Ancient and Obscure Laws That Linger On

From Past and Present

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13,000 CRIMES AN HOUR DURING AN AVERAGE WORKING DAY IN LONDON, AS MANY AS 120,000 TECHNICAL BREACHES OF AN OLD LAW ARE BEING COMMITTED, ALWAYS IN BROAD DAYLIGHT, OFTEN UNDER THE VERY NOSE OF A POLICEMAN, by unwitting citizens and visitors. This works out at an approximate rate of over 13,000 crimes an hour if the working day is taken as 9 hours.

Nine hours is the normal shift for a London taxi driver, and in that time the average driver will pick up about 20 fares. Of the 12,800 licensed taxi drivers in the capital, some 6,000 are on the road at any given time, cruising along, keeping a sharp eye out for a raised arm or a waved umbrella and a sharp ear for a cry of 'Taxi!'

And that is where the breach of the law comes in. According to the strict letter of the law, hailing a cab when it is in motion is illegal. Technically, if you want to hire a cab, you should go to the nearest taxi rank or 'place appointed'.

If that law were ever strictly applied, there would be chaos in central London. Similarly, if some of the other laws governing taxis and taxi-drivers were enforced, London cabbies would find themselves in some bizarre situations.

There are 37 different Hackney Carriage Acts. Most of them date from the 19th century but some go as far back as the reign of Queen Anne (1702-14)—and none has ever been repealed.

May I take your temperature, sir? A taxi driver is supposed to ask every fare if he or she is suffering from any 'notifiable disease' such as smallpox or plague or, for that matter, any other contagious disease. If necessary, he should carry out an on-the-spot medical examination, for

to carry such sufferers is illegal, and it would be the driver who would face prosecution. It is also illegal for a cabby to carry corpses or rabid dogs.

84 on the clock, lady!

Mind the nose-bag!

A cabby is still required to carry a nose-bag on the side of his vehicle, just as he is supposed to have ‘adequate foodstuffs for the horse’. Lawyers generally assume, however, that if any driver of a modern black cab were to be prosecuted under this section, he would be acquitted on the grounds that a tank full of diesel constitutes adequate fuel for his 18 hp. Engine.

Look, No Hands!

It is expressly forbidden for a driver to make ‘insulting gestures’.

Furious driving

Certain laws governing the speed at which cabs may go do not apply to the ordinary motorist. A cabby who drives too slowly and holds up the traffic can be prosecuted for ‘loitering’. One who goes too fast can be accused of ‘furious driving’.

Searching

A cabby should carry out a thorough search of his vehicle before allowing a fare to go on his way. It is the cabby's responsibility, not the passenger's, to sec that nothing is left behind.

Crying for justice

There was once a man who considered that certain works being carried out near his house were interfering with his rights. Accordingly, in the presence of five witnesses, he fell on his knees and shouted: "*Haro, haro, haro, à l'aide mon prince: on me fait tort.*" (Haro, haro, haro, to my aid, my lord: I am being wronged!) He then recited the Lord's Prayer in French. The five men who were engaged in digging up the road near his house immediately stopped work and reported to their employers.

Clamouring For His Rights

That strange piece of action did not take place 500 or 600 years ago in medieval France but in Guernsey, one of the Channel Islands, in April 1950. The workmen involved were employees of the local water board, and the outraged householder was invoking an old law called the *Clameur de Haro* which, although it dates back to the 10th century, is still valid in the Channel Islands.

The Clameur de Haro is a call for aid to Rollo, the first Duke of Normandy, who died in 932.

Once the cry has been raised, the work that is the subject of the dispute must be stopped for 12 months so that the issue can be settled in court. If the work is not stopped, the offender is liable to a penalty of 24 hours' imprisonment in a castle dungeon. A similar punishment is inflicted on anyone who raises the cry wrongfully.

Pastures Old

Lean and hungry loser

As recently as 1959 a Surrey farmer found himself involved in a legal action based on medieval laws that survive today.

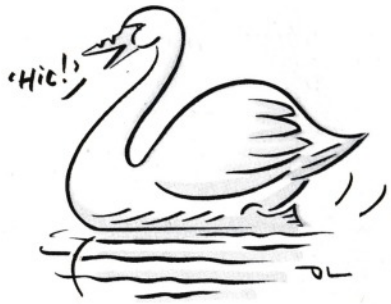
Mr Estler, of Effingham in Surrey, farmed a 5½ acre smallholding with the help of a 19-year old horse called William. It was over William that the trouble arose.

