> a power, although it may be imposing a duty—especially on a constable.
>
> When effected, the arrest is in essence just a step in the administration of criminal justice. . . . It is by bringing him (the offender) in person before the court, whether committing magistrate or judge and jury, that he is made a party; and the whole purpose of arrest, just as much as of the initial steps of information, warrant or summons, is to give the court jurisdiction over the alleged offender, in order that justice may be done and that he, if found guilty, may be punished. The corporal presence of the offender is just as essential to trial verdict and judgment as to punishment; and if he be innocent it is equally essential to him as well as to the prosecution. English justice could not be what it is without the fundamental feature."[10]

Undoubtedly this is very true; but what is more fundamental—the right to acquittal, or the right to personal freedom?

10. *Leachinsky* v. *Christie* [1945] 2 All E.R. 395 at 404.

STATUTORY INTERPRETATION

"Shop"—"Offered or exposed for sale."

The case of *Goodwin's of Newtown Pty. Ltd.* v. *Gurry*[1] is of importance in determining what premises are "shops" within the meaning of the Early Closing Act 1926-1954. "Shop" is defined by s.4 of the Act to mean "the whole or any portion of a building . . . in which goods are offered or exposed for sale by retail or by auction".

The appellant company displayed television sets in premises open to the public. These sets were not for sale, but their counterparts could be ordered on the premises and would be supplied by another firm. The company was convicted, under s.34 of the Early Closing Act 1926-1954, of occupying premises not registered in accordance with the requirements of s.31, and appealed on the ground that their premises were not a "shop" within the meaning of the Act. It was contended[2] that the appellant company were not offering goods for sale but were merely inviting members of the public to make an offer to buy.

Brazel J., rejecting this contention, found from an examination of the Act that the words "offered for sale" should not be given any such "legal meaning", but should be construed "in the sense in which these words are understood in ordinary, everyday use, and particularly in commerce".[3] His Honour then construed the words "offer for sale" to mean "present for sale", or display goods for sale in a way calculated to "influence or induce the public to buy their counterparts" from the other firm.[4]

1. [1959] S.A.S.R. 295.
2. On the authority of *Pharmaceutical Society of Great Britain* v. *Boots Cash Chemists* [1953] 1 Q.B. 401.
3. [1959] S.A.S.R. 295 at 299.
4. Ibid. at 300.

This meaning is very similar to other interpretations which have been given to the words in question. Thus it has been said that goods were offered for sale when "people were meant to look at them today and buy tomorrow".[5] The meaning of the phrase "expose for sale" was not discussed by Brazel J. in the present case,[6] but has been similarly interpreted as "exposed for the purpose of sale—that is to say, exposed in order to attract offers to purchase from the public".[7] Similarly, Murray's Dictionary gives the meaning "to offer publicly", put up "for (or to) sale".

It seems, therefore, that the meanings of "offer" and "expose" in the phrase "offered or exposed for sale" correspond very closely. This section may thus be said to be one where the draftsman is "less concerned to use words which fit into one another, like a jig-saw puzzle, than he is to use language which covers the subject without leaving loopholes".[8] From the case of *W. Goodwin and Coy. Pty. Ltd.* v. *Bridge*[9] it might also be said that the words "offer" and "expose" do not have a separate independent meaning in this section; the court in this case treated the phrase as a whole, and found that goods are "offered or exposed for sale" when they are displayed for the purpose of inducing people who might be attracted by the display to "enter into some contract which would ultimately result in the passing of the property in the goods from the owner to an individual member of the public"[10]

It would follow from these interpretations that display rooms which remain permanently closed would be "shops". Similarly display rooms open to the public would be places where goods are "offered or exposed for sale" and so bound by the Early Closing Act, even though no goods could be bought or ordered at any time in the rooms. The former is clearly contrary to the intention of the Legislature, since Part V of the Act[11] contemplates premises which are open to the public; and there seems to be no reason to make display rooms of the latter type "shops" within the meaning of the Act. It is submitted, therefore, that if a case of this sort were to arise for decision, the court might restrict the interpretations cited above by deciding that goods are only "offered or exposed for sale" on any premises when the public are influenced or induced to make some sort of agreement on the premises, such as placing an order for delivery[12] or paying an option.[13]

The case of *Turnbull* v. *Cocking*[14] seems to be authority against this restricted meaning, since it was there said that goods were offered and exposed for sale on the premises despite the fact that the public had no opportunity of offering to buy the goods or of making any

5. *Turnbull* v. *Cocking* (1899) 25 V.L.R. 83 at 84 *per* Maddern C.J.
6. His Honour found it unnecessary to determine its meaning in the view he took of the meaning of "offer for sale". [1959] S.A.S.R. 295 at 300.
7. *Clark* v. *Strachnan* (1940) S.C. 29 at 31 *per* the Lord Justice-General (Normand). On this interpretation the premises in question would be a "shop" even if the appellant's contended "legal meaning" were adopted.
8. *O'Sullivan* v. *Rout* [1950] S.A.S.R. 4 at 6, *per* Napier C.J.
9. [1957] A.R. (N.S.W.) 181.
10. Ibid. at 185.
11. This deals with closing times and working hours in shops.
12. As in the principal case.
13. As in *W. Goodwin & Coy. Pty. Ltd.* v. *Bridge* (1957) A.R. (N.S.W.) 181.
14. (1899) 25 V.L.R. 83.

agreement or order for their purchase. However, in that case the premises in question were a shop, and the question was whether it was closed within the meaning of a section which was different in form and substance from s.4 of the Early Closing Act. Thus this case should not be binding in any determination of the meaning of s.4.

