant notice to quit, the tenant had "acquired a right" which would "accrue" when he quitted his holding—the right to receive compensation. A contrasting case is *Abbott* v. *Minister of Lands*,[89] in which the appellant claimed that as a purchaser of Crown land in New South Wales in 1871 he became entitled under the Crown Lands Alienation Act 1861 to make further purchases of Crown land adjoining his original holding. The Act of 1861 was repealed by the Crown Lands Act 1884 which, however, provided that notwithstanding the repeal "all rights accrued" by virtue of the repealed enactment should remain unaffected. The Judicial Committee held that the mere right existing at the date of the repealing statute to take advantage of the provisions of the Act repealed was not a "right accrued" within the meaning of the saving clause.[89a]

More recently, the Privy Council has had to consider precisely similar provisions of the Hong Kong Interpretation Ordinance. It

[86] *Semble*, the provision does not apply to subordinate legislation: *D.P.P.* v. *Lamb* [1941] 2 K.B. 89, *per* Humphreys J.

[87] *E.g.*, the giving of a notice (Public Health Act 1875): *R.* v. *West Riding of Yorkshire Justices* (1876) 1 Q.B.D. 220.

[88] [1922] 2 K.B. 422. *Cf. Lewis* v. *Hughes* [1916] 1 K.B. 831; *Costello* v. *Brown* (1924) 94 L.J.K.B. 220.

[89] [1895] A.C. 425. [89a] *G. Ogden Industries Pty., Ltd.* v. *Lucas* [1969] 1 AIIE. R. 121.

was held that the fact that the Director of Public Works had given a Crown lessee notice of his intention to grant a rebuilding certificate, which would enable the lessee to recover vacant possession from the persons in occupation of the premises, did not confer any *right* to the certificate on the lessee, since various conditions had remained to be fulfilled before the certificate could be granted, so that the lessee had no more than a hope that it would be granted. Further, any entitlement the Crown lessee might have to have his case considered by the Governor-in-Council did not come within paragraph (*e*), since the right there referred to is the right acquired or accrued under a repealed enactment mentioned in paragraph (*c*), and there was no such right here. Lord Morris of Borth-y-Gest said: "It may be, therefore, that under some repealed enactment a right has been given but that in respect of it some investigation or legal proceeding is necessary. The right is then unaffected and preserved. It will be preserved even if a process of quantification is necessary. But there is a manifest distinction between an investigation in respect of a right and an investigation which is to decide whether some right should or should not be given. Upon a repeal the former is preserved by the Interpretation Act. The latter is not."[90]

This passage was cited by the Judicial Committee in *Free Lanka Insurance Co., Ltd.* v. *Ranasinghe*.[91] A direct claim given by the Ceylon Motor Car Ordinance 1938 to an injured person against the insurers of the other party involved in an accident was held to survive the repeal of the Ordinance. Lord Evershed said (at p. 552) that the distinction between what was, and what was not, a right must often be one of great fineness; but the injured person here had "something more than a mere hope or expectation— . . . he had in truth a right . . . although that right might fairly be called inchoate or contingent."

The effect of paragraph (*e*), with its reference to the preservation of proceedings in respect of a "penalty," is that a person can now be prosecuted under a repealed enactment.[92]

When an Act is repealed, any delegated legislation made under the Act falls to the ground with the statute unless it is expressly preserved.[93] Where the subordinate legislation is continued in force, however, the general rule is that its scope and construction are

[90] *Director of Public Works* v. *Ho Po Sang* [1961] A.C. 901, at p. 122.
[91] [1964] A.C. 541.
[92] See *Bennett* v. *Tatton* (1918) 88 L.J.K.B. 313; *Postlethwaite* v. *Katz* (1943) 59 T.L.R. 248. *Cf. R.* v. *Fisher* [1969] 1 W.L.R. 8.
[93] *Watson* v. *Winch* [1916] 1 K.B. 688.

determined according to the repealed Act under which it was made.[94]

In *Chapman* v. *Kirke*,[95] the Divisional Court had to consider the effect of the repeal of a definition section. Section 5 of the Stage Carriages Act 1832 contained a definition of "stage carriage," while section 48 created the offence of wanton and furious driving of stage carriages. Section 5 was repealed by the Customs and Inland Revenue Act 1869. On a charge under section 48, it was held that the repeal of section 5 did not make the term "stage carriage" incapable of definition, but that it must be redefined by the court without the "aid" of the limitations placed upon the term by the repealed section.

Finally, two further provisions of the Interpretation Act 1889 concerned with repeals must be noticed. By section 11 (which is, in this respect, declaratory of the common law)[96] when any Act passed after 1850 repeals another in whole or in part and substitutes some provision or provisions in lieu of what is repealed, the repealed enactment continues in force until what has been substituted comes into operation. And, by section 38 (1), when the Interpretation Act or any Act passed after its commencement repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed are, unless the contrary intention appears, to be construed as references to the provisions so re-enacted.[96a]

Revival

Where an Act is repealed and the repealing enactment is then repealed by another, which manifests no intention that the original Act shall continue repealed, the common law rule was that the repeal of the second Act revived the first *ab initio*.[97] So the Ecclesiastical Leases Act 1571, having been repealed in 1803, was revived when, fourteen years later, the Act of 1803 was in turn repealed.[98]

The common law on the point was altered in 1850, by a provision now to be found in section 11 (1) of the Interpretation Act 1889:

[94] *Miller's Cash Stores, Ltd.* v. *West Ham Corporation* [1955] 1 W.L.R. 1121; *Re Fletcher, ex p. Fletcher* v. *Official Receiver* [1956] Ch. 28; *Canadian Pacific Steamships, Ltd.* v. *Bryers* [1958] A.C. 485. But if rules are made under a statute, sections of which are later repealed and re-enacted in a narrower form, the rules must be cut down so as not to conflict with the narrower statute: *Re Simpkin Marshall, Ltd.* [1959] Ch. 229. [95] [1948] 2 *H.B.* 450. *Cf. Ingram* v. *Percival* [1968] 3 W.L.R. 663.

[96] *Butcher* v. *Henderson* (1868) L.R. 3 Q.B. 335.

[96a] See *R.* v. *Goswami* [1968] 2 W.L.R. 1163, *per* Salman J. at p. 1170.

[97] *Phillips* v. *Hopwood* (1829) 10 B. & C. 39; *Tattle* v. *Grimwood* (1826) 3 Bing. 493; *Fuller* v. *Redman* (1859) 29 L.J.Ch. 324.

[98] *Eton College* v. *Minister of Agriculture* [1964] Ch. 274.

where an Act passed after 1850 "repeals a repealing enactment, it shall not be construed as reviving any enactment previously repealed, unless words are added reviving that enactment." The precise meaning of "a repealing enactment" is unclear. In *Mount* v. *Taylor*,[99] the question was whether the Statute of Gloucester, in so far as it made provision for the recovery of costs, had been repealed by certain County Court Acts. "On a careful consideration of the County Court Acts," said Bovill C.J. (at p. 650), "it seems to me they do not amount to a repeal of the Statute of Gloucester within [the 1850] Act. The Statute of Gloucester is the foundation of the plaintiff's right to costs, and the County Court Acts superadd conditions to the plaintiff's right to them in certain cases; and if the operation of those statutes be only to superadd certain conditions, and another statute takes away these conditions, or substitutes other conditions, the original statute, in my opinion, remains in force." Blackburn J., however, was of a different view,[1] and it is submitted that his opinion is to be preferred. Section 11, in the words of Hannen J., "has for its object to prevent the revival of a statute contrary to the intention of the legislature; but it cannot be supposed that it is contrary to the intention of the legislature to restore to a statute its original force without condition, where all that it has done has been to repeal the condition."[2]

Section 11 (1) only precludes the revival of statutes. Section 38 (2) (*a*) is of wider scope, providing that a repealing enactment shall not "revive *anything* not in force or existing at the time at which the repeal takes effect." "Not in force" has been interpreted as meaning "wholly null and void," so that if some provision has effect only conditionally (for instance, a notice the continuance of which is subject to ministerial consent), it is in force and therefore outside the section.[3]

4. Consolidating and Codifying Statutes

These two classes of Acts of Parliament require special consideration.

Consolidating statutes

A consolidating statute is one which collects the statutory provisions relating to a particular topic, and embodies them in a single

[99] (1868) L.R. 3 C.P. 645.
[1] *Butcher* v. *Henderson* (1868) L.R. 3 Q.B. 335.
[2] *Mirfin* v. *Attwood* (1869) L.R. 4 Q.B. 333, at pp. 340, 341 (dissenting). *Cf. Levi* v. *Sanderson* (1869) L.R. 4 Q.B. 331.
[3] *Boddington* v. *Wisson* [1951] 1 K.B. 606.

Act of Parliament, making only minor amendments and improvements.[4]

In the construction of a consolidation Act, the presumption that Parliament does not intend to alter the existing law[5] applies with particular force.[6] For the object of the Act was merely to "reproduce the law as it stood before."[7] And there is a further, perhaps less persuasive, presumption that the words used in the consolidating Act bear the same meaning as that which they had at the time the enactments consolidated were passed.[8]

So, in *O'Toole* v. *Scott*,[9] the Judicial Committee held that section 70 (2) of the New South Wales Justices Act 1902, a consolidating statute, should be given the same construction as section 12 of the English Summary Jurisdiction Act 1848 which it re-enacted. This was so even though the language of the two provisions was not identical, the English Act using the phrase "shall be at liberty" and the New South Wales Act the word "may."

In *R.* v. *Governor of Brixton Prison, ex p. De Demko*,[10] Lord Evershed M.R., dealing with section 31 (1) (*a*) of the Supreme Court of Judicature (Consolidation) Act 1925, said (at pp. 280, 281): "One has to begin by the consideration that the Judicature Act 1925, is expressed to be a consolidating Act; and one does not look for substantial changes in the law, or the jurisdiction, in a consolidating Act."

Section 88 of the Law of Property Act 1922 dealt with trustees' powers to maintain an infant beneficiary out of the income of the trust property, and for the first time provided for the maintenance of a person contingently entitled to an interest in property after he had attained his majority and until his interest had become vested. By section 88 (6), these provisions were made subject to any contrary intention in the trust instrument. Section 88 was repealed by the Trustee Act 1925, and replaced by section 31 of that Act which did not contain a subsection corresponding to the old section 88 (6) (though a general provision of the 1925 Act, section 69 (2), did deal

[4] See *Administrator-General of Bengal* v. *Prem. Lall Mullick* (1895) L.R. 22 Ind. App. 107, *per* Lord Watson; *Craies on Statute Law*, 6th ed., pp. 361–363; Consolidation of Enactments (Procedure) Act 1949.

[5] *Post*, pp. 116–122.

[6] *Gilbert* v. *Gilbert* [1928] P. 1, *per* Scrutton L.J.; *R.* v. *Governor of Brixton Prison, ex p. De Demko*, [1959] 1 Q.B. 268 *per* Lord Evershed M.R.

[7] *Gilbert* v. *Gilbert*, *supra*, *per* Lord Hanworth M.R.

[8] *Crook* v. *Edmondson* [1966] 2 Q.B. 81.

[9] [1965] A.C. 939.

[10] [1959] 1 Q.B. 268; affirmed [1959] A.C. 654.

with conflicts between the Act and the terms of the trust instrument). In *Re Turner's Will Trusts*,[11] the Court of Appeal held that the power to maintain a person having a contingent interest under section 31 was subject to the terms of the trust instrument. Romer L.J. said (at p. 26) that the property statutes of 1925 were "merely consolidating statutes,"[12] the law of property having been reformed by the 1922 Act and the Law of Property (Amendment) Act 1924. "In these circumstances it is incredible that by the Trustee Act 1925 the legislature intended to change the law still further and in so radical a respect as to make the provisions of . . . section 31 (1) override the provisions of the instrument creating the trust."

Section 5 of the Real Property Act 1845 provided that "under an indenture . . . an immediate estate or interest, in any tenements or hereditaments, . . . may be taken, although the taker thereof be not named a party to the said indenture." This was replaced by section 56 (1) of the Law of Property Act 1925, which referred, however, to "an immediate or other interest in land or other property." Applying the presumption that a consolidating Act is not intended to alter the law, the House of Lords held that "land or other property" in the 1925 Act did not have any meaning wider than that of "tenements or hereditaments" in the 1845 Act. A difficulty was created by section 205 (1) (xx) which provides that, unless the context otherwise requires, "property" in the Act shall include both real and personal property. But Lord Reid said: "If application of that definition would result in giving to section 56 a meaning going beyond that of the old section, then, in my opinion, the context does require that the definition of 'property' shall not be applied to that word in section 56. The context in which this section occurs is a consolidation Act. If the definition is not applied the section is a proper one to appear in such an Act because it can properly be regarded as not substantially altering the pre-existing law. But if the definition is applied the result is to make section 56 go far beyond the pre-existing law. Holding that the section has such an effect would involve holding that the invariable practice of Parliament has been departed from *per incuriam* so that something has got into this consolidation Act which neither the draftsman nor Parliament can have intended to be there."[13]

[11] [1937] Ch. 15.
[12] But see *Grey* v. *I.R.C.* [1960] A.C. 1, *post*, p. 23.
[13] *Beswick* v. *Beswick* [1968] A.C. 58, at p. 77.

It should be noted that in *Grey* v. *I.R.C.*,[14] one limitation was placed on regarding the Law of Property Act 1925 as a consolidating Act. It "consolidated Acts [of 1922 and 1924] which themselves were amending Acts." When, therefore, the Acts of 1922 or 1924 replaced provisions of earlier statutes, and these provisions reappear in the 1925 Act, the link between the 1925 Act and the earlier statutes has been broken by the amendments of 1922 and 1924, and there is no presumption that the 1925 provision does not change the pre-1922 law. Section 9 of the Statute of Frauds provided that "all grants and assignments" of interests under trusts should be in writing; the Law of Property (Amendment) Act 1924, Schedule III, Part II, paragraph 15, replaced this provision, but substituted "a disposition" for "all grants and assignments"; and the provision in this form was exactly reproduced in section 53 (1) (*c*) of the 1925 Act. Since the 1925 Act does not consolidate the Statute of Frauds (though it does consolidate the 1924 Act), there is no presumption that "disposition" and "grants and assignments" are synonymous, and "disposition" must therefore be given its natural meaning.

This rule about consolidating statutes is, however, no more than a presumption, and may be rebutted. The "prima facie view must yield to plain words to the contrary."[15] An example is provided by the decision of Cross J. in *Re A Solicitor*.[16] Section 69 of the Solicitors Act 1957 deals with applications to the High Court to tax solicitors' bills: section 69 (2) gives the Court power to order that the bill shall be taxed and no proceedings taken on the bill until taxation, but by proviso (ii) "in no event shall any such order be made after the expiration of twelve months from the payment of the bill." This was a repetition of section 66 of the Solicitors Act 1932, which was a consolidating enactment. The consolidated provision in question here was section 41 of the Solicitors Act 1843, which provided that an order for taxation of a bill which had been paid might be made, "provided the application for such reference be made within twelve calendar months after payment." Cross J. held that the law had been altered in 1932: the relevant period under the 1843 Act was the twelve months before the application for taxation was made, under the 1932 Act the twelve months before the order on that application was made. This had the unfortunate consequence of encouraging an unscrupulous party to delay the proceedings, and of giving rise to suspicions

[14] [1960] A.C. 1, *per* Viscount Simonds at p. 14.
[15] *Grey* v. *I.R.C.*, *supra*, *per* Viscount Simonds at p. 13.
[16] [1961] Ch. 491.

that perfectly honest parties are playing for time, while, however co-operative both sides might be, they could now "be defeated by the state of the list or the illness of a judge. It is altogether wrong that the rights of the parties should depend on accidents of this sort, but however sure I may be that Parliament did not intend the change, my duty is simply to construe the language of the Act. I have no power to rectify it."

In interpreting a consolidating Act, account is taken of judicial decisions on provisions contained in the statutes now codified. "One has to remember," said Lord Evershed M.R., "that Parliament must be taken to have been aware of the decisions of the courts in the meantime."[17]

For example, the provision in the Sheriffs' Act 1887, requiring sheriffs' officers not to take arrested persons to prison for twenty-four hours, was held to apply only to arrests on mesne process, this having been the construction placed on the Debtors' Imprisonment Act 1758, which the 1887 Act replaced.[18]

In *Kerr* v. *Kerr*,[19] the Queen's Bench Divisional Court held that arrears of alimony payable by a debtor to his wife, which accrued before the making of a receiving order against the debtor, constituted a "debt not provable in bankruptcy" within section 37 of the Bankruptcy Act 1883. Section 30 of the Bankruptcy Act 1914 corresponds word for word with section 37, and, in *James* v. *James*,[20] a Divisional Court of the Probate, Divorce and Admiralty Division held that, as the Act of 1914 must be taken to have been passed by the legislature in the light of decisions on the 1883 Act, arrears of maintenance must be regarded as not constituting a debt provable in bankruptcy under section 30.

It will not always be safe to adopt without question the judicial interpretation placed upon enactments consolidated. Lord Wrenbury said when considering the Companies (Consolidation) Act 1908 that he would "derive little, if any, assistance from the knowledge that, for instance, a particular section is in terms identical with a section which as the law previously stood was found in a framework different from that in which it is now found. To ascertain the present law it is necessary to consider such a section in the framework in which it now

[17] *R.* v. *Governor of Brixton Prison, ex p. De Demko* [1959] 1 Q.B. 268, at p. 281.
[18] *Mitchell* v. *Simpson* (1890) 25 Q.B.D. 183.
[19] [1897] 2 Q.B. 439.
[20] [1964] P. 303.

stands."[21] This principle was applied by Sachs J. in *Tursi* v. *Tursi*[22] to the construction of section 7 (3) of the Matrimonial Causes Act 1950, which had originally been enacted at a time when the English courts did not possess jurisdiction (which they had acquired by 1950) over marriages in which the husband had at no time been domiciled in England.

Section 26 (1) of the Matrimonial Causes Act 1950 gave the court which dissolved a marriage power to make provision for the custody, maintenance and education "of the children the marriage of whose parents is the subject of the proceedings." In *Galloway* v. *Galloway*,[23] it was argued, on the basis of the construction which had been placed on the predecessors of section 26 (1), that "children" was here limited to legitimate children, so excluding children born to the parties before their marriage and not afterwards legitimated. The argument was rejected. Lord Radcliffe expressed his dislike (at p. 320) for what he called an "almost mystical method of discovering the law," and said the argument would depend "for its force upon the demonstration that there has been an authoritative judicial interpretation over a period from which your Lordships ought not now to depart. This is a large claim to make in a case where it is not suggested that there has been any previous decision of this House on the matter."

Codifying statutes

A codifying statute is one which purports to state exhaustively the whole of the law upon a particular subject, the draftsman attempting to subsume in his code both the pre-existing statutory provisions (as in a consolidation Act) and also the common law rules relating to the matter.

A codifying Act is approached in quite a different spirit from a consolidating Act. The leading case is *Bank of England* v. *Vagliano Brothers*,[24] in which Lord Herschell said (at pp. 144, 145): "I think the proper course is in the first instance to examine the language of the statute and to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of the law, and not to start with inquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity

[21] *Food Controller* v. *Cork* [1923] A.C. 647, at p. 668.
[22] [1958] P. 54. *Cf. Re Winget, Ltd.* [1924] 1 Ch. 550.
[23] [1956] A.C. 299.
[24] [1891] A.C. 107: the lack of authority on the construction of codification Acts is presumably due to the fact that few codes have in fact been enacted.

with this view. If a statute, intended to embody in a code a particular branch of the law, is to be treated in this fashion, it appears to me that its utility will be almost entirely destroyed, and the very object with which it was enacted will be frustrated." The law is now to be determined by interpreting the language used, not (as before) "by roaming over a vast number of authorities in order to discover what the law was, extracting it by a minute critical examination of the prior decisions."

In the *Vagliano* case, the provision in question was section 7 (3) of the Bills of Exchange Act 1882: "Where the payee [of a bill of exchange] is a fictitious or non-existing person the bill may be treated as payable to bearer." Charles J. and the majority of the judges in the Court of Appeal held, on the authority of cases decided before the passing of the Act, that the rule stated in section 7 (3) could only be invoked against a party who had knowledge that the payee was a fictitious or non-existing person. The House of Lords, by a majority of six to two, reversed this decision. Lord Halsbury L.C. said (at p. 120) "that, construing the statute by adding it to words which are neither found therein nor for which authority could be found in the language of the statute itself, is to sin against one of the most familiar rules of construction, and I am wholly unable to adopt the view that, where a statute is expressly said to codify the law, you are at liberty to go outside the code so created, because before the existence of that code another law prevailed." And the Earl of Selborne said (at p. 130) that the previous authorities, which treated knowledge as necessary, "were no doubt within the view of the legislature, and all reference to the necessity of knowledge being here omitted, I think the omission must be taken to have been deliberate and intentional, and that there is no sound principle on which what is so omitted can be supplied by construction."

In *Bristol Tramways Carriage Co., Ltd.* v. *Fiat Motors, Ltd.*,[25] Cozens-Hardy M.R. said (at p. 836): "The case really turns upon section 14 of the Sale of Goods Act 1893. I rather deprecate the citation of earlier decisions. . . . The object and intent of the statute of 1893 was, no doubt, simply to codify the unwritten law applicable to the sale of goods, but in so far as there is an express statutory enactment, that alone must be looked at and must govern the rights of the parties, even though the section may to some extent have altered the prior common law." Both the Master of the Rolls and Kennedy L.J.

[25] [1910] 2 K.B. 831.

decided the case solely upon the words of the statute, but Farwell L.J. referred to several cases decided before the passing of the Act.[26]

In another case, the Judicial Committee had to consider section 330 of the Criminal Code of the Gold Coast, dealing with sedition. Reference was made by counsel to a number of cases on the law of sedition in English and Scottish courts, but Viscount Caldecote L.C. said: "The elaborate structure of section 330 suggests that it was intended to contain as far as possible, a full and complete statement of the law of sedition in the Colony. It must therefore be construed in its application to the facts of this case free from any glosses or interpolations derived from any expositions, however authoritative, of the law of England or of Scotland."[27]

In *Bank of England* v. *Vagliano Brothers*[28] Lord Herschell was (at p. 145) "far from asserting that recourse may never be had to the previous state of the law for the purpose of aiding in the construction of the provisions of the code. If, for example, a provision be of doubtful import, such resort would be perfectly legitimate. Or, again, if in a code of the law of negotiable instruments words be found which have previously acquired a technical meaning, or been used in a sense other than their ordinary one, in relation to such instruments, the same interpretation might well be put upon them in the code. I give these as examples merely; they, of course, do not exhaust the category." Nevertheless, "some special ground" is needed to justify resort to earlier cases.

Vaughan Williams and Farwell L.JJ., for instance, in *Wallis, Son & Wells* v. *Pratt*,[29] referred to several earlier cases when considering sections 11 and 13 of the Sale of Goods Act though, on appeal to the House of Lords, the dissenting judgment of Fletcher Moulton L.J., in which not a single case was cited, was preferred. More recently, the Court of Appeal considered some earlier authorities in deciding what amounted to "a fixed . . . future time" within section 83 (1) of the Bills of Exchange Act:[30] and Diplock J. acted similarly when elucidating the doctrine of subrogation of insurers as embodied in section 79 (1) of the Marine Insurance Act 1906.[31]

[26] *Cf. Abbott & Co.* v. *Wolsey* [1895] 2 Q.B. 97, *per* Lord Esher M.R. at p. 100: "The statute was passed to declare the law. We are bound by it, and can look to nothing else."
[27] *Wallace-Johnson* v. *R.* [1940] A.C. 231, at p. 240.
[28] [1891] A.C. 107.
[29] [1910] 2 K.B. 1003; reversed [1911] A.C. 394.
[30] *Williamson* v. *Rider* [1963] 1 Q.B. 89.
[31] *Yorkshire Insurance Co., Ltd.* v. *Nisbet Shipping Co., Ltd.* [1962] 2 Q.B. 330.

CHAPTER 2

GENERAL PRINCIPLES OF INTERPRETATION

I. THE PRIMARY RULE: LITERAL CONSTRUCTION

THE first and most elementary rule of construction is that it is to be assumed that the words and phrases of technical legislation are used in their technical meaning if they have acquired one, and otherwise in their ordinary meaning,[1] and the second is that the phrases and sentences are to be construed according to the rules of grammar.[2] "The length and detail of modern legislation," wrote Lord Evershed M.R., "has undoubtedly reinforced the claim of literal construction as the only safe rule."[3] If there is nothing to modify, alter or qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences.[4] "The safer and more correct course of dealing with a question of construction is to take the words themselves and arrive if possible at their meaning without, in the first instance, reference to cases."[5]

The rule of construction is "to intend the Legislature to have meant what they have actually expressed."[6] The object of all interpretation is to discover the intention of Parliament, "but the intention of Parliament must be deduced from the language used,"[7] for "it is well accepted that the beliefs and assumptions of those who frame Acts of Parliament cannot make the law."[8]

[1] *R.* v. *Commrs. of Income Tax* (1888) 22 Q.B.D. 296; *Victoria City Corp.* v. *Bishop of Vancouver Island* [1921] 2 A.C. 384. See also *I.R.C.* v. *Herdman* [1969] 1 AIIt.R. 495.

[2] "It is very desirable in all cases to adhere to the words of an Act of Parliament, giving to them that sense which is their natural import in the order in which they are placed": *R.* v. *Ramsgate (Inhabitants)* (1827) 6 B. & C. 712, *per* Bayley J. at p. 715.

