



George Pollock was the third son of Sir Frederick Pollock, the Lord Chief Baron; born in 1821, he lived until 1915, having been a Master of the Supreme Court from 1851 to 1901. After Willes's death a number of his friends subscribed a sum of money in his memory for the benefit of his sisters, Mrs. Herrick and Eliza Willes, and his niece, Henrietta Herrick. The money was paid to Henry Pollock and Joseph W. Chitty for them to invest in such manner as they thought desirable. The total sum subscribed was £1,625. Sir William Erle gave £400, Mr. Justice Byles and Baron Martin £200 each, and Mr. Justice Keating £300. Mr. Justice Quain, Mr. Justice Montague Smith, Mr. Justice Grove, Charles Pollock and Sir David Salomons gave a hundred guineas each.⁴⁹ Lady Willes died in 1887.

Portraits of Willes may be found in the *Illustrated London News* of 1872, volume 61, pages 353-4, or in *The Graphic*, volume 6, pages 442 and 445. These portraits all seem to be reproductions of a photograph of Willes seated at a table.

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THE INTERPRETATION ACT—TEN YEARS LATER

Part 2 of volume 11 (May 1955) of the earlier series of the *Northern Ireland Legal Quarterly* consisted of a commentary by Dr. A. G. Donaldson and myself, on the Interpretation Act (Northern Ireland), 1954 (hereinafter referred to as "the Act of 1954"). What follows is intended to supplement that commentary by mentioning certain recent cases on statutory construction and some other relevant points which came to attention in the intervening years. The common conclusion that the courts are becoming more and more preoccupied with problems of statutory interpretation is indeed borne out by the amount of material accumulated in the interval. It is not possible to do more than refer very briefly to some of the more important matters. To facilitate annotation, it is proposed to do so in the order of the Act itself. I must also make clear that any opinions expressed are personal to the writer and in no sense official. This warning is all the more necessary since, in this instance, I have had to "go it alone", being deprived by the pressure of events of the invaluable assistance and erudition of the co-author of the original commentary.

To start with the title of an Act, it may be of interest to mention two decisions of the 1890's illustrating how the title may materially affect its construction: *Powell v. Kempton Park Racecourse Co.*¹ and *Fielding v. Morley Corp.*² In Northern Ireland the use of the long title as an aid to the interpretation of a section containing doubt or ambiguity has been sanctioned in *Galloway v. Irish Sailors and Soldiers Land Trust*.³ Nevertheless, if the section is clear and unambiguous, its operation cannot be controlled by the long title.⁴ This rule was re-stated by Lord Parker L.C.J. in *Ward v. Holman*,⁵ although the court in that case referred to the long title as "the preamble". Since 1854, when the practice of the House of Commons was altered by standing order, the title has been capable of amendment by the House—the title is clearly a part of the bill and may justifiably be prayed in aid in construing the bill after it has become law. Amendments to the long title occasionally occur at Stormont.⁶ Lawyers may be surprised

¹ [1897] 2 Q.B. 242, 289; [1899] A.C. 143.

² [1899] 1 Ch. 1.

³ [1950] N.I. 32, 40, 56.

⁴ *Re Wykes* [1961] Ch. 229, 242.

⁵ [1964] 2 Q.B. 580.

⁶ See, e.g., the Housing Bill, 1929, vol. 8, col. 2215, or the Education (Amendment) Bill, 1961 vol. 50, col. 460. For Westminster examples see *Erskine May*, 17th ed., p. 560.

⁴⁹ Chitty papers.

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to learn that in a ruling of the Speaker of the House of Commons as to what the long title of a bill should contain, given on 3rd May 1894, it was said that the familiar phrase "and for purposes connected therewith" has "no Parliamentary force or effect whatever; but the words 'consequential thereon' make a considerable difference."⁷ If the former phrase has no parliamentary effect, one might question what its legal effect may be. Despite this ruling, parliamentary draftsmen at Westminster and elsewhere have continued the use of the phrase "purposes connected therewith" in order to discourage unnecessarily narrow or technical constructions being adopted, and their practice must be regarded as sanctified by long usage. By parliamentary practice, the admissibility of amendments is properly determined not by the formal title of the bill, but by its scope, purport and substance. It is therefore only right that the construction of the bill should be under similar influences. After all, as a famous American judge has put it, the object of the long title is simply "to apprise the public and members of the legislature, upon a reading of the title, what interests are likely to be affected by its enactment"⁸ and "to prevent surprise to members of the legislature and the public."⁹

The effect to be given to the short title of an Act was considered across the Atlantic by Day J. in *Cammerini v. U.S.*¹⁰ where the learned judge said "The name given to an Act by way of designation or description, or the report which accompanies it, cannot change the plain import of its words."

The absence of formal words of enactment was considered in *Halpin v. A-G.*¹¹ If such words are in the enrolled copy of the Act the court, it seems, will not look beyond that copy to an earlier form of bill from which they had been omitted.

The definitions in section 1 of the Act of 1954, with the exception of the definition of "instrument", are explanatory and prima facie restrictive (in simpler terms they employ "means" as opposed to "includes"). The definition of "instrument" was deliberately made extensive ("includes") since the category of instrument is not necessarily closed. The advantages of the extensive form of definition will be apparent from *Portsmouth Corp. v. Smith*¹² and *Pound v. Plumstead*¹³

⁷ 24 H.C. Debates 246, 247.

⁸ *People ex rel. Burroughs v. Brinkerhoff* 68 N.Y. 259.

⁹ *Burke v. Kern* 287 N.Y. 203.

¹⁰ 242 U.S. 470 (1916). See also the observations of O'Halloran J.A. in the

Canadian case of *R. v. McLeod* [1950] 2 W.W.R. 456, 462.

¹¹ [1936] I.R. 226.

¹² (1883) 13 Q.B.D. 184, 195, 197.

Board of Works.¹⁴ Incidentally, the method of proving bye-laws in a criminal prosecution was considered in (1959) 89 *Journal of Criminal Law* 48.

Section 2 of the Act regulates its application to subsequent enactments "unless a contrary intention appears". The related phrase "unless the contrary is expressly provided" was considered in *Shanmugam v. Commissioner for Registration of Indian and Pakistani Residents*,¹⁵ where the Privy Council laid down that to be a "contrary" express provision with regard to something it is not necessary that the thing should be expressly mentioned; it is sufficient that it is directly covered by the language, however broad the language may be, which covers it so long as the applicability arises directly from the language used and not by inference therefrom. Presumably this reasoning applies a fortiori where a mere contrary intention is to be inferred.

Section 3 of the Act provides that rules of construction which are not inconsistent with those laid down by the Act are not excluded by it. While common law principles of construction are outside the ambit of this article, it may be noted in passing that the ejusdem generis rule of construction has been applied¹⁶ to a phrase which did not include the word "other" and also that in the same year Lord Evershed laid down the following rule for the construction of a consolidating statute (*R. v. Governor of Brixton Prison, ex parte de Denko*):—¹⁷

"One does not look for substantial changes in the law... in a consolidating Act... Indeed, in remembering that this is a consolidation Act one has also to remember that Parliament must be taken to have been aware of the decision of the courts in the meantime."

The requirement in section 4 that Acts are to be deemed public Acts is based on historical and other considerations which are discussed by Professor G. D. Nokes in his article on "The Limits of Judicial Notice."¹⁸ While the extent provision in section 6 merely follows the general presumption that the Acts extend to the whole of the legislative area unless there is a contrary indication,¹⁹ it is interesting to note that in United Kingdom law an extent provision may affect construction:

¹⁴ (1871) L.R. 7 Q.B. 183, 194.

¹⁵ [1962] A.C. 515.

¹⁶ *Brownsea Haven Properties Ltd. v. Poole Corp.* [1958] Ch. 574, 597, 609, 613.

¹⁷ [1959] 1 Q.B. 268, 281.

¹⁸ (1958) 74 L.Q.R. 59, at p. 63 *et seq.*

¹⁹ See *R. v. Jameson* [1896] 2 Q.B. 425, 430.

