Chapter 5
What Next in the Law

Illustration - 24

The Law must be stable but it must not be stand still.
Roscoe Pound (1870 - 1964). An Introduction to the Philosophy of Law. *


What Next in the Law is the third flower of the Christmas series published in 1982. This book is treated as the most controversial book of Lord Denning because the original edition had some defamatory material against the non white subjects of Her Majesty living in England. Two black jurors threatened to take legal action against Lord Denning. He declared his superannuation. As usual Lord Denning begins his book with beautiful Biblical quotations. Here he has given us-

[38]

*Not ‘forfeiting those things which are behind,*
*And reaching forthunto these things which are before,*
*I press toward the mark...’*
PART I: GREAT REFORMERS

The book is divided into eight parts. In the first part Lord Denning provides an interesting account of the eminent law reformers of England. He traces them from the Legal and Constitutional history from A.D. 1200 onwards. The great jurist Henry Bracton is mentioned in the very first chapter. The Life and Works of Henry Bracton has always inspired the students and professionals of law. Lord Denning also had great respect towards him. Bracton made notes of 2000 cases from the Roman occupation of England upto his own times. In those times the judicial work was conducted in Latin language. Bracton also wrote in Latin. Presently his single book is surviving – 'Laws and Customs of England'. Bracton served as the judge of Crown Court in the Reign of King Henry-III. He declared-[39]

\[Quod\ Rex\ non\ debet\ esse\ sub\ homine,\ sed\ sub\ Deo\ et\ Lege.\]
\[The\ King\ is\ under\ no\ man,\ but\ under\ God\ and\ the\ Law.\]

Bracton was a staunch Royalist. When King Charles-I had to face a trial under John Bradshaw, he refused to plead and just quoted the above mentioned maxim from Henry Bracton. It was, after all, an 'Inter-regnum'. The King was sentenced to death. He walked out of the Whitehall Palace and mounted the scaffold. This is most pathetic event in the History of the English People. It was witnessed by the great contemporary poet Andrew Marvell. The King's regal behavior up to the last breath of his life has become a source for many immortal works of art. Marvel states in his 'The Royal Actor'-[40]

\['He\ nothing\ common\ did\ or\ mean\nUpon\ that\ memorable\ scene:\nBut\ with\ his\ keener\ eye\nThe\ axe’s\ edge\ did\ try…\nBut\ bowed\ his\ comely\ head,\nDown\ as\ upon\ a\ bed’.\]

The sacrifice of King Charles-I must have become a source for the Restoration of the first Constitutional Monarchy of the world under his son King Charles-II, after twelve years of Interregnum. Albeit, in theory, he was the King right from the aforesaid most sorrowful event of regicide. The Restoration paved the way for a permanent and the most stable Royal
Administration, which continued throughout the long history and which is still continue all over the 16 Commonwealth Realms. Even two most horrible World Wars could not shake the Royal Administration and the emotional affinity within the Commonwealth Realms. The stable administration developed the British, the Australians, the Canadians, the New Zealanders etc. in all walks of life. The great Poet Laureate of the Realm, Lord Tennyson has boastfully sung, in his Patriotic Song thus-[41]

'A man may speak the things he will,
A land of settled government,
A land of just and old renown,
Where freedom slowly broadens down,
From precedent to precedent.'

Lord Denning then gives us an account of The Life and Works of Sir Edward Coke (1552-1634). Coke was a great Law reformer. In the words of Sir William Holdsworth-[42]

“What Shakespeare has been to literature, what Bacon has been to philosophy, what the translators of the authorized version of the Bible have been to religion, Coke has been to the public and private law of England.”

The Life and Works of Sir Edward Coke inspired the legal community throughout the Common law world. Sir Edward Coke (1 February 1552 – 3 September 1634) was an English lawyer judge and politician. He was considered to be the one of the greatest jurist of the 16th century Born into a middle class family. Coke was educated at the Cambridge University. He was called to the Bar on 20 April 1578. As a Barrister he took part in several notable cases and then was elected to Parliament, Following a promotion to Attorney General, he led the prosecution in several notable cases, including those against Sir Walter Raleigh and Devereux and the Gun powder conspirators who aimed to turn the table of the Royal Administration. As a reward for his services to the Crown, he was first knighted and then elevated as the Lord Chief Justice of the Realm. As a Chief Justice, Coke restricted the use of the oath and declared the King to be subject to the law. According to him the laws of Parliament must be void if they are in violation of "common right and reason". These actions eventually led to his transfer from one legal post to
another. Coke then successively restricted the definition of High Treason and declared a royal letter illegal. He was dismissed from the bench in 1616. There was no chance of regaining his judicial posts. He returned to Parliament and with the message of the Petition of Right in 1628, Coke retired to his estates, where he revised and finished his Report and the Institutes of the Laws of England. Coke died on 3rd September 1634. Lord Denning further refers a landmark case John Codet v Bishop of Coventry. In this case, His Majesty sent a message to Coke to stay the proceedings against the Bishop. But Coke boldly said-[43]

