R -V- S. THOBURN

Sunderland Magistrates Court

9TH April 2001.

Before I give my decision and reasons in this case I would first of all like to say one or two things.

First of all I would like to thank Miss Sharpston Q.C, Mr. Shrimpton and Mr. Moser for their most kind help and assistance in this case. Especially for gently and patiently leading me through the plethora of commentaries, Statutory Instruments, Council directives, European and English case law, primary legislation and other documentation, which are rarely seen or referred to in Magistrates' Courts. I would also make mention of their thoughtful spirit of goodwill in which they have conducted these proceedings, although vigorously and eloquently doing their professional duty and defending their own corner.

Secondly, it has been made clear to me that whatever the decision of this court the matter will be taken elsewhere. It would seem sensible that when there is no dispute as to facts, as here, and subject to certain safeguards and conditions, that where there is a complex legal argument before the court a procedure should exist by which this Court could be by-passed. Rather in the same way that indictable only criminal matters are now transferred to the Crown Court. If there are two factors that give rise to constant criticism of the legal system it is the time taken for matters to be dealt with by the courts to finality and the cost of the same. By not having a by-pass system it would seem that this case is set to drag on. It may be a coincidence but I find that many of the cases to which this procedure would be appropriate involve prosecutions brought by Local Authorities.

Thirdly, I made this observation. Some weeks ago, I was listening to a programme on the radio, it featured a Court case and it sounded fascinating. It was only when the particular item had finished did I realise that it was a case I was trying – in fact it was this case. Such were the

inaccuracies of the statements uttered that I was in a state of bewilderment. Let me make it clear – bananas can be advertised for sale by the pound, subject to certain rules as to the prominence of such adverts compared to sale in metric measurements. Scales can be calibrated in the Imperial System but if they are, the prosecution say they must also be calibrated in the Metric System. Whatever the law today and that is what I have to decide, it will no doubt change.

It would therefore seem that a sensible starting point would be the summonses that Mr. Thoburn faces. They are two in number. They allege:

> "On 4 day of July 2000 at The Market, Southwick, Sunderland in the County of Tyne and Wear, you did have in your possession for use for trade a non-automatic weighing-machine, which did not bear a stamp, indicating that it had been passed by an Inspector or approved verifier as fit for such use, which was not defaced otherwise by reason of fair wear and tear"

I said there are two summonses and so there are. Both summonses are framed in identical language and each summons relates to a different weighing machine - commonly called scales - the first summons relating to a system 30 weighing machine, serial number 190073 and the second relating to an identical machine but with serial number 290412.

Due to the most helpful co-operation of the defence the facts are not in dispute. In fact no evidence has been called by either side. The five days of the hearing being take up with legal submissions. The facts have been agreed and a section 10 Criminal Justice Act 1967 admission filed with the court.

It is not necessary for me to recite them in full but the salient facts are as follows:

1. Mr Thoburn is a greengrocer who possesses scales with which to weigh his customers' purchases.

2. On the 16th of February 2000 he was visited and warned by a Principal Trading Standards Officer of the City of Sunderland that his scales were not correctly calibrated in that they did not measure in metric units.

3. On the 31st of March 2000 he was visited by another or the same representative of the City of Sunderland who obliterated the stamps on his weighing machine because they were still not calibrated to measure in metric units. Because of this act of obliteration, he informed Mr. Thoburn the machine, (that is the scales) were no longer fit for use for trade.

4. On the 2nd of June 2000 an inspector from the City of Sunderland visited the premises and warned the defendant of the legal consequences of using unstamped weighing machines.

5. From the date of what would seem to be his first warning on the 16th of February 2000 to the date referred to in the summonses, that is the 4th of July, the defendant continued to use his weighing machines, which were only calibrated to measure by the imperial pound and ounces.

6. On the 4th of July a Consumer Protection Officer purchased a bunch of bananas for thirty four new pence which were priced at twenty five pence per imperial pound, and the same were weighed upon one of the aforementioned weighing-machines which had had its stamp obliterated on the 31st of March 2000. And so commenced the court case of possibly the most famous bunch of bananas in English Legal History.

7. To complete the picture the two sets of weighing machines were seized later that day, when a representative of the City of Sunderland visited the premises accompanied by two Police Officers.

The prosecution alleges in the two summonses that Mr. Thoburn has committed offences Contrary to Section 11(2) of the Weights and Measures Act 1985.

On the first day of the trial Miss Sharpston, who had already filed a document called "Prosecution Skeleton" opened by explaining how it is that Section 11(2) of the Weights and Measures Act 1985 constitutes an offence.

The opening took just over one and half-hours and was one of sparkling clarity by leading counsel, an expert in these matters. That opening I am sure, and I hope I am not being discourteous, was not ex tempore, but I imagine involved careful research.

Yet the path through this legislative maze was one of Byzantine complexity. If any legislative assembly was seeking to confuse the public as to what was happening or what the law is, I can not think of a more perfect way of going about it. I would challenge any greengrocer in Sunderland or elsewhere or anybody to whom section 11(2) could apply to find out why it is an offence or if it is an offence. I doubt if any would succeed. The law and we must remember we are dealing with the Criminal Law, a breach of which carries punitive measures, should not only be understood but also be accessible to all. For over one hundred and fifty years there has been debate of a Criminal Code, as found in some foreign jurisdictions. If any case highlights the need for such a code, so members of the public know what is unlawful, then it is this one. The law should easily be available and understood by all, not only lawyers, constitutional

experts and patient academics. In this case the prosecution, and quite rightly so I have had to explain to court the legislative background to the offence. Not only was reference made to the Weights and Measures Act 1985, which in any event was a consolidating Act, but to

19 Texts and Commentaries

89 Reported cases from 1661 to the present date

6 Treaties and Conventions

16 Acts of Parliament

21 Directions and Statutory Instruments

3 Other reports

I would very much doubt if any, let alone all the above statutes, instruments and directions were at the fingertips of greengrocers in Sunderland or elsewhere. And all this documentation is to say that certain goods have to be weighed in scales calibrated in the metric system.

Again the defence in a spirit of splendid co-operation accepts the legislative route from A to Z but challenge the validity of the same arguing that if one Statutory Instrument fails, then like a pack of cards, they must all fail. I should add that the defence have done all that is possible to assist by simply going to the issues involved without requiring the prosecution to prove everything. This would have been an arduous time-consuming task. In short the defence do not seek to challenge what the law says, so what is their objection?

The defence have taken me on a long journey down constitution lane arguing that because of Parliamentary Sovereignty, doctrine of entrenchment and implied repeal, the abuse of so-called Henry V111 powers and the law relating to international treaties that no offence has been committed.