In the summer Mr Estler was in the habit of grazing his horse on the local common. Now a common is not, despite its name, land that belongs to everyone. It is land over which only certain people have only certain rights. The local Lord of the Manor, a Mr Murells, did not consider that Mr Estler had any right to graze his horse on the common and impounded the aged William.

Mr Estler sued him, claiming that by virtue of his ownership of 5½ acres in the district he had ‘rights of common’ over the common land, including the right to graze an animal. Mr Estler lost his case on a medieval legal technicality called ‘levancy and couchancy’—the ancient method of calculating how many animals a man could graze on common land. Before a man could graze an animal on common land he had to prove, under ‘levancy and couchancy’, that his own land was capable of supporting the animal through a winter.

How did these archaic regulations apply to Mr Estler and William?It was established that of Mr Estler’s 5½ acres only 2 acres carried rights of common. Two acres will not produce a ton of hay and a ton of hay is what a horse needs for a full winter’s feed. So Mr Estler lost and had to compensate the Lord of the Manor for the damage the aged and underfed William had done.

Swan Song



Identifying ownership

The idea that a mute swan sings before it dies, though still widely believed, is a total error, with no basis in fact. For it is an example of a popular misconception being perpetuated by a piece of legislation.

For hundreds of years the Crown controlled the ownership of swans and even had special courts, called 'swanmotes’, for the purpose. Wild, unmarked swans, are still the property of the Queen, and even tame swans living on privately owned property cannot be claimed by a subject without

a grant of a swan-mark—a small nick made in the beak of a swan during a process called ‘swan-upping’.

On the River Thames, for instance, where there are large colonies of swans, the ownership of the birds is divided between the Crown and two City livery companies, the Vintners and the Dyers, who owe their interest to a Royal Charter. The swans belonging to the Vintners have two nicks in their beaks; the Dyers’ swans have one nick. Royal swans are unmarked.

These rights have their origin in common law but various Acts have confirmed them. One, the Case of Swans, dated 1592, gives credence to the myth that swans always sing before they die. It is also remarkable for the extraordinary poetry of its language.

'—for the cock swan is an emblem of representation of an affectionate and true husband to his wife above all other fowls; for the cock swan holdeth himself to one female only, and for this cause nature hath conferred on him a gift beyond all others; that is to due so joyfully, that he sings sweetly when he dies.’

Losing Your Head

Many people believe that since the Murder (Abolition of Death Penalty) Act,, the death penalty has been totally abolished in the United Kingdom. In fact, capital punishment still applies in cases of treason and piracy on the high seas and, until the Criminal Damage Act 1971, offenders could still be hanged for committing arson in a naval dockyard.

It might come as a surprise, however, to discover that, under a 1592 law never repealed, you could be beheaded for the apparently innocuous action of manufacturing a bedspread.

It certainly came as a surprise to Mr Denis Pamphilon of St Albans, Hertfordshire, the managing director of a company of linen merchants.

Mr Pamphilon’s company decided to make some souvenir bedspreads to celebrate the appearance of the Scottish football team in the 1978 World Cup.

Careless copying can cost a head

When the bedspreads were advertised in Scottish newspapers, the Lyon Court, the Scottish court of heraldry, became interested. For their design features the lion rampant, part of the Queen's Scottish Arms.

Mr Pamphilon was informed that he was guilty of the 'usurpation' of the Royal Arms. The penalty for which is beheading.

The Lyon Court reassured him that he was unlikely to lose his head but that he could be fined as much as £100 a day. The court still has considerable powers. It is in daily operation and has the power to impose fines or indeed prison sentences in cases where arms are illegally used.

It has other picturesque powers. It may erase 'unwarrantable arms' and 'dash them furth of stained glass windows'. It may also grant warrants for the seizure of goods in which arms are unlawfully displayed.

On August 19,1978 The Times reported that both the Rangers Football Club and the Scottish National Party might be breaking the law by using

Scotland's national flag, the St Andrew's Cross, as part of their emblems. It was considered unlikely, however, that any beheading would result.

An MP in shining armour

If a Member of Parliament ever took it into his head to appear in the House dressed in a suit of armour he would be breaking a law of Edward II (1284-1327) dated 1313. This statute, which has never been repealed, expressly forbids the wearing of armour by Members of Parliament when attending the House.