[3] *Maxwell*, 11th ed., p. vi.

[4] See *Att.-Gen.* v. *Mutual Tontine Westminster Chambers Association Ltd.* (1876) 1 Ex. D. 469, *per* Jessel M.R.; *Bradlaugh* v. *Clarke* (1883) 8 App. Cas. 354, *per* Lord Fitzgerald; *Re No. 12 Regent St., Oxford* [1948] Ch. 735.

[5] *Barrell* v. *Fordree* [1932] A.C. 676, *per* Lord Warrington of Clyffe at p. 682.

[6] *R.* v. *Banbury (Inhabitants)* (1834) 1 A. & E. 136, *per* Parke J. at p. 142.

[7] *Capper* v. *Baldwin* [1965] 2 Q.B. 53, *per* Lord Parker C.J. at p. 61.

[8] *Davies Jenkins & Co., Ltd.* v. *Davies* [1967] 2 W.L.R. 1139, *per* Lord Morris of Borth-y-Gest at p. 1156; *I.R.C.* v. *Dowdall, O'Mahoney & Co.* [1952] A.C. 401, *per* Lord Reid.

Where the language is plain and admits of but one meaning, the task of interpretation can hardly be said to arise. "The decision in this case," said Lord Morris of Borth-y-Gest in a revenue case, "calls for a full and fair application of particular statutory language to particular facts as found. The desirability or the undesirability of one conclusion as compared with another cannot furnish a guide in reaching a decision."[9] Where, by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the legislature, it must be enforced however harsh or absurd or contrary to common sense the result may be.[10] The interpretation of a statute is not to be collected from any notions which may be entertained by the court as to what is just and expedient:[11] words are not to be construed, contrary to their meaning, as embracing or excluding cases merely because no good reason appears why they should not be embraced or excluded.[12] The duty of the court is to expound the law as it stands, and to "leave the remedy (if one be resolved upon) to others."[13]

Examples of literal construction

It was repeatedly decided at law that the statutes of limitation which enacted that actions should not be brought after the lapse of certain periods of time from the accrual of the cause of action barred actions brought after the time so limited, even though the cause of action was not discovered, nor was practicably discoverable, by the injured party at the date of accrual, and even though it was fraudulently concealed by the wrongdoer until the expiry of the statutory period.[14] The hardship of such decisions was obvious, but the language was susceptible of no other interpretation.

The Sunday Closing (Wales) Act 1881, being fixed to come into operation on the day "next appointed" for the annual licensing

[9] *Shop and Store Developments Ltd.* v. *I.R.C.* [1967] 1 A.C. 472, *per* Lord Morris of Borth-y-Gest at p. 493. But see *I.R.C.* v. *Bates* [1965] 1 W.L.R. 1133, *per* Lord Denning M.R., affirmed in H.L. at [1967] 2 W.L.R. 60 *sub. nom. Bates* v. *I.R.C.*; *Luke* v. *I.R.C.* [1963] A.C. 557, *per* Lord Reid.

[10] *Cartledge* v. *E. Jopling & Sons, Ltd.* [1963] A.C. 758. *Cf. Miller* v. *Salomons* (1853) 7 Ex. 475, *per* Pollock C.B.; *Re British Farmers', etc., Co.* (1878) 48 L.J.Ch. 56, *per* Jessel M.R.; *Magor and St. Mellons R.D.C.* v. *Newport Corporation* [1952] A.C. 189.

[11] *Gwynne* v. *Burnell* (1840) 7 Cl. & F. 572, *per* Coleridge J.

[12] *Whitehead* v. *James Stott Ltd.* [1949] 1 K.B. 358; *Galashiels Gas Co., Ltd.* v. *O'Donnell* [1949] A.C. 275.

[13] *Sutters* v. *Briggs* [1922] 1 A.C. 1, *per* Lord Birkenhead L.C. at p. 8.

[14] *Short* v. *McCarthy* (1820) 3 B. & Ald. 626; *Colvin* v. *Buckle* (1841) 8 M. & W. 680; *Imperial Gas Light & Coke Co.* v. *London Gas Light Co.* (1854) 10 Ex. 39.

meeting, was by a literal construction postponed for a year later than was, in all probability, intended; but the court refused to avert this result by any departure from the primary meaning of the words.[15]

Where an Act provided for orders for committal to be made "in open Court," an order made, not in the actual court-room, but in the room next to it (which was also open to the public), was invalid.[16]

The Act which required Members of Parliament, before voting in the House, to take the abjuration oath in a form which concluded with the declaration that it was taken "on the true faith of a Christian" received a literal construction, which had the effect of excluding Jews from Parliament: notwithstanding that the history of the enactment showed that it was intended to test the loyalty, not the religious creed, of the member.[17]

The provision in section 2 (1) of the Limitation Act 1963, that "any application for the leave of the court for the purposes of the preceding section shall be made *ex parte*," has received a literal construction which prevents the defendant in an action applying to the judge to discharge an order granting leave.[18] A provision that, where a lessor is proceeding by action in the county court to enforce against a "lessee" a right of re-entry or forfeiture for non-payment of rent, the action shall cease upon payment into court of all the arrears of rent and costs by the lessee at least five days before the return date has been literally interpreted so that the action does not cease upon payment being made by a stranger.[19]

Where the word "such" occurs in a section it must not be ignored, but must be read as referring back to the preceding provisions,[20] even though this gives rise to a result which appears anomalous.[21]

Section 13 of the Education Act 1944 has been held, on its literal interpretation, not to prohibit a local education authority from establishing a new school until the plans have been approved by the Secretary of State. The Court of Appeal reached this conclusion "with great regret," because it enabled a council to fly "in the face of the intention which Parliament manifested," that new schools should not be established until the Minister was satisfied that the

[15] *Richards* v. *McBride* (1881) 8 Q.B.D. 119; *Cf. R.* v. *Lamb* [1968] 2 Q.B. 829.
[16] *Kenyon* v. *Eastwood* (1888) 57 L.J.Q.B. 455.
[17] *Miller* v. *Salomons* (1853) 7 Ex. 475; *Salomons* v. *Miller* (1853) 8 Ex. 778.
[18] *Cozens* v. *North Devon Hospital Management Committee* [1966] 2 Q.B. 330.
[19] *Matthews* v. *Dobbins* [1963] 1 W.L.R. 227.
[20] *Ellis* v. *Ellis* [1962] 1 W.L.R. 450.
[21] *Standard Pattern Co., Ltd.* v. *Ivey* [1962] Ch. 432.

standard of accommodation would comply with what he has prescribed as being necessary in educational institutions.[22]

The tense used in a statutory provision may have a decisive effect. A section which empowered a Minister to make a certain order if he was satisfied that a school "is being administered" in contravention of the Act only allows him to consider the present conduct of the school, and not the past conduct, when making the order.[23] And section 1 (3) of the Children Act 1948, providing that "nothing in this section shall authorise a local authority to keep a child in their care . . . if any parent or guardian desires to take over the care of the child," was held by Pennycuick J. to apply only where the parent or guardian expressed a wish to have the immediate care of the child.[24]

One consequence of the rule of literal construction is that wide language should be given a wide construction, however restricted the scope of previous legislation dealing with the same matter may have been.[25] Thus the words "order for the possession of a dwelling-house" in section 20 (1) of the Rent Act 1965 extended to orders made with the consent of the parties;[26] and the term "payment" in section 7 of the Exchange Control Act 1947 is not limited to payments made in pursuance of an obligation.[27] Similarly, a reference in the Matrimonial Causes Act 1950 to the court being "satisfied" was held by the House of Lords in *Blyth* v. *Blyth*[28] to mean precisely what it said, and not to require the court to be satisfied beyond a reasonable doubt.

By article 2 of Schedule 2 to the Hire-Purchase and Credit-Sale Agreements (Control) Order 1960, dealing with the "actual payment" to be made before an agreement was entered into, "in computing for the purposes of this paragraph the total amount to be paid before any agreement is entered into account may be taken of any allowance for any goods taken in part exchange for any goods comprised in that agreement." In *Northgran Finance* v. *Ashley*,[29] the Court of Appeal held that these words covered goods of which the hirer was

[22] *Bradbury* v. *Enfield London Borough Council* [1967] 1 W.L.R. 1311, *per* Diplock L.J. at p. 1335. See now Education Act 1968.
[23] *Maradana Mosque (Board of Trustees)* v. *Mahmud* [1967] 1 A.C. 13. *Cf. R.* v. *Price* [1964] 2 Q.B. 76; *contra, R.* v. *Leicester Justices, ex. p. Workman* [1964] 1 W.L.R. 707.
[24] *Re S. (an infant)* [1965] 1 W.L.R. 94; reversed on other grounds [1965] 1 W.L.R. 483.
[25] *Miller* v. *Minister of Mines* [1963] A.C. 484.
[26] *Mouat-Balthasar* v. *Murphy* [1967] 1 Q.B. 343.
[27] *Shaw* v. *Shaw* [1965] 1 W.L.R. 537.
[28] [1966] A.C. 643.
[29] [1963] 1 Q.B. 476.

in possession under an existing hire-purchase agreement, and which were exchanged in part payment for the goods under the new agreement: it would be "too narrow" a construction to restrict it to goods actually owned by the hirer.

Section 1 (2) of the Agricultural Holdings Act 1948 defines "agricultural land" as "land used for agriculture which is so used for the purposes of a trade or business." The words "trade or business" are not restricted to an agricultural trade or business, and so have been held to include the keeping of a riding school.[30] Section 25 (1) (d) of the same statute, as amended, provides that one of the grounds on which the Agricultural Lands Tribunal can consent to the operation of a notice to quit is where the Tribunal is satisfied that "greater hardship would be caused by withholding than by giving consent." In applying this provision, the Tribunal is not limited to considering the hardship which would be caused to the landlord, but may take into account all those concerned on the landlord's side, such as the widow of a deceased landlord who was living on national assistance.[31]

A provision which makes it an offence to drive a motor vehicle "without reasonable consideration for other persons using the road" was held by a Divisional Court to cover, on its literal construction, the conduct of a bus driver who drove in such a way as to alarm some of his passengers. The argument that the intention of the enactment was to prohibit misconduct in the management of a vehicle towards the public outside on the highway was unsuccessful.[32]

Just as the literal rule prevents the undue restriction of wide language, so also it precludes the undue extension of narrow language. So a provision in the Rules of the Supreme Court which referred to "an agreement (whether in writing or not) for the sale or purchase of property" was held inapplicable to a contract for the grant of a lease.[33] And a provision that the period of any disqualification imposed on a conviction for the offence of driving while disqualified "shall be *in addition* to any other period of disqualification imposed" was held not to permit the imposition of periods of disqualification other than consecutive ones.[34]

Section 1 (1) of the Law Reform (Contributory Negligence) Act

[30] *Rutherford* v. *Maurer* [1962] 1 Q.B. 16.
[31] *Purser* v. *Bailey* [1967] 2 Q.B. 500.
[32] *Pawley* v. *Wharldall* [1966] 1 Q.B. 373.
[33] *Young* v. *Markworth Properties, Ltd.* [1965] Ch. 475.
[34] *Jones* v. *Powell* [1965] 2 Q.B. 216.

1945, which abrogated the old rule on contributory negligence, "shall not operate to defeat any defence arising under a contract." "The words," said Paull J. in *Quinn* v. *Burch Brothers (Builders) Ltd.*,[35] "are not 'under the law related to contract'; the words are: 'any defence arising under a contract,' and that phrase, in my judgment, can only relate to some express clause in a particular contract which governs the liability of the parties in the event of one of the parties being at fault."

Omissions not to be inferred

It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express. Lord Mersey said: "It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do."[36] "We are not entitled," said Lord Loreburn L.C., "to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself."[37] A case not provided for in a statute is not to be dealt with merely because there seems no good reason why it should have been omitted, and the omission appears in consequence to have been unintentional.[38]

So an Act which authorised the removal of lunatics to a hospital when there was no lunatic asylum established in the county did not authorise such a removal when a county asylum existed, but was so full as to be unable to receive another lunatic.[39] Similarly, when extra-parochial places were made rateable without either repealing the enactments which required that a copy of the rate should be affixed on or near the doors of all the churches in the parish, or making any other provision for publication, it was held, where there was no church in the extra-parochial place, that a rate affixed on a church door fifty yards from the boundary was invalid for want of publication.[40]

[35] [1966] 2 Q.B. 370, at p. 377.
[36] *Thompson* v. *Goold & Co.* [1910] A.C. 409, at p. 420.
[37] *Vickers, Sons, & Maxim, Ltd.* v. *Evans* [1910] A.C. 444, at p. 445.
[38] See *e.g. Lloyds Bank* v. *Elliott* [1947] 1 All E.R. 79; *Donovan* v. *Cammell Laird & Co.* [1949] 2 All E.R. 82, *per* Devlin J.; *R.* v. *Evans* [1963] 1 Q.B. 979; *Cammell* v. *Cammell* [1965] P. 467; *R.* v. *Gibbs* [1965] 2 Q.B. 281; *Essex Incorporated Congregational Church Union* v. *Essex County Council* [1963] A.C. 808.
[39] *R.* v. *Ellis* (1844) 6 Q.B. 501.
[40] *R.* v. *Dyott* (1882) 9 Q.B.D. 47.

When the Married Women's Property Act 1870, s. 11, empowered a married woman to sue, without making her liable to be sued, it was held that no action could be brought against her without joining her husband as a defendant.[41]

Section 11 of the Habitual Criminals Act 1869, in enacting that upon a trial for receiving stolen goods a previous conviction for any offence involving dishonesty should be admissible against the prisoner as evidence of his having received with guilty knowledge, provided that notice were given to him that the conviction would be put in evidence "and that he would be deemed to have known that the goods were stolen until he proved the contrary," omitted, however, to enact substantively that this effect should be given to the conviction. It was held that the omission could not be supplied.[42]

Section 13 (1) of the Debtors Act 1869 refers to a person who "in incurring any debt or liability . . . has obtained credit under any false pretences, or by means of any other fraud." The Court of Criminal Appeal held that it need not be shown that the liability incurred for the purposes of the section was something that had not existed before, rejecting the argument that, in order to give sense to section 13 (1), the word "new" or "fresh" should by implication be introduced before "liability."[43]

Section 3 of the Small Dwellings Acquisition Act 1899 allows a local authority either to sell or to take possession of a house where default is made with any of the statutory conditions, one of which is that every sum due for principal and interest "shall be punctually paid." In *Alnwick Rural District Council* v. *Taylor*,[44] it was argued that, as applied to instalments, this meant "where the proprietor fails to pay any sum punctually and the sum remains unpaid." "I do not think," said Pennycuick J. (at pp. 361, 362), "this is a legitimate construction. . . . The statutory condition requires punctual payment and where there is not punctual payment there is default in compliance with the condition. I do not see any justification for writing in any further requirement."

Section 2 of the Justices Protection Act 1848, after enacting that a person injured by an act done by a justice without, or in excess of, jurisdiction has an action against the justice, continues: "Provided

[41] *Hancocks & Co.* v. *Lablache* (1878) 3 C.P.D. 197.
[42] *R.* v. *Davis* (1870) 11 Cox C.C. 578.
[43] *R.* v. *Thornton* [1964] 2 Q.B. 176.
[44] [1966] Ch. 355.

nevertheless, that no such action shall be brought for any thing done under such conviction or order until after such conviction shall have been quashed, either upon appeal, or upon application to Her Majesty's Court of Queen's Bench." There were very strong arguments to the effect that the words "or order" had been omitted by mistake after "conviction" where that word occurred for the second time in the proviso: first, because later in the section there appeared the words "until after such conviction or order shall have been so quashed as aforesaid"; secondly, because the section read very strangely if the words "or order" were not inserted after "conviction" in the only place in the section in which they were not found together; and, thirdly, because when a similar Act was passed for Ireland in 1849, the words included "or order" in the relevant place. But the Court of Appeal (Romer L.J. dissenting) refused to supply the omission.[45]

Two tax cases decided by the House of Lords provide further illustrations of the reluctance of the courts to write in words. Section 59 (2) of the Finance (1909–10) Act 1910 refers to "gifts made in consideration of marriage." In *I.R.C.* v. *Rennell*,[46] the House, by a bare majority, refused to interpret this as meaning "gifts made on the occasion of marriage to parties within the marriage consideration." "To read them as the Revenue would have them read," said Lord Guest (at p. 208), "is not construction, but judicial paraphrase." In *I.R.C.* v. *Saxone, Lilley and Skinner (Holdings), Ltd.*,[47] the House had to consider section 271 (1) (*d*) (iii) of the Income Tax Act 1952 which defines an industrial building as, *inter alia*, one used for the purposes of a trade which consists in the storage of goods which, having been manufactured, have not yet been delivered to any purchaser. The Crown submitted that "in use for the purposes of a trade" meant wholly or mainly in use for such purposes. "But that," said Lord Reid (at p. 504), "involves writing in words which are not there and I can see nothing in the context to make that necessary."

Finally, section 36 (1) of the Summary Offences Ordinance of Trinidad and Tobago empowers a constable to arrest without warrant a person who has in his possession or under his control "in any manner or in any place" anything which the constable has reasonable cause to suspect to have been stolen. The Court of Appeal

[45] *O'Connor* v. *Isaacs* [1956] 2 Q.B. 288.
[46] [1964] A.C. 173.
[47] [1967] 1 W.L.R. 501.

of Trinidad and Tobago held that "in any place" meant "in any public place," and they did so by taking account of what were presumed to be the intentions of the legislature and of the course of development of the legislation on this subject: for instance, that the earliest predecessor of section 36 referred to the constable finding the suspect "carrying or conveying" the article—words quite inappropriate to cover circumstances in which the goods were found at the man's premises. The Judicial Committee of the Privy Council reversed this decision, holding that the words must be given "their ordinary plain clear meaning." "The language of section 36 (1) is clear," said Lord Morris, "and their Lordships see no reason for introducing additional words into it."[48]

Every word in a statute to be given a meaning

A construction which would leave without effect any part of the language of a statute will normally be rejected.[49] Thus, where an Act plainly gave an appeal from one quarter sessions to another, it was observed that such a provision, though extraordinary and perhaps an oversight, could not be eliminated.[50]

The County Courts Admiralty Jurisdiction Amendment Act 1869, which gave to certain county courts power to try claims under £300 arising out of "any agreement in relation to the use or hire of a ship" or in relation to the carriage of goods, with an appeal to the Court of Admiralty, and power to the latter court to transfer any such causes to itself, was at first held not to give the county court jurisdiction over suits for the breach of a charterparty, notwithstanding the comprehensive nature of the language used, on the ground that the literal construction would involve the presumably unintended anomalies of giving by mere implication a large, novel and inconvenient jurisdiction to the Court of Admiralty, and to the suitor the remedy of proceeding *in rem* when his claim was under £300, which he did not possess when it exceeded it.[51] But this construction did not prevail, because it left without effect the words which gave

[48] *Felix* v. *Thomas* [1967] 1 A.C. 292, at p. 306. And see *Ministry of Pensions & National Insurance* v. *Jones* [1966] 1 Q.B. 484, and *R.* v. *Russell, ex p. Beaverbrook Newspapers Ltd.* [1968] 3 W.L.R. 999.

[49] But see *Salmon* v. *Duncombe* (1886) 11 App. Cas. 627; *The Arabert* [1963] P. 102; *Glamorgan County Council* v. *Carter* [1963] 1 W.L.R. 1; *Wynn* v. *Skegness U.D.C.* [1967] 1 W.L.R. 52.

[50] *R.* v. *West Riding of Yorkshire JJ., Re Lees* (1841) 1 Q.B. 325, *per* Littledale J.

[51] *Simpson* v. *Blues* (1872) L.R. 7 C.P. 290; *Gunnestad* v. *Price* (1875) L.R. 10 Ex. 65.

jurisdiction over any agreement in relation to the use or hire of a ship.[52]

In *Re King, deceased,*[53] the Court of Appeal had to interpret the provision in section 141 (1) of the Law of Property Act 1925, that the benefit of every covenant in a lease to be performed by the lessee "shall be annexed and incident to and shall go with the reversionary estate in the land." Diplock L.J. said (at p. 497): "The expression 'go with' must be intended to add something to the concept involved in the expression 'annexed and incident to' and in my view connotes the transfer of the right to enforce the covenant from the assignor to the assignee with the consequent cessation of the right to the assignor to enforce the covenant against the tenant."

By section 34 (1) of the Trade Marks Act 1938: "The registrar may, on request made in the prescribed manner by the registered proprietor,— . . . (*e*) enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of the trade mark." Pennycuick J.'s decision that the phrase "memorandum relating to a trade mark" was limited to matters which were the subject of compulsory registration under sections 1 and 3 of the Act was reversed by the Court of Appeal, Lord Evershed M.R. saying that this "deliberately wide formula" must "fairly extend to memoranda sensibly related to any trade mark." "It seems indeed to us that if the judge be right, it is at least arguable that the words 'which does not in any way extend,' etc. are unnecessary." The section should not be construed in a way which would make them otiose.[54]

By section 1 of the Police (Property) Act 1897: "(1) Where any property has come into the possession of the police in connexion with any criminal charge . . . a court of summary jurisdiction may . . . make an order for the delivery of the property to the person appearing to the magistrate or court to be the owner thereof . . . (2) An order under this section shall not affect the right of any person to take within six months from the date of the order legal proceedings against any person in possession of the property delivered by virtue of the order for the recovery of the property, but on the expiration of those six months the right shall cease." A person who was in

[52] *Gaudet* v. *Brown* (1872) L.R. 5 P.C. 134; *The Alina* (1880) 5 Ex. D. 227.
[53] [1963] Ch. 459.
[54] *Re Svenska Aktiebolaget Gasaccumulator's Application* [1962] 1 W.L.R. 657. at pp. 662, 663.

possession of property at the time of his arrest argued that, possession being prima facie good against all but the true owner, persons whom he sued for the property could only succeed if they proved that they had a better title than he had: in other words, that the fact that they held the property under a section 1 (1) order made no difference to the onus of proof. But the Court of Appeal held that the Act did affect the onus of proof so that the person claiming property from one in possession under an order must show that he has a better title than the person against whom he claims. "The effect of section 1 (2) of the Act of 1897 is to preserve the right of any person . . . to come within six months from the date of the order and apply for the recovery of the property in question. . . . On the plaintiff's argument in this case that subsection would really have been quite unnecessary. It can only become necessary on the assumption that the effect of an order made under section 1 is to alter in some way the rights of a claimant to the property in question."[55]

Similarly, the main part of a section must not be construed in such a way as to render a proviso to the section redundant.[56]

By section 34 (1) of the Caravan Sites and Control of Development Act 1960: "Where the Minister gives any decision on an appeal under this Part of the Act against an enforcement notice [specified persons or bodies] may, according as rules of court may provide, either appeal to the High Court against the decision on a point of law or require the Minister to state and sign a case for the opinion of the High Court." The Rules of the Supreme Court only made provision for appeal by notice of motion, and Ungoed-Thomas J. held that in so doing they satisfied the requirement of the statute, and that a person aggrieved had no statutory right to use the procedure by way of case stated. "If the plaintiffs' interpretation were adopted, the words 'according as rules of court may provide' would be otiose."[57]

By regulation 3 (2) of the Building (Safety, Health and Welfare) Regulations 1948: " 'Scaffold' means any temporary structure on or from which persons perform work in connexion with an operation to which these Regulations apply . . . and includes any working platform, gangway, run, ladder or step-ladder." In *Curran* v. *William Neill and Son (St. Helens), Ltd.*,[58] it was argued that the general

[55] *Irving* v. *National Provincial Bank, Ltd.* [1962] 2 Q.B. 73, *per* Willmer L.J. at pp. 81, 82.
[56] *R.* v. *Leeds Prison (Governor), ex p. Stafford* [1964] 2 Q.B. 625.
[57] *Hoser* v. *Ministry of Housing and Local Government* [1963] Ch. 428, at p. 436.
[58] [1961] 1 W.L.R. 1069.

intention of the definition was directed to temporary structures, so that only those working platforms, etc., which were temporary (and not, for instance, a gutter on the building) would come within the regulation: this would make the whole definition accord more or less with the natural meaning of "scaffold." The Court of Appeal rejected this argument, the main reason apparently being that it would make the words "working platform, gangway," etc., otiose, since what they comprise would be already included in the general term "temporary structure." It was held, therefore, that the regulation included in its definition of "scaffold" all working platforms, gangways or runs which were part of the permanent equipment of a building, so that the scaffolding precautions required by regulations 5 and 7 applied to them.

2. The Other Main Principles of Interpretation

In this section it is proposed to look in a preliminary way at what appear to be the main principles of statutory interpretation, other than the literal rule. It goes without saying that the solution of a particular problem of interpretation will often be determined by which principle or principles the court chooses to apply.[59] But since there is not in English law any settled hierarchy governing the order in which the various canons and presumptions of construction are to be employed, the existence of these principles does not make it possible to predict with certainty the result which will be reached in a given case.

