Chapter 4
THE DUE PROCESS OF LAW – 1979

Illustration – 23
"The Laws of England will not sanction
What is inconsistent with humanity."
(Best – J. 1768-1845 in Illot v Wilkes 1820 3B & A 304). *

General Aspects of the Due Process of Law

The Due Process of Law is the second book of Christmas series written by Lord Denning. It is an Oxford paperback of 292 pages with ISBN13: 9780406176080. The Due Process of Law came in 1979. In the preface, Lord Denning thanks Her Majesty for appointing him as the Master of the Rolls. This legal classic has been divided into seven parts. The first part of the book deals with what Lord Denning says, ‘Keeping the Streams of Justice Clear and Pure’. He wants to bring platonic ideals in the judicial. Lord Denning touches various aspects of the judicial process, for example, the victimization of the witnesses and the consequences of refusing to answer the questions. He stresses for the fair trials and mentions The Thalidomide Case with some details.

Critical Aspects of the Due Process of Lord

Lord Denning opens his famous book 'The Due Process of Law' with a beautiful quotation from Sir William Blackstone who stresses for the proper legal knowledge to be taken by every
responsible member of the society. In the very preface of the due process of Law Lord Denning has given us the proper meaning of the term due process which according to him is originated from Statute of 28 Edw. III,Ch.3 promulgated in 1354. It states-[30]

‘That no man of what estate or condition that he be shall be put out of land or tenement,nor taken or imprisoned nor disinherited,nor put to death,without being brought in answer by due process of law’.

He then gives the importance of Madison who proposed the Fifth Amendment to the Constitution of the U.S. in 1791 which runs by adding- [31]

'No person --- shall be deprived of life, liberty and property without due process of law'.

In this preface he has shown us that - Her Majesty had been pleased to appoint him as one of Her Counsel learned in the law. He gladly accepted Her Majesty’s order. Lord Denning became the Master of the Rolls in 1962 when many important developments had taken place upon the contempt of court both civil & criminal. In 1944 Lord Denning was working as a Law Lord at the High Court as well as the Privy Council. He gives the importance of Thalidomide case which went to the House of Lords. The Lords met with a rebuttal from the European Court and ultimately the Supreme Court of Appeal was restored. In all the books Lord Denning normally tells us a long tale of justice in which different short stories are woven clearly proving his approach towards the ultimate justice. He prefers judicial activism and even reformation at the old laws in order to make them suitable according to the needs of the modern society. He quotes from Lord Hardwick (1742)-[32].

‘There cannot be anything of greater consequence than to keep the streams of justice clear and pure, that parties may proceed with safety both to themselves and their characters’

Part I : KEEPING THE PURITY OF JUSTICE

Chapter-I of this part is related with the procedure which is followed in English courts of Law Lord Denning quotes an interesting case of 1631. A prisoner threw a brick at the Judge of Assizes. The case was reported in Norman French. According to Lord Denning Judges should do justice fearlessly, even through such incidence may be presumed. He has quoted an incident which he himself witnessed when he was sitting as a Lord Justice with Lord Bucknill. A man got up with him stick and broke down a glass window. However, judges did not file any contempt of
court proceeding. He might have done it for fresh air. However he was sent for to be dealt with malicious damage. He has also quoted one another example of the contempt of court when a young woman picked up a big law book and threw it towards the Bench. Both Lord Diplock and Lord Denning remained peaceful. They took no notice. While leaving she said ‘I congratulate your lordship for coolness under the fire.’ Lord Denning has also narrated an incident when the students from Wales demanded the Radio T.V. Programmes in Welsh language instead of English. They rushed in the court without permission. They were the students of Aberystwyth University. Lord Justice Arthin Davis was sitting near Lord Denning. He was a Welsh person. The matter was carefully considered by the Court. After stressing the importance of dignity of court, Lord Denning turn towards the victimization of the witnesses. He stresses a well known case **Attorney General vs. Butterworth (1963) 1 QB 696.** Mr. Butterworth and others were on the Committee of a Trade Union. One of the members had given information before the Restrictive Practices Court. Mr. Butterworth and and other members of the Trade Union punished him by depriving his office as a Treasurer. It was reported to the Attorney-General: because he had a public duty to prosecute for the Contempt of Court (Civil and Criminal). He considered accordingly. He applied to the Restrictive Practices Court. It was held that there was no contempt of either civil or of criminal nature.