Re Sutherland, Winter v. Inland Revenue Commissioners,¹⁹ where Lord Reid took the point that "the Finance Acts are United Kingdom Acts and there is at least a strong presumption that they mean the same in Scotland as in England."

Whatever its other effects may be, section 7 has undoubtedly resulted in it being much easier to determine the extent to which the Crown is bound by an Act of the Parliament of Northern Ireland. In relation to such an Act the lawyer is no longer plagued by the doctrine of necessary implication which can cause so much trouble across the Channel²⁰ or even in the Republic.²¹ The Northern Ireland position is also simplified by a dictum of Lord MacDermott's in *Quinn v. Ministry of Commerce*²² where his lordship held that a Crown agent employed by the Crown was entitled to share the Crown's freedom from statutory obligations. The Canadian counterpart of section 7 was considered in *Re Silver Brothers, Ltd., A.-G. for Quebec v. A.-G. for Canada*²³ as well as in *Nisbet Shipping Co. Ltd. v. R.*²⁴ *Boarland v. Madras Electricity Supply Corp.*,²⁵ which the House of Lords affirmed,²⁶ *Madras Electricity Supply Commissioners v. Whitworth Park Coal Co. Ltd.*²⁷ And *A.-G. v. Hancock*²⁸ was approved in *Re Telephone Apparatus Manufacturers' Application*.²⁹

Finally, it may serve to clear the air to record that section 7 rests not upon any misconceived notions of bureaucracy but upon the principles of the common law. Story J. put the point well one hundred and forty-four years ago in *U.S. v. Hoar*:³⁰ "Where the Government is not expressly or by necessary implication included, it ought to be clear from the nature of the mischiefs to be redressed or the language used that the Government itself was in contemplation of the

legislature before a Court of law would be authorised to put such an interpretation upon any Statute. In general, acts of the legislature are meant to regulate and direct the acts and rights of the citizens, and in most cases the reasoning applicable to them applied with very different and often contrary force to the Government itself. . . . It appears to me, therefore, to be a safe rule, founded in the principles of the Common Law, that the general words of the Statute ought not to include the Government, or affect its rights, unless that construction be clear and indisputable upon the text of the Act."

The effect of preambles upon the construction of enactments, which was the subject matter of section 10(1) of the Act of 1954, was fully considered by the courts in *Prince Ernest of Hanover v. A.-G.*³¹ It appears that cross-headings are treated similarly to preambles.³² A recital in a private Act is not conclusive evidence of the truth of the recital but is nevertheless very strong evidence thereof, especially if the matter is long beyond the reach of living memory.³³

Marginal notes, the subject-matter of subsection (2) of section 10, are, however, a very different kettle of fish. The rule that marginal notes are not to be used in the construction of statutes was favoured in *Parsons v. B.N.M. Laboratories Ltd.*,³⁴ *Britt v. Buckinghamshire C.C.*³⁵ and *Chandler v. D.P.P.*³⁶ Despite this, however, the English Court of Appeal in *Stephens v. Cuckfield R.D.C.*³⁷ certainly kept the marginal note in mind when considering the general purpose of the section to which it related. Moreover, that court has twice laid down³⁸ that "though a title to a section in an Act can give a clue to the meaning of an ambiguous passage in the section, it cannot control the meaning of the words used in the section if they are clear and unambiguous." In Northern Ireland, section 10(2) of the Act of 1954 is much more definite in authorising disregard of the marginal note.

Section 11 of the Act of 1954 deals with references in various parts of enactments to other parts and, probably more than any other provision of the Act, has enabled the language of the statute book to be

¹⁹ [1963] A.C. 235, 248.

²⁰ See *Re M (An Infant)* [1960] 3 W.L.R. 1045, 1049, [1961] 1 All E.R. 201, per Cross J.; [1961] Ch. 328, 336 *et seq.*, per Lord Evershed.

²¹ See *Re Irish Employers Mutual Insurance Association Ltd.* [1955] I.R. 176; *Commissioners of Public Works in Ireland v. Kavanagh* [1962] I.R. 216.

²² [1954] N.I. 131, 142.

²³ [1932] A.C. 514, 523.

²⁴ [1955] 1 W.L.R. 1031, 1036; [1955] 3 All E.R. 161.

²⁵ [1954] 1 W.L.R. 87; [1954] 1 All E.R. 52.

²⁶ [1955] A.C. 667, *sub nom. Madras Electricity Supply Corp. Ltd. v. Boarland*.

²⁷ [1958] Ch. 792.

²⁸ [1940] 1 K.B. 427, referred to in the original article, 11 *N.I.L.Q.* 73.

²⁹ (1963) L.R. 3 R.P. 462, 490, per Upjohn L.J.

³⁰ Mason 311 (1821).

³¹ [1955] Ch. 440, [1956] Ch. 188 (C.A.); approved by the House of Lords: [1957] A.C. 436, *sub nom. A.-G. v. Prince Ernest Augustus of Hanover*.

³² See *Clarke and McGushin v. McDonald* (1958) 93 I.L.T.R. 6, 23.

³³ *Wryd v. Silver* [1963] Ch. 243, 261, 268.

³⁴ [1964] 1 Q.B. 95, esp. p. 128.

³⁵ [1964] 1 Q.B. 77, 93.

³⁶ [1964] A.C. 763, 789, per Lord Reid.

³⁷ [1960] 2 Q.B. 373, 383.

³⁸ *Re Penrhyn's Settlement Trusts* [1923] 1 Ch. 147; *Qualter Hall & Co. Ltd. v. Board of Trade* [1962] Ch. 273.

shortened and many tedious repetitions to be avoided. The effect of grouping or arrangement of the various provisions of an Act was considered by the Irish courts in *Clarke and McGashin v. McDonald*.³⁹ Clearly, division into parts may affect construction: *Inglis v. Robertson*.⁴⁰ A schedule is as much part of an Act as a section.⁴¹ Section 11(10) has enabled the tedious phrase "under or by virtue of" to be avoided: the subsection makes "under" suffice. The implied words "by virtue of" should be given a wide meaning having been held to be wider than "in reliance upon" and to be equivalent to "in consequence of."⁴² Again, it seems "arising out of" is a very much wider phrase than "under."⁴³ The ambiguity inherent in using the word "herein" in an Act of Parliament (which subsection 11(11) of the Act of 1954 sought to avoid) had previously been considered in *Re Cambrian Railways Co.'s Scheme*.⁴⁴

Section 12(2) of the Act of 1954 is possibly one of the most important provisions regulating the construction of amending enactments. Prima facie, the meaning of a word in an amending Act is to be construed as in the Act amended. This is the principle of the subsection and it is gratifying to note that no less an authority than Black L.J. in an unreported decision, *Buchanan v. McKimney*, regarded the rule as "an ordinary canon of construction". In support of his view the learned lord justice cited *R. v. Hopkins*.⁴⁵ However, Lord Simonds in *Inland Revenue Commissioners v. Littlewoods Mail Order Stores Ltd.*⁴⁶ warned that the principle can easily be pressed too far. Another note of warning was sounded in *Tursi v. Tursi*⁴⁷ against construing the provisions of an earlier enactment in the light of a later enactment. Other observations on "construing as one" will be found in *Kirkness v. John Hudson & Co. Ltd.*⁴⁸ and *Crowe v. Lloyds British Testing Co. Ltd.*⁴⁹

³⁹ (1958) 93 I.L.T.R. 6. See also Courtney Ilbert's footnote at p. 245 of *Legislative Methods and Forms*.
⁴⁰ [1898] A.C. 616, 624, 630.
⁴¹ *A.-G. v. Lamplough* (1878) 3 Ex. D. 214, 229.
⁴² See *R. v. Hurford*; *R. v. Williams* [1963] 2 All E.R. 254, 257 n. 1.
⁴³ *Heyman v. Darwins Ltd.* [1942] A.C. 356. And see (1957) 73 L.Q.R. 8.
⁴⁴ (1868) L.R. 3 Ch. App. 278, 293.
⁴⁵ [1893] 1 Q.B. 621, 626, per Bruce J.
⁴⁶ [1963] A.C. 135, 150.
⁴⁷ [1958] P. 54.
⁴⁸ [1955] A.C. 696, 715.
⁴⁹ [1960] 1 Q.B. 592, 613-614.

