STATUTES & THEIR INTERPRETATION IN THE FIRST HALF OF THE FOURTEENTH CENTURY

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649003297

Statutes & their interpretation in the first half of the fourteenth century by Theodore F. T. Plucknett

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

www.triestepublishing.com

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CAMBRIDGE STUDIES
IN ENGLISH LEGAL HISTORY

Edited by
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THE HISTORY OF CONSPIRACY AND ABUSE OF LEGAL PROCEDURE. By PERCY HENRY WINFIELD, LL.D., of the Inner Temple, Barrister-at-Law; Fellow and Law Lecturer of St John's College, Cambridge. 1921.

STATUTES & THEIR INTERPRETATION IN THE FIRST HALF OF THE FOURTEENTH CENTURY. By THEODORE F. T. PLUCKNETT, M.A., LL.B., Choate Fellow (1921–22) in Harvard University; late Research Student of Emmanuel College, Cambridge. 1922.

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CAMBRIDGE
AT THE UNIVERSITY PRESS
1922

CAMBRIDGE UNIVERSITY PRESS
C. F. CLAY, MANAGER
LONDON : FETTER LANE, E.C. 4

LONDON : STEVENS AND SONS, LTD.,
119 and 120 Chancery Lane, W.C. 2
NEW YORK : THE MACMILLAN CO.
BOMBAY
CALCUTTA } MACMILLAN AND CO., LTD.
MADRAS
TORONTO : THE MACMILLAN CO.
OF CANADA, LTD.
TOKYO: MARUZEN-KABUSHIKI-KAISHA

THE INTERPRETATION OF LAW BY ENGLISH MEDIEVAL COURTS

I

THE study of statutes and their interpretation in the time of the first three Edwards (1272–1377) discloses a field of research in English medieval history which has received but scant attention on the part of scholars. We know as yet all too little of the medieval relation of enacted or written to unenacted or unwritten laws; we have even less knowledge of the influence of the judicial power of interpretation upon that part of the law which is legislative and written. These are subjects upon which our legal histories shed only a faint light. Within this sphere of study there is opportunity—and opportunity of no common kind—for exploration and discovery.

Mr Plucknett has entered one particular part of this medieval no man's land and made it his own; and in his choice of the Edwardian century he has shewn wisdom and foresight, wisdom by reason of the special importance of this formative period, foresight by reason of the guidance which the intensive culture of this one limited period will give to future studies of other epochs. He has also made a happy choice of his principal materials, the early year books; for these medieval reports give us better than any other class of historical sources, better even than the plea rolls, an insight into the attitude of the common law courts towards statutes. Previous scholars have dealt with certain aspects of judicial interpretation in this special period; and some of their writings Mr Plucknett has carefully considered. But he is the first scholar to study an important class of original materials from the sole standpoint of interpretation. His results, now embodied in this monograph, reveal for the first time certain processes and tendencies in legislation and adjudication; and, even when his results coincide with those of other students of the period, they bring to us valuable cumulative evidence.

The author's main object has been to study the methods and the principles of interpreting legislation which were evolved by the common law courts during the Edwardian reigns. The justices interpreted the enacted law of earlier reigns; but they were called upon to devote special attention to the statutes of their own time, more particularly those of Edward I. Some of the judges, as the king's counsellors, had taken part in the drafting of statutes which they later interpreted. This is one particular reason why their interpretation now illumines for us the meaning and scope of the acts and the relation of the acts to the unwritten common law. The maxim of the law, *contemporanea expositio est fortissima in lege*, has significance for the historian as well as for the lawyer. Especially in the late thirteenth and early fourteenth centuries, when the judges are closely identified with the council and the parliament, contemporary interpretation is a priceless key to the statutory law. His use of this key forms one of Mr Plucknett's main contributions to the history of his subject.

II

If the study of this century inspires other scholars with the purpose of investigating the history of interpretation in other periods, it might be well for them to begin with the time before Edward I. In approaching this earlier development they must bear in mind many things, and not least of all the wise dictum of Hobbes that "all laws, written and unwritten, have need of interpretation." Nor will they be well advised to overlook the historical teaching of the preface dedicatory to the Reports of Sir John Davies (1613), that "all men at all times and in all places do stand in need of justice and of law, which is the rule of justice, and of the interpreters and ministers of the law, which give life and motion unto justice." The judicial interpretation of the enacted or written and the unenacted or unwritten laws of political societies has ever been one of the principal factors not only in legal administration, but also in legal growth. In his Juridical Society paper "On the Principles of Legal Interpretation" Mr Hawkins has drawn attention to the fact

that "Jurisprudence itself is defined by Heineccius [in his *Elementa Juris Civilis*, sec. 26] to be the art of interpreting the laws: 'habitus practicus leges recte interpretandi, applicandique rite speciebus quibusvis obvenientibus.'" In the civilized communities of history judicial interpreters of the law have given "life and motion unto justice." They have found, declared, and applied the law; they have, at the same time, adapted and fashioned the law to meet the claims of justice; they have been legislators as well as judges. In no country has this creative force of judicial interpretation been more marked than in England. All too often our historical vision has been obscured or blurred by the theories of lawyers. One particular dogma of the lawyers has concealed the actual working of the process of interpretation, the dogma which Bacon expresses in his essay *Of Judicature*, when he declares that "judges ought to remember, that their office is *ius dicere*, and not *ius dare*; to *interpret law*, and not to *make law*, or *give law*." Lord Kenyon repeats this maxim in *Geyer* v. *Aguilar*, 7 T.R. 696, where he says: "I am bound to decide according to the law; it is my duty *ius dicere et non ius dare*." However true Bacon's words may be as a theory of the judicial function in his day and in Kenyon's, they are not true as a statement of the historical part which the judges have played in legal development. The more one examines the historical processes by which the judicature interprets the written and the unwritten laws, the laws that are enacted and the laws that are unenacted, the more clearly one sees that the office *ius dicere*, to interpret law, involves also the office *ius dare*, to make law.

The detailed study of early English interpretation in its two separate but closely related aspects—the interpretation of enacted and of unenacted laws—would enable us, therefore, to observe the law-making processes of the courts at close range and, as a consequence, to trace the lines of institutional and legal evolution as from a new angle. Some of the well-known stages of growth would thus appear to us in a different light; while features of growth that are now hidden to us by lapse of time and by neglect might reveal themselves and illumine the past. If, furthermore, the history of English interpretation of