Moreover, where the question is whether the words of an Act do or do not apply to particular facts, "the court or tribunal may be assisted by legal principles or by so-called rules of construction, but these cannot solve the question."[60] Whether the juice of a single orange, freshly pressed to the order of an hotel guest, is a "manufactured beverage";[61] whether a piece of greaseproof paper on which meat stands in a shop window but which is not large enough to wrap completely round the meat is "any form of packaging . . . partly

[59] See, *e.g.*, *National Provincial Bank, Ltd.* v. *Hastings Car Mart, Ltd.* [1964] Ch. 665, where (paradoxically) Lord Denning M.R. interpreted s. 70 (1) (*g*) of the Land Registration Act 1925 literally so as to arrive at a "liberal" result, while Russell L.J. construed the words in the general context of the law of property and arrived at a "strict" result. On appeal, the House of Lords preferred the approach of Russell L.J.: *National Provincial Bank* v. *Ainsworth* [1965] A.C. 1175.

[60] *Griffiths* v. *J. P. Harrison* (*Watford*), *Ltd.* [1963] A.C. 1, *per* Lord Reid (dissenting) at p. 15.

[61] *Commissioners of Customs & Excise* v. *Savoy Hotel, Ltd.* [1966] 1 W.L.R. 948.

enclosing the goods";[62] at precisely what stage of disrepair a car ceases to be a "mechanically-propelled vehicle":[63] in one sense these are all problems of construction in which the principles considered in this work should be relevant, but in another they are rather questions of fact to be determined simply on the basis of "common sense."[64]

The mischief rule

In *Heydon's Case*,[65] in 1584, it was resolved by the Barons of the Exchequer (at p. 7b) "that for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered: (1st). What was the common law before the making of the Act. (2nd). What was the mischief and defect for which the common law did not provide. (3rd). What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth. And, (4th). The true reason of the remedy; and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*." In 1898, Lindley M.R. said: "In order properly to interpret any statute it is as necessary now as it was when Lord Coke reported *Heydon's Case* to consider how the law stood when the statute to be construed was passed, what the mischief was for which the old law did not provide, and the remedy provided by the statute to cure that mischief."[66] Although judges are unlikely to propound formally in their judgments the four questions in *Heydon's Case*, consideration of the "mischief" or object of the enactment[66a] is common, and will often provide the solution to a problem of interpretation.

In the well-known case of *Smith* v. *Hughes*,[67] for example, it was held that prostitutes who attracted the attention of passers-by from

[62] *Lucas* v. *Rushby* [1966] 1 W.L.R. 814.
[63] *Smart* v. *Allan* [1963] 1 Q.B. 291. *Cf. Ingram* v. *Percival* [1968] 3 W.L.R. 663; *Candy Maid Confections, Ltd.* v. *Commrs. of Customs and Excise* [1968] 3 W.L.R. 1196; *Soil Fertility Ltd.* v. *Breed* [1968] 3 W.L.R. 193.
[64] A phrase used by Sachs J. in *Commissioners of Customs & Excise* v. *Savoy Hotel, Ltd.*, *supra*, and by Lord Parker C.J. in *Smart* v. *Allan*, *supra*.
[65] 3 Co.Rep. 7a.
[66] *Re Mayfair Property Co.* [1898] 2 Ch. 28, at p. 35. *Cf. Salkeld* v. *Johnson* (1848) 2 Ex. 256; *River Wear Commissioners* v. *Adamson* (1877) 2 App. Cas. 743, *per* Lord Blackburn; *Eastman Photographic Materials Co.* v. *Comptroller-General of Patents* [1898] A.C. 571, *per* Earl of Halsbury L.C.
[66a] See *Victoria Sporting Club, Ltd.* v. *Hannam* [1969] 2 W.L.R. 454.
[67] [1960] 1 W.L.R. 830.

balconies or windows were soliciting "in a street" within section 1 (1) of the Street Offences Act 1959. "For my part," said Lord Parker C.J. (at p. 832), "I approach the matter by considering what is the mischief aimed at by this Act. Everybody knows that this was an Act intended to clean up the streets, to enable people to walk along the streets without being molested or solicited by common prostitutes." Viewed in that way, the precise place from which a prostitute addressed her solicitations to somebody walking in the street became irrelevant.[67a]

By section 12 of the Criminal Procedure Act 1851: "If upon the trial of any person for any misdemeanour it shall appear that the facts given in evidence amount in law to a felony, such person shall not by reason thereof be entitled to be acquitted of such misdemeanour." In *R.* v. *Males*,[68] applying these words to the facts of the case, the Court of Criminal Appeal held that a person charged with attempted housebreaking was not entitled to be acquitted because it appeared from the evidence that he had committed the complete offence. "When one considers the mischief aimed at by the Act," said Lord Parker C.J. (at p. 505), "it seems to this court that that is really the only interpretation that can be put on these words." The "mischief" was the disrepute into which the criminal law had been brought by 1851 by such technicalities as the doctrine of merger of felonies and misdemeanours.

In *Re Newspaper Proprietors' Agreement*,[69] the Court of Appeal held that the duty of the Registrar under section 1 (2) of the Restrictive Trade Practices Act 1956 to maintain a register of agreements extended to agreements which had expired or been terminated by the parties. Lord Denning M.R. said (at pp. 375, 376): "It is natural enough for the Act to speak in terms of existing agreements which are brought before the court, because those were the ones principally in mind, but there is no insuperable difficulty in applying its provisions to agreements which have expired or been determined before being brought to court. And when I bear in mind the mischief which it was intended to remedy, and the remedy which it has provided (by restraining agreements [in the future] to the like effect), I think that it should be construed so as to apply to agreements that have expired or been determined."

By section 23 of the Agricultural Holdings Act 1948: "A notice to

[67a] As to being "on the road" (Road Traffic Act 1960), see *Randall* v. *Motor Insurers' Bureau* [1968] 1 W.L.R. 1900.

[68] (1962) 2 Q.B. 500. [69] (1962) L.R. 3 R.P. 360; aff. (1962) L.R. 4 R.P. 361.

quit an agricultural holding . . . shall . . . be invalid if it purports to terminate the tenancy before the expiration of twelve months from the end of the then current year of tenancy." This has been held to invalidate a notice to quit given before the commencement of the tenancy to which it relates, even though there is no "then current year of tenancy" within the strict words of the section. Any other decision "would have the effect of defeating the purpose of the Agricultural Holdings Act."[70]

Consideration of the "mischief" aimed at may also lead to a restricted interpretation of a statute.

For example, hire-purchase legislation the purpose of which "is to restrain the mischief of inflating credit by means of . . . 'a charade' of payment, and to prohibit bogus pretences of payment designed to present a false picture of the price element of the purchase" is not interpreted so widely that the "actual payment" which it demands must always be payment in cash.[71]

By section 164 of the Public Health Act 1875, an urban authority may "purchase or take on lease lay out plant improve and maintain lands for the purpose of being used as public walks or pleasure grounds." The purpose of this section being "to provide the public with public walks and pleasure grounds," the Court of Appeal held that an authority which acquired lands under this section did not have the option of retaining occupation of them: it was bound to dedicate such lands to the public.[72]

By section 31 (1) of the Mines and Quarries Act 1954: "The surface entrance to every mine shaft . . . shall be provided with an efficient enclosure or barrier so designed and constructed as to prevent any person from accidentally falling down the shaft." Section 31 (2) provides that every enclosure or barrier provided in pursuance of section 31 (1) shall be properly maintained. In an action for breach of statutory duty, in which the deceased had met his death by falling off the top deck of a cage in a shaft, Waller J. said: "The mischief against which section 31 (2) is directed is the mischief of somebody accidentally falling down the shaft from the surface entrance. . . . This case was an accident which happened when the deceased . . . fell down

[70] *Lower* v. *Sorrell* [1963] 1 Q.B. 959, *per* Ormerod L.J. at p. 968. More accurately the Court held that the invalidity of such a notice was a common law rule implicit in the section, rather than expressly provided for therein.

[71] *Kingsley* v. *Sterling Industrial Securities, Ltd.* [1967] 2 Q.B. 747 *per* Winn L.J. at p. 785. *Cf. Snook* v. *London & West Riding Investments, Ltd.* [1967] 2 Q.B. 786.

[72] *Blake* v. *Hendon Corporation* [1962] 1 Q.B. 283, *per* Devlin L.J.

the shaft from inside the shaft. . . . Therefore . . . there was no breach of statutory duty which caused this accident."[73]

In *Brown* v. *Brown*,[74] Sir Jocelyn Simon P. said that the disadvantage of the old law on condonation of adultery was that, though a resumption of cohabitation might actually promote a reconciliation which had not yet taken place, a wronged spouse might be reluctant to resume cohabitation in case it did not succeed and he or she would then have lost the right to complain of the matrimonial offence. The provision in section 2 (1) of the Matrimonial Causes Act 1963 (now contained in section 42 of the Matrimonial Causes Act 1965) that adultery shall not be deemed to be condoned by reason of a continuation or resumption of cohabitation between the parties for a period of up to three months was, therefore, limited to cases within this "mischief"—where the cohabitation was *with a view to* effecting a reconciliation, and did not extend to cases where it was in consequence of reconciliation.

The golden rule

The so-called "golden rule" is really a modification of the literal rule. It was stated in this way by Parke B.: "It is a very useful rule, in the construction of a statute, to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified, so as to avoid such inconvenience, but no further."[75] "If," said Brett L.J., "the inconvenience is not only great, but what I may call an absurd inconvenience, by reading an enactment in its ordinary sense, whereas if you read it in a manner in which it is capable, though not its ordinary sense, there would not be any inconvenience at all, there would be reason why you should not read it according to its ordinary grammatical meaning."[76] The application of this rule, and its limits, will be seen in the parts of this work devoted to construction with reference to the consequences,[77] and construction to avoid

[73] *Rodgers* v. *National Coal Board* [1966] 1 W.L.R. 1559, at p. 1563.
[74] [1967] P. 105; *ante*, pp. 4, 5.
[75] *Becke* v. *Smith* (1836) 2 M. & W. 191, at p. 195.
[76] *R.* v. *Tonbridge Overseers* (1884) 13 Q.B.D. 339, at p. 342. *Cf. Grey* v. *Pearson* (1857) 6 H.L.Cas. 61, *per* Lord Wensleydale; *Luke* v. *I.R.C.* [1963] A.C. 557, *per* Lord Reid.
[77] *Post*, pp. 105–116.

inconvenience and injustice[78] and to prevent evasion.[79] Here, a few recent examples of the application of the golden rule will be given.

Section 77 (1) of the Road Traffic Act 1960 requires the driver of a motor vehicle to "stop" after an accident. Winn L.J., in the Divisional Court, said that he would not wish to give the impression that a momentary pause after an accident would exempt the driver of a car from the necessity of stopping to give particulars. "The phrase 'the driver of the motor vehicle shall stop' is properly to be construed as meaning the driver of the motor vehicle shall stop it and remain where he has stopped it for such a period of time as in the prevailing circumstances, having regard in particular to the character of the road or place in which the accident happened, will provide a sufficient period to enable persons who have a right so to do, and reasonable ground for so doing, to require of him direct and personally the information which may be required under the section."[80]

By section 155 (1) of the Factories Act 1961: "In the event of any contravention in or in connexion with or in relation to a factory of the provisions of this Act . . . the occupier . . . of the factory shall . . . be guilty of an offence." Lord Parker C.J. said: "[Counsel] says, what is quite true, that [section 155 (1)] is prima facie referring to any contravention under the Act . . . by whomsoever committed, and that under these wide words the employer is liable for the offence committed by the employee. . . . I agree that those are very wide words, but I feel constrained in the circumstances of the case to interpret them in a way which will only make the employer liable for all contraventions under the Act other than those in respect of which the sole obligation to perform is imposed on the employee. To give it the other meaning seems to me to conflict with the principle that a master is not vicariously liable for crimes of his servant." Marshall J. agreed, saying that the interpretation attached to the provision by the Lord Chief Justice was "reinforced by the claims of good sense and of justice."[81]

Finally, Buckley J. has held that a debt may come within the description "book debts" in section 95 (2) (*e*) of the Companies Act 1948, even though it has not been entered in the books of the business, provided that it "would or could in the ordinary course of such

[78] *Post*, pp. 199–212.
[79] *Post*, pp. 137–145.
[80] *Lee* v. *Knapp* [1967] 2 Q.B. 442, at pp. 447, 448.
[81] *Wright* v. *Ford Motor Co., Ltd.* [1967] 1 Q.B. 230, at pp. 236–238.

a business be entered in well-kept books relating to that business."[82] He cited a nineteenth-century case in which Byles J. had said: "Suppose the trader kept no books, or was blind and could not write, and did not choose to incur the expense of keeping a clerk or book-keeper,—upon the construction contended for by the defendant, there could be no book debts which could be made the subject of sale and assignment under section 137 of the Bankruptcy Act 1861. That surely would not be a very sensible construction to put upon the statute."[83]

Construction ut res magis valeat quam pereat

"If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result."[84] "Where alternative constructions are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system."[85]

In accordance with these principles, the court should avoid interpretations which would leave any part of the provision to be interpreted without effect;[86] will not narrow enactments designed to prevent tax evasion;[87] may sometimes find it necessary to depart from the principle that *mens rea* is an essential ingredient of criminal offences;[88] and may give a wide sense to words in a penal statute.[89]

Under section 20 (3) of the Restrictive Trade Practices Act 1956, an injunction may be issued against persons who are parties to an agreement which has been declared contrary to the public interest and who "carry on business in the United Kingdom." Section 6 (1)

[82] *Independent Automatic Sales, Ltd.* v. *Knowles & Foster* [1962] 1 W.L.R. 974, at p. 983.
[83] *Shipley* v. *Marshall* (1863) 14 C.B. (N.S.) 566, at p. 573.
[84] *Nokes* v. *Doncaster Amalgamated Collieries, Ltd.* [1940] A.C. 1014, *per* Viscount Simon L.C. at p. 1022.
[85] *Shannon Realities, Ltd.* v. *Ville de St. Michel* [1924] A.C. 185, *per* Lord Shaw at pp. 192, 193. And see *Engineering Industry Training Board* v. *Samuel Talbot (Engineers) Ltd.* [1969] 2 W.L.R. 464.
[86] *Ante*, pp. 36–39.
[87] *Post*, p. 141.
[88] *Post*, pp. 127–130.
[89] *Post*, pp. 246–251.

of the Act refers to agreements "between two or more persons carrying on business within the United Kingdom in the production or supply of goods, or in the application of goods to any process of manufacture." Diplock J., in the Restrictive Practices Court, has refused to limit the jurisdiction under section 20 (3) by reference to the words of section 6 (1) (thus departing from the principle that an Act is to be read as a whole), and has held that under section 20 (3) an injunction might be issued against a registered trade union consisting of persons trading in the United Kingdom, even though the trade union could not be said to be carrying on business in the sense of producing or supplying goods. Section 20 (3) was thus given the greatest possible effect.[90]

By section 346 (1) of the Companies Act 1948: "The court may, as to all matters relating to the winding-up of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any sufficient evidence." By section 346 (2): "In the case of creditors, regard shall be had to the value of each creditor's share." The Court of Appeal has refused to adopt an interpretation of section 346 (2), which would have the effect of diminishing the very wide discretion conferred upon it by the earlier provision.[91]

By section 1 (1) (*a*) of the Drugs (Prevention of Misuse) Act 1964, it is a defence for an accused person to show that he was in possession of a scheduled substance by virtue of a prescription issued by a medical practitioner for its administration to him by way of treatment. In *R.* v. *Ewens*,[92] it was held that the onus of bringing himself within this exception was on the accused, and that the Crown was not bound in the first place to adduce any prima facie evidence that he fell outside the exceptions. Melford Stevenson J. said (at p. 330): "It is tolerably plain that there must be many statutory prohibitions which would become incapable of enforcement if the prosecution had to embark upon inquiries necessary to exclude the possibility of a defendant falling within a class of persons excepted by the section when the defendant himself knows perfectly well whether he falls within that class. . . . That consideration has proved a powerful one in enabling courts in the past to construe enactments such as the

[90] *Re the Agreement between the Newspaper Proprietors' Association, Ltd. and the National Federation of Retail Newsagents, Booksellers and Stationers* (1961) L.R. 2 R.P. 453, not following *Re Wholesale Confectioners Alliance of Great Britain and Northern Ireland's Agreement (No. 2)* (1961) L.R. 2 R.P. 231.

[91] *Re P. & J. Macrae, Ltd.* [1961] 1 W.L.R. 229. *Cf. Re A.B.C. Coupler & Engineering Co., Ltd.* [1962] 1 W.L.R. 1236.

[92] [1967] 1 Q.B. 322.

section now before us and we think that it is of the utmost persuasive importance in relation to this section."

A statute is to be read as a whole

It was resolved in the *Case of Lincoln College*[93] that the good expositor of an Act of Parliament should "make construction on all the parts together, and not of one part only by itself." Every clause of a statute is to "be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute."[94] This principle is fully discussed in a later section of this chapter.[95]

3. Reading Words in their Context: The External Aspect

Statutory language is not read in isolation, but in its context. In this section, we consider the extent to which external circumstances may be taken into account in construing an Act of Parliament: in the following section, the effect of other legislative provisions (whether contained in the same enactment as that which contains the words to be interpreted, or in other enactments) on construction will be considered.

Historical setting

"The Court," said Sir George Jessel M.R., "is not to be oblivious . . . of the history of law and legislation. Although the Court is not at liberty to construe an Act of Parliament by the motives which influenced the Legislature, yet when the history of law and legislation tells the Court, and prior judgments tell this present Court, what the object of the Legislature was, the Court is to see whether the terms of the section are such as fairly to carry out that object and no other, and to read the section with a view to finding out what it means, and not with a view to extending it to something that was not intended."[96] In the interpretation of statutes, the interpreter may call to his aid all

[93] (1595) 3 Co.Rep. 58b, at p. 59b.

[94] *Canada Sugar Refining Co., Ltd.* v. *R.* [1898] A.C. 735, *per* Lord Davey at p. 741.

[95] *Post*, pp. 58–64. *Cf. Midland Bank, Ltd.* v. *Conway B.C.* [1965] 1 W.L.R. 1165, a case in which the principle that words should be read in their context prevailed over arguments based on the literal wording of the Act and the purpose of the provision in question.

[96] *Holme* v. *Guy* (1877) 5 Ch.D. 901, at p. 905. *Cf. Att.-Gen.* v. *Dean and Canons of Manchester* (1881) 18 Ch.D. 596, *per* Hall V.-C.; *River Wear Commissioners* v. *Adamson* (1877) 2 App.Cas. 743, *per* Lord Blackburn; *Eastman Photographic Materials Co., Ltd.* v. *Comptroller-General of Patents* [1898] A.C. 571, *per* Earl of Halsbury L.C.

those external or historical facts which are necessary for comprehension of the subject-matter,[97] and may also consider whether a statute was intended to alter the law or to leave it exactly where it stood before.[98] But although "we can have in mind the circumstances when the Act was passed and the mischief which then existed so far as these are common knowledge . . . we can only use these matters as an aid to the construction of the words which Parliament has used. We cannot encroach on its legislative function by reading in some limitation which we may think was probably intended but which cannot be inferred from the words of the Act."[99]

Examples of attention being paid to the historical setting of legislation abound. In a Canadian constitutional appeal, Lord Sankey L.C. said: "The process of interpretation as the years go on ought not to be allowed to dim or to whittle down the provisions of the original contract upon which the federation was founded, nor is it legitimate that any judicial construction of the provisions of sections 91 and 92 should impose a new and different contract upon the federating bodies."[1] In *Henrietta Muir Edwards* v. *Att.-Gen. for Canada*,[2] the legal position of women from the earliest times was considered. And Goddard L.J. approached "the construction of the [Truck] Act, bearing in mind that in the words of Lord Lindley,[3] regard must be had not only to the words used, but to the history of the Act and the reasons which led to its being passed."[4]

In his celebrated judgment in the *Alabama* arbitration, Cockburn C.J. showed, by a reference to their history, that both the American and English Foreign Enlistment Acts of the early part of the nineteenth century were intended, not to prevent the sale of armed ships to belligerents, but to prevent American and English citizens from manning privateers against belligerents.[5]

The Slave Trade Act 1824 was construed to extend to offences committed by British subjects out of the British dominions, that is, on the west coast of Africa, by the light of the notorious fact that the crime against which the Act was directed was mainly, if not

[97] *e.g.*, The Buildings (Safety, Health and Welfare) Regulations are not construed in a vacuum, but with reference to the day-to-day experience with regard to the doing of work of the kind in question: *Connolly* v. *McGee* [1961] 1 W.L.R. 811.
[98] *Re A Debtor* [1903] 1 K.B. 705, *per* Cozens-Hardy L.J.
[99] *Att.-Gen. for Northern Ireland* v. *Gallagher* [1963] A.C. 349, *per* Lord Reid at p. 366.
[1] *Re the Regulation and Control of Aeronautics in Canada* [1932] A.C. 54, at p. 70.
[2] [1930] A.C. 124. *Cf. Viscountess Rhondda's Claim* [1922] 2 A.C. 339.
[3] *Thomson* v. *Clanmorris* [1900] 1 Ch. 718.
[4] *Pratt* v. *Cook, Son & Co. (St. Paul's), Ltd.* [1939] 1 K.B. 364, at p. 382.
[5] Supplement to the *London Gazette*, September 20, 1872, p. 4135.

exclusively, committed there;[6] though it may, perhaps, not have extended to our subjects in other parts of the world beyond our territories.[7]

In interpreting the words of the Ceylon Bribery Act 1954, the Judicial Committee has said that it is proper, bearing in mind the historical affinity between the Parliamentary institutions of the United Kingdom and Ceylon, "to draw any assistance that can be obtained from practices, conventions or rulings that govern the conduct of members of the House of Commons of the United Kingdom."[8]

By section 111 (1) of the Housing Act 1957: "The general management, regulation and control of houses provided by a local authority under this Part of the Act shall be vested in and exercised by the authority." The Court of Appeal has held that a council which, having erected houses, arranged with an insurance company for a group policy insuring tenants' effects, invited the tenants to participate in the scheme and collected the premiums with the rent, was acting within its powers of general management under section 111 (1). Lord Evershed M.R. thought, though without expressing a concluded view on the matter, "that when one looks at the facts of the case, and particularly regards the date of the passing of the Housing Act 1957, it is legitimate to take into account what, under the guise of management, councils had been proved in substantial numbers of cases to have done."[9]

In holding that it was not possible for an accused person, charged under the Official Secrets Act 1911, to show by evidence that the policies to which he adhered would be beneficial, and not prejudicial, to the state, Lord Reid said: "The 1911 Act was passed at a time of grave misgiving about the German menace, and it would be surprising and hardly credible that the Parliament of that date intended that a person who deliberately interfered with vital dispositions of the armed forces should be entitled to submit to a jury that Government policy was wrong and that what he did was really in the best interests of the country, and then perhaps to escape conviction because

[6] *R.* v. *Zulueta* (1843) 1 Car. & K. 215. See *Santos* v. *Illidge*, *infra*, *per* Bramwell B. at pp. 869, 870. "I cannot doubt that it was intended to apply to the coast of Africa, where the slave-trade was carried on. But, was it intended to apply to the territories, or rather the interior of the territories, of the King of Portugal? Was it intended to apply to the State of Kentucky in North America? I think not."

[7] *Santos* v. *Illidge* (1859–60) 8 C.B. (N.S.) 861, *per* Bramwell B.

[8] *Att.-Gen. of Ceylon* v. *De Livera* [1963] A.C. 103, *per* Viscount Radcliffe at p. 119.

[9] *Att.-Gen.* v. *Crayford U.D.C.* [1962] Ch. 575, at pp. 589, 590.

a unanimous verdict on that question could not be obtained."[10] And the same learned judge, when considering the phrase "an offence of a political character" in section 3 (1) of the Extradition Act 1870, said: "In reading the Act of 1870 one is entitled to look through mid-Victorian spectacles. Many people then regarded insurgents against continental governments as heroes intolerably provoked by tyranny who ought to have asylum here although they might have destroyed life and property in the course of their struggles."[11]

Finally, the failure of Parliament to legislate in a particular way at any time in the past may be relevant. In holding that the chance of playing at better odds in future games (the result of winning the jackpot from a one-armed bandit) was not a "benefit" within section 2 (3) of the Betting, Gaming and Lotteries Act 1964 Widgery J. referred to the fact that at no time had Parliament thought fit to regulate the use of automatic machines by reference to the odds which they offer to the player.[12]

Parliamentary history

In the past reference has occasionally been made to what those who framed a statute, or individual members of the legislature, intended to do by the enactment, or understood it to have done.[13] Lord Nottingham, for example, claimed to have some reason to know the meaning of the Statute of Frauds because, he said, it had its rise from him, he having brought it into the House of Lords.[14] And, in determining the meaning of the rubric on vestments in the Prayer Book (enacted by the Act of Uniformity 1662), the Privy Council referred to the introduction of a proviso by the Lords in that Act and its rejection by the Commons, and to the reasons assigned by the Commons for the rejection in the conference that ensued, as an indication of the intention of the legislature.[15]

But the modern rule is clear: the Parliamentary history of legislation is not a permissible aid in construing a statute.[16] Lord Westbury,

[10] *Chandler* v. *D.P.P.* [1964] A.C. 763, at p. 791.
[11] *Schtraks* v. *Government of Israel* [1964] A.C. 556, at pp. 582, 583.
[12] *Cronin* v. *Grierson* [1967] 1 W.L.R. 1147; reversed [1968] A.C. 895.
[13] Y.B. 33 Edw. 1, M.Term (Rolls Ed.), 82, *per* Hengham C.J.; *R.* v. *Wallis* (1793) 5 T.R. 375; *Mounsey* v. *Ismay* (1865) 3 H. & C. 486.
[14] See *Ash* v. *Abdy* (1678) 3 Swanst. 664.
[15] *Hebbert* v. *Purchas* (1871) L.R. 3 P.C. 605. *Cf. Ridsdale* v. *Clifton* (1877) 2 P.D. 276.
[16] See *R.* v. *Hertford College* (1878) 3 Q.B.D. 693; *Att.-Gen.* v. *Sillem* (1863) 2 H. & C. 431, *per* Pollock C.B. and Bramwell B.; *Administrator of Bengal* v. *Prem Lal Mullick* (1895) 22 Ind.App. 107; *Herron* v. *Rathmines, etc., Commissioners* [1892] A.C. 498, *per* Lord Halsbury L.C.

when Chancellor, referred to a speech which he had made, as Attorney-General, in introducing the Bankruptcy Bill of 1860 in the House of Commons: but he observed that he had endeavoured, in forming his opinion on the interpretation of the Bill as enacted, to divest his mind, so far as possible "for one who wrote the words and knew the meaning he intended to convey," of all impressions received from the past, and to consider the language of the Act as if he were seeing it for the first time.[17] Lord Denning has said that "in this country we do not refer to the legislative history of an enactment as they do in the United States of America. We do not look at the explanatory memoranda which preface the Bills before Parliament. We do not have recourse to the pages of Hansard. All that the courts can do is to take judicial notice of the previous state of the law and of other matters generally known to well-informed people."[18] The action of Lord Upjohn in *Beswick* v. *Beswick*,[19] in considering the proceedings of the Joint Committee of both Houses on Consolidation Bills, was quite exceptional.