Sections 13 and 14 of the Act of 1954 were intended to remove any difficulties regarding the ascertainment of the date on which enactments and statutory instruments were passed or made and the date on which they come into effect. In practice this object seems to have been largely attained. As regards deeds, the position is more difficult because a distinction can be drawn between the date of a deed and the date of the signature of a party to the deed.⁵⁰ From the standpoint of constitutional law, a law is "made" within the meaning of section 5 of the Government of Ireland Act, 1920 when its relevant provisions can be invoked as a source of legal authority as distinct from the moment when the words of a law qualify to be enrolled upon the statute book.⁵¹ Nonetheless, the date of the royal assent to a bill is the date of its passing as distinct from its being "made" into a law.⁵² Subsection (4) of section 13 avoids the difficulties which can arise across the Channel where an instrument has to be confirmed by a higher authority.⁵³

Perhaps the most interesting authority on the coming into force of enactments is *R. v. Logan*,⁵⁴ where it was held that a statute (the Army Act, 1955) having extra-territorial operation came into force in all territories on the day which was in those territories the date of the coming into operation of the Act of England.⁵⁵ It seems that, in exceptional circumstances, the courts may anticipate the commencement of legislation announced by the government, though this is most unusual.⁵⁶ The more controversial topic of the retrospective effect of statutes was considered again in *Re A Solicitor's Clerk*,⁵⁷ and the presumption against retrospectivity as laid down in *Young v. Adams*⁵⁸ was also upheld by Denning L.J. in *Fairey v. Southampton C.C.*⁵⁹ In brief, an Act which affects the substantive law is not to be given retrospective operation unless such a construction appears very clearly in the terms of the Act or arises by necessary and distinct implication.

⁵⁰ See *Bell v. Hobbs* [1956] N.Z.L.R. 1005.
⁵¹ *McCann v. A.-G. for N.I.* [1961] N.I. 102, 129, per Lord Radcliffe.
⁵² *Coleridge-Taylor v. Novello & Co. Ltd.* [1938] 1 Ch. 608.
⁵³ See *Ivagh v. Minister of Housing and Local Government* [1964] 1 Q.B. 395.
⁵⁴ [1957] 2 Q.B. 589.
⁵⁵ The difficulties of this decision are summarised in (1957) 73 L.Q.R. 462. See also *R. v. Ross* [1945] 1 W.W.R. 590.
⁵⁶ For an example, see *Re Royal Naval and Royal Marine Children's Homes Portsmouth* [1959] 2 All E.R. 716; [1959] 1 W.L.R. 755.
⁵⁷ [1957] 1 W.L.R. 1219; [1957] 3 All E.R. 617.
⁵⁸ [1898] A.C. 469.
⁵⁹ [1956] 2 Q.B. 439.

The presumption against retrospective operation has been said not to apply to alterations in procedure.⁶⁰ As will be seen from the comments on section 28,⁶¹ alterations in the substantive rights of the parties tend to preclude a statute from operating retrospectively in the absence of clear words authorising retrospective operation. For the constitutional lawyer, one difficulty has been satisfactorily got out of the way by *Sabally and N'Jie v. A.-G.*,⁶² where Lord Denning M.R. approved Salmon L.J.'s statement that "Plenary legislative powers include the power to legislate retrospectively, seldom though such a power in practice may be used."

Under section 16 of the Act of 1954 certain statutory instruments or documents may be made or issued before the enactment conferring the power to make them has become operative. The power can, however, only be exercised so far as is necessary or expedient for making the enactment effective upon its commencement. In *Orrman Bros. Ltd. v. Greenbaum*⁶³ an attempt to rely on a form of notice prescribed by regulations made before the Act came into operation failed because the form had not been prescribed solely for this reason.

The common-sense provision in section 17(4) that anything authorised to be done collectively by more than two persons may be done by a majority of them subject to any required quorum appears to be the normal common law rule.⁶⁴ Surprisingly, subsection (3) of section 17, enacting in broad terms that the power to do any act or thing shall be construed as including everything necessary to enable that act or thing to be done, has not come very often before the courts, although a qualified version of this provision was disregarded by Ungood-Thomas J. in *Charles Roberts & Co. Ltd. v. British Railways Board*.⁶⁵ Apart from this subsection, the courts have held that when Parliament imposes duties it may be held to grant by implication the power by which those duties can be performed.⁶⁶ In that case, however, the

⁶⁰ *Republic of Costa Rica v. Erlanger* (1876) 3 Ch.D. 62, 67; *Hendon and Stenworth U.D.C. v. Groul* [1897] 2 Ch. 306. But see (1959) 228 *Law Times* 293 and *Re Verazza* [1960] 1 All E.R. 183, [1960] 3 All E.R. 97.

⁶¹ See pp. 229-230, *post*.

⁶² [1964] 3 W.L.R. 732; [1964] 3 All E.R. 377; [1965] 1 Q.B. 273.

⁶³ [1955] 1 W.L.R. 248; [1955] 1 All E.R. 610.

⁶⁴ See *Grindley v. Barker* (1798) 1 Bos. & Pul. 229, 126 E.R. 875, distinguished in *Brain v. Minister of Pensions* [1947] K.B. 625 and *Minister of Pensions v. Horsley* [1949] 2 K.B. 526. For the New Zealand view, see *Atkinson v. Brown* [1963] N.Z.L.R. 755.

⁶⁵ [1964] 3 All E.R. 651.

⁶⁶ *Hazelidine v. Minister of Housing and Local Government* [1959] 1 W.L.R. 1155; [1959] 3 All E.R. 693.

mood of the court may have been generous since usually courts prefer to propound afresh the paramount rule that every statute "shall be expounded according to its manifest or expressed intention"—that is of course, as seen by the court. In *Commissioners of Customs and Excise v. Cure & Dealey Ltd.*⁶⁷ Sachs J. held that the words "as appear to them to be necessary" do not make the empowered authority the sole judge of what its powers are as well as the sole judge of the way in which it may exercise such powers as it may have. Rightly the test of what can be done must remain reasonably subjective and section 17(4) cannot be relied upon to confer power to do an act which is not authorised and which is not necessary for or incidental to an authorised act.

If the law in authorising the creation of a body corporate intends to attribute to that body the attributes of legal personality, one cannot help regretting that this is not done in more simple terms. Both the courts and the legislature have made unduly heavy weather of the point. The statutory formula usually is "shall be a body corporate having perpetual succession, a common seal and the capacity to sue and be sued"; it used to go on, in proper cases, "and the power to hold land without licence in mortmain". The abolition of the law of mortmain has rendered the latter phrase unnecessary but it seems a pity that the customary formula did not stop at the words "body corporate." What follows merely states some of the things without which a body corporate cannot exist as a legal person. This view seems to be adequately supported by *The Brabo*,⁶⁸ and there is authority⁶⁹ for saying that to incorporate a Minister produces the same result as giving a Minister an express power to sue and be sued.

As regards a Crown department this view may not be the whole story, since incorporation would merely give the Minister as a corporation the same capacity in litigation as an individual has. But an individual Minister could not litigate on behalf of the Crown without an express power to sue and be sued. For this reason it is possibly as well that section 19 of the Act of 1954, which was intended to make provision for the incorporation of bodies who would act on behalf of the Crown as well as for the incorporation of other bodies, expressly confers a power to sue and be sued. The difficulties about the omission

⁶⁷ [1961] 3 W.L.R. 781, 818. See also [1962] 1 Q.B. 340.

⁶⁸ [1948] P. 33, affirmed [1949] A.C. 326, *sub nom. Tyne Improvement Commissioners v. Arment Anversois S/A*.

