

## LEGAL CURIOSITIES<sup>1</sup>

### **Whales and Sturgeons**

The statute *Prerogativa Regis* (Of the King's Prerogative), which is of uncertain date but probably dates from the reign of Edward II (1307-1327), declares that "the King shall have throughout the realm, whales and great sturgeons taken in the sea or elsewhere within the realm, except in certain places privileged by the King" (the original text is in Latin). This provision was not new law but a declaration of the common law before; and there is some doubt as to whether it is a statute at all.

It is said that when a whale is captured in the seas adjoining the coast, the head belongs to the King while the tail belongs to the Queen. Blackstone states: "The reasons for this whimsical division, as assigned by our ancient records, was to furnish the Queen's wardrobe with whalebone." The reason is more whimsical than the division, for the whalebone lies entirely in the head. So it may be that whales were used instead as a source of oil or food.

As a result of the prerogative right, dead stranded whales and sturgeons should be offered to the Sovereign and must not be disposed of without the Sovereign's consent. Responsibility for the administration of this prerogative right is vested in the Receiver of Wreck. The Receiver's jurisdiction over whales arises only when the mammal is stranded on Crown land or public (rather than privately-owned) land. Today in practice the Receiver no longer offers whales to the Royal Household. Sturgeons, however, are still offered. All strandings should be reported to the Natural History Museum.

### **Coming Armed to Parliament**

A statute of 1313 (7 Edw. 2) still forbids the wearing of armour by members of Parliament when attending in the House.

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<sup>1</sup> This document has been produced by the Law Commission's Statute Law Revision team for the benefit of persons interested in the statute book as it reflects legal history. All the items listed remain in force and are not proposed for repeal.

## **Death Penalty**

In 1965 Parliament abolished the death penalty for murder. However, the penalty of death by hanging subsisted in respect of treason and piracy with violence on the high seas until its abolition by the Crime and Disorder Act 1998.

## **Easter**

The Easter Act 1928 provides that, in the United Kingdom, the Channel Islands and the Isle of Man, Easter Day shall be a fixed day in each year, viz. the first Sunday after the second Saturday in April. The Act has been on the statute book for 62 years but has never been brought into force.

## **Streets**

Under the Metropolitan Police Act 1839 no person (other than persons acting in obedience to lawful authority) is to discharge any cannon or other firearm of greater calibre than a common fowling-piece within 300 yards of any dwelling house to the annoyance of any inhabitant thereof. Maximum penalty: £200 fine.

Under the Town Police Clauses Act 1847 it is an offence (carrying a maximum penalty of £1000 for each offence or 14 days imprisonment)-

- (a) to beat or shake any carpet, rug or mat in any street (except door mats beaten or shaken before the hour of eight in the morning);
- (b) to fly a kite, to make or use a slide on ice or snow in any street;
- (c) wilfully and wantonly to disturb any inhabitant by pulling or ringing any doorbell, or knocking at a door;
- (d) wilfully and unlawfully to extinguish the light of any lamp in any street;
- (e) to leave any furniture, goods, wares or bucket on any footway;
- (f) to roll any cask, tub, hoop or wheel upon any footway, except for the purpose of loading or unloading a cart or carriage or of crossing the footway;
- (g) to erect a washing line across any street or hang washing on it;
- (h) publicly to sing any profane or obscene song or ballad in any street;
- (i) to order or permit any servant to stand on the sill of any window to clean or paint it;

- (j) to keep any pig sty at the front of any street (unless shut off by a sufficient wall or fence) or keep any swine in or near any street so as to be a common nuisance.

The Metropolitan Streets Act 1867 prohibits the driving or conducting of any cattle through any street between the hours of 10 in the morning and 7 in the evening (except with the permission of the Commissioner of Police). The maximum penalty is a £200 fine for each head of cattle.

### **Local customs in Devon and Cornwall**

An Act of 1603 (1 James 1 c.23) protects the ancient custom whereby "huers and baulkers" take up a position on cliffs in Cornwall and shout directions to fishing boats to indicate the direction taken by shoals of fish close inshore. The Act gives those on the cliffs a right of entry into the lands of others and thus provides them with a defence to any action for trespass.

Under an Act of 1609 (7 James 1 c.18) still in force, it is declared to be lawful for all persons dwelling in Devon or Cornwall to fetch and take sea-sand at all places "under the full sea-mark" where the same is cast by the sea, for the bettering of their land and the increase of corn and tillage. The Act confirmed an ancient custom.

### **Hackney carriage**

The Town Police Clauses Act 1847 defines 'hackney carriage' as a wheeled carriage used in standing or plying for hire in any street. Originally hackney carriages were horse-drawn. Nowadays they are usually taxis licensed under the 1847 Act or other similar Act.

An enduring misconception about hackney carriages is that the driver must keep a bale of hay in the boot to feed the (nowadays) non-existent horse. This misconception probably comes about because of section 51 of the London Hackney Carriage Act 1831 which made it an offence, punishable by a 20 shilling fine, for the owner or driver of a hackney carriage (or any one else) to-

“feed the horses of or belonging to any hackney carriage in any street, road or common passage, save only with corn out of a bag, or with hay which he shall hold or deliver with his hands”.

This offence was repealed by the Statute Law (Repeals) Act 1976. As a result any taxi driver who travels around accompanied by a bale of hay does so purely for his own amusement and not in compliance with any legal requirement.