In giving my decision it is not possible for me to refer to all the many authorities quoted by both the defence and the prosecution. By not doing so I mean no discourtesy. I would also add that at one time it was argued that there where issues of vires were raised, ~~(as in this case)~~ in this case the vires of a regulation, then such argument could not be considered by Magistrates or indeed the Crown Court on appeal where relevant to the defence. It would seem that Boddington -v- Bristol Transport Police (1997 - 2AC 143) and other cases have now reversed that old rule.

Let me briefly look at the history of weights and measures in this country to include both the imperial and metric system - this is relevant especially when looking at Henry V111 powers.

A Weights and Measures Act was passed about 1864. I do not have a copy of that piece of legislation, but it referred to the dual system of imperial and metric weights. Since that date, subject to exceptions I shall refer to later, citizens have had freedom of choice of which of the measurements to use. This country adopted the imperial system. In the 1950`s some industries went metric. On a personal note, at Oswestry School in the 1950`s, I learnt the metric system as part of my education in mathematics. In 1972 we entered the E.E.C where most countries used the metric system. A Metrication Board was set up but came and went without much success. There was a Weight and Measures Act in 1963 but this was amended following the coming into force of the European Communities Act 1972. The amendment was the all-important Weights and Measures Act 1976 which in section 1(1) gave the Secretary of State power to amend Schedule 1 to the 1963 by adding to or removing any unit of mass or weight. This was an early sign of Parliaments proposal to go metric and so comply with European Directives, but more of this later.

I mention these facts because part of the defence argument is that section 1 of the Weights and Measures Act 1985 entrenched the imperial system of measurement of mass in this country and is an implied repeal of the European Communities Act 1972. In addition the defence argue that the powers, exercised by the Secretary of State, as referred to in section 1(1) of Weights and Measures Act 1963 and subsequently consolidated in section 1(3) and 8(6) of the Weights and Measures Act 1985 (current version), are an abuse of his Henry V111 powers. The defence argue that the exercise by the designated minister of King Henry V111 powers has brought about such a dramatic change to our culture and heritage that the Minister overstepped the mark and the powers he exercised were ultra vires.

We know that in this country there has been a dual system for the measurement of mass. The coming to prominence of metrification, in accordance with European Directives, state the prosecution, is not the coming to prominence of a system of measurement that is unknown to or alien to this country. It has been here for nearly one and a half centuries. In the European Union metrification is compulsory. There has always been a choice, but I will show later how this choice has been eroded. When Ireland agreed to go metric, that left only the United Kingdom using the imperial system in the European Community, although it is still used in Canada and the United States. I will show later how it was proposed from our entry into the E.E.C in 1972 for this country eventually to go metric.

Let me see why the defence accept that on 30th of October 1985 the Weights and Measures Act 1985 enacted by the Queen in Parliament and, in accordance with tradition, coming into force one minute after midnight on the 30th of January 1986 argue that it repeals the European Communities Act 1972 by entrenching the imperial system and the subsequent powers

exercised by ~~the, or~~ various Secretaries of State, have been exercised ultra vires. To some extent the defence have drawn a line under that piece of primary legislation and have regarded all subsequent Statutory Instruments stemming therefrom as being ultra vires, that is unlawful.

Can they do this? How do they seek to do this? First of all one has to turn the clock back to 1972 when the European Communities Act 1972 came into force. This of course relates to this Country's entry into what was once called the European Economic Community - the Common Market, but is now called the European Union. Let me recite the all-important Section 2(2) :-

> "Subject to schedule 2 of this Act at any time after its passing Her Majesty may by Order in Council, and any designated Minister or department may by regulation make provision: -
>
> (a) For the purpose of implementing any community obligation of the U.K. or enabling any such objection to be implemented, or of enabling any rights enjoyed or to be enjoyed by the U.K. under or by virtue of the treaties to be exercised, ***or***
>
> (b) for the purpose of dealing with matters arising out of or related to any such obligations or rights or the coming into force, or operation from time to time of subsection (1) above.
>
> And in the exercise of any statutory power or duty including any power to give directions or to legislate by means of orders, rules, regulations or other subordinate instrument, the person entrusted with the power or duty may have regard to the objects of the Community and to any such obligation or rights as aforesaid."

The power to make subordinate legislation, and of course many of the Regulations in this case are embraced in that definition, are conferred by sub 2(2) above which is needed to implement certain provisions of the treaties and community instruments which do not have direct applicability and to supplement certain provisions which are directly applicable.

When considering the European Communities Act 1972 it is necessary, in addition to section 2(2), to also consider for our purposes sec 2(4): (I paraphrase)

> "The provision that may be made under section 2(2) above include - any such provisions (of any such extent) as might be made by Act of Parliament, and any enactment passed or to be passed, other than one contained in this part of this Act, shall be construed and have effect subject to the foregoing provisions of this section, Schedule 2 shall have effect in connection with the powers confirmed by this Act the following sections of this act to make Orders in Council and regulations"

By joining the European Union we took on board all existing jurisprudence and took on law that was fundamentally different from International Treaties. The above quoted sub-sections provide a general power to make subordinate legislation. Later on the Act refers to a list of Orders in Council and regulations made, or partly made, under this section and are listed. They include Units of Measurement Regulations 1994 S1 1994/2887 as amended and Units of Measurements Regulations 1995 s1 1995/1802.

The defence argue that this piece of legislation sought to prevent future Parliaments from enacting measures contrary to the United Kingdom treaty obligations. In the Van Gend en Loos case (case 26/62 1963 ECR 1) a case I shall deal with later - it was held that Community Law Regulations and Directions passed in Brussels, take precedence over conflicting national

law. However the defence say that one Parliament can not bind a future Parliament - that is no Parliament can pass an Act that is entrenched. The expression in section 2(4) above of "enactment passed or to be passed" is a clear expression of looking to future legislation that was in 1972 not even contemplated let alone in an embryonic state. But this is precisely what has happened under sec 2(2)(4) of the European Communities Act 1972. Power is given to the designated Ministers to make Orders in Council in relation to Acts on the statute books or to come to the statute books. Most of the subordinate legislation previously and to be referred to have been made by Order in Council. So where is the difficulty?

In 1963 a Weights and Measures Act was passed. Between then and the 1985 Weights and Measures Act (which was a consolidation Act) there was also passed the Weights and Measures Act 1976 previously referred to. A consolidation Act, although a piece of primary legislation, follows a different course through Parliament compared to other pieces of primary legislation. Consolidation means to gather in one place material relating to, in this particular case, weights and measures. What is important is that there is no change to the existing law. It is therefore not possible to read into the 1985 Act as some intention on behalf of Parliament to touch or to vary the pre-existing law - more particularly the European Communities Act 1972. To bring about a consolidation Act requires, as previously referred to a particular and abbreviated procedure in Parliament but it can not change the law and therefore has no effect upon the 1972 Act. It is argued, and I believe rightly so, that the doctrine of implied repeal is not relevant where there is a consolidation Act - simply because nothing is being altered. Implied repeal is where new legislation is in conflict with earlier legislation but makes no specific reference to that earlier legislation as opposed to express repeal where it does so refer. I agree that generally if the two Acts do not stand together you look at the language of

the late Act, as happened after the awful tragedy of Dunblane in the case of R -V- Secretary of State for the Home Department ex-parte Burke 1999. But that is not the position here. Subsequent European case law, to which I will refer later, and the fact that this is a consolidation statute will bear witness to this.