⁶⁹ *Minister of Works and Planning v. Henderson* [1947] K.B. 91.

of the power to be sued were more than fully explored in the recent decision of *Mocatta J. in Knight and Searle v. Dove*.⁷⁰ A body corporate with statutory power to own land has all the rights incidental to property.⁷¹ That statutory powers should include powers fairly incidental or consequential to those which the statute confers is not a new principle (see *per Lord Selborne in A.-G. v. Great Eastern Railway Co.*⁷² approved in *A.-G. v. Crayford U.D.C.*)⁷³ Moreover it would seem that a power to employ staff recognises that such staff may themselves act within the reasonable and proper scope of their authority: compare *Freeman & Lockyer v. Buckhurst Park Properties (Mangal) Ltd.*⁷⁴ The real innovation of section 19 of the Act of 1954, namely, the provision in paragraph (a) (ii) of subsection (1) giving the new statutory corporation the same power to contract as an individual and abolishing as regards third parties the doctrine of ultra vires, has not yet been tested.⁷⁵ At common law it seems that the contract is void and neither party is able to enforce it. Either party may therefore set up the defence of ultra vires. This does not work out fairly in practice.⁷⁶ Moreover, in the case of a statutory corporation it seems that any party claiming to be prejudiced by what the corporation is doing may apply to have the corporation's action declared to be ultra vires: *Roberts v. British Railways Board*.⁷⁷ As far as new statutory corporations are concerned section 19 has anticipated the effect of the recommendations of the Jenkins Committee.

The subject of double punishments for one and the same offence was dealt with in general terms in section 20(1) of the Act of 1954 which was based upon section 33 of the Interpretation Act, 1889. This topic has been before the courts on a number of occasions: see *A.-G. v. Mallen*⁷⁸ and also *R. v. Miles*.⁷⁹ It is most fully considered in *Connelly v. D.P.P.*⁸⁰ Nevertheless, it is doubtful if the cases really

⁷⁰ [1964] 2 Q.B. 631.

⁷¹ *A.-G. v. Logan* [1891] 2 Q.B. 100, 104 (D.C.).

⁷² (1880) 5 App. Cas. 473, 479.

⁷³ [1962] Ch. 246.

⁷⁴ [1964] 2 Q.B. 480.

⁷⁵ As to who can plead that a contract is ultra vires, see (1961) 24 M.L.R. 715.

⁷⁶ See "The Ultra Vires Rule To-day" (1962) 233 *Law Times* 214, and on the subject of ultra vires generally in relation to companies see the Jenkins Report (Cmd. 1749), paras. 36-41.

⁷⁷ See n. 65, p. 222, *ante*.

⁷⁸ [1957] I.R. 344; 89 *Journal of Criminal Law* 52.

⁷⁹ (1890) 24 Q.B.D. 423, 432.

⁸⁰ [1964] 2 W.L.R. 1145, 1149, 1192, 1207, [1964] A.C. 1254 (H.L.).

add anything new. It seems that punishment under prison rules for breach of discipline would not constitute a bar for the purposes of section 20(1): *R. v. Hogan*; *R. v. Tomkins*.⁸¹ Subsection (2) of section 20 dealt in general terms with the liability of the responsible officers of a corporation for the criminal acts of the corporation. The subsection has obviated the need to repeat this provision in ad hoc terms whenever a new criminal offence is being committed. The better view seems to be that even without any provision of this kind the responsible officials would probably be guilty of common law conspiracy to commit the offence in question.⁸² Subsection (3) of section 20 afforded protection to the officers charged by prohibiting prosecutions unless directed by the Attorney-General. An objection that such direction has not been given should be taken before the prosecution has closed its case as there is a prima facie presumption that proceedings are properly authorised.⁸³ As to offences generally, the courts have reiterated that criminal liability must always be imposed in unequivocal terms,⁸⁴ although in earlier times the phrase "shall not be lawful" was held sufficient to make the doer of the prohibited act liable to indictment.⁸⁵

The decision in *Phillips v. Britannia Hygienic Laundry Co. Ltd.*⁸⁶ might well have been included in the original note to subsection (4) of section 20 of the Act of 1954 on the relationship between civil and criminal remedies. On this relationship note that a statute referring to a common law liability and declaring to whom it shall attach does not thereby create a new and extended application of that liability unless by words which expressly declare such a purpose.⁸⁷ Subsection (4) does not deal with the more difficult question as to whether a duty is so imposed by statute as to create a civil cause of action.⁸⁸ Where

⁸¹ [1960] 2 Q.B. 513.

⁸² See *R. v. Stanley Haulage Co. Ltd.* (1963) 114 L.J. Liverpool Crown Ct. 25; (1964) *Criminal Law Review* 221; *R. v. I.C.R. Haulage Ltd.* [1944] K.B. 551. See also *Moore v. I. Brestler Ltd.* [1944] 2 All E.R. 515 which, however, has been the subject of criticism in (1946) 62 L.Q.R. 358 *et seq.*

⁸³ *Price v. Humphries* [1958] 2 Q.B. 353.

⁸⁴ *Sales-Maitie Ltd v. Hinchcliffe* [1959] 1 W.L.R. 1005; [1959] 3 All E.R. 401. *R. v. Fox* (1859) 1 E. & E. 746, 120 E.R. 1090. And see *Osborne v. Millman* (1887) 18 Q.B.D. 471, 475, *per Bowen L.J.*

⁸⁵ [1923] 2 K.B. 832.

⁸⁶ *River Wear Commissioners v. Adamson* (1877) 2 App. Cas. 743; *Southport Corp. v. Esso Petroleum Co. Ltd.* [1954] 2 Q.B. 182; *Gapler and Pope Ltd v. Davies and Son Ltd* [1924] 2 K.B. 75; *Great Western Railway Co. v. S.S. Mosslyn (Owners)* [1928] A.C. 57.

⁸⁷ On this aspect, see *Cutler v. Wandsworth Stadium Ltd.* [1949] A.C. 398, *J. Bollinger v. Costa Brava Wine Co. Ltd.* [1960] Ch. 262, 285-287, and the various authorities there cited by Dankwerts J.

civil and criminal liabilities co-exist the law may still require the prosecution for felony to be pursued first.⁸⁸ A felony can never be committed nor can a misdemeanour "if it is of a public nature".⁸⁹

Only two minor comments on section 21, regarding rules of court, are really pertinent. In *R. v. Burr*⁹¹ it was said that, generally speaking, "costs" includes disbursements and expenses, including expenses of salaried officials. Again, in *Hoser v. Ministry of Housing and Local Government*⁹² the courts considered the meaning of the phrase "according as rules of court may provide" which, it seems, is intended to leave the Rules Committee to choose between alternative means of procedure and (unlike "in accordance with rules of court") not to allow them to prescribe means of proceeding in both. By contrast with section 21, there have been several decisions relating to appellate tribunals which were the subject of section 22 of the Act of 1954. It seems that an appeal to the "High Court" *simpliciter* is an appeal to the Divisional Court,⁹³ and where a statute provides a right of appeal but is silent as to the form of the appeal, the appeal takes the form of a complete re-hearing: *Belfast Corp. v. Goldring*.⁹⁴ In *Ulster Chemists Ltd. v. Hemsborough Investment Co. Ltd.*⁹⁵ McVeigh J. held that an appeal under Order 59A was an appeal by way of full re-hearing. The Fire Supreme Court has nevertheless held that an appeal by way of re-hearing is not altogether the same thing as a complete retrial: *A.G. v. Mallen*.⁹⁶ and in *Re Gilbert's Application*⁹⁷ a distinction was again drawn between a re-hearing and a trial *de novo*. Words conferring powers on the appellate tribunal somewhat similar to those used in section 22 were considered in *R. v. Billock*⁹⁸ where the Court of Criminal Appeal held that a court of quarter sessions in England could not commit a person to themselves for sentence where they considered the summary courts had inadequate powers of imprisonment. As to the

express power of the Court of Appeal in England to draw inferences of fact, see section 25(2) of the Supreme Court of Judicature Act, 1925 and *Chivers & Sons Ltd. v. Cambridge C.C.*⁹⁹