The rule against reference being made to legislative material, while it admittedly excludes from consideration one possible source of relevant information, may, perhaps, be justified on two grounds. One is that a statute can only be regarded as the language of the three Estates of the realm, and the meaning attached to it by those who drafted it or by individual members of one of those Estates should not control its construction. The other is the danger that members of either House might, in the course of debate, attempt to influence the future interpretation of a statute by expressing their own "views" as to its probable effect in the hope that these would remain uncontradicted at the conclusion of its passage through Parliament.

Government publications

These may be divided into two groups: the reports of commissions or committees which preceded the legislation to be interpreted, and other documents.

With regard to the latter class, the law is not in doubt. Unless the document is expressly referred to in the statute,[20] it cannot be looked at for the purpose of construction. The courts do not, for example,

[17] *Re Mew* (1862) 31 L.J.Bk. 87.
[18] *Escoigne Properties Ltd.* v. *I.R.C.* [1958] A.C. 549, at p. 566.
[19] [1968] A.C. 58.
[20] As in *Lord Advocate* v. *Reliant Tool Co.* [1968] 1 W.L.R. 205 (Standard Industrial Classification referred to in Selective Employment Payments Act 1966).

A-80462

refer to the explanatory memoranda which preface Bills before Parliament.[21] In *Katikiro of Buganda* v. *Att.-Gen.*,[22] a White Paper containing the recommendations of a constitutional conference held in Uganda was held inadmissible as an aid to the construction of the Buganda Agreement 1955 Order in Council 1955. And in *London County Council* v. *Central Land Board*,[23] "Practice Notes, being notes on Development Charges" under the Town and Country Planning Act 1947, provided by the Board for the guidance of its officials, were held by the Court of Appeal to be "wholly inadmissible for the purpose of construing the Act."

The reports of commissions which preceded the statute in question are in a more doubtful position. The nineteenth-century cases are almost unanimously against the admission of such reports:[24] one striking consequence was that the Dower Act 1833 was construed to apply to gavelkind lands, although this was avowedly contrary to the intention of the Real Property Commissioners who prepared the Act—for they stated in their report that it was their intention that the Act should not extend to lands of that tenure.[25] In 1898, however, in *Eastman Photographic Materials Co., Ltd.*, v. *Comptroller-General of Patents*,[26] in considering the Patents Act 1888, the Earl of Halsbury L.C. referred to the report of an inquiry into the working of the Patents Act 1883. He said (at p. 575) that "no more accurate source of information as to what was the evil or defect which the Act of Parliament now under construction was intended to remedy could be imagined than the report of that commission."

In *Assam Railways and Trading Co., Ltd.* v. *I.R.C.*,[27] counsel before the House of Lords sought to introduce into his argument certain recommendations from a report of a Royal Commission on Income Tax in 1920, arguing that as section 27 (1) of the Finance Act 1920 followed these recommendations, it should be presumed that the words of the section were intended to give effect to them, and hence that they could be used to show what was the intention of the legislature in enacting the section. Lord Wright (with whom Lord Atkin

[21] *Escoigne Properties Ltd.* v. *I.R.C.* [1958] A.C. 549, *per* Lord Denning.
[22] [1961] 1 W.L.R. 119.
[23] [1958] 3 All E.R. 676, *per* Jenkins L.J. at p. 678.
[24] See, *e.g.*, *Salkeld* v. *Johnson* (1846) 2 C.B. 749; *Ewart* v. *Williams* (1854) 3 Drew. 21; and the other cases cited in *Craies on Statute Law*, 6th ed., p. 130, n. 33. *Contra*, *Fellowes* v. *Clay* (1843) 4 Q.B. 313.
[25] *Farley* v. *Bonham* (1861) 30 L.J.Ch. 239.
[26] [1898] A.C. 571.
[27] [1935] A.C. 445.

and Lord Thankerton concurred) refused to accept this submission. "It is clear," he said (at p. 458), "that the language of a Minister of the Crown in proposing in Parliament a measure which eventually becomes law is inadmissible and the Report of Commissioners is even more removed from value as evidence of intention, because it does not follow that the recommendations were accepted." He distinguished the *Eastman* case[28] on the ground that Lord Halsbury was there merely "treating the Report as extraneous matter to show what were the surrounding circumstances with reference to which the words were used."

Since the *Assam* case[29] the extent to which reports have been used has varied. Recently, having disposed of points arising under the Variation of Trusts Act 1958 and the Perpetuities and Accumulations Act 1964, Megarry J. said that he had been "astute to do so without resort to the Fourth and Sixth Reports of the Law Reform Committee or the discussions which led to those reports, despite their relationship to the Acts of 1964 and 1958 respectively."[30] On the other hand, Thompson J. permitted counsel to refer to the report of the committee which preceded the 1963 Limitation Act not, admittedly, to interpret the Act, but to show that there was nothing in the recommendations of the committee which was inimical to the way in which an application was being made to the Court under the Act:[31] it is, however, hard to draw a line between admitting a report for such a purpose and admitting it avowedly for construction.

The majority of the cases have taken the middle course indicated in the *Assam* case:[32] reports have been admitted, not to show the intention of the legislature, but to show what was the mischief intended to be remedied in the same way as other evidence of the historical setting of legislation is received. So, the Judicial Committee has referred to government reports in constitutional appeals from Canada[33] and Ceylon;[34] a report of the Common Law Commissioners in 1853 was referred to by the Court of Appeal when discussing the Evidence Amendment Act of that year;[35] and, in considering the meaning of the word "desertion," Evershed J. referred

[28] [1898] A.C. 571.
[29] [1935] A.C. 445.
[30] *Re Holt's Settlement* [1969] 1 Ch. 100, at p. 120.
[31] *Cozens* v. *North Devon Hospital Management Committee* [1966] 2 Q.B. 318.
[32] [1935] A.C. 445.
[33] *Ladore* v. *Bennett* [1939] A.C. 468.
[34] *Pillai* v. *Mudanayake* [1953] A.C. 514.
[35] *Shenton* v. *Tyler* [1939] Ch. 620.

to the Royal Commission of 1912 on Divorce and Matrimonial Causes.[36] The modern attitude is best summed up in these words of Lord Denning M.R. in *Letang* v. *Cooper*:[37] "It is legitimate to look at the report of such a committee, so as to see what was the mischief at which the Act was directed. You can get the facts and surrounding circumstances from the report so as to see the background against which the legislation was enacted. This is always a great help in interpreting it. But you cannot look at what the committee recommended, or at least, if you do look at it, you should not be unduly influenced by it. It does not help you much, for the simple reason that Parliament may, and often does, decide to do something different to cure the mischief. You must interpret the words of Parliament as they stand, without too much regard to the recommendations of the committee."

International conventions

International conventions may not be resorted to for the purpose of interpreting legislation which does not contain any ambiguities.[38] But if the terms of the legislation are not clear, "we can refer to the convention to resolve ambiguities or obscurities of language in . . . the statute."[39] So in *Hogg* v. *Toye and Co., Ltd.*,[40] Maugham L.J. referred to article 11 of the Berne Convention 1886 when the Copyright Act 1911 was before the Court of Appeal; and in *Salomon* v. *Commissioners of Customs and Excise*,[41] it was held that, in construing the phrases "open market" and "normal price" as used in the Customs and Excise Act 1952, the court might have regard to the Convention on the Valuation of Goods for Customs Purposes which preceded the Act, which showed that the "open market" was the import market.

The use in an international convention of words different from those employed in the corresponding domestic legislation does not give rise to any presumption that a different meaning was intended, for international conventions do not employ the terms of art of the municipal law of any single country.[42]

[36] *Weatherley* v. *Weatherley* [1946] 2 All E.R. 1.
[37] [1965] 1 Q.B. 232, at p. 240.
[38] *Ellerman Lines, Ltd.* v. *Murray* [1931] A.C. 126; *Warwick Film Productions, Ltd.* v. *Eisinger* [1967] 3 W.L.R. 1599.
[39] *Salomon* v. *Commissioners of Customs and Excise* [1967] 2 Q.B. 116, *per* Diplock L.J. at p. 145. *Cf. Corocraft* v. *Pan American Airways Inc.* [1969] 1 All E.R. 82, *post*, p. 185, n. 93a.
[40] [1935] Ch. 497. [41] [1967] 2 Q.B. 116.
[42] *Post Office* v. *Estuary Radio, Ltd.* [1967] 1 W.L.R. 847.

Dictionaries and textbooks

"I am quite aware," said Lord Coleridge, "that dictionaries are not to be taken as authoritative exponents of the meanings of words used in Acts of Parliament, but it is a well-known rule of courts of law that words should be taken to be used in their ordinary sense, and we are therefore sent for instruction to these books": he then cited Johnson's and Webster's definitions of "credit."[43] Thus dictionaries have been resorted to when considering the meaning of the words "park,"[44] "rubbish,"[45] "document,"[46] "practicable,"[47] "machinery,"[48] "hardware,"[49] and "curtilage."[50]

Care must, however, be exercised in the use of such works: thus, when the Court of Appeal had to interpret the word "poultry" in section 2 (2) of the Fertilisers and Feeding Stuffs Act 1926, Davies L.J. pointed out that *Webster's Third New International Dictionary*, published in the United States in 1961, was of no assistance with regard to English usage in 1926.[51] And dictionaries are for consultation "in the absence of any judicial guidance or authority."[52] "I continue to think," said Lord Macnaghten in *Midland Railway Co.* v. *Robinson*,[53] "that the word ['mine,' defined by Dr. Johnson so as to include a quarry] was used . . . in the sense which, if I am not mistaken, every English judge who had occasion to consider the meaning of the word before *Farie's* case[54] was decided took to be its ordinary signification. It seems to me that on such a point the opinions of such judges as Kindersley V.-C., Turner L.J. and Sir George Jessel are probably a safer guide than any definitions or illustrations to be found in dictionaries." Further, the utility of dictionary definitions is obviously limited where judge and counsel use different works;[55] and "it is often fallacious in considering the meaning of a phrase

[43] *R.* v. *Peters* (1886) 16 Q.B.D. 636, at p. 641. *Cf. Marquis of Camden* v. *I.R.C.* [1914] 1 K.B. 641, *per* Cozens-Hardy M.R.
[44] *Re Ripon (Highfield) Housing Confirmation Order 1938* [1939] 2 K.B. 838.
[45] *McVittie* v. *Bolton Corporation* [1945] K.B. 281.
[46] *Hill* v. *R.* [1945] K.B. 329.
[47] *Lee* v. *Nursery Furnishings, Ltd.* [1945] 1 All E.R. 387.
[48] *Lovelidge* v. *Anselm Odling & Sons, Ltd.* [1967] 2 Q.B. 351.
[49] *Pioneer Plastic Containers, Ltd.* v. *Commissioners of Customs and Excise* [1967] Ch. 597.
[50] *Re St. John's Church, Bishop Hatfield* [1967] P. 113.
[51] *Hardwick Game Farm* v. *Suffolk Agricultural and Poultry Producers Association Ltd.* [1966] 1 W.L.R. 287.
[52] *Kerr* v. *Kennedy* [1942] 1 K.B. 409, *per* Asquith J. at p. 413.
[53] (1890) 15 App.Cas. 19, at pp. 34, 35.
[54] (1888) 13 App.Cas. 657.
[55] As in *Nairne* v. *Stephen Smith & Co., Ltd.* [1943] 1 K.B. 17.

consisting of two words ['unfair competition'] to find a meaning which each has separately and then infer that the two together cover the combination so arrived at. The two together may, as here, have acquired a special meaning of their own."[56]

Textbooks may also be referred to for assistance in finding the true construction of a statute. The opinions of Coke, for example, have been relied upon more than once;[57] and in *Re Castioni*[58] the court, of which Stephen J. was a member, consulted his *History of Criminal Law* to define "political crime." The place of textbooks in the science of interpretation was aptly summarised by Lord Goddard C.J. in *Bastin* v. *Davies*.[59] Referring to the discussion of the word "substance" in the twelfth edition of Bell's *Sale of Food and Drugs*, he said (at pp. 582, 583): "This court would never hesitate to disagree with a statement in a textbook, however authoritative, or however long it had stood, if it thought right to do so. In fact, it has had occasion, I think, in the past to differ from statements in Stone's *Justices' Manual*, which justices are accustomed to treat with almost the respect paid to the Bible. *Communis error facit jus* is a maxim of very limited application; but, as Lord Ellenborough C.J. said in *Isherwood* v. *Oldknow*,[60] it is truer to say '*communis opinio* is evidence of what the law is.' It would be unfortunate if doubt had to be thrown on a statement which has appeared in a well-known textbook for a great number of years without being judicially doubted and after it had been acted on by justices and their clerks for many years."

Practice—judicial, conveyancing, administrative and commercial

The practice which has been followed in a matter in the past may influence the interpretation to be placed on legislation.

In *Re Holt's Settlement*,[61] for instance, in adopting a particular view of the effect of the making of an order under section 1 of the Variation of Trusts Act 1958, Megarry J. said (at p. 661) that "it accords with the practice which has been relied on for many years in some thousands of cases."

[56] *Lee* v. *Showman's Guild of Great Britain* [1952] 2 Q.B. 329, *per* Somervell L.J. at p. 338.
[57] *Mayor of Newcastle* v. *Att.-Gen.* (1845) 12 Cl. & F. 402; *Strother* v. *Hutchinson* (1837) 4 Bing. N.C. 83; *Gorham* v. *Bishop of Exeter* (1850) 5 Ex. 630.
[58] [1891] 1 Q.B. 149.
[59] [1950] 2 K.B. 579.
[60] (1815) 3 M. & S. 382.
[61] [1969] 1 Ch. 100.

"The uniform opinion and practice of eminent conveyancers has always had great regard paid to it by all courts of justice."[62] Where a statutory power is couched in the same terms as express terms in settlements, the opinions of the courts on those express powers must clearly become relevant. "No one disputes," said Viscount Radcliffe in *Pilkington* v. *I.R.C.*,[63] "that, when section 32 was framed and inserted in the Trustee Act 1925 as a general enabling provision applying to trusts coming into existence after that date, it was expressed in terms that corresponded closely with the previous common form recommended in books of conveyancing precedents and adopted in practice. I do not see any particular importance in this circumstance apart from the fact that it makes it the more natural to refer to what had been said in earlier reported decisions that bear up on the meaning and range of a power of advancement."

Administrative practice does not, however, have the same weight.[64] In *Strand Securities, Ltd.* v. *Caswell*,[65] the Court of Appeal, reversing Cross J., held that the defendant's application for registration of his sub-lease was complete without the production of the land certificate relating to the head lease, the Land Registry's practice (based on its reading of section 64 (1) (*a*) of the Land Registration Act 1925) of requiring production being erroneous. "The judge," said Lord Denning M.R. (at p. 977), "was much influenced by the practice of the Land Registry. He thought he ought to give weight to it, just as to the practice of conveyancers. I do not agree with this. We cannot allow the registrar by his practice to make bad law and it is bad law to insist on the lessee producing his landlord's land certificate—to which he has no right."

Commercial usage may be relevant. In *United Dominions Trust, Ltd.* v. *Kirkwood*,[66] in applying the phrase "any person bona fide carrying on the business of banking" (Money-lenders Act 1900, s. 6 (*d*), Lord Denning said (at pp. 454, 455) that "in such a matter as this, when Parliament has given no guidance, we cannot do better than look at the reputation of the concern amongst intelligent men of commerce." For "when merchants have established a course of business which is running smoothly and well with no inconvenience

[62] *Basset* v. *Basset* (1744) 3 Atk. 203, *per* Lord Hardwicke L.C. at p. 208. *Cf. Re Ford and Hill* (1879) 10 Ch.D. 365, *per* James L.J.; *Jenkins* v. *I.R.C.* [1944] 2 All E.R. 491.
[63] [1964] A.C. 612, at p. 634.
[64] But see Lord Macnaghten in *Commissioners of Income Tax* v. *Pemsel* [1891] A.C. 531; *Craies on Statute Law*, 6th ed., pp. 131–32.
[65] [1965] Ch. 958.
[66] [1966] 2 Q.B. 431.

or injustice, it is not for the judges to put a spoke in the wheel and bring it to a halt. Even if someone is able to point to a flaw, the courts should not seize on it so as to invalidate past transactions or produce confusion . . . *Communis error facit jus.* That is to say, when business has been regulated on the faith of it and the position of parties altered in consequence."

4. Reading Words in Context: The Statutory Aspect

An Act is to be regarded as a whole

Passing from the external aspects of the statute to its contents, it is an elementary rule that construction is to be made of all the parts together, and not of one part only by itself.[67] It has been said that one of the safest guides to the construction of sweeping general words which are hard to apply in their full literal sense is to examine other words of like import in the same instrument, and to see what limitations must be imposed on them; and if it is found that a number of such expressions have to be subjected to limitations and qualifications, and that such limitations and qualifications are of the same nature, that circumstance forms a strong argument for subjecting the expression in dispute to a like limitation and qualification.[68]

(i) Individual words are not considered in isolation, but may have their meaning determined by other words in the section in which they occur.[69]

By section 23 (4) of the Limitation Act 1939: "Where any right of action has accrued to recover any debt or other liquidated pecuniary claim . . . and the person liable or accountable therefor acknowledges the claim or makes any payment *in respect thereof*, the right shall be deemed to have accrued" on the date of the acknowledgment or last payment. "Payment," said Buckley J., "is in this subsection dealt with in close conjunction with acknowledgment. Just as an acknowledgment can only acquire that character by the act of the debtor or his agent, so also, I think, a payment can for the purposes of the

[67] *Co.Litt.* sect. 728; *Turquand* v. *Board of Trade* (1886) 11 App.Cas. 286, *per* Lord Blackburn; *Att.-Gen.* v. *Brown* [1920] 1 K.B. 773, *per* Sankey J.

[68] *Blackwood* v. *R.* (1882) 8 App.Cas. 82 *per* Sir A. Hobhouse; *Jennings* v. *Kelly* [1940] A.C. 206, *per* Viscount Maugham. See *Prestcold (Central), Ltd.* v. *Minister of Labour* [1969] 1 W.L.R. 89, and *Corocraft, Ltd.* v. *Pan American Airways Inc.* [1969] 1 All E.R. 82.

[69] See *Jewish Blind Society Trustees* v. *Henning* [1962] 1 W.L.R. 24; *Ratcliffe* v. *Ratcliffe* [1962] 1 W.L.R. 1455; *Cumberland Court (Brighton), Ltd.* v. *Taylor* [1964] Ch. 29; *R.* v. *Price* [1964] 2 Q.B. 76.

subsection only acquire the characteristic of being made 'in respect of' the debt by the act of the debtor or his agent." Consequently, appropriation by a creditor of a sum received from the debtor towards satisfaction of a particular debt could not make such appropriation a "payment in respect thereof" within the section.[70]

The effect of section 161 (1) of the Income Tax Act 1952 is to make chargeable to an employee the costs of "living or other accommodation, of entertainment, of domestic or other services or of other benefits or facilities of whatsoever nature" with which he is provided by the company which employs him. This does not apply "to expense incurred by the body corporate in or in connexion with the provision of living accommodation" in the business premises in which the employee is required by the terms of his employment to reside for the purpose of enabling him properly to perform his duties: section 161 (3). In *Butter* v. *Bennett*,[71] the manager of a mill was required to live in a house near the mill, and his employers supplied him with free coal and electricity and the services of a gardener. Were these "in or in connexion with the provision of living accommodation"? The Court of Appeal held that they were not. "Living accommodation" should be construed in a narrow sense, the expense which was exempt being that of providing accommodation so as to make it habitable for the employee as distinct from the expense of inhabiting the accommodation. "I gather this," said Lord Denning M.R. (at p. 195), "by looking back to section 161 (1). Parliament there draws a distinction between 'living accommodation' and 'other accommodation.' It draws a distinction between 'living accommodation' and 'domestic or other services or other benefits or facilities' whatsoever, so it seems to me in this situation 'living accommodation' must be narrowly construed as meaning the premises themselves which the employee occupies."

(ii) The meaning of a section may be controlled by other individual sections in the same Act.[72] So too, the apparently general language

[70] *Re Footman Bower & Co., Ltd.* [1961] Ch. 443, at p. 449. [71] [1963] Ch. 185.

[72] See *Smith* v. *Adams* (1855) 24 L.J.Ch. 258; *Thompson* v. *Farrer* (1882) 9 Q.B.D. 372; *Mercer* v. *Denne* [1905] 2 Ch. 538; *Re Cohen (a bankrupt)* [1961] Ch. 246; *Longhurst* v. *Guildford, Godalming and District Water Board* [1963] A.C. 265; *Smalley* v. *Robey & Co., Ltd.* [1962] 1 Q.B. 577; *Coward* v. *Motor Insurers Bureau* [1963] 1 Q.B. 259; *Hamlyn* v. *Pearce* [1962] 2 Q.B. 346; *Flower Freight Co., Ltd.* v. *Hammond* [1963] 1 Q.B. 275; *R.* v. *Hammond* [1963] 2 Q.B. 450; *Blackdown Properties, Ltd.* v. *Ministry of Housing and Local Government* [1967] Ch. 115; *Shulton (Great Britain) Ltd.* v. *Slough B.C.* [1967] 2 Q.B. 471; *R.* v. *Pembrokeshire Justices, ex p. Bennell* [1968] 2 W.L.R. 858; *Secretary of State for Defence* v. *Warn* [1968] 3 W.L.R. 609; *Minister of Housing and Local Government*, v. *Lambert* [1969] 2 W.L.R. 447.

of a schedule may be restricted by the more specific provision of one of the sections of the statute.[73]

If one section of an Act, for instance, required that "notice" should be "given," a verbal notice would generally be sufficient: but if another section provided that it should be "served" on a person, or "left" with him, or in a particular manner or place, it would obviously show that a written notice was intended.[74]

So, where section 74 of the Metropolis Local Management Acts Amendment Act 1862 enacted that if "any building" projecting beyond the general line of the street was pulled down the Metropolitan Board of Works might order it to be set back, giving compensation, and the following section enacted that in certain circumstances "no building" should be erected in any street without the consent of the Board, beyond the general line, the latter section, which, *per se*, would have included alterations, whether on new sites or old, was confined by the former to buildings erected on land which had been hitherto vacant.[75]

By section 1 of the Fines and Recoveries Act 1833: "The expression 'actual tenant in tail' shall mean exclusively the tenant of an estate tail which shall not have been barred." Could a contingent remainderman be an "actual tenant in tail"? In *Re Duke of St. Albans' Will Trusts*,[76] Pennycuick J. held that, though at first sight one might not expect such a person to be so described, yet he fell within the description because of the indication given by section 15, which provided that "after December 31, 1833, every actual tenant in tail, whether in possession, remainder, *contingency* or otherwise" should have full power to bar the entail.

In *Gibson* v. *Ryan*,[77] the question was whether an inflatable rubber dinghy and a fish basket, found on the person of the appellant, fell within the term "instrument" in section 7 (1) of the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951. The Divisional Court held that they did not. Referring to section 10 of the Act, which deals with the powers of water bailiffs, Diplock L.J. said (at p. 255): "It is evident that, so far as that section is concerned, a

[73] *Cheesman* v. *Bagnall* [1962] 1 W.L.R. 672; *I.R.C.* v. *Littlewoods Mail Order Stores Ltd.* [1963] A.C. 135.
[74] *Moyle* v. *Jenkins* (1881) 8 Q.B.D. 116; *Wilson* v. *Nightingale* (1846) 8 Q.B. 1034; *R.* v. *Shurmer* (1886) 17 Q.B.D. 323.
[75] *Auckland (Lord)* v. *Westminster Local Board of Works* (1872) L.R. 7 Ch. App. 597; *Wendon* v. *L.C.C.* [1894] 1 Q.B. 812.
[76] [1963] Ch. 365.
[77] [1968] 1 Q.B. 250.

distinction is drawn between instruments on the one hand, boats on the other hand and baskets on, if there is such a thing, the third hand."