At this point I would add that I do not think it is necessary for me in this judgement to apply the rule in Pepper -V- Hart (1993) AC593. I know that Hansard has been quoted. I am not satisfied that the criteria is made out here. The defence accept that the Act is a consolidating statute and there is no ambiguity (page 4 Paragraph 4 Skeleton argument)

Section 1 of the Weights and Measures Act is a defining section. It is nothing more. It does not nor was it ever intended to entrench into our way of life, the imperial system. It defines a yard and a pound under section 1(1).

> "..... The yard or the metre shall be the unit of measurement of length and the pound or the kilogram shall be the unit of measurement of mass by reference to which any measurement involving a measurement of length or mass shall be made in the U.K."

Sub section (3) which was not included in the 1963 Act, that is before our entry into the European Union, was first included in weight and measure legislation in the Weights and Measures Act 1976 four years after the accession of the United Kingdom and to which I have previously referred. In the 1985 consolidation Act an exception is made to the pint. The Schedule 1 referred to in section 1(3) includes pounds.

A similar provision of creating Henry V111 powers is to be found under Section 8(6).

The Secretary of State may by order: -

(a) amend Schedule 3 to this Act by adding to or removing from it any linear, square, cubic or capacity measure, or any weight.

(b) add to vary or remove from subsection (2) above any restriction on the cares or circumstances in which, or the conditions subject to which a unit of measurement, measure or weight may be used for trade or possessed for use for trade

Schedule 3 refers to weights and measures lawful for use for trade; in Part V is the imperial system. Therefore under both the European Communities Act 1972 and Weights and Measures Act 1985 there is the vires for the Secretary of State to act in accordance with Council Directives from the European Union. The relevant statutory instruments empowered the Secretary of State for Trade and Industry, say the prosecution, to implement those using Statutory Instruments.

It is argued that because of the wealth of work with which Parliament is now inundated, that to make every change to or amendment in the law, however trivial, to be subject to primary legislation would swiftly bring the legislative process to a grinding halt. Both sides accept that the Secretary of State has these powers, referred to as Henry V111 powers. This I would say is not out of monarchical respect for that King of England but as a term of contempt and derision because of his own particular abuse of power. The exercise of these powers produce secondary legislation. The defence argue that the powers so exercised by the Minister should relate to minor mundane and trivial matters - for the more important matters, the defence say, there should be proper debate in Parliament. The defence go on to argue that as this secondary legislation is as a result of powers derived from an Act that predates the Weights

and Measures Act, that is the 1972 Act, secondary legislation is ultra vires. In fairness to the defence they do not argue that the statutory instruments failed to implement the Council Directives in that they were procedurally or formally flawed - just that they were ultra vires. As I have said the Minister may exercise the vires under either the 1972 or the 1985 Act.

The Statutory Instruments Act 1946 defines a Statutory Instrument under section 1. I understand that such Henry V111 measures were abolished until the Second World War but since then have gradually come back into usage. Is the Secretary of State entitled to amend the Weights and Measures Act, as in fact he did, and when he did so was he acting ultra vires? Sec 8(6)5 states, inter alia;

"An order under any provision of this Act shall not be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament"

This has been done. The Statutory Instruments have undergone the appropriate Parliamentary control and scrutiny by a resolution of each House of Parliament.

In the case of R -V- Secretary of State for Trade and Industry ex parte Unison (1996 RLR 438) the argument now raised by the defence was rejected. It was held that Section 2(2) of the European Communities Act 1972 gave very wide powers to the Secretary of State both to amend domestic primary legislation and to implement Council Directives by secondary legislation in all matters related to our community obligations. Section 2(2) of the European Communities Act 1972 is particularly widely drawn. In that case L.J Otten said "it follows that when addressing other specific issues in the terms advanced by the applicants in my judgement the Act of 1972, properly construed, does empower the Secretary of State to amend section 188 of the Act of 1992 (Trade Union and Labour Relations (Consolidation) Act by secondary, as opposed to primary legislation so as to..... "and went on to conclude....." the

provisions of the Act of 1992 especially section 197(1)(a) themselves do not exclude amendments by secondary legislation".

In this case from 1985 there have been a number of statutory instruments, whose existence wording / meaning is not in dispute, which is delegated legislation. Erskine May `Parliamentary Practice` refers to this timesaving device by writing:

> "consequently legislative powers is often conferred upon the Executive by statue and various agreements are made for Parliamentary scrutiny of its exercise"

The prosecution have helpfully drawn my attention to a number of instances where Statutory Instruments have amended later statues. Those statues amended include Fisheries Act 1981, Road Traffic Act 1988 and the Sex Discrimination Act 1975 (applicable to Armed Forces); there are others.

If I accept the defence argument then not only will Parliament grind to a sudden halt but a plethora of legislation including that just recited and being used on a daily basis will all be ultra vires. The ensuing chaos that would result would be mind-boggling.

One of the most important reasons to justify European Union is that of conformity and uniformity. That is all the member states adapting and applying the same rules and regulations in the pursuit of, not only fairness, but to make the Union easy to operate with everybody in the same boat starting from the same position. It would destroy the concept of the Union if member states could go off on legislative frolics of their own. I appreciate there are exceptions but when there is an exception it is clearly spelt out. The Fisheries Limits Act 1976 is a good

illustration of Parliament departing from European Legislation stating in the Act that the Act "shall have effect regardless of the European Communities Act 1972". If the Weights and Measures Act 1985 was to fit into the same bracket I would have expected some degree of clarity upon the issue. For this country to repeal the 1972 Act would not only involve an enormous amendment to our Constitution but would require certain detailed steps to be taken, and procedures to be adopted which simply have not taken place. It can not be done by stealth or error.

In the 1985 Act the Secretary of State is given far ranging powers of what measurements can be used for trade. Parliament adopts the same device and mechanism to make legislative changes by Statutory Instruments even where the effect is to modify primary legislation.