He has further given the case **Chapman v Honing (1963) 2 QB 502.** Chapman was a tenant since 1959. He had seen something on the second floor. One Harrand wanted him to give evidence in his action against the landlord of the villa. Chapman first feared to give evidence against his landlord, and avoided to go to the the court. He was subpoenaed to do so, and evidence was taken on 22 June 1962, at the Hon. Bench of the Judge Baxter. On the next day, 23 June 1962, the landlord served on Chapman a Legal Notice of Eviction of his first – floor flat upto 28 July 1962. The reason obviously, was simply he had given evidence for Harrand. The object of the landlord was, the judge found, “to punish or victimize Mr. Chapman for having given evidence”. The landlord was inflicted with a net £ 50/- as damages for contempt of court. He further gives us an account of two journalists who were sent to prison as they refused to answer the questions asked by the court (**Attorney General @ Mulholland- 1983 QB 477**). Then Lord Denning comes towards the important part of disobedience to an order of the court. Here he stresses the case **Churchman vs. Shop Stewards 1972 WLR 1094.** In this case the
Industrial Relation Act 1971 established a new Industrial Court. The Trade Unions opposed the move of the Royal Administration. Rioting and picketing started in London. The Court was compelled to rebuke for a warrant. In conclusion of this part, Lord Denning states that the Contempt of Court (both civil and criminal) must be considered severe offences. In the Commonwealth Realms including the United Kingdom, the Attorney General is a political post (In India it is an administrative post). According to Lord Denning some matters are politically delicate and the Attorney Generals may not be ready to proceed for the legal actions which may affect the interests of his party.

PART II : INQUIRY IN TO CONDUCT

PART-II of the book deals with inquiries into conduct. Lord Denning says that many of the contemporary questions are not decided by the court as they are not justiciable. They are entrusted to the commissions of inquiry. He then quotes the example of a judge who ‘Feared not God’, and unnecessarily decided in favour of a widow. (St.Luke 18: 2-5) Professional negligence must be checked. Lord Denning’s sincerity and sheer humanity asks a question about the excessive immunity granted to the judges. Firstly Lord Denning deals with the conduct of judges. He has given us an incident from a judge who talked too much. The name of judge was Sir Huge Imbert Perian Hallett (due to nick name – initials called ’Hippy Hallett’) he was an advocate for 17 years. He argued in loud but powerful language. His legal interpretation was appreciated by Lord Maugham who recommended his name for the Bench. He had a bad habit to take more interest in the legal matters pending before him. In Jones v National Coal Board (1957) 2 QB 55, the roof of a coal mine fell. A miner died. The widow claimed compensation. The case was tried by the above mentioned Judge Hallet who rejected her claims. She came to the Court of Appeal. The Appeal Memo shew that she had a queer grudge against the Judge’s interruptions which made it impossible for her advocate to put her case properly. Lord Denning here advises the judges not to show excessive interest in any matter but to act judicially with impartial views. Then Lord Denning tells about a judge who made mistakes. Whether the judge be made liable in damages for his mistake? The point was discussed in Sirros v Moore (1974) 3 WLR 459. In this landmark case a Turk entered England as a visitor. He remained there for an excessive period. He was caught. His bail was rejected. He came to the Supreme Court of Appeal and wanted a
Writ against the Judge and the Police Officers claiming damages for assault and false imprisonment. Lord Denning very carefully interpreted the law stated by Lord Tenterden in Garnett v Ferrand (1827) 6 B&C 611. The ratio was applied.

Further Lord Denning has discusses about the conduct of the Crown Ministers. In this regard, he had given us his own experience at the Profumo Affair. Lord Denning also discusses the conduct of the directors. He quotes the case- Re Pergamon Press Ltd. 1971 CH 388 (75) In this case Lord Denning discusses the nature of the ‘Corporate Veil’. The Companies Acts of the U. K. as well as of India guarantee certain freedoms to the directors of the companies and they take the disadvantages of this curtain and commits all sorts of fraud beneth its. The enquiries are done and sometimes the reports are ignored. It is nothing but the cutting of the time. Further Lord Denning discusses about the conduct of gaming clubs. In this regard He mentions R. v Gaming Board (1970) 2 WLR 1009. The case is related to Crockford which is one of the most famous gaming areas of London. There was a Club at 16 Carlton House Terrace. They played there the familiar games: chimin-de-fer, baccarat, roulette, blackjack and craps. By the Gambling Act 1968 all these gaming clubs must had a license and for that purpose they had to apply to the Gaming Board for a ‘Certificate of Consent; Crockford duly applied, but the Gaming Board refused it. They said that those who ran the club were associated with certain persons of unacceptable background and reputation;