The fact that one section of the Income Tax Act 1952 makes express reference to income from assets as having "accrued from day to day" indicates that under a section which contains no such express reference shareholders will not be regarded as entitled to income until the end of the relevant accounting period.[78]

"Section 4 (1) [of the Small Dwellings Acquisition Act 1899] is of major importance. . . . It provides in unequivocable terms that the proprietor shall be personally liable for the repayment of any sum due until one precisely specified event, namely, that he ceases to be the proprietor by reason of a transfer made in accordance with the Act. Those last words refer back to section 3 (2), the event in which he ceases to be personally liable being when he ceases to be proprietor by reason of a transfer of his interest in the house to some other person with the permission of the local authority. Having regard to that express provision, one must, unless it is quite impossible to do so, construe the subsequent provisions of the Act in a manner which will not be inconsistent with that personal liability continuing until the one event specified."[79]

The use of other provisions for purposes of construction must not, however, be carried too far. Even where a word is repeated in the same section, there is no more than a presumption that it bears the same meaning in both places.[80] *A fortiori*, "where a statute has used words which prima facie have an unambiguous meaning it is not . . . legitimate to extract a forced and unnatural meaning from a consideration of other provisions in the same statute, particularly where the result of such a construction is to lead to difficulties of the interpretation of the secondary meaning."[81] The word "premises," for example, in some parts of the Landlord and Tenant Act 1954 has its strict legal meaning of the subject-matter of the habendum in a lease, while in other parts it has its popular sense of buildings.[82]

Section 26 (1) of the Factories Act 1937 provided that "there shall, so far as is reasonably practicable, be provided and maintained safe means of access to every place at which any person has at any time

[78] *C.H.W. (Huddersfield), Ltd.* v. *I.R.C.* [1963] 1 W.L.R. 767, *per* Lord Hodson.
[79] *Mexborough U.D.C.* v. *Harrison* [1964] 1 W.L.R. 733, *per* Pennycuick J. at p. 737.
[80] *I.R.C.* v. *Littlewoods Mail Order Stores, Ltd.* [1963] A.C. 135, *per* Lord Reid.
[81] *Cramas Properties, Ltd.* v. *Connaught Fur Trimmings* [1965] 1 W.L.R. 892, *per* Lord Guest at p. 901. *Cf. Freeman-Thomas* v. *Freeman-Thomas* [1963] P. 157.
[82] *Bracey* v. *Read* [1963] Ch. 88.

to work." In *Gardiner* v. *Admiralty Commissioners*,[83] the Court of Session held that the scope of section 26 (1) was restricted to the premises and plant of which the factory consists; they did not cover means of access within a factory which passed over the article being manufactured or repaired, for the general tenor of the various safety provisions in the Act (ss. 12-40) was that they referred only to machinery which formed part of the equipment of the factory. This decision was reversed by the House of Lords, Lord Guest saying (at pp. 594, 595): "The provisions of section 26 are perfectly general in their terms. There is no principle which would compel a court to restrict general words to be found in one section by a limitation to be found in other surrounding sections dealing with different matters."

There may, furthermore, be an excellent reason for *not* reading one section in the light of another. In *Ching Garage, Ltd.* v. *Chingford Corporation*,[84] the House of Lords held that section 67 (2) of the Highways Act 1959 entitled the respondents to erect a pedestrian refuge notwithstanding that it interfered with frontagers' rights of access to the highway. "The appellants," said Lord Radcliffe (at pp. 479, 480), "placed some reliance on the fact that there are other sections of the same Act . . . which make much more scrupulous provision for the recognition of private rights of access than the mere right of compensation given by section 67. They point to section 18 (stopping up of highways) and section 85 (fences or posts to prevent access to a highway). In my opinion, however, this argument can lead to no conclusion as to the scope of section 67 itself. The other two sections relate to operations that by their own nature involve serious obstruction, their purpose being denial of access. It is only to be expected that in such sections more detailed attention would be paid to protecting private rights of access than in a section such as section 67, in which the works involved [walls, etc., 'for the purpose of safeguarding persons using the highway'] do not necessarily involve any appreciable form of obstruction at all."

(iii) Lastly, the meaning of a section may be determined, not so much by reference to other individual provisions of the statute, as by the scheme of the Act regarded in general.[85]

[83] [1964] 1 W.L.R. 590.
[84] [1961] 1 W.L.R. 470.
[85] See *Brown* v. *National Coal Board* [1962] A.C. 574; *Wilson* v. *Evans* [1962] 2 Q.B. 383; *Re W., Spinster (an infant)* [1962] Ch. 918; *Re R. (an infant)* [1962] 1 W.L.R. 1147; *R.* v. *Kent Justices, ex p. Crittenden* [1964] 1 Q.B. 144; *Oxford* v. *Sangers, Ltd.* [1965] 1 Q.B. 491; *R.* v. *Jefferies* [1969] 1 Q.B. 120.

Thus, in *Re Newspaper Proprietors' Agreement*[86] the House of Lords held that the jurisdiction conferred by section 20 of the Restrictive Trade Practices Act 1956 "in respect of any agreement of which particulars are for the time being registered" was not limited to existing agreements, but extended to ones which had already been terminated by the parties. This conclusion was reached after an elaborate analysis which showed that, when read in the context of the Act as a whole, the section could be understood as referring to both live and extinct agreements. "There is," said Lord Evershed (at p. 389), "solid and respectable authority for the rule[87] that you should 'begin at the beginning and go on till you come to the end: then stop'; and, in my opinion, the rule is . . . peculiarly proper when construing an Act of Parliament and seeking to discover from the Act the parliamentary intention."

In another case, the House of Lords held that the phrase "the tenant" in section 34 (*c*) of the Landlord and Tenant Act 1954, Part II, refers to the tenant in the capacity in which he applies to the court for a new lease, that is, under the current tenancy which he seeks to have renewed. In consequence, the effect of improvements made during a previous tenancy is not required by section 34 (*c*) to be disregarded in calculating the rent. Viscount Simonds said that Part II of the Act "begins and ends with the tenancy then current which is to be extended or renewed. When that tenancy was created, a new relation was established between landlord and tenant. It is to be assumed that, when it was established and the old chapter, if there was one, was closed, the parties took into account what were then their respective rights and liabilities and founded on them accordingly. A new chapter then began and it is only with what thereafter happened that the court is concerned."[88]

Although section 6 (2) (*a*) of the Patents Act 1949 allows the Comptroller to "refuse to proceed with the application" for a patent, the scheme of the Act read as a whole shows that he is not thereby empowered to decide finally whether an alleged new manner of manufacture is patentable. It is still for the High Court to determine actual patentability, for subsequent sections of the Act show that section 6 was merely "intended as it were as a sieve to eliminate cases

[86] (1964) L.R. 4 R.P. 361; *ante*, p. 41.
[87] Carroll, *Alice's Adventures in Wonderland*, Chap. 12.
[88] *East Coast Amusement Co., Ltd.* v, *British Railways Board* [1965] A.C. 58, at pp. 70, 71.

which on no reasonable view could be said to come within the ambit of the Acts."[89]

Similarly, the Housing Act 1957, regarded as a whole, shows that the words "*further* housing accommodation" in section 91 do not limit a local authority's powers of acquisition under section 92 to acquisitions which actually increase the number of housing units: these powers of acquisition therefore extend to houses which are intended to be used as separate dwellings.[90]

Construction by reference to earlier legislation

Previous legislation may be relevant to the interpretation of later statutes in two ways.

(i) The course which legislation on a particular point has followed often provides an indication as to how the Act at present in force should be interpreted.[91]

Section 5 of the Fugitive Offenders Act 1881 required that certain evidence should raise "a strong or probable presumption that the fugitive committed the offence." In *Armah* v. *Government of Ghana*,[92] the House of Lords held that it was not sufficient that the magistrate was satisfied that a prima facie case had been made out, in other words, that there was evidence on which a reasonable jury could properly convict at a subsequent trial. Lord Reid showed from nineteenth century Acts that they drew a distinction between two kinds of evidence: positive or credible evidence which raised a strong presumption of the guilt of the accused, and evidence which afforded sufficient ground for judicial enquiry into his guilt. The distinction must have been known to those who framed the 1881 Act, and the words they used must be taken as referring to the first kind of evidence.

"The whole course of prior legislation shows that there is a separation between, on the one hand, enactments dealing with the Thames as a highway navigable by the public, and on the other hand, those dealing with the pilotage of ships coming into or leaving the Thames. There are two self-contained compartments, the separate-

[89] *R.* v. *Patents Appeal Tribunal, ex p. Swift & Co.* [1962] 2 Q.B. 647, *per* Lord Parker C.J., at p. 661.

[90] *Moore* v. *Minister of Housing and Local Government* [1966] 2 Q.B. 602.

[91] See *Clapham* v. *National Assistance Board* [1961] 2. Q.B. 77; *R.* v. *Patents Appeal Tribunal, ex p. Swift & Co.* [1962] 2 Q.B. 647; *Re Hampstead Garden Suburb Trust, Ltd.* [1962] Ch. 806; *Minister of Housing and Local Government* v. *Hartnell* [1965] A.C. 1134; *Barentz* v. *Whiting* [1965] 1 W.L.R. 433; *Rowley* v. *Murphy* [1964] 2 Q.B. 43; *Brown* v. *Dyerson* [1969] 1 Q.B. 45. [92] [1968] A.C. 192.

ness of which is confirmed more than once over the preceding 100 years as a statute in one group follows or is followed by a statute in the other." Approaching the matter on these lines, Wilberforce J. held that, on the true construction of section 11 (1) of the Pilotage Act 1913, navigation for the purpose of using the river as a highway was not "making use of [the] port" so as to require compulsory pilotage.[93]

Section 44 of the National Assistance Act 1948, which enabled the National Assistance Board to apply for an affiliation order, applied where "assistance is given under Part II of this Act by reference to the requirements of an illegitimate child." The Divisional Court held that the words "is given" did not have the effect of requiring that assistance must be being given when the Board makes its application. MacKenna J. pointed out that section 44 replaced section 5 of the Bastardy Laws Amendment Act 1873, which enabled the justices to make an order for payments to the guardians during such time as the child should continue, or afterwards be, chargeable: but no similar limitation as to time was expressed in section 44.[94]

County courts are required to give effect to "every ground of defence" which would be available in the High Court: County Courts Act 1959, s. 74. The Court of Appeal held that a defendant in a county court action was entitled by section 74 to maintain any equitable defence, whatever might be the limit imposed by the Act on the court's jurisdiction to entertain such a plea if made by way of claim, Russell L.J. saying that "the ancestry" of section 74 "would strongly suggest that 'every ground of defence' was regarded as including excessive defences."[95]

Considerations stemming from legislative history must not, however, override the plain words of a statute.[96] Where it is clear that a different and wider intention inspired a later Act, the intention of Parliament as manifested in an earlier one will be of little assistance.[97] And Lord Denning M.R., in considering the meaning of the word "execution" in section 325 of the Companies Act 1948 spurned the use of "the historical argument": "Parliament deliberately set out to change the law: and we should ascertain the effect of the changes by

[93] *Thames Launches, Ltd.* v. *Trinity House Corporation (No. 2)* [1962] Ch. 153, at p. 185,
[94] *Payne* v. *Critchley* [1962] 2 Q.B. 83.
[95] *Kingswood Estate Co., Ltd.* v. *Anderson* [1963] 2 Q.B. 169, at p. 195.
[96] *Att.-Gen.* v. *St. Ives R.D.C.* [1961] 1 Q.B. 366; *Clixby* v. *Pountney* [1968] Ch. 719.
[97] *Att.-Gen.* v. *Prince Ernest Augustus of Hanover* [1957] A.C. 436, *per* Viscount Simonds.

considering the words actually used rather than thumbing laboriously through the dusty pages of the Acts of 1838, 1864, 1888, 1900 and 1925, as we were invited to do. Parliament has repealed all those Acts or, at any rate, all the relevant parts of them, and has made a new Act to tell people what they are to do to operate the new process. I should have thought it a work of supererogation to ask of judgment creditors, or even of their lawyers: 'Now go through all the old statutes in order to see what is the effect of this new one'."[98]

(ii) Light may be thrown on the meaning of a phrase in a statute by reference to a specific phrase in an earlier statute dealing with the same subject-matter.[98a]

Lord Mansfield C.J. stated the rule as to the exposition of one Act by the language of another in this way: "Where there are different statutes *in pari materia* though made at different times, or even expired, and not referring to each other, they shall be taken and construed together, as one system, and as explanatory of each other."[99] "I see no reason for thinking," said Uthwatt J., "that there is not implicit in the legislation of 1939 [Landlord and Tenant (War Damage) Act] the principle of sharing loss which Parliament proclaimed as just in 1666 [Fire of London Disputes Act]."[1] According to Lord Russell of Killowen C.J., however, "it is . . . proper to refer to earlier Acts *in pari materia* only where there is ambiguity."[2]

Statutes are said to be *in pari materia* when they deal with the same person or thing or class: it is not enough that they deal with a similar subject-matter.[3] Section 1 of the Foreign Tribunals Evidence Act 1856 is *in pari materia* with section 5 of the Evidence by Commission Act 1843, for both deal with the obtaining of testimony, one for courts in the United Kingdom and the other for foreign courts.[4] The Leasehold Property Repairs Act 1938 is *in pari materia* with that part of the Law of Property Act 1925 which deals with breaches of covenants to repair,[5] but the 1925 property legislation is not *in pari materia* with the Rent Acts.[6] The Town and Country Planning Act

[98] *Re Overseas Aviation Engineering (G.B.), Ltd.* [1963] Ch. 24, at p. 37.
[98a] See *Registar of Restrictive Trading Agreements* v. *W. H. Smith & Son, Ltd.* [1968] 1 W.L.R. 1541.
[99] *R.* v. *Loxdale* (1758) 1 Burr. 445, at p. 447. *Cf. R.* v. *Palmer* (1785) 1 Leach C.C. 352; *ex p. Copeland* (1852) 22 L.J.Bk. 17; *Goldsmiths' Co.* v. *Wyatt* [1907] 1 K.B. 95.
[1] *Re Orbit Trust, Ltd.'s Leases* [1943] Ch. 144, at p. 152.
[2] *R.* v. *Titterton* [1895] 2 Q.B. 61, at p. 67. *Cf. Littlewoods Mail Order Stores, Ltd.* v. *I.R.C.* [1961] Ch. 597, *per* Harman L.J. [3] *United Society* v. *Eagle Bank* (1829) 7 Conn. 457, *per* Hosmer J., cited in *Craies on Statute Law*, 6th ed., pp. 133–134.
[4] *Penn-Texas Corp.* v. *Murat Anstalt (No. 2)* [1964] 2 Q.B. 647.
[5] *Re Metropolitan Film Studios, Ltd.'s Application* [1962] 1 W.L.R. 1315.
[6] *Powell* v. *Cleland* [1948] 1 K.B. 262.

1959 should be read in conjunction with the Town and Country Planning Act 1947, but not with the Housing Act 1957.[7]

Where a question arose whether section 7 of the Admiralty Court Act 1861, which gave jurisdiction over any claim for "damage" done by any ship, included injuries caused to persons by collision, one reason for deciding in the negative was that in other Acts *in pari materia* injury to property was invariably treated distinctly from personal injury and loss of life, and the word "damage" was nowhere in them applied to injuries to the person.[8]

In *E. R. Ives Investments, Ltd.* v. *High*,[9] the Court of Appeal had to consider the Land Charges Act 1925, s. 10 (1), Class D (iii): "Any easement right or privilege over or affecting land created or arising after the commencement of this Act, and being merely an equitable interest." "Those words," said Lord Denning M.R. (at p. 395), "are almost identical with section 2 (3) (iii) of the Law of Property Act 1925, and should be given the same meaning. . . . It then appears that an 'equitable easement' is a proprietary interest in land such as would before 1926 have been recognised as capable of being conveyed or created *at law*, but which since 1926 only takes effect as an equitable interest."

An applicant for a licence for a betting shop was required by the Betting and Gaming Act 1960 to insert a notice "in a newspaper circulating in the authority's area." Where an application was made to the Westminster Betting Licensing Committee, it was held that an advertisement in *The Sporting Life* was sufficient, and that there was no need to advertise either in a local paper or in a national paper read by the general public of Westminster. Lord Parker C.J. contrasted another provision dealing with the insertion of notices in newspapers: in Schedule 12 to the Highways Act 1959, Parliament had specifically referred to a "local newspaper circulating in the area."[10]

By section 173 (1) of the London Government Act 1939: "The minutes of proceedings of a local authority shall be open to the inspection of any local government elector for its area." Construing this provision by reference, *inter alia*, to earlier legislation, the

[7] *Bolton Corporation* v. *Owen* [1962] 1 Q.B. 470.
[8] *Smith* v. *Brown* (1871) L.R. 6 Q.B. 729. *Cf. Seward* v. *The Vera Cruz* (1884) 10 App.Cas. 59.
[9] [1967] 2 Q.B. 379. *Cf. Poster* v. *Slough Estates, Ltd.* [1968] 1 W.L.R. 1515.
[10] *R.* v. *Westminster Betting Licensing Committee, ex p. Peabody Donation Fund* [1963] 2 Q.B. 750.

Divisional Court held that the words "minutes of proceedings of a local authority" denoted minutes of proceedings at a meeting, so that although acts done by the London County Council's town planning committee might in law be acts of the Council, yet the meeting and minutes of the committee remained proceedings of the committee, not of the Council, so that there was no right to inspect them under section 173 (1).[11]

The same words or phrases, when used in Acts dealing with the same subject-matter, often bear the same meaning. So Lord Parker C.J. has said that it is a "fair inference" that "agricultural land" means the same thing in the Agriculture Act 1947, the Agricultural Holdings Act 1948, and even the Vehicles (Excise) Act 1949[12]; Cross J. has said that it would be "very astonishing" if "premises" meant different things in the Landlord and Tenant Acts of 1927 and 1954;[13] and Lord Dilhorne L.C. found it "inconceivable that Parliament intended that a different interpretation should be given to the words 'obtained credit' in the Bankruptcy Act [1914] from that given to the same words in the Debtors Act 1869."[14] But it is not uncommon for the same word or phrase to have different meanings in different statutes.[15] "Market value," for example, when used in a provision of the Crown Proceedings Act 1947 dealing with the loss of a registered postal package is not used in the sense in which the term appears in the Sale of Goods Act 1893.[16] The word "possession" is so general that its meaning must always depend on the context in which it is used, and considering Acts which may be *in pari materia* will be of little assistance.[17]

In *Fendoch Investment Trust Co.* v. *I.R.C.*,[18] Lord Simonds (at p. 144) sounded a note of warning (more recently echoed by Harman L.J.)[19] in connection with the use of statutes *in pari materia* when construing a tax statute. "I do not doubt that in construing the latest of a series of Acts dealing with a specific subject-matter, particularly where all such Acts are to be read as one, great weight

[11] *Wilson* v. *Evans* [1962] 2 Q.B. 383.
[12] *J. M. Knowles, Ltd.* v. *Rand* [1962] 1 W.L.R. 893, at p. 896.
[13] *Bracey* v. *Read* [1963] Ch. 88, at p. 94.
[14] *Fisher* v. *Raven* [1964] A.C. 210, at p. 229. *Cf. Delaroy* v. *Tadman* [1969] 2 W.L.R. 92.
[15] *R.* v. *Surrey Quarter Sessions, ex p. Commissioner of Police of the Metropolis* [1963] 1 Q.B. 990 ("sentence").
[16] *Building and Civil Engineering Holidays Scheme Management, Ltd.* v. *Post Office* [1966] 1 Q.B. 247.
[17] See *Towers & Co., Ltd.* v. *Gray* [1961] 2 Q.B. 351, and cases there discussed.
[18] [1945] 2 All E.R. 140. [19] *Littlewoods Mail Order* v. *I.R.C.* [1961] Ch. 597.

should be attached to any scheme which can be seen in clear outline and amendments in later Acts should if possible be construed consistently with that scheme. But this is a principle which can easily be pressed too far in the consideration of a body of legislation . . . in which, if any prevailing motive can be found, it is in the attempt, as each loophole for escape from taxation is discovered, to close it as firmly as possible."

Where it is expressly provided that two Acts are to be read together, every part of each must be construed as if contained in one Act unless there is some manifest discrepancy which makes it necessary to hold that the later Act has to some extent modified the earlier.[20]

Thus, where it was expressly provided that two Acts should be construed as one, an enactment in one that nothing therein should include debentures was held to exclude debentures from the other also.[21]

In the Rating and Valuation (Apportionment) Act 1928, s. 4 (2), the term "industrial purposes" meant the manufacturing purposes that made the hereditament a factory and accordingly the term when used in section 22 (4) of the Rating and Valuation Act 1925, which was added by amendment in 1955, had the same meaning, since the Act of 1925 was by section 84 of the Local Government Act 1929 to be construed as one with the Act of 1928.[22]

Construction by reference to later legislation

"How far one may look at a later statute is questionable."[23] The question was discussed by the House of Lords in *Kirkness* v. *John Hudson & Co., Ltd.*,[24] where Lord Reid said (at p. 735) that the earlier decision of the House in *Ormond Investment Co.* v. *Betts*[25] afforded "conclusive and binding authority for the proposition that, in construing a provision of an earlier Act, the provisions of a later Act

[20] *Canada Southern Railway Co.* v. *International Bridge Co.* (1883) 8 App.Cas. 723, *per* Earl of Selbourne L.C. *Cf. Hart* v. *Hudson Brothers, Ltd.* [1928] 2 K.B. 629; *R.* v. *Folkstone and Area Rent Tribunal* [1952] 1 K.B. 54. This does not, however, mean that every word in the latter Act must be construed in the same way as in the earlier Act: see, *e.g.*, *Preston and Area Rent Tribunal* v. *Pickavance* [1953] A.C. 562.

[21] *Read* v. *Joannon* (1890) 25 Q.B.D. 300.

[22] *Crowe* v. *Lloyds British Testing Co., Ltd.* [1960] 1 Q.B. 592. See now section 19 (6) of the General Rate Act 1967.

[23] *Musson* v. *Emile* [1964] 1 W.L.R. 337, *per* Edmund Davies J. at p. 343.

[24] [1955] A.C. 696.

[25] [1928] A.C. 143. *Cf. Canada Southern Railway Co.* v. *International Bridge Co.* (1883) 8 App.Cas. 723; *Cape Brandy Syndicate* v. *I.R.C.* [1921] 2 K.B. 403; *Re MacManaway* [1951] A.C. 161; *I.R.C.* v. *Dowdall, O'Mahoney & Co., Ltd.* [1952] A.C. 401; *Re W. (an infant)* [1964] Ch. 202, *per* Upjohn L.J.

cannot be taken into account except in a limited class of case, and that that rule applies although the later Act contains a provision that it is to be read as one with the earlier Act. Of course, that does not apply where the later Act amends the earlier Act or purports to declare its meaning: in such cases the later Act operates directly by its own force. But where the provisions of the later Act could only operate indirectly as an aid to the construction of words in the earlier Act those provisions can only be used for that purpose if certain conditions apply to the earlier Act when it is considered by itself." For the later statute to become relevant, there must be something "obscure or ambiguous, or readily capable of more than one interpretation" in the earlier one, some "phrase fairly and equally open to divers meanings."[26] If such an ambiguity can be found, it becomes permissible to look at the later Acts "not perhaps to construe the earlier statute, but to see the meaning which Parliament puts on the self-same phrase in a similar context, in case it throws any light on the matter."[27]

Thus chapter 23 of Magna Carta, which provided that "all weirs shall be put down through Thames and Medway, and through all England, except the sea-coast," was held to apply only to navigable rivers, because subsequent statutes spoke of it as having been passed to prevent obstruction to navigation.[28]

In section 299 of the Merchant Shipping Act 1854, which enacted that damage arising from non-observance of the sailing rules should prima facie be deemed to have been occasioned by the "wilful default" of the person in charge of the deck, the expression "wilful default" was construed by the light of the Merchant Shipping Act Amendment Act 1862 (section 29 of which declared that the ship which occasioned the collision should be deemed to be "in fault") as including a negligent as well as a criminal fault.[29]

A stone was held not to come within the words "any dangerous or offensive weapon or instrument" in section 28 (1) of the Larceny Act 1916 by reference to the definition of an offensive weapon in the Prevention of Crimes Act 1953 and to section 23 (5) of the Firearms Act 1937. The latter section provided that an unloaded firearm or imitation firearm should be deemed to be an offensive weapon for the

[26] *Ormond Investment Co.* v. *Betts* [1928] A.C. 143, *per* Lds. Atkinson and Buckmaster at pp. 164, 156. [27] *Payne* v. *Bradley* [1962] A.C. 343, *per* Lord Denning at p. 357.
[28] *Rolle* v. *Whyte* (1868) L.R. 3 Q.B. 286.
[29] *Grill* v. *General Iron Screw Collier Co. (Ltd.)* (1866) L.R. 1 C.P. 600, *per* Willes J. *Cf. Corocraft Ltd.* v. *Pan American Airways Inc.* [1969] 1 All E.R. 82.

purposes of section 28 (1) of the Larceny Act, and this suggested "that the words of this provision of the Larceny Act 1916 are dealing with weapons or instruments adapted or intended for causing injury to a human being, otherwise it seems . . . difficult to understand why this reference to unloaded firearms, or imitation firearms, should have been brought into force."[30]

In *R.* v. *West*,[31] the Court of Criminal Appeal held that section 7 of the Accessories and Abettors Act 1861 did not confer on justices jurisdiction to try accessories in any case in which they had jurisdiction to try the principal felon. This conclusion was reached after considering, *inter alia*, subsequent statutes: "whatever may be the reason, certainly since 1879 it has been the policy of the legislature not to give justices summary jurisdiction to deal with accessories after the fact."