Section 1 of the 1985 Act is to be read as a whole. Section 1(2) is expressly qualified to move units in and out of the Schedule by the Secretary of State. Section 1(4) protects some measurements - the pound is not so protected - section 8(1) deals with what is used as a measurement for trade. Section 8(4) is an offence to contravene section 8(1). Section 8(6) gives powers to amend Schedule 3. One has to look at Sections 1 and 8 as a whole and they provide powers to amend Schedules 1 and 3. Parliament specifically intended the Secretary of State to use the Henry V111 powers, that is delegated legislation, to do what has been done. That is, over a period of time modify units of weight for trade (more accurately the measurement of mass)

Statutory Instrument 1070 which is Unit of Measurement Regulation 1980 sets out the main set of Regulations before the Consolidation Act of 1985. Regulation 8 refers to units no longer authorised by reference to Schedule 3 which includes some imperial units. Schedule 4 sets out measurements of mass or weight and definition of units which may not be used for trade.

There were other Regulations after 1985 such as Statutory Instruments 1986 1082 which provide a classic example of vires under the 1972 Act. Schedule 1 referring to an International System of Units whereby the kilogram is the unit of mass. Statutory Instruments 1995 No. 1084 Weights and Measures, the Unit of Measurement Regulation 1995 globally makes provision of movement across from imperial to metric. Regulation 3(1) which states under 3(1)(a):

> "where an existing provision authorises or requires a measurement to be made, or an indication of quantity to be expressed in a relevant imperial unit ..... the provision shall, unless the contact otherwise requires ..... be expressed in the corresponding metric unit"

That is the use of the pound or ounce for goods sold loose from bulk, the relevant date was 01.01.2000.

By looking at the 1985 Act then various Statutory Instruments using the vires conferred by section 2(2) 1972 Act on the Secretary of State one sees that the consolidation Act of 1985 fits into a pattern.

Under section 1(1) Parliament did not intend to entrench imperial measures as section 1 is a defining section. It is not intended to make other provisions invalid. The vires used are different under section 2(2) to the vires used to amend the 1985 Act. The Weights and Measures Act 1985 (Metrification)(Amendment) Order 1994 Statutory Instruments 1 2866 is made by the vires given to the Secretary of State by the 1985 Act whilst the Units of

Measurement Regulation 1994 section 1 1994 2867 is made under powers given to the Secretary of State for this purpose by the 1972 Act.

Parliament intended the Secretary of State to use the vires as they were used to make this type of amendment. In accordance with the 1972 Act it is necessary for a Minister to be designated as responsible for a particular type of change. The European Committee (Designation) Order 1976 897 shows powers given by Her Majesty to the Secretary of State in relation to units of measurements. For example in the Unison case previously referred to the vires to amend the later statute were under the section 2(2) provision of the 1972 Act.

The defence argue that whilst Henry V111 clauses are permissible they can not be used to bring about changes of great importance - here national importance - an imperial system. That is the initial demotion to second place of part of our heritage and culture and subsequently to the disappearance of the same. The defence refer to such clauses as imposing "despotic powers with notorious clauses" placing Ministers above Parliament. I refer to Hyde Park Residence -V- Secretary of State for Environmental Transport at the Regional and another ex-parte Spath Holme (CA) 2000 3 WLR 141 in which it was said:

> although it was possible for one statute to confer power for another to be amended by means of delegated legislation such a power was to be narrowly and strictly construed"

The draftsman will have had full knowledge of the 1972 Act and our membership did intend what the Minister has done. Obviously no statute confers on any Minister limitless discretion- he must comply with the spirit of the legislation as well as the word of the legislation and do

what Parliament intended. Later I shall refer to our accession to the Treaty and the Treaty itself. At the end of the day Parliament had the official say as to how wide these powers are to be used and the extent thereof. Even if the defence are correct in their swingeing condemnation-the simple truth is that Parliament permits such powers to exist and is aware of how and when these powers are implemented by the designated Minister. In our context Parliament, or those aggrieved by the Ministers various decisions, have not sought to overturn the decision made by the subordinate legislation. Parliament has power to do this and I am aware members of the public have the right to challenge the same. I do not find that the exercise of those powers in this case has overturned by secondary legislation primary legislation.

The Ministers have simply implemented, at the relevant time, what Parliament always intended them to implement. Whether the relevant time is a result of political expediency or absolute compliance with a European Directive is immaterial.

I would comment that many years have passed since one of the earliest Statutory Instruments were brought into force and there has been no challenge that has been brought to my attention. Statutory Instruments, which are delegated legislation, can only apply to amendments to primary legislation as that primary legislation authorises them under section 2(2)(4) 1972 Act and section 1(3) and 8(6) of 1985 Act. It is crystal clear to me that the type of amendment envisaged is that as referred to in the various Statutory Instruments that have come into effect. That is, the demoting of the imperial system for the measurement of mass to rank behind the metric system and subsequently to disappear forever as a lawful measurement. This is what Parliament intended however popular or unpopular such a move may be. The vires of the delegated legislation is unassailable.

I accept there are restrictions upon the things you can do and you can not do. Section 80(1)(x) Health and Safety Act 1974 is an example of this. The case of R -V- Secretary of State for Social Services ex parte Britnell (1991 1 WLR) is an example of the Secretary of States power to make transitional provisions by Regulations.

Historically it was in 1932 when a committee on ministers powers was formed that the expression Henry V111 clause was conceived. It was in 1948 that the Statutory Instrument Act was passed as a result of the committees deliberations. The legislative process has to adapt to the times in which we live. It may well be that between 1932 - 1946 when the committee sat it was not envisaged what would happen in 1972 or the volume of work with which Parliament would be inundated. They were more gentle and relaxed times. The fact is delegated powers exist and are likely to be used more and more as time goes by. I do not read this as a clash between Parliament and the European Union. Parliament knows what the position is and has power to alter the same. Indeed Parliament has created the situation.

I find the 1985 Act, consolidating as it does previous enactments, gave direct authority to the designated Minister to implement the Statutory Instruments he has implemented, in accordance with the wishes of Parliament to comply with our Treaty obligations. All these implementations until today have gone unchallenged. I believe the first instance of the delegated power being used under the Act was the Weighing Equipment (Non-Automatic Weighing Machines) Regulations 1988 - some twelve years ago. The 1972 Act imposes in section 2(2) the power that is again referred to in 1985 and which the Minister has acted upon so adopting a legislative formula used in this country for many a year. There is an unbroken chain of legislative authority. I am aware that many leading authorities, like Professor Craig of Oxford are concerned about what is perceived as a shift in the balance of power between Parliament and

the Executive and find the concept of delegated legislation as referred to Henry V111 powers as objectionable. However they exist and no Parliament for over half a century have sought to take them away.

It may be convenient here for me to consider what were this country's obligations viz a viz weights and measures following our accession to the Treaty of Rome. If there were none that may lend support to the defence argument.