On the other hand, it is submitted that the case of *Bonarius* v. *Playfair*[15] supports the restricted meaning. On the facts of this case the people coming on to the premises clearly did not have the opportunity of making any order or agreement to purchase the goods, since they had already made contracts with the defendants to buy the goods they were inspecting. The premises were held not to be a "shop".[16]

The second important proposition laid down by Brazel J. in the principal case was that it is immaterial whether the goods on display are the actual articles offered for sale or whether they are offered as samples of the goods which are available to prospective purchasers.[17]

It does not seem to be placing an unnatural meaning on the words of the section to interpret "goods" as "*any* goods", and there is no need to confine "goods" to the samples actually displayed. Similarly, "sale" can mean "*any* sale", and need not connote sales of only those goods which are on the premises.

The "mischief rule" of statutory interpretation also justifies this conclusion, since the appellant company was carrying on transactions which the Early Closing Act was designed to prevent. It was trading, or actively effecting sales of goods after the hour when shops must close. Again, in ordinary everyday speech we say that a shop-keeper is "offering" us goods when he shows us samples, irrespective of whether we finally buy these actual samples or other identical goods taken from the shop's store. Hence it seems perfectly in accordance with the language and intention of the section to say that on the facts of this case television sets were "offered or exposed for sale".

NOTE.—The case of *Fisher* v. *Bell*[18] came to hand after this commentary had been written. In this case, a Divisional Court of the Queen's Bench Division had to determine the meaning of the words "offer for sale" in s.1(1) of the Restriction of Offensive Weapons Act, 1959. It was decided that since Parliament must be taken to know the general law of the country, the term "offer for sale" must be given the meaning attributed to it in the ordinary law of contract. Accordingly, to display goods in a shop window with a price ticket attached was merely an invitation to treat and not an "offer for sale" within the meaning of the section. Lord Parker C.J. observed that "in many statutes and orders which prohibit the selling and offering for sale of goods it is very common when it is so desired

15. (1903) 20 W.N. (N.S.W.) 125.
16. It could also be said that because of the existing contracts there was no "influencing or inducing" the public to buy. But whether this was so on the facts of the case is not stated in the report; it is possible that those inspecting the meat were induced to go to a nearby shop and buy additional supplies of similar meat.
17. See also *W. Goodwin & Coy. Pty. Ltd.* v. *Bridge* (1957) A.R. (N.S.W.) 181 at 186.
18. [1960] 3 W.L.R. 919.

to insert the words 'offering or exposing for sale', 'exposing for sale' being clearly words which would cover the display of goods in a shop window".[19] However, there were no such words in the section in question and even if this was a *casus omissus* it was not for the court to supply the omission.

It is submitted with the greatest respect that His Lordship gives an unfortunately narrow construction to the words "offer for sale", and that it would be more permissible and realistic to speak of Parliament's manifest intention in this case rather than its presumed knowledge. In the case under review Brazel J. reached his conclusion from the words of the Act. He pointed out that the definition of "shop" in the Early Closing Act includes a building in which goods "are offered or exposed for sale by retail or by auction". It has been decided that an auctioneer does not offer goods for sale in law, but each bid at an auction is an offer by an intending purchaser and the fall of the auctioneer's hammer is normally the acceptance of the offer contained in the highest bid.[20] Hence the definition of "shop" in so far as it was intended to cover the places where goods are offered for sale by auction would be rendered nugatory unless the words in question were interpreted in the sense in which these words are ordinarily meant and understood. His Honour also observed that if the legal meaning of the words was adopted the Act would have no application to the "exempted shops" contained in the Third Schedule to the Act or to retail shops as that term is ordinarily understood. This plainly led to an absurdity, and so he gave the words their everyday meaning.

19. Ibid. at 922.
20. *McManus* v. *Fortescue* [1907] 2 K.B.1.

EVIDENCE

The Unsworn Statement

The right of an accused to make an unsworn statement from the dock, while not submitting himself to the terrors of cross-examination by eloquent and experienced counsel, has recently received the attention of the Supreme Court of South Australia on two occasions. The first occasion was in the *cause célèbre* of *R.* v. *Stuart*,[1] where the matter was discussed by the Full Court (Napier C.J., Mayo and Abbott JJ.) on appeal from a decision of Reed J.[2] The second occasion was in *Lavender* v. *Petherick*,[3] a judgment of Napier C.J. on appeal from a court of summary jurisdiction. The judgments taken together have helped to clarify an otherwise confused section of the law.

In *R.* v. *Stuart* the facts relevant to the present discussion were as follows: at the trial (for murder) of an illiterate aboriginal native whose knowledge of English was extremely limited, counsel for the defence intimated that the accused wished to make an

1. [1959] S.A.S.R. 144.
2. The case went on appeal to the High Court of Australia ((1959) 33 A.L.J.R. 113), but the decision of the Full Court was affirmed without enlargement.
3. [1960] S.A.S.R. 108.