Interpretation placed upon Acts of similar scope

The doctrine of *stare decisis* applies in the usual way to cases which determine the interpretation of particular statutory provisions. "I have always understood," said Lord Morton of Henryton, "that when this House clearly expresses a view upon the construction of an Act of Parliament, and bases its decision on that view, the Act must bear that construction unless and until Parliament alters the Act."[32]

Further, the construction which has been placed on statutes of similar scope may be referred to. In the words of James L.J.: "If an Act of Parliament uses the same language which was used in a former Act of Parliament referring to the same subject, and passed with the same purpose, and for the same object, the safe and well-known rule of construction is to assume that the legislature when using well-known words upon which there have been well-known decisions use those words in the sense which the decisions have attached to them."[33] This is not "a canon of construction of absolute obligation," but merely "a presumption that Parliament intended that the language . . . used by it in the subsequent statute should be given the meaning

[30] *Smaje* v. *Balmer* [1965] 2 All E.R. 248, *per* Judge Chapman at p. 249.
[31] [1964] 1 Q.B. 15. *Cf. Godfrey* v. *Bournemouth Corp.* [1969] 1 W.L.R. 47.
[32] *Close* v. *Steel Co. of Wales, Ltd.* [1962] A.C. 367, at pp. 393, 394. But see *Paisner* v. *Goodrich* [1955] 2 Q.B. 353, *per* Denning L.J.; *Campbell College, Belfast (Governors)* v. *Valuation Commissioner for Northern Ireland* [1964] 1 W.L.R. 912.
[33] *Greaves* v. *Tofield* (1880) 14 Ch.D. 563, at p. 571. *Cf. Ex p. Campbell, Re Cathcart* (1870) L.R. 5 Ch.App. 703; *Webb* v. *Outrim* [1907] A.C. 81; *Beaman* v. *A.R.T.S.* [1949] 1 K.B. 550, *per* Somervell L.J.

which meantime has been judicially attributed to it."[34] The court may find that the previous judicial construction was erroneous,[35] and in any event that construction is not conclusive, but is merely one factor to be taken into consideration.[36]

What would have been held to be a sufficient signature under the Statute of Frauds to a will or contract was for that reason held to be sufficient under the Parliamentary Voters' Registration Act 1843.[37]

The word "let" in section 12 (2), proviso (iii) of the Increase of Rent and Mortgage Interest (Restrictions) Act 1920 has been held, following a decision on the same word occurring in another provision of the Act, to mean "let to the occupying tenant."[38]

The phrase, "no permission was required . . . in respect of the development" in section 33 (1) (*c*) of the Caravan Sites and Control of Development Act 1960 was held to bear the meaning which it was held to have in the Town and Country Planning Act 1947.[39]

"Last known place of abode" in section 23 of the Landlord and Tenant Act 1927 was held by the Court of Appeal to include business premises. Danckwerts L.J. cited a number of cases on other statutes, showing that words referring to a person's place of residence had been, where the context was appropriate, construed as applicable also to his place of business.[40]

Similarly, a decision on the words "dispute" and "matter in dispute" in the Savings Bank Act 1844 has been followed when construing the Post Office Savings Bank Act 1954, even though the wording of the two Acts was not identical;[41] and a decision on the definition of "goods vehicle" in the Vehicles (Excise) Act 1949 has been reached by following a decision on a corresponding provision in the Customs and Inland Revenue Act 1888.[42]

Occasionally, the construction which has been placed on an earlier Act is adopted even though that statute is not *in pari materia* with the one to be construed.[43] But it is fallacious to regard the construction

[34] *Barras* v. *Aberdeen Steam Trawling and Fishing Co., Ltd.* [1933] A.C. 402.
[35] *Royal Crown Derby Porcelain Co., Ltd.* v. *Russell* [1949] 2 K.B. 417.
[36] See *Chesworth* v. *Farrar* [1967] 1 Q.B. 407. And see *Ogden Industries Pty., Ltd.* v. *Lucas* [1969] 1 All E.R. 121.
[37] *Bennett* v. *Brumfitt* (1867) L.R. 3 C.P. 28.
[38] *Critchley* v. *Clifford* [1962] 1 Q.B. 131. [39] *Findlow* v. *Lewis* [1963] 1 Q.B. 151.
[40] *Price* v. *West London Investment Building Society, Ltd.* [1964] 1 W.L.R. 616.
[41] *Ministry of Pensions & National Insurance* v. *Jones* [1966] 1 Q.B. 484.
[42] *Taylor* v. *Mead* [1961] 1 W.L.R. 435. *Cf. R.* v. *Sirett* (*dec'd*) [1969] 1 W.L.R. 60, and *Long* v. *Hepworth* [1968] 1 W.L.R. 1299.
[43] *R.* v. *Edgehill* [1963] 1 Q.B. 593; *Re C. W. & A. L. Hughes* [1966] 1 W.L.R. 1369; *Re Roehampton Swimming Pool, Ltd.*, [1968] 1 W.L.R. 1693.

put upon a statute as *controlling* Acts not dealing with a similar subject-matter.[44]

Thus, it did not follow that, because chambers were a "house" under Acts dealing with assessment to a poor rate, gaining a settlement, qualifying for a vote, and the commission of burglary, they should be given the same meaning under the House Tax Act 1808, which imposed a duty on "inhabited houses."[45]

The definition of "seaman" in the Merchant Shipping Acts was not imported into the Employers' Liability Act 1880.[46]

"Yard" does not necessarily mean in the Vagrancy Act 1824 what it has been held to mean under a Railway Act.[47] "Family" for the purposes of a statute dealing with matrimonial proceedings does not bear its Rent Acts meaning.[48] "Mine" in the Income Tax Act 1952 does not have its meaning elucidated by a decision on a private Act of Parliament.[49] And the Town and Country Planning Act 1947 will not be regarded for the purpose of statutory construction as being *in pari materia* with statutes dealing with rating and occupiers' liability,[50] and probably not with the Rent Acts.[51]

Where legislation is repealed and re-enacted in substantially the same terms, the new legislation is taken to have been drafted with knowledge of the judicial decisions on the old, and will be interpreted in the light of those decisions.[52] This does not, however, prevent the court from overruling an old decision which it considers to have been incorrectly decided.[53]

Decisions of the Scottish courts on statutes applicable in both parts of Great Britain, though of no more than persuasive authority, will where possible be followed in England:[54] for "in construing a taxing statute which applies to England and Scotland alike, it is desirable to adopt a construction of statutory words which avoids differences

[44] See *Dewhurst* v. *Feilden* (1845) 7 M. & G. 182, *per* Maule J.
[45] *Att.-Gen.* v. *Mutual Tontine Westminster Chambers Assoc., Ltd.* (1876) 1 Ex.D. 469.
[46] *Macbeth & Co.* v. *Chislett* [1910] A.C. 220.
[47] *Goodhew* v. *Morton* [1962] 1 W.L.R. 210.
[48] *Bowlas* v. *Bowlas* [1965] P. 450.
[49] *Rogers* v. *Longsdon* [1967] Ch. 93.
[50] *Caravans & Automobiles, Ltd.* v. *Southall B.C.* [1963] 1 W.L.R. 690.
[51] *Birmingham Corporation* v. *Minister of Housing and Local Government and Habib Ullah* [1964] 1 Q.B. 178; *Ealing Corporation* v. *Ryan* [1965] 2 Q.B. 486.
[52] *Re Budgett* [1894] 2 Ch. 557, *per* Chitty J.; *James* v. *James* [1964] P. 303; *Fire, Auto and Marine Insurance Co., Ltd.* v. *Greene* [1964] 2 Q.B. 687; *Re Yeovil Glove Co., Ltd.* [1965] Ch. 148; *Allford* v. *Allford* [1965] P. 117.
[53] *Royal Crown Derby Porcelain Co., Ltd.* v. *Russell* [1949] 2 K.B. 417.
[54] See *Income Tax Commissioners* v. *Pemsel* [1891] A.C. 531; *Daley* v. *Hargreaves* [1961] 1 W.L.R. 487; and, conversely, *Glasgow Corporation* v. *Johnstone* [1965] A.C. 609.

of interpretation of a technical character such as are calculated to produce inequalities in taxation as between citizens of the two countries,"[55] and in the case of a criminal statute "it would be very unfortunate to have, on a similar set of facts, a conviction in England and no conviction in Scotland, or vice versa."[56]

Referring to Australian and New Zealand decisions on patent legislation, Lord Parker C.J. has said: "One cannot shut from one's mind the desirability of having a homogeneous development of the law in all countries which have adopted our system of patent legislation. That desirability must result in a tendency of our courts to follow those decisions if it is possible to do so."[57]

Statutory instruments

Statutes being a superior, and statutory instruments an inferior, form of legislation, statutes may of course be referred to for the purpose of interpreting statutory instruments.[58] The extent to which statutory instruments are a permissible aid in the construction of statutes is more doubtful. In *ex p. Wier*,[59] James and Mellish L.JJ. said (at p. 879) "that, where the construction of the Act is ambiguous and doubtful on any point, recourse may be had to the rules which have been made . . . under the authority of the Act, and if we find that in the rules any particular construction has been put on the Act, that it is our duty to adopt and follow that construction"—a statement which, it is respectfully submitted, if carried to its logical conclusion would result in the judges' abdicating their function of construing statutes to the executive.

It is impossible to derive any settled principle from the recent cases on statutory instruments. In one case, Widgery J., delivering the judgment of the Divisional Court, said (at p. 539) that he would "hesitate to attach great importance to the [Land Registration] rules of 1925 in a problem which is essentially a problem of interpretation of the statute under which the rules were made."[60] In another, Sachs J., dealing with the Legal Aid and Advice Act 1949, said (at

[55] *Income Tax Commissioners* v. *Gibbs* [1942] A.C. 402, *per* Viscount Simon L.C. at p. 414.
[56] *Cording* v. *Halse* [1955] 1 Q.B. 63, *per* Lord Goddard C.J. at p. 70.
[57] *R.* v. *Patents Appeal Tribunal, ex p. Swift & Co.* [1962] 2 Q.B. 647. *Cf. Consolidated Agencies, Ltd.* v. *Bertram, Ltd.* [1965] A.C. 670 (Indian decisions relevant to interpretation of Tanganyika statute.)
[58] See *Hargreaves* v. *Alderson* [1964] 2 Q.B. 159; *Allford* v. *Allford* [1965] P. 117.
[59] (1871) L.R. 6 Ch.App. 875.
[60] *Carter* v. *Butcher* [1966] 1 Q.B. 526.

p. 27): "When interpreting the provisions of a streamlined statute it is, to my mind, permissible to look at those initial regulations made under it which must have been in preparation contemporaneously and the broad potential effect of which was likely to have been the subject of parliamentary discussion during the passage of the Bill."[61] By a "streamlined statute," he meant one which contained the general principles of the subject, leaving the details to be filled in by subordinate legislation.

The two decisions of the Court of Appeal in point are not in harmony. In *Britt* v. *Buckinghamshire County Council*,[62] the court had to consider the statement of Upjohn L.J., in delivering the judgment of the court in a case heard three years before, that "we doubt very much whether it is right to construe the words of the section by reference to regulations made under powers therein contained."[63] In *Britt's* case, the court held that where a statute gave power to a minister to prescribe by regulations "exceptions and modifications" to an Act, the regulations (which had come into force at the same time as the Act) might legitimately be used in construing the Act. Harman L.J. (at pp. 88, 89) distinguished Upjohn L.J.'s statement on the ground that in the present case there was "a process which I have not seen anywhere else. There is a power given by the Act itself to the Minister to modify another section of the Act so that when the Minister does produce that modification . . . that regulation becomes in fact part of the Act. It is like an amending section of the Act. So that in my judgment that regulation can be referred to because it is embodied in the Act itself and, having a quasi-parliamentary validity, is a good indication of the wishes of the legislature, just as much as if it were enacted in the Act itself . . . It is not a question of construing an Act by subsequent regulations, in the ordinary sense of those words."

It seems therefore that, with this one exception, statutory regulations should not be used as aids to construction: but *ex p. Wier*[64] has never been formally overruled, so that the Court of Appeal might still prefer to choose the opinion of Mellish and James L.JJ. in preference to that of Upjohn L.J.

[61] *Neill* v. *Glacier Metal Co., Ltd.* [1965] 1 Q.B. 16.
[62] [1964] 1 Q.B. 77.
[63] *Stephens* v. *Cuckfield R.D.C.* [1960] 2 Q.B. 373, at p. 381.
[64] (1871) L.R. 6 Ch.App. 875.

CHAPTER 3

TREATMENT OF GENERAL WORDS

Words understood according to their subject-matter

"The subsection to be construed [Evidence Act 1938, s. 1 (3)] . . . depends on the meaning of the word 'interested.' This is not one of those cases in which one can simply endeavour to ascertain the natural and popular meaning of a word and trouble no further once that is ascertained. The word 'interested' is not a word which has any well-defined meaning, and anybody who was asked what it meant would at once want to know the context in which it was used before he could venture an opinion. It may mean a direct financial interest on the one hand, or on the other hand it may mean nothing more than the ordinary human interest which everybody has in the outcome of proceedings in which he is likely to be a witness. Just as in ordinary speech one would require to know the context, so in construing the word in an Act of Parliament it is essential . . . to look at the scope and purpose of the Act, and I think that if one does that one will be led to the conclusion that section 1 (3) is to be given a narrow rather than a broad meaning."[1]

The words of a statute, when there is doubt about their meaning, are to be understood in the sense in which they best harmonise with the subject of the enactment.[2] Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject, or in the occasion on which they are used, and the object to be attained.[3] Grammatically, words may cover a case; but whenever a statute or document is to be construed it must be construed not according to the mere ordinary general meaning of the words, but according to the ordinary meaning of the words as applied to the subject-matter with regard to which they are used, unless there is something which renders it necessary to read them in a sense which is not their ordinary sense in the English language as so applied.[4]

[1] *Bearmans, Ltd.* v. *Metropolitan Police District Receiver* [1961] 1 W.L.R. 634, *per* Devlin L.J. at p. 655.
[2] See, *e.g.*, *Towerfield (Owners)* v. *Workington Harbour and Dock Board* [1949] P. 10, *per* Scott and Asquith L.JJ., and *Freed* v. *D.P.P.* [1969] 2 W.L.R. 390.
[3] *Per cur.*, *R.* v. *Hall* (1822) 1 B. & C. 123.
[4] *Lion Mutual Marine Insurance Association* v. *Tucker* (1883) 12 Q.B.D. 176, *per* Brett M.R.

This is evident enough in the simple case of a word which has two totally different meanings. The Statute of Provisors, for instance, which forbade ecclesiastics to purchase "provisions" at Rome, and the object of which was to repress papal usurpations, referred to papal grants of benefices in England and not to food.[5] Similarly, the "vagabond" of the Vagrancy Act 1824 is not necessarily the mere wanderer of strict etymology,[6] nor is a person making a bona fide collection in the street for a charitable object a "beggar" within section 3 of that statute.[7] And a reference in a modern Act (Highways Act 1959, s. 127) to a "gipsy" has been understood as meaning simply a person leading a nomadic existence, whether or not he is of pure Romany descent.[8]

In section 21 of the Succession Duty Act 1853, which provided that the instalments of duty payable by a successor should cease at his death except when he was "competent to dispose by will of a continuing interest in the property," the competency intended was obviously not mental sanity or freedom from personal incapacity, but the possession of an estate of inheritance which was capable of disposition by will.[9] In the context of factory or similar legislation, the same word would bear a third meaning, that of being a practical and reasonable man who knows how to perform the task in question.[10]

The Gasworks Clauses Act 1847 did not, by calling the debt due for gas "rent," authorise a distress for the rent under section 34 of the Bankruptcy Act 1869, which regulated the power of distress of a landlord "or other person to whom any rent is due" from the bankrupt.[11] Similarly, the Courts (Emergency Powers) Act 1939, s. 1 (2), which required the leave of the court to be obtained before the exercise by any person of a remedy available to him by way of "the levying of distress" did not require leave to be obtained before the levy of a distress on cattle damage feasant.[12]

Enactments relating to "persons" have been variously understood, according to the circumstances in which the word was used. Thus, in

[5] 1 *Blackstone's Commentaries* 60.
[6] *Monck* v. *Hilton* (1877) 2 Ex.D. 268.
[7] *Mathers* v. *Penfold* [1915] 1 K.B. 514.
[8] *Mills* v. *Cooper* [1967] 2 Q.B. 459.
[9] *Att.-Gen.* v. *Hallett* (1857) 27 L.J.Ex. 89.
[10] *Gibson* v. *Skibs A/S Marina and Orkla Grobe A/B* [1966] 2 All E.R. 476; *Brazier* v. *Skipton Rock Co., Ltd.* [1962] 1 W.L.R. 471.
[11] *Ex p. Hill* (1877) 6 Ch.D. 63.
[12] *Watkinson* v. *Hollington* [1944] K.B. 16. *Cf. Re Miller (dec'd)* [1968] 3 All E.R. 844.

a provision for the recovery of wages by "persons belonging to a ship," this expression would obviously be confined to persons employed in its service on board; but in a statute which related to the salvage of "persons belonging to the ship," it would as obviously include passengers as well as crew.[13]

Section 57 (1) of the Malayan Internal Security Act of 1960 made it an offence for "any person" to have in his possession without lawful excuse in a security area fire-arms, ammunition or explosives. "True," said Lord Hodson in *Public Prosecutor* v. *Oie Hee Koi*,[14] "that the language of section 57 covers 'any person,' but upon its proper construction section 57 cannot be read so widely as to cover members of the regular Indonesian armed forces fighting as such in Malaysia in the course of what, it has been assumed, was an armed conflict between Malaysia and Indonesia. The Act is an Internal Security measure, part of the domestic law, and not directed at the military forces of a hostile power attacking Malaysia."

The word "inhabitant" has frequently furnished illustration of this adaptation of the meaning to what appears to suit the object of the Act.[15] In the abstract, the word would include every human being dwelling in the place spoken of, and so a right of way granted to the "inhabitants" of a parish would include every person in the parish. But where the object of an Act was to impose a pecuniary burden in respect of property in the locality, the expression would be construed as comprising all persons or bodies having chargeable property there, whether resident or not,[16] but as excluding actual dwellers who had no rateable property in the place, such as servants.[17] On the other hand, where the object is to impose the performance of a personal service within the locality, the word "inhabitant" would probably be construed as not comprising either corporate bodies or non-resident proprietors. Thus, it was held that a person who occupied premises in one parish and carried on his business in person there, but resided in his dwelling-house in another, was not an "inhabitant" of the former parish so as to be bound to serve as its collector of rates.[18] Yet another meaning would be given to the same expression where the object was to determine the settlement of a pauper, or the

[13] *The Fusilier* (1865) 3 Moo.P.C. (N.S.) 51.
[14] [1968] A.C. 829, at p. 860. *Cf. Ministry of Social Security* v. *John Bryant & Co. (Bristol), Ltd.* [1968] 1 W.L.R. 1260.
[15] *R.* v. *Mashiter* (1837) 6 A. & E. 153, *per* Littledale J.; *R.* v. *Davie* (1837) 6 A. & E. 374.
[16] *R.* v. *North Curry* (1825) 4 B. & C. 953, *per* Bayley J.
[17] *R.* v. *North Curry, supra.* [18] *Donne* v. *Martyr* (1828) 8 B. & C. 62.

qualification of an elector. In these cases, a person has been held to be an inhabitant or resident in the place in which he usually sleeps.[19]

The word "occupier" has similarly received different meanings, varying with the object of the enactment. "The term 'occupier,' " said Lindley L.J., "is ambiguous. In one sense a caretaker is an occupier, but in another sense his occupation is that of some other person."[20] Sometimes, a person can only be regarded as in occupation for the purposes of a statute if he is at present in actual physical control of the premises. Thus in the Bills of Sale Act 1854, which provided that personal chattels should be deemed in the possession of the grantor of a bill of sale so long as they were on the premises "occupied" by him, actual personal occupation, and not merely tenancy, was intended, and therefore the owner of chattels in rooms which he did not personally occupy was not in the "apparent" possession of them within that Act.[21] Formerly, when income tax payable under Schedule A had been collected from the occupiers of premises, they could recoup themselves by treating their payment to the Revenue as a payment of rent. In *Thorley* v. *Payne*,[22] Tucker J. held that this statutory right was restricted to occupiers in the narrow sense of the term and did not extend to a tenant who had sub-let the premises.

Sometimes, however, ownership appears to be the test of occupation. Thus the owner of a switchboard controlling the electricity supply in a factory, which had not yet been handed over to the owner but was still being worked upon by another company, was held to be its "occupier" for the purposes of the Factory and Workshop Act 1901.[23] And where the tenant of premises, who actually resided on the premises, assigned the goodwill of a business carried on there to a company of which he was managing director, it was held that the company, and not the manager, was in occupation for the purposes of the Leasehold Property (Temporary Provisions) Act 1951.[24] On the other hand, it has been held that a hospital is in the occupation of the Board of Governors who are responsible for its

[19] *St. Mary Colechurch* v. *Radcliffe* (1717) 1 Stra. 60, *per* Parker C.J.; *R.* v. *Mildenhall* (1820) 3 B. & Ald. 374; *Ford* v. *Drew* (1880) 5 C.P.D. 59; *Daventry Union* v. *Coventry Union* (1917) 86 L.J.K.B. 276.

[20] *Paterson* v. *Gas Light & Coke Co.* [1896] 2 Ch. 476, at p. 482.

[21] *Robinson* v. *Briggs* (1871) L.R. 6 Ex. 1.

[22] [1943] K.B. 306.

[23] *Turner* v. *Courtaulds, Ltd.* [1937] 1 All E.R. 467.

[24] *Pegler* v. *Craven* [1952] 2 Q.B. 69.

administration, not in the Minister of Health in whom the property in the building is vested, so that the Governors were the proper persons to object to the grant of a new tenancy of premises belonging to the hospital under section 30 (1) (*g*) of the Landlord and Tenant Act 1954.[25]

"Premises" is another word the meaning of which is governed by the context in which it appears. Sometimes it bears its strict legal meaning of the subject-matter of a lease and so covers any sort of property in respect of which a lease was granted.[26] At other times, it carries its popular meaning of buildings.[27]

The definition of "sewer" in section 343 (1) of the Public Health Act 1936 contains the words "used for the drainage of buildings." "Used" does not here mean in actual use at the present time, but constructed for the purpose mentioned, and so a sealed-off part of a sewer remains a sewer within the Act.[28] Similarly, the words "used ... in connexion with agriculture" in regulation 3 (1) of the Motor Vehicles (Construction and Use) Regulations 1955 are not definitive, but purely descriptive of the class of machinery or implement there dealt with, so that the actual use to which such machinery is being put at the time of an alleged contravention of the Regulations is irrelevant.[29] On the other hand, land was not "in use as a caravan site" so as to qualify as an "existing site" under section 13 (*a*) of the Caravan Sites and Control of Development Act 1960 unless there had been some measure of regularity in the user of the land by caravans.[30]

Section 21 (1) (*f*) of the Restrictive Trade Practices Act 1956 refers to "a reduction in volume or earnings of the export business." It was argued in one case that "earnings" meant net profits, as contrasted with the "volume" or turnover of the business. But the argument was rejected. What concerned the public interest in relation to the export trade was turnover, not the rate of profit earned by individual exporters, and thus the context showed that "earnings" meant gross earnings.[31]

"Indecent behaviour" in the context of the Ecclesiastical Courts

[25] *Hills (Patents), Ltd.* v. *University College Hospital Board of Governors* [1956] 1 Q.B. 90.
[26] *Bracey* v. *Read* [1963] Ch. 88.
[27] *Hobhouse* v. *Wall* [1963] 2 Q.B. 124. *Cf. West Mersea U.D.C.* v. *Fraser* [1950] 2 K.B. 119; *Grandi* v. *Milburn* [1966] 2 Q.B. 263.
[28] *Blackdown Properties, Ltd.* v. *Ministry of Housing and Local Government* [1967] Ch. 115.
[29] *Amalgamated Roadstone Corporation, Ltd.* v. *Bond* [1963] 1 W.L.R. 618.
[30] *Biss* v. *Smallburgh R.D.C.* [1965] Ch. 335.
[31] *Re Associated Transformer Manufacturers' Agreement* (1961) L.R. 2 R.P. 295.

Jurisdiction Act 1860 has no connection with conduct which might corrupt or deprave others, "but it is used in the context of 'riotous, violent or indecent behaviour,' to put it quite generally, within the genus of creating a disturbance, in a sacred place." So, to take part in a political demonstration in a church while a service held in connection with the Labour Party Conference was in progress was "indecent behaviour."[32]

In *D.P.P.* v. *Essoldo Circuit (Control), Ltd.*,[33] the Divisional Court held that a "player" for the purposes of the Betting, Gaming and Lotteries Act 1963 is not necessarily an individual person, but that the players' pool in the game of Super Legalite was a statutory "player."