Under the Treaty of Accession concerning United Kingdom (and other Sovereign States) accession to the European Economic Community and of course the European Atomic Energy Community occurred on 1.1. 1973 and was signed by the Prime Minister of the day the Right Honourable Edward Heath and others. We agreed to comply with the articles of that Treaty. Article 2 in Part 1 states the rules of joining. I quote: -

> "From the date of accession the provisions of the original Treaties and the Acts adopted by the institutions, of the communities shall be binding on the new member states and shall apply in those states, under the conditions laid down in those Treaties and in the Act"

Article 6 states: -

> "The provisions of this Act may not, unless otherwise provided herein, be suspended, amended or repealed other than by means of the procedure laid down in the original treaties enabling those Treaties to be revised"

and thus we became a member of this European Union.

Article 29 lists the Acts to be adopted, in Annex 1. These include Council Directive 71/354/E.E.C of 18.10.71 which is the metrification directive. Article 1(3) 1(4) lists the units of measurement affected which include the imperial system. Reference is made to article 1(3):

" is replaced by the following:

"4. The classification in Annex 1 of the units of measurement listed in Annex II shall be decided on the 31st of August 1976 as the units of measurement concerning which no decision has been 31st August 1976 at the latest, shall disappear on the 31st of December at the latest. An appropriate extension of this time limit may be for certain of these units of measurement if it should be for special reasons".

And so the die was cast. It may well be that prior to the referendum the attention of the British public was not drawn to this. That is immaterial, there is no opt out clause if not in the Treaty of Accession. We have to comply with and respect that at the time of accession weights and measures became part of the field covered by European Convention Law. From the moment the Right Honourable Edward Heath signed the treaty on behalf of the U.K. he also agreed to the eventual demise of the imperial system. Until this case I am not aware of anybody seeking to challenge Parliaments intention in that respect.

As I understand the position at that time voting upon European Union Law, the vote had to be unanimous (Article 100). The first directive 76/770 after the accession was accepted because the British delegate did not vote against the same. Even when a variation took place to prevent one state holding-up legislation and a qualified majority vote was required, Council Directive 89/617 was passed. The voting of the British delegate is unknown but we are bound by it. In that directive 76/790 Article 1(3) states: -

"Member states shall with effect from 31st of December 1979 at the latest, cease to authorise the use of the units of measurement listed in Chapter C of the annex"

No. 9 under chapter C we see the two simple words "Imperial Units". Let me recall that the Weights and Measures Act 1976 which I believe received the Royal Assent on the 22nd of November 1976, incorporated in section 1(3) (to which I have referred) and gave to the Secretary of State power to amend Schedule 1 by adding to or removing units of measurements of mass. The nexus is clear for all to see.

The European Economic Area Act 1973 amended the European Communities Act 1972 Sec 1(2). This sort of legislation can not be passed if the 1972 Act is not up and running. It shows this country's continued intention to be close to and involved in European matters. Section 3 of this Act could not work if Section 2(2) of 1972 Act was not in force. This evinces Parliament intention to keep the 1972 Act live and in force.

I therefore reject the defence argument that the various Ministers have acted ultra vires in relation to the implementation of their Henry V111 powers by way of the various statutory instruments. I therefore do not accept that Parliament never intended the designated Minister to act in the way he has acted or that such Ministers have usurped their powers. The Weights and Measure Act 1985 (Metrication)(Amendment) Order 1994 is the authority that makes it unlawful to use the pound for trade as from 1. January 2000 is valid in domestic law.

The defence seek to rely upon the doctrine of implied repeal. Parliament has the power to repeal the 1972 Act in exactly the same way as it had power to pass the Act. Section 2(4) the 1972 Act says the Honourable Sir John Laws:-

"Falls to be treated as establishing a rule of construction for later statutes, so that any such statute has to be read (whatever its words) as compatible with rights accorded by European Law"

This is obviously contrary to the view that Parliament can not bind its successors. In 1998 the Human Rights Act was passed. It is accepted that from its passing that any legislation that is passed which may, intentionally or unintentionally, be inconsistent with the European Convention of Human Rights there is power for this inconsistency, this conflict, to be overridden by the courts with a Remedial Order following a declaration of incompatibility. This is so even though the subsequent pieces of legislation sought to override an earlier Act of Parliament. The pre - 1972 doctrine of implied repeal is not applicable.

The Diceyan view of the illimitable sovereignty offers a view expressed before the concept of a European Union and the passing of the Human Rights Act. He writes :

" any Act of Parliament, or any part of an Act of Parliament, which make a new law, or repeals or modifies an existing law will be obeyed by the courts - there is no body of persons who can, under the English Constitution, make rules which override or derogate from an Act of Parliament or which will be enforced by the courts in contravention of an Act of Parliament."

In like vein Blackstone writes of "The omnipotence of Parliament" and Sir Edward Cohen:

"The power and jurisdiction of Parliament is so transcendent and absolute that it can not be confined"

However these are the writings of constitutional commentators of yesteryear. Time has moved inexorable onwards. Every law student of my generation lapped up these sayings with alacrity and gusto. It is true we believed they would stand the test of time, now they are only of interest from the historical perspective.

The defence argue that in relation to our constitution the older the doctrine the better. The concept of the older the better may well apply to certain vintages of claret but old law, like old wine eventually goes off. What happened in 17th, 18th and 19th century does not necessarily tie Parliament and the courts today if they have evinced the intention of not being so tied because there would be an apparent and obvious conflict with recent legislation and case law.

In 1972 Parliament took a step which probably no British Parliament before it has taken. In the 1972 Act 2(4) reference is made to "enactments passed or to be passed." It did the same, in principle with the passing of the Human Rights Act 1998. So what was good law for the unfortunate Mr. Warner in 1611, John Davison in 1783, Elizabeth Warburton in 1831, J.W Hardie in 1853, Cannon Selwyn in 1872 and so on does not mean it is good law today if Parliament has shown a contrary intention - which it has. Those ladies and gentlemen of yesteryear are now simply part of the case law of the land - a historical and non-binding part.

Constitutional law is not like a stagnant pond - never changing. It is like a fresh running stream, constantly changing as it does to accommodate the surrounding land and the varying weather patterns, so it is with our Constitution in order to meet the needs of the time and age in which we live. Constitutional law has and always will evolve as of necessity to fit into the demands of the time.

This country quite voluntarily surrended the once seemingly immortal concept of the sovereignty of parliament and legislative freedom by membership of the European Union. In doing so this must mean we have a hierarchy of statutes the hierarchy dominated by the 1972 and 1998 Acts.