The Board refused to disclose some confidential information which they had. Thereupon Crockford was instructed by the learned Mr. Quentin Hoff, QC (afterwords Lord Halisham). The Board was instructed by a very experienced legal expert Mr. Raymond Kidwell QC. In those times Lord Wilberforce was on the Bench of the Supreme Court of Appeal. On very rare occasions, if the House can spare a Law Lord, he came to help. It was a great advantage to have Lord Wilberforce on the Bench. There were several points in the case which were minutely discussed by the Law-Lords. Both Lord Denning and Lord Wilberforce criticized the excessive discretion of the administration.
Then Lord Denning comes towards the conduct of alien. Here he mentions the landmark legal case, **R v Home Secretary exparte Hosenball (1977) 1 WLR 766.** In this matter Mark Hosenball was an American Journalist. He came in the UK when he was only 18 and took part in investigative journalism. He had permission from the Royal Home Office to be in UK. His permit had four weeks to go when he received a letter from the Office. It told him that he could no longer to stay because the Hon. Secretary of State had decided to deport him. It was decided in the interests of national security. Lord Denning carefully read the statement which was enclosed with the Appeal Memo. The statement was in official language: but if translated into Plain English it means that the Secretary had thought his presence in the UK was unwelcome and he could no longer be permitted to stay. Here Lord Denning applied the ratio of Lord Finley in **R v Halliday 1917.AC 260** in which His Lordship has carefully interpreted the maxim-‘The Laws of Natural Justice are silent when the very existence of the State is endangered by the warlike situation or the alien espionage.’ Lord Denning applied the similar ratio to this case, eventhough the Americans are the former subjects of Her Majesty and they fought both the World Wars supporting the Royal Army.

Then Lord Denning discusses the conduct of lawyers especially in relation to the delays. He has quoted a stanza from the Geoffrey Chaucer, the Father of English Poetry. In his immortal classic, ‘The Canterbury Tales’, he describes the ‘Sergeant of the Lawe’- [33]

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“ No-ther so bisy a man as he ther nas,  
And yet he scmed biser than he was”.
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Here Lord Denning humourously points out the pretence of the advocates to show them more busy than they actually are. He further condemns the all sorts of the delaying tactis usually played by the all classes of the lawyers and advises them to follow the Rules and the conventions of the noble profession. He then mentions **Allen v Mc Alpine (1968) 2 QB 229.** Lord Denning describes it as a great case because they reserved it over the Christmas vacation. Lord Justice Diplock remarked that it was the most important work they had done. In all the civil cases, the speed of the matter is set by the plaintiff/petitioner who is making the claim. It is he who has to issue the writ and to serve it. It is he who has to put in the statement of claim and to serve it. It is he who can call upon the defendant/respondent to put in a defense or suffer the consequences in
case of negligence. If the plaintiff/petitioner himself takes a long time the delay is inevitable. Allen v Mc Alpine is a landmark case in which Lord Denning stressed for laying down a timetable with which the plaintiff was supposed to comply. The case has inspired the Speedy Disposal Acts all over the world. **The Speedy Trial Act of 1974 (88 Stat. 2080, as amended August 2, 1979, 93 Stat. 328, 18 U.S.C. §§ 3161-3174)**, establishes time limits for completing the various stages of a federal criminal prosecution. In India, **The Civil Procedure Code 1908** has been amended so as to have a speedy disposal from the Bench.

He also mentions **Bremer Veulkan v South India Shipping, 1979 WLR 471 (97)**. In this case it was held that arbitrators had the same power as a Court to dismiss for want of prosecution: and further that where the claimant had been guilty of enormous delay, the other side could apply to the court for an injunction: and that the court could order the claimant to desist from proceeding further with the arbitration.