The high degree of technicality inherent in so many modern legal and administrative processes is reflected in the fact that the subject matter of section 24 of the Act of 1954, namely, the service of documents, came in for more than its full share of judicial attention in the past decade. The meaning of "last known" and "place of abode" were canvassed in *Price v. West London Investment Building Society Ltd.*¹ The difficulties of "unless the contrary is proved" were once again fully explored. It seems that the contrary is proved if the registered letter containing the document to be served is returned, since this means that it was not delivered at all. So in *R. v. County of London Quarter Sessions Appeals Committee, ex parte Rossi*² it was held that if a registered letter is returned undelivered a judgment or order afterwards obtained by default is irregular and will be set aside. And this applies equally if the registered packet is not returned nor delivered but is retained by the Post Office.³ But if the registered letter is taken in and signed for the service is deemed good even though the letter never reaches the addressee.⁴ In so far as section 24 authorised service by registered post it must now be read subject to section 1(1) of the Recorded Delivery Service Act (Northern Ireland) 1963 which authorised recorded delivery service as an alternative to registered post. All too often decisions on service of documents appear to be based upon purely technical considerations and to lack merit. *R. v. Bilton*,⁵ where it was held that authority to serve on a company at its registered office does not necessarily mean that service can only be effected at that office, is a useful exception. As to the documents served, it may be useful to mention that a summons alleging dangerous driving which bore on its face a date indicating that it had been issued on a Sunday was held, in *A.-G. v. Dyer*,⁶ not to be invalid on that account because of the Sunday Observance Act, 1695.

⁹⁹ [1957] 2 Q.B. 68.

¹ [1964] 1 W.L.R. 616; [1964] 2 All E.R. 318. Cf. *Beer v. Davies* [1958] 2 Q.B. 187.

² [1956] 1 Q.B. 682.

³ *Re J. Bird Moyer & Co. (Ireland) Ltd.* (1964) 98 I.L.T.R. 202.

⁴ *Layton v. Shires* [1959] 3 All E.R. 587; [1959] 3 W.L.R. 949; following *Monte v. Bucknell* (10th April 1959) (unreported). See also *Sandiland v. Needle* [1956] 1 Q.B. 241; (1959) 228 Law Times 282-283.

⁵ (1964) *Criminal Law Review* 828.

⁶ (1962) 98 I.L.T.R. 203.

⁸⁸ See *Pastore v. Oswaldtwistle U.D.C.* [1898] A.C. 387, and on the subject generally Professor S. A. de Smith's *Judicial Review of Administrative Action*, p. 421.

⁸⁹ As to when a misdemeanour may be of a sufficiently private nature to admit a compromise, see (1959) *Criminal Law Review* 822-831, where certain specific statutory bars to civil action after prosecution are listed.

⁹¹ [1960] 1 Q.B. 625.

⁹² [1963] Ch. 428.

⁹³ *McCormell v. Belfast Corp.* [1955] N.I. 196.

⁹⁴ [1954] N.I. 107.

⁹⁵ [1957] N.I. 185.

⁹⁶ [1957] I.R. 344.

⁹⁷ [1961] 2 All E.R. 313; [1961] 1 W.L.R. 822.

⁹⁸ [1964] 1 Q.B. 481.

Looking at section 25 of the Act of 1954 ten years later it seems a pity that the section did not apply to all transferred provisions (as defined in section 1(g)) instead of simply to enactments. Had it done so it would have avoided the difficulties which conveyancing solicitors in Northern Ireland have had to face in connection with the strict requirements of the (Westminster) Building Societies Acts regarding the form of vacancies. That particular difficulty has now been removed by section 80 of the Building Societies Act (Northern Ireland) 1964. It is surely wrong in our day and age that the slightest deviation from a prescribed form should affect the essence of the transaction in which the form is used. The meaning of the words sometimes used in this connection by the legislature, namely, "to the like effect", was considered by Lord Evershed M.R. in *Re Black Bolt and Nut Association's Agreement (No. 2)*,⁷ where his Lordship said: "I should have thought that, as a matter of ordinary English, what was meant was that, according to the natural construction of the words used in the second agreement, it was one which was intended to operate substantially in the same way as the first." This echoes the provisions of section 25 authorising deviations not materially affecting substance nor calculated to mislead. But, in relation to court procedure, it would be best not to lean too heavily upon section 25 since procedural requirements are necessarily strict. For example, the Canadian courts have held that the omission of the words "Statement of Claim" from an endorsement clearly intended as a special endorsement meant that the endorsement could not be treated as a special endorsement: *Bank of Nova Scotia v. Wayne*.⁸ One may be forgiven for doubting, at times, if the first part of Matland's dictum about forms of action is wholly true. Nevertheless, there are clearly occasions when "rules of court must prima facie be obeyed" and, for a recent one, the reader is referred to *Raiman v. Cumarasamy*.⁹ For an example in which the words "or to the like effect" saved the day see *Evans v. Thomas*.¹⁰ And, while on the subject of forms, a reference to 232 *Law Times* 228 and to Order XXXVIII of the Rules of the Supreme Court (Northern Ireland) might be added to the note on section 26(4) regarding the form of affidavits. Rule 3 of Order XXXVIII provides that costs occasioned by any unnecessary prolixity in the title to an affidavit shall be disallowed by the Taxing

Master. Perhaps it should not be inferred that unnecessary prolixity in the affidavit itself is not subject to similar disallowance.

Section 28 of the Act of 1954 is the modern version of section 38 of the Interpretation Act, 1889, which has probably been before the courts more often than any other section of that Act. The effect of repeals in Statute Law Revision Acts was the subject of separate consideration in *Huffam v. North Staffordshire Railway Co.*¹¹ and the effect of savings similar to those in section 28(2) was examined in *Re the Tithe Act, 1891, Roberts v. Potts*.¹² The effect of a change in the law on pending proceedings was described by Denning L.J. in *Re Verazzani*¹³ in the following terms: "If the new Act affects the respondent's substantive rights it will not be held to apply to proceedings which have already commenced unless a clear intention to that effect is manifest."

In *Meek v. Powell*¹⁴ it was held that a summons issued under an enactment which at the time of the commission of the offence had been repealed and re-enacted was bad. In *Smith v. Raskington Foods*¹⁵ it was held that the summons could not be issued under a Consolidation Act where the Act was not in force when the offence was committed. This decision emphasises the importance of the words "committed against the transferred provision so repealed or revoked" in paragraph (d) of section 28 (2), which words were not in section 38 of the Act of 1889.¹⁶ The subject of accrued rights and the effect of repeals thereon was again before the courts in *Free Lanka Insurance Co. Ltd. v. Ramasinghe*¹⁷ where it was held that a "right acquired" may be an inchoate or contingent right, but in *Abbott v. Minister for Lands*¹⁸ it had been held that a mere right to take advantage of the repealed statute is not a "right accrued".¹⁹ Subsection (1) of section 28 of the Act of 1954 has been regarded as novel in some quarters. The subsection provided that the repeal of an enactment does not necessarily involve a declaration that the enactment repealed was previously in force in

¹¹ [1894] 2 Q.B. 821.

¹² [1894] 1 Q.B. 213.

¹³ [1960] 1 All E.R. 183; [1960] 3 All E.R. 97.

¹⁴ [1952] 1 K.B. 164.

¹⁵ (1956) *Criminal Law Review* 557.

¹⁶ See *Shanmugam v. Commissioner for Registration of Indian and Pakistani Residents* [1962] A.C. 515.

¹⁷ [1964] A.C. 541.

¹⁸ [1895] A.C. 425.

¹⁹ See *Director of Public Works v. Ho Po Sang* [1961] A.C. 901 and compare *Hamilton Gell v. White* [1922] 2 K.B. 422.

⁷ (1962) L.R. 3 R.P. 43, 59 (C.A.).

⁸ (1963) 43 D.L.R. (2d) 674.

⁹ [1965] 1 W.L.R. 8; [1964] 3 All E.R. 933.

¹⁰ [1962] 2 Q.B. 350.