In the phrase "any purpose prejudicial to the safety or interests of the state" in section 1 (1) of the Official Secrets Act 1911, the meaning is not that of the interests of the people in general without regard to the guiding policies of those in authority: but the context shows that "the state" there means (according to Lord Reid and Lord Hodson) the organised community or (according to Lord Devlin and Lord Pearce) the organs of government of a national community.[34]

Finally, in a suitable context, the words "place of abode" may refer, not to a man's residence, but to the place at which he carries on business.[35]

Words used in popular sense

In dealing with matters relating to the general public, statutes are presumed to use words in their popular, rather than their narrowly legal or technical sense: "*loquitur ut vulgus*, that is, according to the common understanding and acceptation of the terms."[36] If an "Act is directed to dealing with matters affecting everybody generally, the words used have the meaning attached to them in the common and ordinary use of language."[37] "I do not think," said Diplock L.J., "that anywhere, except in a court of law, it would be argued with gravity that a Dutch barn or grain and fodder stores or any ordinary farm buildings are properly described as repositories. A Gloucestershire farmer would say they were farm buildings and would laugh at

[32] *Abrahams* v. *Cavey* [1968] 1 Q.B. 479, *per* Lord Parker C.J. at p. 485.
[33] ['966] 1 Q.B. 799.
[34] *Chandler* v. *D.P.P.* [1964] A.C. 763.
[35] *Price* v. *West London Investment Building Society, Ltd.* [1964] 1 W.L.R. 616.
[36] *The Fusilier* (1865) Br. & L. 341, *per* Dr. Lushington at p. 393.
[37] *Unwin* v. *Hanson* [1891] 2 Q.B. 115, *per* Lord Esher M.R. at p. 119.

their being called 'repositories.' "[38] In the same spirit, Stamp J. rejected the argument that the carrying on of the business of a crematorium involved the "subjection of goods or materials to any process" within section 271 (1) (*c*) of the Income Tax Act 1952 as "a distortion of the English language. . . . I protest against subjecting the English language, and more particularly a simple English phrase, to this kind of process of philology and semasiology."[39]

Thus, the Land Tax Acts 1797 and 1798, which exempted "hospitals" from the land tax, were construed as applying to all establishments popularly known by that designation, and even as extending to an asylum for orphans when it appeared more consonant to the object of the Act to give it that wider meaning than to restrict it to what are alone "hospitals" in the strict legal sense of the term, that is, eleemosynary institutions in which the persons benefited form a corporate body.[40] "Almshouse" has received a similarly broad construction.[41]

The power given in the Highway Act 1835, s. 65, to "lop" trees growing near a highway was construed in the popular sense as confined to cutting off lateral branches, and not extending to "topping."[42]

The Railway Clauses Consolidation Act 1845, s. 32, which, while giving companies power to take land for temporary purposes, provided that they should not be exempted from "an action" for nuisance or other injury, was applied not only to what were technically "actions," but to all proceedings whether at law or in equity.[43] Similarly, "cause" is "not a technical word, signifying one kind or another, it is *causa jurisdictionis*, any suit, action, matter, or other similar proceeding competently brought before and litigated in a particular Court."[44]

"Five miles square" has been taken in its popular, rather than strictly mathematical, sense as an area of twenty-five square miles, irrespective of whether it forms a geometrical figure five miles square.[45]

[38] *G. Percy Trentham, Ltd.* v. *Gloucestershire County Council* [1966] 1 W.L.R. 506, at p. 513. *Cf. Warwickshire Publishing Co., Ltd.* v. *Commrs. of Customs and Excise* [1969] 1 W.L.R. 240.
[39] *Bourne* v. *Norwich Crematorium, Ltd.* [1967] 1 W.L.R. 691, at p. 695.
[40] *Lord Colchester* v. *Kewney* (1867) L.R. 1 Ex. 368.
[41] *Mary Clark Home* v. *Anderson* [1904] 2 K.B. 645.
[42] *Unwin* v. *Hanson* [1891] 2 Q.B. 115.
[43] *Fenwick* v. *East London Ry.* (1875) L.R. 20 Eq. 544.
[44] *Green* v. *Lord Penzance* (1881) 6 App.Cas. 657, *per* Lord Selbourne L.C.; *Kosianowski-Lorenz* v. *Kosianowski-Lorenz* [1964] P. 351.
[45] *Robertson* v. *Day* (1879) 5 App.Cas. 63.

In the phrase "rates actually levied on the board" in Schedule 4 to the Rating and Valuation (Miscellaneous Provisions) Act 1955, "levied" was held not to carry its technical meaning in rating law as meaning the service of the demand in due form which is a condition precedent to the enforcement of the claim against the ratepayer by distress. The words might therefore "embrace payments actually claimed by the [rating authority] and paid by the board under the name of rates, without either the rating authority corporation or the board having insisted upon formalities of strict rating law being followed."[46]

Under section 69 (1) of the London County Council (General Powers) Act 1933, petroleum-filling stations are not to be established adjacent to any street without the consent of the local authority, "but such consent shall not be refused in the case of any proposed petroleum-filling station unless in the opinion of the local authority the petroleum-filling station if established would cause obstruction to traffic." The words "obstruction to traffic" have been held to be synonymous with "interference with traffic," and not to deal at all with obstruction on the highway in the strict common law sense.[47]

Section 65 (3) of the Town and Country Planning Act 1947 provided that "interest on the amount of any payment falling to be made in accordance with a scheme made under this Part of the Act shall accrue, at such rate as may from time to time be determined by the Treasury, from the appointed day until the payment is satisfied in accordance with the provisions of this section." Pennycuick J. has held that "accrue" here does not bear its strict meaning of a notional accruer of interest from day to day, but means no more than "shall be payable."[48]

The Court of Appeal has held that the word "execution" in section 325 of the Companies Act 1948 (as amended) is used in its ordinary sense of process of law for the enforcement of a judgment creditor's right, and not in any narrower sense which would exclude a charging order on land.[49]

In a case in which Sellers L.J. (who dissented) found "anything but exhilaration in the prolonged arguments on this issue," the Court of Appeal held that pheasants were not "poultry" within section 2

[46] *North Western Gas Board* v. *Manchester Corporation* [1964] 1 W.L.R. 64 *per* Russell L.J. at p. 80.
[47] *L.C.C.* v. *Cutts* [1961] 1 W.L.R. 292.
[48] *Re Sneyd (deceased)* [1961] 1 W.L.R. 575, at p. 579.
[49] *Re Overseas Aviation Engineering (G.B.), Ltd.* [1963] Ch. 24.

(2) of the Fertilisers and Feeding Stuffs Act 1926. Davies L.J. said that there was a marked distinction in common parlance between poultry and game, and Diplock L.J. decided the point on the basis of what the "ordinary educated Englishman" would understand by "poultry."[50]

Sometimes, however, words are given their strict legal interpretation. "Charitable institution," for example, has been construed in its technical sense.[51] "Fraud" when used in connection with civil proceedings is a precise term of art which will not be widened.[52] And the reference in section 30 (1) (*g*) of the Landlord and Tenant Act 1954 to "a business to be carried on by him [the landlord] therein" is construed with a strict regard to the distinction between an individual and a limited company, however complete the control of the former over the latter.[53]

When dealing with particular businesses or transactions, words are presumed to be used with the particular meaning with which they are used and understood in the business in question. "If the Act," said Lord Esher M.R., "is one passed with reference to a particular trade, business, or transaction, and words are used which everybody conversant with that trade, business, or transaction, knows and understands to have a particular meaning in it, then the words are to be construed as having that particular meaning, though it may differ from the common or ordinary meaning of the words."[54]

So in a Customs Act, which imposes duties on imported commodities, the articles specified, such as "spirits," would generally be understood in their known commercial sense.[55]

The meaning of the word "fettling" in the Schedule to the Protection of Eyes Regulations 1938 cannot be gathered from looking "in the dictionary and, divorcing the word from its context, [arriving] at its etymological or other definition." The "fettling of metal castings" appeared from evidence to be "a kind of trimming up of the castings as they come from the foundry."[56]

In *Jenner* v. *Allen West and Co., Ltd.*,[57] the Court of Appeal held

[50] *Hardwick Game Farm* v. *Suffolk Agricultural Poultry Producers Association* [1966] 1 W.L.R. 287; affd. [1968] 3 W.L.R. 110. *Cf. Re Melton Mowbray (Egerton Ward) U.D.C. Election* [1969] 1 Q.B. 192.
[51] *Adamson* v. *Melbourne and Metropolitan Board of Works* [1929] A.C. 142.
[52] *Barclays Bank, Ltd.* v. *Cole* [1967] 2 Q.B. 738.
[53] *Tunstall* v. *Steigmann* [1962] 2 Q.B. 593.
[54] *Unwin* v. *Hanson* [1891] 2 Q.B. 115, at p. 119.
[55] *Att.-Gen.* v. *Bailey* (1847) 1 Ex. 281; *Bailey* v. *Harris* (1849) 12 Q.B. 905.
[56] *Prophet* v. *Platt Brothers & Co., Ltd.* [1961] 1 W.L.R. 1130, *per* Harman L.J. at p. 1134. [57] [1959] 1 W.L.R. 554.

that the term "crawling boards" in regulation 31 (3) (*a*) of the Building (Safety, Health and Welfare) Regulations 1948 referred to boards with battens on them, not to plain boards, the former being the meaning of the term according to the usage of the relevant trades.

After evidence had been given by a flying instructor as to the points at which "taxi-ing" and "take-off" began and stopped, Byrne J. held that when a motor-car and an aircraft collided on a "cross-wind" runway while the pilot was about to turn his aircraft round to proceed to the "duty runway" where he would commence his take-off run the aircraft was not "taking off" at the time of the accident within the meaning of section 9 (1) of the Air Navigation Act 1920.[58]

Finally, an electric tramcar has been held to be a "stage carriage" within the Stage Carriages Act 1832. The words do not connote only those vehicles familiar from the "western" films, but comprise any "vehicle which proceeds from stage to stage at regular, or more or less regular intervals, and carries passengers who pay separate fares."[59]

Meaning at the time the statute was passed

The words of an Act will generally be understood in the sense which they bore when it was passed.[60] They are to be construed, it has been said, "as if we had to read it the day after it was passed,"[61] though this does not prevent old words from being applied to things not known or invented at the time of the enactment.[62]

For instance, a private Act which provided that "no action in any of His Majesty's Courts of Law" should be brought against certain shipowners without a month's notice, has been held not to apply to proceedings in the Admiralty Division of the High Court, for when the Act was passed the Admiralty Court was not one of His Majesty's courts, nor were proceedings there called actions.[63]

A fourteenth-century statute which spoke of trespassers was understood as referring thereby to wrongdoers generally.[64]

The words "public religious worship" in section 7 (2) of the Rating and Valuation (Miscellaneous Provisions) Act 1955 were first found

[58] *Blankley* v. *Godley* [1952] 1 All E.R. 436n.
[59] *Chapman* v. *Kirke* [1948] 2 K.B. 450, *per* Lord Goddard C.J. at p. 452.
[60] See *Gaslight and Coke Co.* v. *Hardy* (1886) 17 Q.B.D. 619, *per* Lord Esher M.R. at p. 621.
[61] *Sharp* v. *Wakefield* (1888) 22 Q.B.D. 239, *per* Lord Esher M.R.
[62] *Post*, p. 102.
[63] *The Longford* (1889) 14 P.D. 34.
[64] *Wilson* v. *Knubley* (1806) 7 East 128, *per* Lord Ellenborough C.J.

in the Poor Rate Exemption Act 1833. "These words were repeated by the Act of 1955, and unless the context requires, or unless in the intervening years there have been legal decisions or other matters affecting their meaning, they bear the same meaning in 1955 as they bore in 1833. . . . At that date, I think that the place in which the meetings were held would be the dominant consideration, and the important difference was between worship in private houses and worship in public places, rather than between the public and private worship of the individual."[65]

Schedule A to the Jamaica Wharfage Law of 1895 refers to "carriages, four wheels" and "carts and carriages of two wheels." The Judicial Committee has held that tractors mounted on four wheels and each weighing 18,000 lb., and trailers mounted on two wheels and weighing 17,000 lb., do not come within the description "carriages." Mr. L. M. D. de Silva said: "Their Lordships find it difficult to imagine that, in however wide a sense the word 'carriage' was used in the Law of 1895, the legislature could have intended articles of the weight and complexity of the tractors and trailers under consideration to be covered by the term. . . . The Court of Appeal came to the conclusion that the 'intention of the legislature was that carriages included carts' and that the word 'carriages' was used as a generic term. As against this, an argument of great force arises—namely, that if the word 'carriages' included carts there was no need to use the word 'carts' at all and that its use in 1895 would be unintelligible except upon the basis that the word 'carriage' was not used as a generic term including carts."[66]

Words are to be construed in accordance with intention

However wide in the abstract, general words and phrases are more or less elastic, and admit of restriction or extention to suit the legislation in question. The object or policy of this legislation often affords the answer to problems arising from ambiguities which it contains. For it is a canon of interpretation that all words, if they be general and not precise, are to be restricted to the fitness of the matter,[67] that is, to be construed as particular if the intention be particular.[68]

[65] *Church of Jesus Christ of Latter-Day Saints* v. *Henning* [1964] A.C. 420, *per* Lord Pearce at pp. 438, 439.

[66] *Kingston Wharves, Ltd.* v. *Reynolds Jamaica Mines, Ltd.* [1959] A.C. 187, at pp. 195–198.

[67] Bacon, *Maxims*, 10; *Wandsworth Board of Works* v. *United Telephone Co.* (1884) 13 Q.B.D. 904.

[68] *Stradling* v. *Morgan* (1560) 1 Plowd. 199; *Cox* v. *Hakes* (1890) 15 App.Cas. 506.

Thus, an Act which, reciting the inconveniences arising from churchwardens and overseers making clandestine rates, enacted that those officers should permit "every inhabitant" of the parish to inspect the rates, under a penalty for refusal, was held not to apply to a refusal to one of the churchwardens, who was also an inhabitant. As the object of the Act was to protect those inhabitants who had previously no access to the rates (which the churchwardens had), the meaning of the term "inhabitants" was limited to them.[69]

In *Re Ternan*,[70] the Court of Queen's Bench gave an unusual and even artificial meaning to the word "piracy" so as to keep within the scope of the Extradition Act 1843. This statute, which was passed to give the executive the necessary powers for carrying into effect the treaty of 1842 between Great Britain and the United States, provided that each state should, on the requisition of the other, deliver up to justice all persons who, being charged with murder, piracy or other specified crimes committed within the jurisdiction of either state, should seek an asylum, or be found within the territories of the other. It was held that piracy was here confined to those acts which were declared piracy by the municipal law of either country, such as slave-trading, and did not include those which were piracy in the primary sense of the word, that is, *jure gentium*. For as piracy *jure gentium* was within the jurisdiction of all states and was triable by all, and the offenders, consequently, could not be said to seek an asylum in any state since none could be a place of safety for them, that species of the crime was not within the mischief intended to be remedied by the Act.

In *Vandervell* v. *I.R.C.*,[71] the House of Lords held that section 53 (1) (*c*) of the Law of Property Act 1925, which provides that "a disposition of an equitable interest or trust subsisting at the time of the disposition must be in writing," did not apply where the beneficial owner of shares instructed his bank to transfer the shares to a charity, making it abundantly clear that he wanted to pass, by means of that transfer, his own equitable interest together with the bank's legal interest. Lord Upjohn said (at p. 311) that in two other cases,[72] the provision had been applied to situations where the legal estate remained outstanding in a trustee and the beneficial owner was dealing only with the equitable interest. "That is understandable; the object of the section, as was the object of the old Statute of Frauds, is to

[69] *Wethered* v. *Calcutt* (1842) 4 Man. & G. 566.
[70] (1864) 33 L.J.M.C. 201.
[71] [1967] 2 A.C. 291.
[72] *Grey* v. *I.R.C.* [1960] A.C. 1; *Oughtred* v. *I.R.C.* [1960] A.C. 206.

prevent hidden oral transactions in equitable interests in fraud of those truly entitled, and making it difficult, if not impossible, for the trustees to ascertain who are in truth his beneficiaries. But when the beneficial owner owns the whole beneficial estate and is in a position to give directions to his bare trustee with regard to the legal as well as the equitable estate there can be no possible ground for invoking the section where the beneficial owner wants to deal with the legal estate as well as the equitable estate."

By section 28 (1) of the New South Wales Sale of Goods Act (a provision derived from the Factors Act 1889): "Where a person having sold goods continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person . . . of the goods or documents of title under any . . . disposition thereof to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same." The Judicial Committee held that the words "continues . . . in possession" were merely intended to refer to the continuity of physical possession regardless of any private transactions between the seller and the buyer which might alter the legal title under which possession was held. Lord Pearce relied heavily on the fact that "the climate of legislative opinion was, at the time of the passing of the Factors Acts of 1877 and 1889 favourable to legislation which would prevent the buyers or others from being misled by an apparent possession of goods which was belied by legal transactions which were unknown to the world at large."[73]

Just as a consideration of the object of the Act may lead to the narrower of two possible interpretations of a general word being adopted, similarly it may lead to the choice of the broader construction. A striking illustration is provided by the interpretation which has been placed on the phrase "a single woman" in the series of enactments (the latest of which is section 1 of the Affiliation Proceedings Act 1957) under which "a single woman who is with child, or who has been delivered of an illegitimate child, may apply by complaint to a justice of the peace for a summons to be served on the man alleged by her to be the father of the child." It has been consistently held that a married woman living apart from her husband,

[73] *Pacific Motor Auctions Pty., Ltd.* v. *Motor Credits (Hire Finance), Ltd.* [1965] A.C 867, at pp. 887, 888.

and who has a child by another man, is a "single woman" for the purposes of this provision:[74] for, said Lord Denman C.J., "the law, differently interpreted, would fail to reach a very large proportion of illegitimate children."[75] It has even been held that a person may be a "single woman" while living in the same house as her husband,[76] and that a wife, who is living apart from her husband under a separation order, is a single woman *quoad* her husband in respect of a child born to them before their marriage and not legitimated *per subsequens matrimonium*.[77]

By section 26 (1) of the Factories Act 1961, certain "provisions shall be complied with as respects every chain, rope or lifting tackle used for the purpose of raising or lowering persons, goods or materials." Holding that the operation of loosening and lifting molten metal which overspilt on to the floor of a steel works amounted to "raising . . . materials" within the section, Willmer L.J. said: "If the argument for the [factory-owners] were to prevail, it would mean that this operation of tearing the scab by the use of a crane, which is admittedly a regular and recognised method of procedure . . . fraught with some degree of danger, would be completely outside the scope of the Factories Act 1961, and any regulations made thereunder."[78]

In *Neill* v. *Glacier Metal Co., Ltd.*,[79] Sachs J. held (at pp. 26, 27) that the phrase "performance by any person . . . of functions under this Part of the Act" in section 14 (1) (*a*) of the Legal Aid and Advice Act 1949 covered performance of such functions by a judge. "If there is any ambiguity in the phraseology . . . the construction which facilitates the remedying of potential abuses of the legal aid system is to be preferred."[79a]

By section 12 (1) of the Tribunals and Inquiries Act 1958, where any one of certain tribunals makes a decision, it shall be the duty of the tribunal, if requested to do so, to furnish a statement of its "reasons." "The whole purpose of section 12 . . . was to enable persons whose property, or whose interests, were being affected by some administrative decision or some statutory arbitration to know, if the decision was against them, what the reasons for it were." It

[74] See, *e.g.*, *Jones* v. *Evans* [1945] 1 All E.R. 19; *Hockaday* v. *Goodenough* [1945] 2 All E.R. 335.
[75] *R.* v. *Collingwood* (1848) 12 Q.B. 681, at p. 687, following *R.* v. *Luffe* (1807) 8 East 193.
[76] *Whitton* v. *Garner* [1965] 1 W.L.R. 313.
[77] *Kruhlak* v. *Kruhlak* [1958] 2 Q.B. 32.
[78] *Ball* v. *Richard Thomas & Baldwins, Ltd.* [1968] 1 W.L.R. 192, at p. 203.
[79] [1965] 1 Q.B. 16.
[79a] *Cf. Re Murray, A Debtor* [1969] 1 W.L.R. 246.

followed that "reasons" here meant "proper, adequate reasons."[80]

By regulation 16 (*b*) of the Collision Regulations 1948: "A power-driven vessel hearing, apparently forward of her beam, the fog-signal of a vessel the position of which is not ascertained" must stop her engines and navigate with caution until the danger of collision is over. The object of the regulation is manifest: and so it has been held that the position of a ship has not been "ascertained" for the purpose of the rule when it has merely been established by radar at three miles, thirty degrees on the starboard bow. "In my view, 'ascertainment' in this context means much more than ascertainment of distance and bearing at one particular time. . . . The minimum amount of knowledge required is that you must know the other vessel's course and speed and, it may even be, her probable future course and speed."[81]

In the reference in section 2 (1) of the Homicide Act 1957 to such abnormality of mind "as substantially impaired [the accused's] mental responsibility," "substantially" does not merely mean "really" nor even "of considerable amount." It indicates that the impairment is somewhere in between "trivial" and "total." The word was "obviously inserted in the Act of 1957 with a view to carrying some meaning," and the Court of Criminal Appeal refused to give it an interpretation which would render it superfluous.[82]

By section 2 (1) of the Fatal Accidents Act 1959: "In assessing damages in respect of a person's death in any action under the Fatal Accidents Act 1846 . . . there shall not be taken into account any insurance money, benefit, pension or gratuity which has been or will be or may be paid as a result of the death." Where the deceased owned and managed a "one-man company" which insured his life for £2,000, thereby causing a very substantial rise in the value of the company's shares (all but one of which passed to the deceased's widow under his will) on his death, the question was whether the insurance money fell within section 2 (1). It was argued that the policy had been taken out by the company for its own benefit, not that of the widow, and that at no time had the widow received "insurance money" within section 2 (1): as the rise in the value of the shares was not insurance money and had arisen on the death, it should therefore be taken into account in reducing the widow's

[80] *Re Poyser and Mills' Arbitration* [1964] 2 Q.B. 467, *per* Megaw J. at pp. 477, 478.
[81] *The Gunnar Knudsen* [1962] P. 151, *per* Hewson J. at p. 156. *Cf. Nippon Yusen Kaisha* v. *China Navigation Co., Ltd.* [1935] A.C. 177, *per* Lord Macmillan.
[82] *R.* v. *Lloyd* [1967] 1 Q.B. 175, *per* Edmund Davies J. at p. 180.

damages. But Mocatta J. held that section 2 (1) applied. "Adopting, as I think that I must in order to give effect to the intention of the Act, a liberal interpretation of the words used . . . ," he regarded the widow as benefiting to the extent of £2,000 from the insurance money and section 2 (1) as applying to that money.[83]

[83] *Malyon* v. *Plummer* [1963] 1 Q.B. 419; affirmed on this point [1964] 1 Q.B. 330.

CHAPTER 4

BENEFICIAL CONSTRUCTION

Extension of the letter

The construction of a statute must not so strain the words as to include cases plainly omitted from the natural meaning of the language. Thus an enactment requiring that public-houses be closed at certain hours on Sundays was incapable of being construed as extending to Christmas Day;[1] and a rule relating to applications for new trials in cases tried by a jury did not extend to cases tried by an official referee.[2] Nevertheless, even where the usual meaning of the words falls short of the object of the legislature, a more extended meaning may be attributed to them, if they are fairly susceptible of it.[3] Previous editions of this work have referred to this relaxation of strictly literal principles of interpretation as *beneficial construction*: and the modern cases provide many instances of the judges' reluctance to stand upon the letter of a statute. They will not, of course, supply omissions,[4] but where they are faced with a choice between a wide meaning which carries out what appears to have been the object of the legislature more fully, and a narrow meaning which carries it out less fully or not at all, they will often choose the former. Beneficial construction is a tendency, rather than a rule.