**PART III : ARREST AND SEARCH**

After this, Lord Denning turns towards Part Three of the book which he has devoted to Arrest and Search. These two important elements are directly related to human rights. They are the outcome of his Hamlyn Lectures delivered in 1949. He has stated about the personal freedom-

> “It must be matched, of course, with social security, by which I mean, the peace and good order of the community in which we live. The freedom of the just man is worth little to him if he can be preyed upon by the murderer on the thief. Every society must have means to protect itself from marauders. It must have powers to arrest, to search and to imprison those powers are properly exercised, they are the safeguards of freedom. But powers may be abused, and if those powers are abused, there is no tyranny like them.”

Lord Denning regards Police Department as the Guards of Freedom. According to him the police must act properly and within the power which is granted to them. When a constable says to a man-
'Come along with me, I am taking you to the Police Station.'

It is an arrest. No matter whether the man goes quietly or resists. After the arrest, it is the responsibility of the police department to protect the accused until the further judicial procedure is completed. It should be borne in mind that he is innocent until the contrary is proved. Lord Denning specifically states **Dallison v Caffery (1965) 1 QB 348.** This case is a typical story. A typist was working in with an advocate at Dunstable. She went to the bank, collected the money and put £173 in the safe. She shut the door of the safe but did not lock it. She was just leaving for lunch when she saw a man on the landing. He proposed help which she denied. She went upstairs for a few moments. Coming down she found £173 was missing. She called the Police Team. Detective Constable Caffery was In-charge. She gave them a description of the man. They look her to the CID office. They showed her some photographs. She picked out one photograph of a criminal well known to the police. It was Dallison. She recognized the man.

The police went to London. They saw Dallison. He said that he was working at another place that day. They did not accept his alibi. They arrested him. They took him to his home. They took him to the place where he said he had been working that day. They searched his house and found noting. They took him back to Dunstable. Before taking him back, however, they want to see some very respectable people, Mr. and Mrs. Stamp and Mrs. Lansman. Their evidence tended to support his alibi. An identification parade was held. There were 11 men of similar appearance to Dallison. The typist pointed to Dallison and went up and touched him. He was taken before the magistrate. Further Lord Denning towards making a search by the police. Before 1970 the position of Common law was not clear in this regard. In an important case a passport was withheld. It was the famous **Ghani v Jones 1970 QB 693.** There was a Pakistani family living near the Oxford campus. The wife was not found while the husband had abruptly returned back to Pakistan. The police had doubt that he had murdered her. His father, mother and sister remained in the house. The police searched it and took the passports of the three of them. They continued their inquiries, still believing – on reasonable grounds- that the husband had murdered his wife. Meanwhile the Pakistanis demanded their passports back as they wanted to go back to their country for the holidays. The police refused to give them up. Lord Denning and the other judges of the Court of Appeal made an order for their release. Then Lord Denning has discussed
a landmark case, **R. v Governor of Brickston Prison exparte Soblen 1963 QB 243**. In this case Dr. Soblen was a Lithuanian medical practitioner. He went to America in 1941. It is doubtful whether he was spying for the Russian Administration. Lithuania as it then was, a part and parcel of the vast Russian Empire. He was caught, charged and sentenced to imprisonment for life. He preferred an appeal before the Federal Court of the U. S. A. It was dismissed. He any how went to Israel upon his brother’s passport. He was again caught. They put him on a plane which came to London. He tried to wound himself with a knife. He was admitted to a hospital. Here he applied for the writ of Habeas Corpus. The Home Secretary decided to send him America. The issue in this case was whether the Home secretary can order for the deportation when the matter was before the court.

Then an important case of the stolen ladies garments is brought to our notice in which he has given his landmark judgment which is corollary with the ancient doctrine of 'Tresspass ab initio' through the classic **Six Carpenters Case 1610 (8) Co. Rep. 146**. In this case the six carpenters went to a tavern. They had worked hard and were under fatigue. They were hungry. They drank wine and ate heavy food. Then they started to go without giving money. They said they had no money. It was held that if a man abuses an authority given by the law, he becomes a trespassers ab initio. Lord Denning then turns towards the new procedures which are now followed in relation to search committed in secret and offender possessing important documents. If the warning is given thy may dispose off them.