Northern Ireland. There is sometimes difficulty in determining whether or not certain Westminster Acts operated or were intended to operate in Northern Ireland and the subsection largely removes the need to resolve such questions. But there does not seem to be anything startling about a provision which is closely comparable with the rule adopted by the courts themselves, that the common law is not to be altered by a mistaken view in an amending Act.²⁰ Finally, it may be mentioned that repealed provisions, though dead, occasionally will not lie down. They may be referred to in explaining the rest of an Act.²¹

Some comments on subordinate instruments can be related to section 29(3)(b) of the Act of 1954. Subordinate instruments derive their authority from the statute which creates the power to make them and not from the executive authority by which they are made.²² In *Blakey & Co. v. R.*²³ the Canadian courts expressly approved the rule that if an authorising statute is repealed then, unless statutory provisions specially provide to the contrary (as did those in section 28(2)), the subordinate instruments made under the statute automatically fall. An unlimited power to alter or amend a statutory instrument appears to include a right to revoke.²⁴ Perhaps the most important English decision on this topic was *Canadian Pacific Steamships Ltd. v. Bryers*²⁵ where it was held that the construction of a regulation does not change automatically by reason of an extension in the vires of the enabling Act.

In the Canadian case of *R. v. Konowalchuk*²⁶ the question arose whether an order continued in force after repeal of the statute under which it was made and the enactment of a provision similar, but somewhat wider, in scope. The court held that the order under the repealed statute was inconsistent with the new statute and was therefore not in force. In some cases the new Act provides expressly for continuation of regulations made under the repealed Act.²⁷

²⁰ *Camille & Henry Dreyfus Foundation Inc. v. Inland Revenue Commissioners* [1954] 2 All E.R. 466, 484 (C.A.)

²¹ *Chapman v. Kirke* [1948] 2 K.B. 450; *Smith v. London Transport Executive* [1949] 2 All E.R. 295, [1951] A.C. 555.

²² *The Zamora* [1916] 2 A.C. 77.

²³ [1935] Ex. C.R. 223.

²⁴ See *Re Campbell-Renton* (1960) 25 D.L.R. (2d) 512.

²⁵ [1958] A.C. 485.

²⁶ (1955) 112 C.C.C. 19.

²⁷ See the Broadcasting Act, S.C. 1958 c. 22, s. 37.

The power to reprint Acts with amendments which was conferred in general terms by section 30 of the Act of 1954 has turned out to be useful in the administration of certain codes, notably the Education Act. The Exchequer and Financial Provisions Act (Northern Ireland), 1950 was reprinted in 1955 and there seems no doubt that other codes, such as the National Assistance Acts, could usefully be reprinted. Nevertheless, reprinting, though expedient in practice, is no substitute for proper consolidation, despite its proved administrative convenience. Reprints rarely come before the courts since, if construction is in dispute, it is better to turn to the original versions. It was hardly necessary, however, to say, as was said in *Bribery Commissioner v. Ramasinghe*,²⁸ that "If Parliament could not make a Bill valid by purporting to enact it, it certainly could not do so by reprinting it, however august the blessing that it gives to the reprint."

In the original comment on section 31 of the Act of 1954 it was said that the authority for the rule that an enactment is always speaking was somewhat scanty. The idea behind this rule, namely, that a code of law is being constructed of which every enactment that reaches the statute book is to form a part, is in a British context somewhat unrealistic but great strides towards codification are not impossible as our friends South of the Border are currently showing. The only additional authority relevant to section 31 is *Inland Revenue Commissioners v. Clifforia Investments Ltd.*,²⁹ where the court discussed the use in statutes of the historic present tense.

The importance of section 32 of the Act of 1954 has somewhat diminished with the enactment of section 14 of the Northern Ireland Act, 1962, which abolished the restriction imposed by section 5(1) of the Government of Ireland Act, 1920 on the power of the Parliament of Northern Ireland to make laws providing for the taking of property without compensation. The principle that an authority or privilege granted under statute does not carry with it the further obligation on the part of the grantor to ensure that the legislature will not at any time during the currency of the grant alter the nature of the authority or privilege is neither unnatural nor unfair.³⁰ Section 32 of the Act of 1954 enabled the Parliament of Northern Ireland, for example, to grant licences for off-course betting without being restricted

²⁸ [1964] 2 W.L.R. 1301, 1309; [1964] 2 All E.R. 785, 791; [1965] A.C. 172.

²⁹ [1963] 1 All E.R. 159; [1963] 1 W.L.R. 396.

³⁰ See *Midland Railway Co. of Western Australia Ltd. v. State of Western Australia* [1956] 1 W.L.R. 1037; [1956] 3 All E.R. 272.

by reason of consequences which might arise should it become necessary at some future time, in the interests of the peace, order and good government of Northern Ireland, to restrict the privileges granted to the licensees.

While section 33 of the Act of 1954 embodies in statutory terms the rule that expressions in an instrument made under an Act will in the absence of a contrary intention be taken to have the same meaning as in the Act under which the instrument is made, this does not mean that expressions used in a subordinate instrument are to influence the meaning to be attributed to those expressions in the parent Act.³¹ In particular, practice notes provided for the assistance of officials are wholly inadmissible for the purpose of considering the parent Act.³² This principle does not, of course, apply to a regulation made under a power expressly given to modify by regulations the provisions of the parent Act.³³

Although, as section 35 of the Act of 1954 provides, where a word is defined in an enactment other parts of speech and grammatical variations of that word are to have corresponding meanings, Lord Reid has pointed out that it does not necessarily follow that if Parliament uses the same words in quite a different context they must retain the same meaning.³⁴ The use in the statute book of names commonly applied, which is authorised by section 36 of the Act of 1954, would enable certain existing provisions, notably section 5 of the Administrative Provisions Act (Northern Ireland), 1925, to be dispensed with, and section 36 makes it easier to decide to do without certain fairly obvious definitions. The presumption that Parliament is aware of the interpretation of words construed by a court before their use in a statute was considered in *Thompson v. Stimpson*.³⁵ The draftsman's difficulty is that the decision on which he is relying may be overruled at a later stage. There is, as Denning L.J. (as he then was) pointed out in *Royal Court Derby Porcelain Co. Ltd. v. Russell*,³⁶ nothing to prevent this. If, therefore, he has doubts about an earlier construction he may deliberately decline to re-enact the relevant section in the same terms.³⁷

³¹ *Stephens v. Cuckfield R.D.C.* [1960] 2 Q.B. 373, 381.
³² *London C.C. v. Central Land Board* [1959] Ch. 386.
³³ *Britt v. Buckinghamshire C.C.* [1964] 1 Q.B. 77, 88.
³⁴ *London Corp. v. Cusack-Smith* [1955] A.C. 337.
³⁵ [1961] 1 Q.B. 195. And see *Halsbury's Laws of England*, 3rd ed., vol. 36, p. 403, para. 609.
³⁶ [1949] 2 K.B. 417, 429.
³⁷ See the opinion of the Privy Council in *Dun v. Dun* [1959] A.C. 272, 292. See also *Morelle Ltd. v. Wakeling* [1955] 2 Q.B. 379.

The rules as to gender and number embodied in section 37 of the Act of 1954 have, as in the past, sometimes led to difficulty. First, as regards female persons: see *Chorlton v. Lings*,³⁸ *Beresford-Hope v. Sandhurst*,³⁹ *Nairn v. University of St. Andrews*⁴⁰ and *Edwards v. A-G. for Canada*.⁴¹ Next, for an example of a context in which the plural cannot be read as including the singular, see *Dixon v. B.R.S. (Pickfords) Ltd.*⁴² Again, as to the force of such provisions as those contained in subsection (2) of section 37 see *Coleman v. Shang*⁴³ and *Jarvis Motors (Harrow) Ltd. v. Carabott*.⁴⁴ For a case in which "person" was held not to include a corporation see *Pharmaceutical Society v. London and Provincial Supply Association Ltd.*⁴⁵ An extension of the principle of section 37 will be found in *Re Turner's Will Trusts*⁴⁶ where the words "any person" in section 1(1)(d) of the Variation of Trusts Act, 1958 were held to include an unborn or unascertained person.