One well-known example of beneficial construction is that which has been placed upon the words "soldier being in actual military service" and "mariner or seaman being at sea" in section 11 of the Wills Act 1837. They have been held, for instance, to include a Territorial officer who has received orders to join his unit,[5] and a female typist employed on an ocean-going liner.[6] Several of the cases on this section were discussed by Cohen L.J. in *Re Wingham*.[7]

Where a statute protected "bedding" from seizure on distress, it was

[1] *Forsdike* v. *Colquhoun* (1883) 11 Q.B.D. 71.
[2] *Gower* v. *Tobitt* (1891) 39 W.R. 193.
[3] *Barlow* v. *Ross* (1890) 24 Q.B.D. 381, *per* Lord Esher M.R.
[4] *Ante*, pp. 33–36; *post*, p. 243; but see *post*, pp. 229–230.
[5] *In the Goods of Rippon* [1943] P. 61.
[6] *Re Hale* [1915] 2 I.R. 362.
[7] [1949] P. 187.

held to include the bedstead.[8] And the Railway Clauses Consolidation Act 1845, which required a railway company to keep in repair a "bridge" carrying a highway over their lines, was held to require them also to keep the roadway on the bridge in repair.[9]

Statutes conferring powers are sometimes broadly construed.[10] A New Zealand statute which empowered a corporation to "construct waterworks for the supply of pure water for the inhabitants of the district" was held to authorise them to add fluoride to the water, Lord Upjohn saying that it would be "an unnecessarily restrictive construction to hold . . . that because the supply of water was already pure that there is no power to add to its constituents merely to provide medicated pure water."[11]

Wilberforce J. has held (at p. 792) that the words in section 105 (1) (*a*) of the Housing Act 1957, "purposes . . . necessary or desirable for, or incidental to, the development of the land as a building estate" have "nothing exclusive about them." He rejected the submission that the land could not be sold under the powers contained in the section for ancillary purposes beneficial to other land, and held that, the language of the section being quite general, it could not be said that the provision of schools was something which should be excluded from its scope.[12]

Section 13 (1) of the Transport Act 1962 gives the British Railways Board power "to construct . . . anything required for the purposes of the business" of the Board. Since there is nothing in the section which says that the thing manufactured must be required for use *exclusively* in the business of the Board, the section enables the Board to manufacture railway tank wagons with a view to their sale to an oil company and their use by the company on the Board's lines.[13]

And the provision in the Patents Act 1949, which permits any government department to "make, use and exercise any patented invention for the services of the Crown," does not refer merely to use within the various public services such as the Army, but permits the supply of patented drugs to patients in National Health Service hospitals.[14]

The fact that a section is clearly designed to afford relief may

[8] *Davis* v. *Harris* [1900] 1 Q.B. 729.
[9] *Lancashire & Yorkshire Ry. Co.* v. *Mayor, etc. of Bury* (1889) 14 App.Cas. 417.
[10] But see, *post*, pp. 262–263.
[11] *Att.-Gen. of New Zealand* v. *Lower Hutt City Corporation* [1964] A.C. 1469, at p. 1484.
[12] *Capital Investments, Ltd.* v. *Wednesfield U.D.C.* [1965] Ch. 774, at p. 792.
[13] *Charles Roberts & Co., Ltd.* v. *British Railways Board* [1965] 1 W.L.R. 396.
[14] *Pfizer Corporation* v. *Ministry of Health* [1965] A.C. 512.

incline the court to construe it more benevolently than it might a less obviously remedial enactment. A striking example can be seen in *Re Clark* v. *Forbes Stuart (Thames Street), Ltd. (Intended Action)*.[15] Section 1 of the Limitation Act 1963 gives the court power to extend a period of limitation in certain cases in which the material facts of a decisive character relating to the cause of action have been outside the knowledge of the plaintiff. "Material facts" are defined in section 7 (3), paragraph (*c*) of which is "the fact that the personal injuries so resulting were attributable to that [*i.e.*, that which constitutes the cause of action] negligence, nuisance or breach of duty." The Court of Appeal held that the fact that the applicant thought that Forbes Stuart (Billingsgate), Ltd., and not the defendants in the proposed action, were occupiers of the premises on which he was injured, and that he had wasted time negotiating with them, was prima facie a "material fact" within section 7 (3) (*c*).

Similarly, when it was argued that section 46 of the Bankruptcy Act 1914, which makes payment of money to a person subsequently adjudged bankrupt a good discharge to the person making the payment provided it is made before the date of the receiving order, without notice of the presentation of the bankruptcy petition, and in good faith, should be construed so as to intrude on the title of the trustee in bankruptcy no more than the language required, a Divisional Court of the Chancery Division rejected the submission. Although the section was enacted "to deal specifically with three types of case which had been found to give rise to great inconveniences and sometimes hardship," the court would "decline to hold that this remedial section is to be tied to such cases."[16]

Section 4 (2) (*b*) of the Cheques Act 1957 refers to "any document issued by a customer of a banker which . . . is intended to enable a person to obtain payment from that banker of the sum mentioned in the document." It was argued that this did not include instruments in the form "Pay cash or order" in which no person was specifically named as the payee. But MacKenna J. did not think that it could be "right to give so narrow a meaning to these sections, which were designed to afford relief to bankers for converting other people's property."[17] His decision was, however, reversed on appeal.[18]

[15] [1964] 1 W.L.R. 836.
[16] *Re Dalton (A Bankrupt)* [1963] Ch. 336, *per* Russell J. at p. 352.
[17] *Orbit Mining & Trading Co., Ltd.* v. *Westminster Bank, Ltd.* [1962] 2 All E.R. 552, at p. 561.
[18] [1963] 1 Q.B. 794.

Section 1 of the Scientific Societies Act 1843 referred to bodies supported by "annual voluntary contributions." The Court of Appeal held that gifts qualified as "annual" where the donee annually received such a regular flow of gifts as enabled him to rely on them as a source of income: it was unnecessary that there should be a recurrence of gifts from the same donors.[19]

Section 22 (2) of the Charities Act 1960 provides for the making of a common investment scheme "on the application of any two or more charities." Wilberforce J. said that "one is justified in extending the meaning of section 22 (2) so as to fit in with the evident purposes of the section," and accordingly held that a scheme could be made on the application of a single corporate body which was administering several trusts.[20]

A requirement in the County and Borough Election Forms Regulations 1951 that "at an election of a county councillor the forms in the First Schedule hereto, or forms to the like effect, shall be used" (the forms in that Schedule being in the English language) was satisfied by a candidate who handed in a nomination paper in Welsh.[21] In *Evans* v. *Lloyd*,[22] it was submitted that the provision in section 173 (3) of the London Government Act 1939 that "an order for the payment of money made by a local authority shall be open to the inspection of any local government elector for its area" must apply only to a specific document, for otherwise it would impose undue burdens on local government officials. But, though the Divisional Court considered that how many might be asked for at a time without becoming an abuse of the elector's rights was a question of degree, it was unable to say that a request for all the orders for payment of money for the financial year 1959-60 did not sufficiently identify the documents.[22a]

The reference in section 21 (1) (*b*) of the Restrictive Trade Practices Act 1956 to "specific and *substantial* benefits or advantages" does not demand "precise quantitative evidence as to the extent, size or scope" of the alleged benefit.[23]

Finally, section 91 (1) of the London Transport Act 1936 provides that every passenger "shall on request by an officer or servant of the Board either produce and if so requested deliver up a ticket . . . or

[19] *Cane* v. *Royal College of Music* [1961] 2 Q.B. 89. *Cf. Campbell* v. *I.R.C.* [1968] 3 W.L.R. 1025.

[20] *Re University of London Charitable Trusts* [1964] Ch. 282. at p, 287. *Cf. Aldous* v. *Southwark London B. C.* [1968] 1 W.L.R. 1671.

[21] *Evans* v. *Thomas* [1962] 2 Q.B. 350. [22] [1962] 2 Q.B. 471.

[23] *Re Net Book Agreement, 1957* (1962) L.R. 3 R.P. 246, *per* Buckley J. at p. 309.

give the officer or servant his name and address." Lord Parker C.J. said that the servant did not have to "go and put each request separately: 'Will you deliver up your ticket; show me your ticket; will you pay the fare; will you give your full name and address.' It is sufficient if in all the circumstances of the case the conductor or inspector makes known that the passenger must comply with one or other of the requests." In a case in which the conductor knew full well that a passenger had no ticket, it was quite unnecessary to give her the opportunity of producing or delivering up a ticket.[24]

To suppress the mischief and advance the remedy

It is said to be the duty of the judge to make such construction of a statute as shall suppress the mischief and advance the remedy.[25] To this end, a certain extension of the letter is not unknown, even in criminal statutes.

So, to supply beer to a drunken man and his sober companion amounted to "selling" liquor to the former, even though it was ordered and paid for by the latter.[26]

By section 1 (1) of the Obscene Publications Act 1959 an article is deemed to be obscene "if its effect . . . is, if taken as a whole, such as to tend to deprave and corrupt" persons likely to read it: depravity and corruption are not to be understood as here confined to sexual matters.[27]

Where a stepdaughter lived in a brothel managed by her stepmother, and had "a part at any rate of the say of what goes on at that house," the Divisional Court held that, though the evidence was slender, it was possible to say that the stepdaughter was "assisting in the management of a brothel" contrary to section 33 of the Sexual Offences Act 1956.[28] The same Act, in various sections, uses the phrases "prostitution," "common prostitute" and "purposes of prostitution": these are not to be understood as limited to cases of "prostitution" as the term is commonly used (meaning cases in which a woman offers her body for sexual intercourse), but include, in the words of Darling J.,[29] all cases in which "a woman offers her body for purposes amounting to common lewdness for payment in return,"

[24] *Covington* v. *Wright* [1963] 2 Q.B. 469, at p. 474.
[25] *Heydon's Case* (1584) 3 Rep. 7a; *ante*, p. 40.
[26] *Scatchard* v. *Johnson* (1888) 57 L.J.M.C. 41.
[27] *John Calder (Publications), Ltd.* v. *Powell* [1965] 1 Q.B. 509. And see *R.* v. *Hayles* [1968] 3 W.L.R. 1106.
[28] *Gorman* v. *Standen* [1964] 1 Q.B. 294. [29] *R.* v. *De Munck* [1918] 1 K.B. 635.

whatever the precise manner of her participation in the activity in question.[30]

Section 6 (4) of the Road Traffic Act 1960 empowers a constable to arrest without warrant "a person committing" the offence of driving a motor vehicle while unfit through drink. The Court of Appeal in *Wiltshire* v. *Barrett*[31] held that, on the true construction of the section, a constable was justified in arresting a man who was *apparently* committing the offence: Lord Denning M.R. said (at p. 322) that the constable was in the right if the facts, as they appeared to him at the time, were "such as to warrant him bringing the man before the court."

Section 117 (1) of the same statute refers to passengers being carried "at separate fares." Where X agreed with Y, a mini-bus operator, that Y should carry X and some of her friends home from work at a charge of 7*s.* per day, whatever the number of passengers, X paying the fare and receiving contributions from the other passengers, it was held that they were being carried "at separate fares."[32]

Industrial legislation provides a fruitful field for the application of the tendency towards beneficial construction. Thus Veale J. has said that, although the words "every place where any mineral is worked" in section 49 (1) (*a*) of the Mines and Quarries Act 1954 do not include a place which is not a working place, they must be construed in a "broad, commonsense way": a working place was not only a place where a man was actually working, but also places where he had been set to work or was expected to be, and it did not *ipso facto* cease to be a working place merely because an element of danger had arisen there.[33] So also, "the preparation for, and laying the foundation of, an intended building" (reg. 2 (1) of the Building (Safety, Health and Welfare) Regulations 1948) were held applicable to an excavation for a pumping well some ten feet from the wall of a proposed building.[34] And where regulations referred to a man being "required . . . to pass on foot" over certain material in a coal-mine, the House of Lords held that "required" did not mean "ordered" or "instructed" or that it was a matter of necessity for the man to pass

[30] *R.* v. *Webb* [1964] 1 Q.B. 357.
[31] [1966] 1 Q.B. 312.
[32] *Wurzal* v. *Addison* [1965] 2 Q.B. 131.
[33] *Venn* v. *National Coal Board* [1967] 2 Q.B. 557.
[34] *Horsley* v. *Collier & Catley, Ltd.* [1965] 1 W.L.R. 1359. *Cf. Moorcroft* v. *Thomas Powles & Sons, Ltd.* [1962] 1 W.L.R. 1447; *Baxter* v. *Central Electricity Generating Board* [1965] 1 W.L.R. 200.

that way. "I am content," said Lord Guest, "to adopt the test of required as being whether it was reasonably incidental to the performance of the deceased's duty as a shunter."[35]

Parts of a quay which were being used for the storage and assembly of steel components for a floating oil dock under construction have been held to be a "factory."[36] And Lord Upjohn has said that the facts that a man is doing a skilled and technical job and may have undergone a prolonged period of training do not mean that he is not engaged in "manual labour," "for the Factory Acts are Acts passed for the benefit of the workers and ought to be broadly construed."[37]

Similarly, a young person whose work was partly indoor and partly outdoor, the outdoor work being at some distance from the shop where he was employed, was, when employed in outdoor work, employed "in or about a shop" within the Shop Hours Act 1892.[38]

Provisions regarding continuity of residence are liberally interpreted. A person was held to have been "receiving treatment for mental illness as a resident in a hospital" within section 1 (1) of the Divorce (Insanity and Desertion) Act 1958, notwithstanding temporary absences from the hospital on "trial leave" at home.[39] And, in a case in which the Divisional Court had to consider the definition of "foster child" in section 2 (1) of the Children Act 1958 as "one whose care and maintenance are undertaken for reward for a period exceeding one month by a person who is not a relative or guardian of his," it was held that a child had become a "foster child" even though it went home to its parents for certain weekends, the intervals between which never exceeded one month.[40]

A "child of the family" is defined in section 16 (1) of the Matrimonial Proceedings (Magistrates' Courts) Act 1960 as including "any child of either party who has been accepted as one of the family by the other party." It was held that this covered children *en ventre sa mère*, and so applied to a case in which X, knowing that Y was pregnant by another man, agreed to marry her and to take the child when born into the family as his own.[41]

[35] *Smith* v. *National Coal Board* [1967] 1 W.L.R. 871, at p. 879.
[36] *Barry* v. *Cleveland Bridge and Engineering Co., Ltd.* [1963] 1 All E.R. 192
[37] *J. F. Stone Lighting and Radio, Ltd.* v. *Haygarth* [1968] A.C. 157, at p. 186.
[38] *Collman* v. *Roberts* [1896] 1 Q.B. 457.
[39] *Head* v. *Head* [1963] P. 357. *Cf. Dunn* v. *Dunn* [1963] P. 192. But it cannot be said that continuity of residence has been interrupted where a person has never been resident in the first place: *Shanmugam* v. *Commissioner for Registration of Indian and Pakistani Residents* [1962] A.C. 515.
[40] *Surrey County Council* v. *Battersby* [1965] 2 Q.B. 194.
[41] *Caller* v. *Caller* [1968] P. 39.

A person is "employed partly in driving a vehicle" in relation to his employer's vehicle, notwithstanding that his job is that of a salesman and that he is free to use his own means of transport if he so wishes.[42]

A consultant was employed by the Northern Ireland Hospitals Authority to perform such duties as might be assigned to him by the Authority for the purpose of discharging its obligations under the Public Health (Tuberculosis) Act (Northern Ireland) 1946. By section 2 it was the Authority's duty to make provision for "(*b*) the discovery of cases of tuberculosis; (*c*) the prevention of tuberculosis; . . . and (*g*) the performance of any incidental function necessary for the making of any such provision as aforesaid." The House of Lords held that the consultant was bound to carry out the instructions of the Authority to report on the chest X-rays of every candidate for admission to the Royal Ulster Constabulary. The work, said Lord Morton of Henryton, "contributed to 'the discovery of cases of tuberculosis,' although it was carried out only in regard to a particular section of the community; and it also contributed to 'the prevention of tuberculosis,' since it prevented the entry into the Royal Ulster Constabulary of men who might spread the disease amongst their comrades."[43]

Statutes requiring something to be done

Provisions regarding the giving of notice often receive a liberal interpretation. For instance, by section 92 (1) of the Agricultural Holdings Act 1948 "any notice . . . under this Act shall be duly given to or served on the person to or on whom it is to be given or served if it is delivered to him, or left at his proper address, or sent to him by post in a registered letter." In *Re Poyser and Mills' Arbitration*,[44] it was argued that notice sent by unregistered letter was not good, even if it duly reached the addressee: but Megaw J. held that there was good and sufficient service within the section if there was proof that the letter was actually delivered to the person to whom it was addressed.

Section 241 (2) (*c*) of the Road Traffic Act 1960, before amendment by section 51 (1) of the Road Traffic Act 1962, referred to a notice of intended prosecution being "served on or sent by registered post

[42] *Gross Cash Registers, Ltd.* v. *Vogt* [1967] 2 Q.B. 77.
[43] *Northern Ireland Hospitals Authority* v. *Whyte* [1963] 1 W.L.R. 882, at p. 894.
[44] [1964] 2 Q.B. 467. S. 92 (1) was amended by s. 1 of the Recorded Delivery Service Act 1962.

to him [the person charged]." It had been held that receipt by the accused's wife at his house suffices,[45] even in a case in which the wife did not show it to her husband and the justices thought that the police had acted unreasonably in not making inquiries about the man's ability to receive and deal with the notice in a hospital in which he was undergoing treatment.[46]

Among important modern decisions on notices are the cases of *Sunrose, Ltd.* v. *Gould*[47] and *Moody* v. *Godstone Rural District Council*.[48] In the former case, the Court of Appeal held that a notice was "given to the tenant in the prescribed form specifying the date at which the tenancy is to come to an end" (Landlord and Tenant Act 1954, s. 25 (1)) where the landlord used a printed form, typing in the blanks and forgetting to fill in the blank in "196 ," but from a note on the back of the notice it was clear that he meant 1961. In the latter, it was held that service of an enforcement notice had been proved under section 26 of the Interpretation Act 1889 where the notice had been sent by prepaid registered post and, though the owner of the land concerned denied on oath that he had ever received the notice, no attempt had been made to cross-examine him on his denial.[49]

Statutes relating to the jurisdiction or procedure of the courts have also on occasions received a beneficial construction. Thus, by section 7 (2) of the Adoption Act 1958: "In determining whether an adoption order if made will be for the welfare of the infant, the court . . . shall give due consideration to the wishes of the infant, having regard to his age and understanding." The judge's consideration of the reports of an infant's guardian *ad litem* has been held to be a sufficient compliance with the section, and he need not actually see the infant.[50]

Section 26 (1) of the Matrimonial Causes Act 1950 provided for the making of orders about a child "the marriage of whose parents is the subject of the proceedings." Wrangham J. held that in determining

[45] *Burt* v. *Kirkcaldy* [1965] 1 W.L.R. 474.

[46] *Hosier* v. *Goodall* [1962] 2 Q.B. 401. *Cf. Cooper* v. *Scott-Farnell* [1969] 1 W.L.R. 120. See also *Van Lynn Developments* v. *Pelias Construction Co., Ltd.* [1968] 3 W.L.R. 1141.

[47] [1962] 1 W.L.R. 20. [48] [1966] 1 W.L.R. 1085.

[49] By s. 26, where an Act passed after August 30, 1889 authorises or requires any document to be served by post, then, "unless the contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the document, 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.": *post*, pp. 360–361. *Cf. White* v. *Weston* [1968] 2 Q.B. 647.

[50] *Re G. (T.J.) (an infant)* [1963] 2 Q.B. 73.

whether or not a child was within this section, parentage and not legitimacy was the test: the section "empowers the court to make orders for the maintenance of a child where the mother of that child was one party to divorce proceedings and the father of the child was the other party to those proceedings, whether that child be born before or after decree absolute."[51]

The word "conviction" in section 18 of the Prevention of Crimes Act 1871 is not limited to the actual plea or verdict of guilty, but embraces the sentence passed in consequence as well: therefore a sentence may be proved by producing the appropriate certificate under section 18.[52]

Section 52 (4) of the Betting, Gaming and Lotteries Act 1963 empowers the court to order the forfeiture or destruction of "anything produced to the court and shown to the satisfaction of the court to relate to" an offence under the Act in respect of which a person has been convicted by the court. It is not necessary for the thing in question to be physically produced in court, but is enough if it is properly identified as being the object concerned in the offence and is available for the court to look at if it wishes to do so. The fact that counsel appears and makes a submission relating to gaming-machines amounts to a sufficient identification for this purpose.[53]

By section 75 of the Trengganu Civil Procedure Code: "Where evidence in any suit has been taken and recorded by a judge . . . and a postponement has become necessary the further hearing . . . shall only be continued before the same judge . . . : Provided that if such judge . . . is unable to sit by reason of leave, sickness or transfer *the further hearing . . . may be continued* before another judge." In *Chua Chee Chor* v. *Chua Kim Yong*,[54] the Judicial Committee held that the latter part of the section enabled a judge to give judgment on the basis of notes of the evidence taken by another judge who had retired from the judiciary without giving judgment, although the hearing had been concluded even to the extent of the final speeches of counsel.

A reference to the power of a court being exercisable "at any time thereafter" will receive a literal construction.[55] But where something

[51] *Knowles* v. *Knowles* [1962] P. 161, at p. 170. *Cf. Wild* v. *Wild* [1968] 3 W.L.R. 1148.
[52] *Stone* v. *Bastick* [1967] 1 Q.B. 74.
[53] *R.* v. *Edmonton Justices, ex p. Stannite Automatics, Ltd.* [1965] 1 W.L.R. 984.
[54] [1962] 1 W.L.R. 1464.
[55] *L.* v. *L.* [1962] P. 101.

is to be done "forthwith" by some person or body, a court will not require instantaneous compliance with the statutory requirement.[56] " 'Forthwith,' " Harman L.J. has said, "is not a precise time and, provided that no harm is done, 'forthwith' means any reasonable time thereafter," and so may, according to the circumstances, involve action within days or years.[57]

Extension to new things

The language of a statute is generally extended to new things which were not known and could not have been contemplated when the Act was passed, when the Act deals with a genus and the thing which afterwards comes into existence was a species of it. Thus the provision of Magna Carta which exempted lords from the liability of having their carts taken for carriage was held to extend to degrees of nobility not known when it was made, such as dukes, marquises and viscounts.[58]

So, the Engraving Copyright Act 1734, which imposed a penalty for piratically engraving, by etching or otherwise, or "in any other manner" copying prints and engravings, applied to copying by photography, though that process was not invented until more than a century after the Act was passed.[59] And Edison's telephone was held to be a "telegraph" within the meaning of the Telegraph Acts 1863 and 1869, even though it was unknown in 1869.[60]

Similarly, bicycles were held to be "carriages" within the provision of the Highway Act 1835 against furious driving,[61] and tricycles capable of being propelled by steam to be "locomotives" within the Locomotives Acts 1861 and 1865,[62] though not invented when these Acts were passed.

Where an Act of 1790 (which was deemed to be a public Act) exempted ferry proprietors from assessment to any "tax . . . whatsoever" in respect of the ferry, it was held that the exemption extended to income tax even though that tax was first imposed considerably after 1790.[63]

[56] *Sameen* v. *Abeyewickrema* [1963] A.C. 597.
[57] *Hillingdon London Borough Council* v. *Cutler* [1968] 1 Q.B. 124, at p. 135. *Cf. Brown* v. *Bonnyrigg Magistrates*, 1936 S.C. 258.
[58] 2 Inst. 35.
[59] *Gambart* v. *Ball* (1863) 32 L.J.C.P. 166.
[60] *Att.-Gen.* v. *Edison Telephone Co. of London (Ltd.)* (1880) 6 Q.B.D. 244.
[61] *Taylor* v. *Goodwin* (1879) 4 Q.B.D. 228; but see *Williams* v. *Ellis* (1880) 5 Q.B.D. 175 and, *ante*, pp. 85–86.
[62] *Parkyns* v. *Preist* (1881) 7 Q.B.D. 313.
[63] *Pole-Carew* v. *Craddock* [1920] 3 K.B. 109; but see, *post*, pp. 243–244, 262.

De minimis non curat lex

Occasionally, the principle, that the law does not concern itself with trifles will be invoked, in applying a statutory provision.

In one case, for example, a football club ran a pool betting scheme, under which a member's chance of winning depended on the code number arbitrarily allocated by the printer to each weekly ticket. Members could change their code numbers on request, but rarely did so, and out of a total of £70,000 in stake moneys less than £1 was attributable to code numbers which members had changed. Lloyd-Jacob J. held that although the choice of numbers by a member would render the purchasing of a ticket a bet for the purpose of the pool betting duty, yet this "series of transactions" could "fairly be dismissed on the ground of *de minimis*."[64]

Similarly, where a notice claiming an increase in rent in respect of increases in rates between 1939 and 1945 stated the increase payable (which was in fact £2 6*s*. 1*d*.) as £2 6*s*. 0*d*., the Court of Appeal, distinguishing a *dictum* of Scrutton L.J. requiring very strict compliance with the statutory requirements as to these notices,[65] declined to hold that this "very slight error—almost a trivial error—in stating what the rates were" made the notice "false or misleading in any material respect" within section 3 (2) of the Increase of Rent and Mortgage Interest (Restrictions) Act 1920.[66]

In *Coleshill and District Investment Co., Ltd.* v. *Minister of Housing and Local Government*,[67] the appellants acquired a disused ammunition magazine. They removed the protective banks of rubble and soil outside its blast walls, the work, which was a comparatively small job of removing some cubic yards of soil, being done by a mechanical excavator and lorries. Was this "the carrying out of building, engineering, mining or other operations . . . on land," so as to constitute "development" within section 12 (1) of the Town and Country Planning Act 1962? The Divisional Court held that it was not, Widgery J. saying (at p. 65): "This little job of shifting a few cubic yards of soil with a digger and lorry is not, in my judgment, an operation of a kind which could ever be dignified with the title of an engineering operation." The decision was reversed by the Court of

[64] *Customs and Excise Commissioners* v. *Dodd* [1961] 1 W.L.R. 144.
[65] *Bourne* v. *Litton* [1924] 2 K.B. 10.
[66] *Fredco Estates, Ltd.* v. *Bryant* [1961] 1 W.L.R. 76, *per* Ormerod L.J. at p. 84. See also *Sevenarts, Ltd.* v. *Busvine* [1969] 1 All E.R. 392, and *cf. Marks* v. *British Waterways Board* [1963] 1 W.L.R. 1008.
[67] [1968] 1 All E.R. 62.

Appeal but, in so far as the judgment of the Divisional Court was referred to (the arguments addressed to the Court of Appeal being somewhat different),[68] Lord Denning M.R.'s view of the matter diverged from Widgery J.'s in his appreciation of the facts rather than in principle. "This was," he said (at p. 604), "not so small an operation as to be overlooked."[69]

[68] [1968] 1 W.L.R. 600, *per* Diplock L.J.

[69] There is no room for the application of the *de minimis* principle where a driver's blood-alcohol concentration slightly exceeds the permitted limit: *Delaroy-Hall* v. *Tadman* [1969] 2 W.L.R. 92, *per* Lord Parker C.J. at p. 98.