**Anton Pillar K.G. v Manufacturer Process Ltd. (1976) CH 55**

In this case Lord Denning orders for the Anton Pillar remedy. The new procedure was invented by Mr. Hughe Laddie QC an advocate working on the Chancery. He was consulted by the makers of gramophone records. They had the copyrights in all kinds of music and earn their living from the concerned royalties which they acquire. The recordings can be easily copied: and there is a vast market for the pirates of them. These pirates reproduce the music illegally on tapes and records. They have a cheap apparatus. The infringing copies are sold by small shopkeepers at a very low rate. In a case in 1974 the owners had a copyright in sound recordings of Indian music. They found out that one Mr. Pandit, an Indian settled in the UK, having a small shop in Leicester, was selling infringed copies at a very low price. The Supreme Court of Appeal issued a writ against him. He swore an affidavit in those proceedings and said that he had only a
few of those records. He said that he had bought them from a Mr. Hajisayed, a subject of Dubai, UAE. The Royal Police could not the aliens scattered all over the globe and they decided to put sole responsibility on Mr. Pandit. Lord Denning through this case discussed the delicate matter of copyright piracy and has given us valuable suggestions for its control. They can still be followed throughout the world for the suppression of this severe crime against the human brain.

**PART IV : THE MAREVA INJUNCTIONS**

Part-IV of the book The Due Process of Law has been devoted to Mareva Injunctions. Lord Denning stresses the importance of a case of 1975 in which he issued a judgment in *Nippon Kayesha v Karageorgis* (1975) 1 WLR 1093. The facts of this case were simple. Japanese ship-owners entered into charter parties with two Greek gentlemen. They did not pay the hire and disappeared. Their office in the Piraeus (Kingdom of Greece) was closed. But they had enough funds in the Bank of London. The Japanese owners feared that the two Greek gentlemen would transfer those funds to Switzerland or some other country. It could be done in a moment by a telegraphic transfer. Hence their solicitors wanted an injunction to stop the funds being removed from the Bank of London.

The judge refused it on the simple ground that nothing of that kind could be done in England. The Japanese ship-owners immediately came to the Supreme Court of Appel and Lord Denning immediately granted the injunction. This equitable remedy saved them from destruction. Otherwise the ‘de jure’ victory becomes the ‘de facto’ defeat. *Mareva v International Bulk Carriers* (1975) 2 LR 509. In this case Ship-owners let their vessel, the Mareva, to time charterers on terms which required hire to be paid half each 15 days in advance. The charterers defaulted on the third installment. But there was money in a local London bank in their name. It had been paid to them by the Government of India as freight for the voyage: and that was money which the time charterers should use to pay the hire. They did not pay it. On this occasion the senior counsel, Mr. Rix drew the attention of the entire Bench of the Supreme Court of Appeal which shew the then view that no injunction could be granted before judgment. Lord Denning strongly rejected the arguments and favoured the issue of the most powerful equitable remedy. He thus protected the human rights of even those subjects/citizens of the Realms/Republics which were against Sovereign of the Commonwealth Realms in the last two World Wars in
which he himself had served as a Cadet under the Royal Engineers. In the first case, the interests of the subjects of the Empire of Japan were protected, while in the second the same was done for the Indian citizens. It is particularly attitude of Lord Denning as a Judge. As the Indian jurist Smt. Suchitra Vijayan points out that Lord Denning had his biases and prejudices, however he never allowed them to meddle in his sacred judicial work which the Sovereign of the Commonwealth Realms had entrusted him while considering his high capacity. Work itself was a sort of worship to him. It was, just like his preceptor Lord Atkin, the very influence of the moral philosophy of Lord Jesus Christ which is based upon self-sacrifice for the sake of fellow human beings, irrespective of any sect or religion. The two cases of Nippon yusen Kaisha v Karageorgis and Mareva v International Bulkers are part of the evolutionary process. The grand Supreme Court of Appeal was presented with sets of fact which called aloud for the intervention through the equitable remedy of an injunction. One can easily understand that it was both just and convenient that the Royal Courts must always restrain the debtors from removing their funds from all the Commonwealth Realms under Her Majesty’s jurisdiction. In case, if they become successful in doing so, the justice given by the Royal Courts anywhere in the UK, Australia, Canada, New Zealand etc. would become a part of theory only.