The old adage where that were there are two laws that are incompatible, the later repeals the earlier to the extent of the incompatibility is no longer so. As Neil McCormick writes: -

> "If the change to the rule of recognition has been validly enacted in the sense suggested, the lex posterior principle must be considered over ridden in relation to community law"

In short Dicey`s "sovereignty is the power of law made unrestricted by any legal limit" and Wades` "the rule was that an Act of Parliament in proper form had absolutely over-riding effect, except that it could not fetter the corresponding power of future Parliaments"

May no longer be an accurate expression of our present constitution. Except, of course, to the extent Parliament may repeal both the 1972 and the 1998 Acts but for nearly one score years and ten she has made no attempt to do so.

The 1972 Act was a bold pronouncement that a new source of law is henceforward to be recognised in this country.

So long as this country remains a member of the European Union then the laws of this country are subject to the doctrine of the primacy of community law. This doctrine of primacy applies to all member states. The doctrine of primacy is as developed by the courts of justice. This may

well, according to some people, bring into open conflict of the community law primacy and Parliamentary sovereignty.

In the case of McCarthy Ltd -V- Smith (1979 3ALLER325) Lord Denning said - (and this we must remember was when community law in this country was in its infancy.):-

> "In constructing our statutes, we are entitled to look to the treaty as an aid to its construction: even more, not only as an aid but as an over-ridding force. If on close investigation it should appear that our legislation is deficient - or is inconsistent with community law - by some oversight of our drafting - it is our bounden duty to give priority to Community Law such in the result of section 2(2) and (4) European Communities Act 1972."

Such judgement would seem to conflict in relation to what he said in the Felixstone case (Felixstone Dock and Railway Company and European Ferries Ltd -V- British Transport Dock Board 1976 C.M.L.R. 655) three years earlier but in that case his comments were obiter and in view of recent European case law and rulings in the House of Lords that case can not represent the correct position.

The defence argue that Parliament can not pass an Act of Parliament which is entrenched so as to prevent repeal by a subsequent Act of Parliament. No doubt the doctrine of "implied repeal", if still valid, may apply to conflicting domestic legislation simpliciter but not where that domestic legislation is in direct conflict with the 1972 or the 1998 Acts. These two statutes are over ridding. This is Parliaments intention. I can not accept that the 1985 Act repeals in some form or another the 1972 Act. There is no conflict between the respective pieces of legislation. It is wrong to argue that section 1 is anything more than a defining section, it is not a statement that such measurement of mass over rules the 1972 Act. The 1985 Act, in accordance with the

1972 Act, refers to delegated powers and those powers are subsequently implemented by various Statutory Instruments. It is a legal journey one step to another. The argument that Parliament intended somehow or another to amend or repeal the 1972 Act by a consolidation Act of Parliament is unacceptable and impossible. Parliament can of course, repeal the 1972 and the 1998 Acts. However to do so she must make her intentions clear and go through the correct procedure.

I have been referred to the case of Factortame referred to by some commentators as a legal soap opera. In relation to that case the defence took me back to 1661 and the case of Warner where is it reported: -

"a hundred precedent sub silentio are not material"

The defence argue that relevant and important arguments were not put before the House of Lords - (although it would seem there were four visits to the House when this could have been done), that is the implied repeal argument was not raised. I can not accept the defence argument that if such argument had been raised the decision could have gone the other way. Community Law says otherwise.

The implied repeal point is a fundamental misconception and misunderstanding of Weights and Measures Act 1985. The ordinary canons of interpretation apply. In volume 7 table 6 there is reference to "Linguistic Canons of Construction" in particular: -

"an Act is to be read as a whole and general (e.g. sec1 Weights and Measures Act 1985) provisions do not over ride special provisions"

(Generalia specialibus non derogant)

also

"Where the literal meaning of a general enactment covers a situation for which specific provision is made by some other enactment within the Act or instrument, it is presumed that the situation was intended to be dealt with by the specific provision."

(Generalitus specialia derogant)

It is presumed that the general words are intended to give way to the particular. This is because the more detailed a provision is, the more likely it is to have been tailored to fit the precise circumstance of a case falling within it. I refer to Effort Shipping Co. Ltd -V- Linden Management S.A and another. The Giancis U.K. (1 ALL E.R. 1998 495)

The defence argument here is that there was a repeated failure to apply the basic construction principle of implied repeal. They say that the House of Lords, which is the highest court in the land, and whose decisions bind me, `fell into such egregious error` It is not my position to criticise, condemn or ignore their Lordships ruling - like Mary's little lamb I simply have to follow. I am bound by the ruling. The defence may condemn their Lordships ruling I can not. In this case there was concern about the compatibility or otherwise of provisions contained in Part II of the Merchant Shipping Act 1988 with Community Law. The House held that the High Court was competent to give relief, whether by interim injunction or final declaration, whose effect would be to disapply main U.K legislation as being incompatible with the law of the European Union. Lord Bridge said: -

"By virtue of section 2(4) of the Act of 1972 Part II of the Act of 1988 is to be constructed and take effect subject to directly enforceable community rights. This has precisely the same effect as if a section were incorporated in Part II of the Act of 1988 which in terms enacted that the provision with respect to registration of British fishing

vessels were to be without prejudice to the directly enforceable community rights of nationals of any member state of E.E.C"

Section 2(4) has the effect of establishing a rule of construction for statutes passed after that date - that is those statutes have to be read as compatible with the rights according to European Law. I appreciate that there are those legal commentators, including the defence, who believe that Lord Bridge connived at over turning what was, so I am told, till then a fundamental constitutional rule that Parliament can not bind a successor Parliament as enunciated by Dicey. Whether the criticism of Lord Bridge is justified or not is not material, it matters not a jot because I am bound by his judgement. Parliament is aware of the judgement and has not sought to reverse the same by amending or repealing the 1972 Act and I doubt if it will do so in the foreseeable future, if ever. The important point is that if she wishes to do so she may. As the House of Lords visited this case on no fewer than four separate occasions I find it difficult to accept that they and the various parties appearing before them constantly over looked the doctrine of implied repeal if it was of such fundamental importance.

In R -V- the Secretary of State for Employment ex-parte Equal Opportunities Commission (1995 1.AC1) the judgement in the Factortame was supported when Lord Keith of Kinkel said:

"The Factortame case is thus a precedent in favour of the Equal Opportunities Commission recourse to judicial review for the purpose of challenging as incompatible with European Community Law the relevant provisions of the Act of 1978."

Community Law is supreme and the British Courts accept that, as indeed does Parliament.

The case of Vauxhall Estate Ltd -V- Liverpool Corporation (1931 - 1KB 733) and Ellen Street Estate Ltd -V- Minister of Health (1934 1KB 590(CA)) as listed in detail by the defence are

cases which did not examine in depth Parliamentary sovereignty and were in any event cases prior to the 1972 Act which created a new legal order and also prior to the House of Lords ruling in Factortame.