The construction of "shall" and "may" like the poor is an ever present problem which section 38 of the Act of 1954 did something to eliminate.⁴⁷ Stroud's *Judicial Dictionary*⁴⁸ deals helpfully with the subject and reference may also be made to *Re Baker*.⁴⁹ In like manner the problems of the "odd day"⁵⁰ continue to plague the courts, particularly in England.⁵¹ The pre-section 39 rules were a source of difficulty.⁵² The day on which a cause of action arises or an offence is committed is to be excluded in computing a limitation period thereafter: *Radcliffe v. Bartholomew*,⁵³ where it was held that if a statute

³⁸ (1868) L.R. 4 C.P. 374.

³⁹ (1889) 23 Q.B.D. 79.

⁴⁰ [1909] A.C. 147.

⁴¹ [1930] A.C. 124.

⁴² [1959] 1 W.L.R. 301; [1959] 1 All E.R. 449.

⁴³ [1961] A.C. 481.

⁴⁴ [1964] 1 W.L.R. 1101; [1964] 3 All E.R. 89.

⁴⁵ (1880) 5 App. Cas. 857. See also *Law Society v. United Service Bureau Ltd.* [1934] 1 K.B. 343. The latter decision must be contrasted with *Briggs v. Gibson's Bakery Ltd.* [1948] N.I. 165.

⁴⁶ [1959] 2 All E.R. 689.

⁴⁷ See *Re Shuter (No. 2)* [1960] 1 Q.B. 142 and comments in (1960) 76 L.Q.R. 19.

⁴⁸ 3rd ed. (1953), pp. 1756, 1763.

⁴⁹ (1890) 44 Ch. D. 262.

⁵⁰ See (1957) 73 L.Q.R. 462.

⁵¹ See *R. v. Fitzpatrick* [1963] 1 W.L.R. 7; [1962] 3 All E.R. 840.

⁵² See *Ex parte Simpkin* (1859) 2 E. & E. 392, 121 E.R. 148; *Peacock v. R.* (1858) 4 C.B. (N.S.) 264, 140 E.R. 1085; *Rowberry v. Morgan* (1854) 9 Ex. 730, 156 E.R. 313.

⁵³ [1892] 1 Q.B. 161.

enacts that criminal proceedings are to be taken within a limited period after the commission of the offence, the day on which the offence was committed shall not be reckoned in computing the time. That decision may be compared with *Gehmini v. Moriggia*⁵⁴ which was not followed in *Marren v. Dawson Bentley and Co. Ltd.*⁵⁵ It is submitted that a period "beginning with" a particular day is "expressed to begin on" that day within the meaning of section 39(2) of the Act of 1954, and accordingly that day would be excluded in Northern Ireland but not, apparently, in England.⁵⁶ Another complication in the previous rules, still in force across the Channel, is that where a period was fixed before the expiration of which an act may not be done, the person for whose benefit the delay is prescribed can take advantage of the entire period and accordingly, in computing it, the day from which it runs as well as the day on which it expires must be excluded.⁵⁷

Section 40 of the Act of 1954 prescribes how distance is to be measured for the purposes of any enactment and authorises reference to be made to the most recent edition of the Ordnance map.⁵⁸ The indication upon an Ordnance survey map of a road, track or footpath is not evidence of the existence of a right of way although section 40 makes the map *prima facie* evidence of distance. The admissibility of maps in criminal cases was considered in *R. v. Barker and R. v. Reid*.⁵⁹ Section 68(7) of the Local Government (Ireland) Act, 1898 presupposes that for the purposes of local government boundaries, the Ordnance map is correct.⁶⁰ In *A.-G. v. McKeivill*⁶¹ the letters "FF" on the Ordnance survey map were taken to denote that the face of the

fence was the boundary. The authorities⁶² which are cited in that case show the law in Ireland on the subject. Further authorities on what is presumed to be indicated by a boundary line on an Ordnance survey map are *Fisher v. Winch*⁶³ and *Davey v. Harrow Corp.*⁶⁴ In this last case judicial notice was taken of the Ordnance survey practice that the boundary line indicates the centre of the hedge.⁶⁵

A minor constitutional innovation was introduced by the amendment made to section 41(2) of the Act of 1954 by section 7(2) of the Statutory Rules Act (Northern Ireland), 1958. Under this the "statutory period" for which subordinate instruments are laid before the Legislature is no longer taken to be interrupted by a prorogation.

No additional annotations seem to be necessary in relation to sections 42, 43 or 44 of the Act of 1954, but in regard to section 45(3) the decision in *Rhyl U.D.C. v. Rhyl Amusements Ltd.*⁶⁶ contains some helpful comments by Harman J.⁶⁷ on the meaning in Acts of Parliament of the words "dispose of". There is a useful article on "The Meaning of 'land' in Administrative Statutes" by J. F. Garner in the *Conveyancer* (1957) volume 21, page 141, and the following decisions will be found helpful: *Dominion Fire Brick & Clay Products Ltd. v. Elmsthorpe Rural Community*,⁶⁸ *Wardle v. Manitoba Farm Lands Association*,⁶⁹ *Commonwealth v. New South Wales*,⁷⁰ *Fenn v. Grafton*,⁷¹ *Kerlake v. White*,⁷² *Higgins v. Harding*,⁷³ *Great Eastern Railway Co. v. Hackney Board of Works*,⁷⁴ *West Mersea U.D.C. v. Fraser*.⁷⁵

Section 46(1) defined "functions" as including jurisdictions, powers and duties. In *Hazeldine v. Minister of Housing and Local Government*,⁷⁶ it was held that the expression "functions of the police

⁵⁴ [1913] 2 K.B. 549.
⁵⁵ [1961] 2 Q.B. 135.

⁵⁶ See *Hare v. Gocher* [1962] 2 Q.B. 641, distinguishing *Goldsmiths' Co. v. West Metropolitan Railway Co.* [1904] 1 K.B. 1.

⁵⁷ *Halsbury's Laws of England*, 3rd ed., vol. 37, para. 166, as approved by the Court of Criminal Appeal in *R. v. Lang* [1960] 1 Q.B. 681, and by the Divisional Court in *Thompson v. Stimpson* [1961] 1 Q.B. 195. See also (1960) 94 *Irish Law Times and Solicitors' Journal* 35; *R. v. Turner* [1910] 1 K.B. 346; *Chambers v. Smith* (1843) 2 L.T. (O.S.) 101; *Re Railway Sleepers Supply Co.* (1885) 29 Ch.D. 204.

⁵⁸ As to the admissibility of maps apart from statutes, see *Pymer v. Wyrall R.D.C.* (1909) 73 J.P. 242; *R. v. Norfolk C.C.* (1910) 26 T.L.R. 269; *A.-G. v. Horner* (No. 2) [1913] 2 Ch. 140.

⁵⁹ (1959) *Criminal Law Review* 176. Cf. *R. v. Inhabitants of Milton* (1843) 1 C. & K. 58, 61, 174 E.R. 711, 712; *Mercer v. Denne* [1905] 2 Ch. 538; *A.-G. v. Kirk* [1955-56] Ir. Jur. Rep. 57.

⁶⁰ See *Phipson, Law of Evidence*, 9th ed., p. 313; *Nicholls v. Parker* (1805) 14 East 331, 104 E.R. 629.

⁶¹ (1959) 293 *Irish Law Times and Solicitors' Journal* 127.

⁶² These were *Grants Export Co. v. A.-G.* (1898) 32 *Irish Law Times and Solicitors' Journal* 95; *A.-G. (Cork C.C.) v. Perry* [1904] 1 I.R. 247; *Tisdall v. Parnell* (1863) 14 I.C.L.R. 1, 27, 28.

⁶³ [1939] 1 K.B. 666.

⁶⁴ [1958] 1 Q.B. 60.

⁶⁵ See "The Limits of Judicial Notice" (1958) 74 *L.Q.R.* 59; (1961) 232 *Law Times* 229.