PART V : ENTRANCES AND EXITS

Part V of the book is related with entrances and exits. The part also throws ample light upon the delicate concept of the Commonwealth citizenship. It is fully discussed in the Chapter IX of the present research work. However, as an academic interest the researcher finds it necessary to study the position of the Commonwealth citizenship in the Post-Denning era. It is to be noted that in recognition of their shared heritage and culture, the Commonwealth countries are not considered to be "foreign" to each other. While dealing with each other, the Commonwealth governments appoint the High Commissioners. Between the two Commonwealth Realms, they represent the Head of the Government rather than the Head of the State. In the Commonwealth countries which are not Realms and are Republics (India, Pakistan, Mauritius etc) or National Monarchies (Lesotho, Swaziland, Tonga etc) they represent their Head of the State. All these countries appoint Ambassadors in Non-Commonwealth countries. However, some Commonwealth Realms may consider other members to be foreign for certain purposes. For example, the Hon. Australian High Court in SUE V HILL (1999) HCA 30 has held that the
United Kingdom is a foreign power for the purposes of Section 44 of the Constitution of Australia. [1982] In this case Heather Hill, the UK born [Australian] subject of Her Majesty was prevented to return to the Parliament in ACT Canberra. It is to be most carefully noted that there are dissenting judgments.

PART VI to VIII: FAMILY LAW AND DESERTED WIVES

Part VI is fully devoted to Lord Denning’s venture into the domain of family Law. In 1944, he was elevated to the High Court and he was given a bench of the Divorce Division. In those times the Family Law was considered inferior if compared to Property Law or Criminal Law work. He stresses some of his early cases. He was always unwilling to decree a divorce and tried for the union upto the last circulation date. He remained there on Divorce Division for 18 months. When Lord Jowitt became Lord Chancellor, he called Lord Denning to the kings Bench. Further Lord Denning tells as the story of emancipation of male female inequality. He tells us about the attitude of the judge by quoting St. Paul-[36]

*For the husband is the head of the wife....*
*So let the wives be subject to their Own husbands in everything’ (Ephesians V, 22-24).*

Then he turns towards the legal philosophy of Sir William Blackstone and stated- [37]

*“Upon this principle of an union of person in husband and wife depends almost legal rights, duties and disabilities that either of the them acquires by the marriage “Commentaries I- 442”*  

In the part seven of the book Lord Denning gives us the important aspect of the deserved wife's equity. In this chapter the Law Refors have been given in detail. Lord Denning issued a number of judgments which finally established the right of the deserted wife upon matrimonial homes. We find the humourous attitude of Lord Denning when he quotes the classic satire 'Don Quixote' written by Shakespeare's Spanish contemporary writer – Cervantes. 'Don Quixote' always wandered though out the world. He is in search of getting opportunities in relieving the beautiful damsels in distress. Lord Denning states that some people might make a fun of him as he also always tried to protect the deserted wives. He provides account of H v H. (1947) 63 TLR 645. It was the first case of deserted wife decided by Lord Denning. It was in relation to the dispute over the matrimonial home. Lord Denning carefully interpreted the S-17 of the Married Women's Property Act 1782 and hundred over the possession of matrimonial home to the wife by
reversing the judgments of the Lower court. Lord Denning also quotes one another famous case- Pettitt v Pettitt. 1970. AC. 777. In this case the Lords declared that section 17 of the Married Women’s Property Act 1882 was procedural only. It can not affect the legal rights of either party. The wife got Legal Aid and took it to the House of Lords. Then for the first time they had an opportunity to consider all the cases decided by the Supreme Court of Appeal over the last two decades. They considered the principle which Lord Denning had sought to establish: namely, that under section 17 of the 1882 Act, the Court could do what was fair and just in all the circumstances what had happened. They also held that section 17 was procedural only and was unable to create any legal rights. He concludes his classic with an epilogue. It contains some aspects of his family story, his brothers and sisters. He remembers his two brothers, Jack and Gordon. That was the Remembrance Day. It is celebrated in the Occidental world as the Memorial Day for the departed souls. In the Oriental world it is called ‘The Shraddha’. Thus the classic is just like a dedication to Jack and Gordon, the two brave heroes who gave up their lives for their motherland and became an eternal part of His Lordship’s personal memory as well as the national memory recorded in the history of the United Kingdom.