This country is not seeking to move away from Europe by implied repeal of all or any part of the European Communities Act 1972. This country has shown the opposite intention. Since entering Europe we have incorporated into domestic law the Single Europe Act, the Treaty of European Union, the Treaty of Amsterdam and the Treaty of Maastricht. These Acts and Treaties are illuminating statements that Parliament wishes this country to be an integral part of the European Union - in short the closer the better.

The defence have also sought to rely upon International Law, especially that in relation to treaties. The defence argue that it is a basic proposition of international law as confirmed by the Charter of the United Nations the Declaration on Principle of International Law of 1970 that there is a duty not to intervene in matters within the domestic jurisdiction of any state, and further, under Article 1 of the International Convenant on Civil and Political Rights that nations and people enjoy a right to self - determination. This is no doubt true but where is the relevance here? If a state wishes on a voluntary basis to have its domestic jurisdiction subject to and part of European Law, then providing the process adapted is a legitimate one (in this country that would be an Act of Parliament with a Royal Assent, passed by a democratically elected Parliament) then who can or is to stop it?

This country held a referendum - it may be that all the issues were not put to the British electorate - and voted to join the then E.E.C. To deny what the majority of the electorate wishes would bring about the very state about which the defence show concern, that is not allowing the

majority self - determination as they wish. The same way as we joined Europe by passing an Act of Parliament with Royal Assent then we may leave by the same means. Our membership is not entrenched.

The passing of the ECA 1972 meant that European legislation became part of our legislation. This country has not been forced or coerced (although some may say the electorate were misled) to join the European Union, we did so voluntarily. Since 1972 Governments of different political persuasions have not sought to bring about our withdrawal.

The case of Blackburn -V- Attorney General (1971 1WLR 1037) supports this proposition where it was held that the courts could not impugn the treaty making power of the Crown and would only interpret laws when they had been made by Parliament.

The defence argue that the right of self - determination is inalienable. This is correct, however, if a country wishes to be a member of a collection of European states and have the support of the populace, as revealed by a referendum, then the defence can not argue that the right to determination has been `bartered away by a Government Minister in a mere treaty'.

What can not happen is for a state, against its wishes, to be subjugated to the laws of another state by oppression, coercion or force. It is to prevent that state of affairs that so many of these International Treaties and Conventions have been brought about, especially following the dark days in Europe between 1914 - 1918 and 1939 - 1945. Freedom of choice is the over-riding doctrine and we in this country have made our choice.

This country has decided that its political future lies in Europe - not the whole of Europe - but with those states that make-up the European Union. As such it has joined this European club and by so doing has agreed to be bound by the rules and regulations of the club, as indeed have all the other member states

By joining we and all the other member states have not breached Article 53 of the Vienna Convention or the Law of Treaties. No Conventions or Treaties would ever seek to remove from an independent state its freedom of choice as to how it wished to be governed. If this country wished to be part of an international (European) organisation, which is what the European Union is, then it may do so.

My attention is drawn to U.N. Resolution 1541(XV) which contemplates 3 possibilities as part of the right of self-determination in relation to non-self governing territories which include free association with an independent state and integration with an independent state.

It may be that the Factortame judgement has been rejected by the Supreme Court of Denmark because they believe it violates the Jus Cogens right of that country to self-determination. I do not have to follow the decision in a Danish Court, especially when it conflicts with a decision of the House of Lords on the same point. I have to follow that Court and the law.

Parliament is not necessarily bound by International Treaties. The case of the Parlement Belge (1879 4PD 129) confirms this although in that Judgement it states:

"The power of the Crown to make treaties with foreign states is indisputable"

Again this principle is reiterated in the case of Mortense –v- Peters (1906 14SLT 227). In Soloman –v- Commission of Customs and Excise (2 QBD 1966 116) it was held the Sovereignty of Parliament extends to breaking treaties. In that case Ellerman Line Ltd –v- Murray, White Star Line of Royal and United States Mail Steamers, Oceanic Steam Navigators Co Ltd (1932 AC 126) is cited.

However Parliament has not sought to break the Treaty of Rome which can not be compared to the Treaties in the cases cited by the defence some of which I have referred to above. They are Treaties covering relevantly minor matters, when compared to the Treaty of Rome and the subsequent Community Law and Directives which are to affect the everyday lives of the citizens of this country. Nothing referred to in the Treaties in the various cases quoted can be compared to E.C.A. 1972 which in many respects, prior to the Human Rights Act 1998 is a one-off piece of legislation which Parliament has not only decided not to revoke but to enforce with various later Treaties some of which I have alluded to.

All the cases cited in relation to foreign treaties come from a by-gone age and are not really relevant as far as the point I have to decide today. By being part of the European Union it is wrong to say that we are subject to their laws as if they were the laws of a foreign power. We have voluntarily incorporated them so that they now become our laws.

When this country joined the E U we took on board all existing jurisprudence and took on law that is fundamentally different form the International Treaties referred to in the cases cited by the defence and relate to ordinary International Treaties. Many such Treaties exist today and are mainly to do with commerce. But European Law is supreme. In the European Union the

treaties are fundamentally different as they relate to what is almost a new way of life and not limited like most International Treaties referred to, that is, commercial considerations.

The exercise of powers under the 1985 Act are entirely in existence with the obligation under European Communities Act to enable the Secretary of State to use vires to effect necessary change as they become necessary to comply with our accession to the Treaty of Rome and our membership of the European Union.

There is no conflict between the 1985 Act and obligations under European Community directions. It envisaged a considerable period over which it took place. It was never intended that the Weights and Measure Act 1985 (a consolidation Act) was to reverse the relentless march of metrication.

Although when the committee met from 1932 there was some recommendation for the abandonment of such clauses such recommendations were not followed. It is seen that Parliament has quite openly granted great powers to her Ministers who are in any event answerable to Parliament.

Wade in his book on Administrative Law shows that Henry VIII powers are alive and well and used by Parliament.

> "The European Communities Act 1972 which give powers to make orders in council and regulation for giving effect to Community Law which are to prevail over all Acts of Parliament, whether past or future."

The defence attack the vires contained in 1972 and 1985 Acts are not sustainable. The

methods of amendment are lawful and proper and often confirmed by decisions of The Divisional and other Higher Courts.

Section 2 (2) of the European Communities Act 1972 is a mechanism to be found to enable obligations to be given effect in National Law. The Minister has to have regard to Community objectives for which he has wide-ranging powers. The designate Minister has to see what vires are at his disposal. If they are available under the principal domestic Act there is no need to use the European Communities Act 1972. If vires in the Principal Act do not go far enough to make changes to comply with European Community law then he may use the vires under the European Communities Act.

In the case of R –v- Secretary of State for Trade and Industry ex. parte Orange Personal Communications (Q.B.D. 20.10.2000) there is revealed the freedom of the Minister.