⁶⁶ [1959] 1 W.L.R. 465; [1959] 1 All E.R. 257.

⁶⁷ [1959] 1 All E.R. 264.

⁶⁸ [1940] 3 W.W.R. 139.

⁶⁹ [1954] 14 W.W.R. 289.

⁷⁰ (1923) 33 C.L.R. 1.

⁷¹ (1836) 2 Bing. (N.C.) 617; 132 E.R. 238.

⁷² (1819) 2 Stark. 508; 171 E.R. 719.

⁷³ (1872) L.R. 8 Q.B. 7.

⁷⁴ (1883) 8 App. Cas. 687.

⁷⁵ [1950] 2 K.B. 119.

⁷⁶ [1959] 1 W.L.R. 115; [1959] 3 All E.R. 693.

authority" included such things as were reasonably necessary for the provision of an efficient police service. Accordingly, where it was necessary that police officers should be housed near their work, the authority's functions included the provision of houses for the officers.

The Act of 1954 does not, of course, deal with the proof of enactments but the power of the courts to question a duly enrolled statute was helpfully discussed in (1960) 23 *M.L.R.* 323.⁷⁸ As to proof of Acts see *Palastanga v. Solman*.⁷⁹

It may be helpful to mention, in reference to section 48 of the Act of 1954, that the draftsman's practice ought to be not to include a repeal in a repeal schedule which is not consequential upon a specific provision in the bill. If it is proposed to repeal an enactment without putting something in its place the repeal should be express and specific in the body of the bill. The practitioner is often faced with the difficult question of deciding how far the general provisions of an Act may operate to repeal or override specific or local enactments. A useful authority on the point is *Ashton-under-Lyme Corp. v. Pugh*.⁸⁰

The Interpretation Act, while not necessarily a perfect document—no Act ever is—has in the past decade proved its worth. No doubt if it were to be re-enacted some improvements could be incorporated in it. For example, a definition of "Land Purchase Acts" might be attempted or perhaps even "rateable value" or "poor law valuation". Consideration might also be given to empowering appellate courts in general terms to draw any inference of fact which might have been drawn by the original tribunal—see section 26(2) of the Supreme Court of Judicature (Consolidation) Act, 1925. To the legal practitioner the Interpretation Act must at times remain something of a mixed blessing, to put it mildly. If he is advising upon a particular subject he would much prefer to find all the statute law on that subject contained within one and the same Act. In the nature of things, this is in any event unlikely to happen. The Interpretation Act was intended to shorten and simplify the language used in Acts of Parliament and the objects of brevity and simplicity could never be achieved if subsequent Acts repeated from time to time the carefully worded definitions and rules of the Interpretation Act which, for this purpose, operates as a reference dictionary. Since it will in any case be necessary to refer

to the Interpretation Act for the purposes of construing any other Act, nothing will be lost by making the Interpretation Act as comprehensive as possible. Without the Act of 1954, the annual volumes of the statutes of Northern Ireland would, upon a conservative estimate, have been approximately one-third larger than they are. In these days of excessive verbiage this is surely a positive gain since anything which may tend, however slightly, to avoid what Lord Denning M.R. referred to in *Davy v. Leeds Corp.*⁸¹ as "a mass of obscurity" is all to the good.

Nevertheless the language used by his lordship in that case fairly illustrates the fact that the courts do not always appreciate the difficulty of the draftsman of the provisions they criticise. Lord Denning complains that there had been an undue disregard of principle and an excessive attention paid to detail. The draftsman's instructions must, however, have required him to state in detail specific rules which could be applied uniformly by valuation officers over the whole of Great Britain. His lordship would have preferred a broad statement of principle, and so would we all. But the difficulty about broad statements of principle in Acts of Parliament is that they are not always applied in a uniform way by the courts. One has only to compare the disparity in sentencing policy, adopted not alone by the several courts but by individual judges, to appreciate the force of this. Such disparity is almost a natural consequence of leaving matters to broad principle and wide judicial discretion. But if the citizen in his capacity as taxpayer or ratepayer has to be treated on the same fair and equitable basis throughout the whole of the country, nothing else can be done but to spell out rules in the greatest possible detail however tiresome and difficult that process may be. That there could be another side to the story might be gathered from *Hultquist v. Universal Pattern and Precision Engineering Co. Ltd.*,⁸² which reveals that there had been no less than six conflicting decisions at first instance before the Court of Appeal noticed that the point at issue had been dealt with—and correctly dealt with—not in another section but in the same section, and that only about a page long.

It is, of course, a matter for some speculation whether difficulties in construction would be reduced if, in the words of the United States Supreme Court,⁸³ language were "given hospitable scope". As

⁷⁸ [1964] 1 *W.L.R.* 1218, 1222; [1964] 3 *All E.R.* 390.

⁷⁹ [1960] 2 *Q.B.* 467.

⁸⁰ See *Securities and Exchange Commission v. C. M. Joiner Leasing Corp.* 320 U.S. 344 (1943).

⁷⁷ And see *Field v. Clarke* 36 *Davis* (U.S. Supreme Court) 649, 669 (1892); *Edinburgh and Dalkeith Railway Co. v. Wauchop* (1842) 8 *Cl. & F.* 710, 725, 8 *E.R.* 279, 285; *Halpin v. A.-G.* [1936] *IR.* 226.

⁷⁸ (1962) *Criminal Law Review* 334; 106 *Sol. Jo.* 176.

⁷⁹ [1898] 1 *Q.B.* 45.

Douglas J. noted,³³ "the will of Congress would be thwarted if we gave the language in question the strictest construction possible". He therefore held that "the fair meaning of the Act is our guide". If the present Lord Chancellor's proposal that explanatory memoranda may be referred to in construing enactments becomes law, it may indeed be made easier to ascertain the fair meaning as opposed to the strict construction.

WM. A. LETCH³⁴

THE EXTRA-JURISDICTIONAL IMPACT OF ANTITRUST ENFORCEMENT¹

I

Few lawyers, I regret to say, have ever had in mind the frightening world of Franz Kafka when they have had occasion to emphasize the absurdities of the world of law. This neglect has been the lawyer's fault and it has also been the lawyer's loss. An impression of the horrifying reality of contemporary man being not infrequently viewed without one shred of sympathy or understanding by those in authority, that impression can best dramatically be conveyed by a reference to Kafka. A reference to Kafka is a reference to his supposedly fictitious world where men are misunderstood, misguided, utilised, persecuted but never permitted to know the secret of the truth. Kafka's writings should, above all, be recalled for their emphasis on the ubiquity of capricious authority.

The relevance of Kafka to law has not been entirely lost on those lawyers who are honest enough, as I believe a good number of them are, to admit the validity of attacks made both against the law and the legal professions. Recently the Supreme Court of the Republic of Ireland came to what might appear to you to be a scarcely remarkable conclusion, namely, that smuggling activities were criminal offences.² They did so primarily because a possible penalty laid down by law was a period of imprisonment. To have accepted an alternative argument to the effect that smuggling offences were only "civil" in character would have been, as Mr. and now Chief, Justice O'Dalaigh put it, to live in a Kafkaesque world.

References to Kafka are not uncommonly suggested by the criminal law. Early in 1963 the Chief Constable for Southend in England announced that he had given instructions to the members of his force that, in view of supermarkets, through their inadequate security provisions, having themselves contributed to the incidence of shoplifting, not all shoplifters were to be prosecuted for larceny. Some time previously, the House of Lords had announced a decision upholding that it was an offence to fail to give information to the police about known past felonies.³ Larceny is a felony and therefore, by virtue of the

¹ This is the text of a public lecture delivered in the Queen's University of Belfast on 19th November 1964.

² In *Melling v. O'Mathghamhna* [1962] I.R. 1.

³ *Sykes v. D.P.P.* [1962] A.C. 528.

³³ *Black v. Magnolia Liquor Co. Inc.* 355 U.S. 24, 26 (1957).

³⁴ C.B., LL.B., Solicitor of the Supreme Court of Northern Ireland, First Parliamentary Draftsman.