Getting Carpeted

A great many London housewives must unwittingly be breaking the law every day.

Under section 60 of the Metropolitan Police Act of 1839 it is an offence to beat or shake any carpet, rug or mat in any street within the Metropolitan Police District. The penalty is a fine of £2. It is, however, permitted to shake out a doormat, as long as you do it before 8 o'clock in the morning.

Roll Out The Barrel

Under the same Metropolitan Police Act, it is an offence to roll a cask, tub, hoop or wheel on any footway in the Greater London area except for the purpose of loading or unloading a cart or carriage. The maximum penalty is a £20 fine.

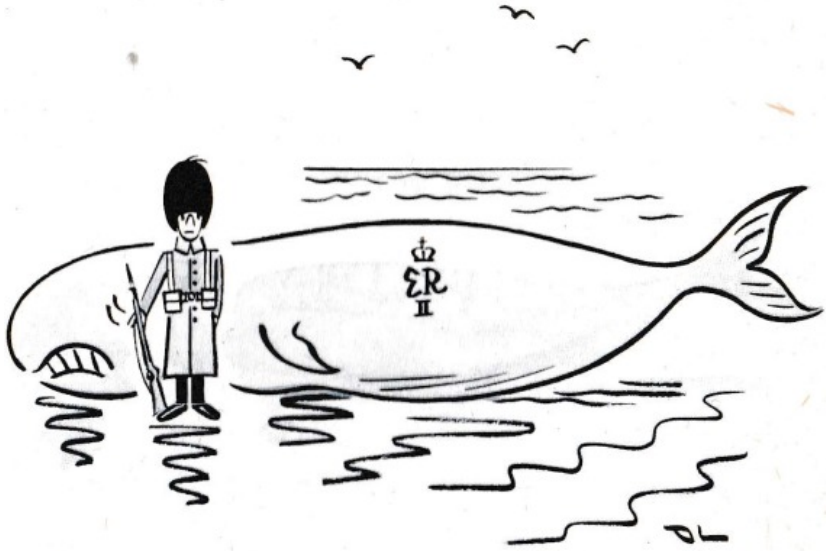

A trim and two fillings perhaps?

Close Shaves

A law passed during the reign of Henry VIII in 1540 and still in operation makes it illegal for barbers in the City of London to practise surgery. In theory, though, a City barber could set up as a dentist since, under the statute, the 'drawing of teeth' is allowed. With impeccable impartiality, the statute also forbids surgeons to act as barbers!

A Whale of a Time

It is some time since whales have been common in the seas around Britain, but many records exist of these giant mammals being stranded on our coasts.



Royal prerogative

A stranded whale can cause a considerable public health problem if the carcase is not dealt with promptly, and it is here that a statute called *Prerogativa Regis* (Of The King's Prerogative), dating back to the reign of Edward II (1284—1327), might complicate the situation.

According to the law 'the King shall have throughout the realm, whales and great sturgeons taken in the sea or elsewhere within the realm–-' In simple terms, that means that all whales and sturgeons are automatically the property of the Queen and cannot be disposed of without her consent.

In medieval times the custom was that if any whale was captured off the coasts of Britain the head went to the King and the tail to the Queen—to provide whalebone for her dresses. (That, in itself, however, was a

misconception for the whalebone used to stiffen dresses was a kind of pliable horn found in the upper jaw of certain species and was therefore obtained from the head).

In 1970 the Queen agreed to allow her prerogative right to whales to be abolished, and the Law Commission recommended such a change to Parliament. However, the proposal was defeated by the House of Lords in 1971 with the result that the Queen still has the exclusive right to her whales and great sturgeons.

Never on a Sunday

What you may and may not do on a Sunday is still governed by an Act of Parliament that is nearly 200 years old.

The 1780 Entertainments Act, although it has been slightly amended over the years, is still in force, making it illegal to take money as an entrance fee to sporting events like football matches, boxing and wrestling contests on Sundays—in effect banning them. The Act also covers circuses, variety shows and ‘public dancing’.

It was not until the Sunday Theatres Act 1972, that these restrictions were lifted for theatrical performances, though even now plays can be put on only during limited hours.

One Sunday law, however, dated 1652, has been repealed, though only a few years ago. This banned Bear-baiting, Bull-baiting, Interludes, Common plays, and all other unlawful pastimes.

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