Mr Justice Sullivan said:

> "Subordinate legislation is in quite a different category from primary legislation it represents the will of the executive- it can be made only within limits expressed or implied in the enabling Act and the court has jurisdiction to determine that this has not been done in which event it is void"

Later he says:

> "Moreover Parliament has delegated power to modify primary legislation, the subordinate legislation should be construed restrictively....."

And again later:

> "If a statutory provision is ambiguous there is a presumption that Parliament intended it to be construed in accordance with our international treaty obligations....."

And finally:

> "Since the directives formed part of the U.K. Community obligations, Parliament may be taken to have known that the result had to be achieved, the Executive retain a broad discretion to repeal or amend primary legislation by way of regulations."

The High Court has said you can use the vires in the 1972 Act to amend primary legislation. In fact the principal of using vires under the 1972 Act to amend Acts of Parliament is not in dispute.

In the Weights and Measures Act 1985 Parliament was told expressly by the words of Statutory Instruments what, how and when the changes were. Again Parliament was aware that the Metrication Directive had to be achieved.

To remove the pound the Secretary of State could use either the vires under the 1972 Act or 1985 Act. He can decide - what he can not decide is his obligation to implement Community Law and Directives. The power in 1 (3) is to remove items from the Schedule. It is a specific power not a general one. I have already referred to the English canons of interpretation, which show that the Secretary of State did exactly what he was required to do.

In 1985 Parliament did not withdraw Weights and Measures from the primacy of Community Law.

A look at Community Law shows that in the Van Gend en Loos case (case 26/62 1963 ECR 1)

> "The object of the E.E.C treaty which is to establish a Common Market the functioning of which is of direct concern to interested parties in the Community, implies that this Treaty is more than an agreement merely creating mutual obligations between the contracting states"

and later:

> "The conclusion to be drawn from this is that the Community constitutes a new legal

order of international law for the benefit of which the States have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only Member States but also their nationals."

I would add as a rider it would be difficult to have a common market with two ways of measuring mass. [AND ELEVEN DIFFERENT LANGUAGES AND SEVERAL DIFFERENT NATIONAL CURRENCIES]

This is an early authority that shows the relationship between National Law and E.C Law where the whole status of E.C Law is brought into question. It will be seen it is not another ordinary international treaty like those treaties referred to in cases put forward for the defence. It is a treaty that is much more far-reaching.

It is an indisputable historical fact that when Parliament passed the 1972 Act she intentionally surrendered her sovereignty to the primacy of E.C Law and made that law part of our domestic law. This is the current position and will always be the position until Parliament legislates otherwise.

As I have said the signing of that Treaty was the first step to the abolition of the Imperial System. It was the beginning of Parliaments avowed intention to say 'fare thee well' to the Imperial System and embrace the Metric System.

This is confirmed in Flaminio Costa -V- ENEL (1963 6/64 ECR 1) when the court ruled:

> "By contrast with ordinary International Treaties the E.E.C Treaty has created its own legal system which on the entry into force of the Treaty became an integral part of the legal systems of the Member States and which their courts are bound to apply"

Both these cases drive a coach and horses through the argument put forward by the defence of the Sovereignty of Parliament.

To further drive home this point the court at Luxembourg which normally gives judgments but can give opinions did so in opinion 1/91. I quote part of Paragraph 21

> "The E.E.C Treaty - none the less constitutes the constitutional Charter of a Community based on the rule of law - the Community treaties established a new legal order for the benefit of which the states have limited their sovereign rights, in even wider fields, and the subjects of which comprise not only member states but also their nationals"

These judgements and this opinion which are spread over a quarter of a century or more reveal that E.E.C law takes precedence and that member states have surrendered their sovereign rights.

The European courts, whose judgments are binding upon us, have been ever-consistent in their approach. In the case of Simmenthal (case 106/77 1978 ECR 629) where a conflict arose between Community and National law the court ruled:

> " It follows .... that every national court must in a case within its jurisdiction apply community law in its entirety and protect rights which the latter confer on individuals and must accordingly set aside any provision of national law which may conflict with it whether prior or subsequent to Community rule."

As a once Sovereign power we have said we want to be bound by Community Law. We said this voluntarily and so we voted. There is no conflict between the principle of self-determination and the European communities Directives on metrication. We can not leave by stealth by passing Acts that conflict with community law as seems to be suggested. If we wish to leave we must manifest our plainest intention. We have never done so. There are numerous authorities including:

1995 1. Law and Democracy. The Honourable Sir J Laws.

1999 2. Questioning Sovereignty (Law State and Nation in the European Commonwealth) Neil McCormick.

1999 3. Studies in Constitutional Law. Professor Colin Munro.

1994 4. The Changing Constitution. Jewell and Olive

1999 5. Sovereignty of the U.K Parliament after Factortame. P.P Craig.

All these authorities are upto date by constitutional experts and reveal not only a major shift in the constitutional landscape but a shift with Parliaments knowledge, approval and consent. Implied repeal does not work in the context of European law because of the doctrine of primacy and supremacy. Implied repeal formed part of a set of principles derived from the doctrine of Parliaments sovereignty - a doctrine now defunct when in conflict with the 1972 Act. In any event it is not applicable when a consolidation Act, which is what the 1985 Act is, is involved.

I am aware that this case has aroused saracenic emotion from that what I have read in the Media and what has even been written to this court. My sole task is to apply the law to the facts and see if an offence has been committed. I am not to be swayed by public opinion or to take any form of political stance. I am not and do not.

In this case the Prosecution, that is the Local Authority have come in for some heavy criticism, to many they are the villains of the peace. I even saw a mis-guided letter in The Times saying this prosecution should not have been brought. This was by a lawyer.

Let me comment upon the Prosecution and in doing so I will say that the defence, and this is to their great credit, pass no personal criticism about this prosecution being brought. They say the prosecution is wrong in law but that is not a personal criticism. If Parliament enacts legislation then that legislation has to be enforced. Most legislation involving criminal offences is enforced by the C.P.S. However there are other statutory bodies like the Health and Safety and of course, the Local Authority who are also prosecuting authorities. It is not for these bodies to decide whether or not they will enforce Parliamentary legislation. They must

do so but clearly have a discretion. They are not able to exercise that discretion to favour certain members of the public. The law must apply to all.

In this case the handling by the Local Authority has been of the highest order. So many years ago Local Authorities who saw what they believed to be an offence being committed would prosecute without consultation or debate. Nowadays Local Authorities try to work with the communities they serve. They talk to them, they reason with them, they try to point out the law. In this case they spoke to Mr. Thoburn on several occasions. Many have adapted a Code of Practice and Conduct. In short their conduct has been exemplary.

As I emphasise the defence do not criticise them, their only comment is why the prosecution should relate to foreign produce purchased on July 4th the American Day of Independence. This I understand

For the reasons stated I find these matters proved.