"I will not do what the King asks.  
The judge ought not delay the matter  
At the request of King"

Coke is also one the early jurist who understood the importance of systematic Law Reporters for the legal community. However some of his Law Reforms were controversial and he was dismissed from the Kings Bench. Then Lord Denning gives us an interesting life account of the great Law reformer Sir William Blackstone. Today the world remembers him on account of his immortal classic in four volumes i.e. Commentaries on the Laws of England. Sir William Blackstone (10 July 1723 – 14 February 1780) was an English jurist, judge and a Tory (Conservative) politician of the eighteenth century. He is most noted for his enormous legal writings Born into a middle-class family in London; Blackstone was educated at the Oxford University and the Middle Temple. He passed his BCL in flying colours. He became a leading advocate. His fame, now, rests upon Commentaries. Lord Denning was deeply influenced by Blackstone’s philosophy.

Then he turns towards William Murray, afterwards Earl of Mansfield (1705-93). William Murray, 1st Earl of Mansfield, (2 March 1705 – 20 March 1793) was a Scottish Aristocrat, a Barrister, a politician and finally a judge noted for his Law Reforms. He has been called the Founder of English Commercial Law. He is perhaps best known for his judgment in the world famous Somerset’s case, where he held that slavery was unlawful in England, though this did not immediately end slave trafficking, it certainly started an anti-slavery mission in England. Lord Denning covers this chapter on William Murray with the words of William Cowper, the great contemporary poet who witnessed the fiery mob burning Murray’s library-[44]
Lord Denning then turns towards Lord Brougham (1778-1868). He was a great law reformer of the Victorian Age. Henry Peter Brougham, 1st Baron Brougham and Vaux (1778–1868) was a British statesman who was elevated as the Lord Chancellor of the Commonwealth Realms. As a young lawyer in Edinburg, Brougham contributed many articles to The Review. He went to London, and was called to the English bar in 1808. In 1810 he entered the Imperial Parliament. Brougham condemned the slave trade. In 1820, he won immense fame as the Chief Legal Advisor to Queen Caroline. In the next decade he became a liberal leader in the House. He not only proposed educational reforms in Parliament but also was one of the founders of innovative education societies throughout the United Kingdom and other Realms under the Crown.

PART – II : TRIAL BY JURY

Part II : of the book is devoted to trial by jury. Lord Denning in this part has given us the importance of jury system, its history and its present status. The system is closely associated with Ancient Nyaya Panchayat system of India. The Indians also believe in 'Panchmukhi Parameshwar' (The God speaks through the Five Mouths). [45] Lord Denning was a staunch supporter of the trial by jury. In his time some of his contemporary judges opposed the system. In India the system received a deathblow after 1947. Presently its fossils are available at the Coroner’s Court in Bombay only. The system is nothing but the process of the ‘Democratization of the Judiciary’. It is in fact a system by which a true ‘peoples’ verdict’ is issued.

The Criminal Procedure Code 1973 (India) has fully abolished the jury system. It is interesting to note that the system is still continuing in the Coroner’s Court at Bombay. [46] Lord Denning says that the trial by jury is an inherent and in valuable right of every British subject. Further Lord Denning gives us an interesting account of a merchant's case reported in Yearbook of 1367. A merchant named Henry of North Hampton took his clothes for sale in a cart and started to go in Stammford. Another merchant Robert seized the goods and claimed them. Henry
sued Roberts. Robert pleaded 'Not guilty'. The Jury's were divided in opinion. The judge directed each to give his verdict separately. Each said 'guilty' and one said 'Not guilty'. When the judge rebuked, the minority juror, he remained adamant. The judge realized his mistake and followed majority. The court quashed the verdict. The court added that the judge must have carried the jurors from town to town in a wagon until they agreed. So the principle was established that the jury must be unanimous. Now the Act of 1967 has altered the position of jury system in England. Then Lord Denning tells us about the **Trial of the Quackers**.

Lord Denning traces these trials. Quackers are the most religious people who fear God or in other words Quake (Tremble) when the name of God is taken. William Penn and William Mead were the preachers of the Quakerism. In 1670 they were charged for causing an unlawful assembly in London. The Recorder directed the Jury to find the Quakers guilty but they refused. The Quakers were detained in a cell and kept all night without food, drink or candles. The Juries gave the verdict of “Not Guilty”. However, they were fined with 40 marks each to be paid in cash. The case shows the power of the Juries in history. Normally there were appeals to Privy Council. Then Lord Denning tells us about the Golden Age of the Trial by the Jury – from **Mac Naughten’s case** (1843) – 10 C. l. & Fin 200. In this case one Daniel M’Naghten was charged with murder. It was said that on 20 January 1843 he got-

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“.......... a certain pistol of the value of 20 Shillings loaded and charged it with gunpowder and a leaden bullet. He held it in his right hand and shot Edward Drummond in the back …. Of which wound the said E Drummond languished until the 25th of April and then died.”

He has also given the reference of Kith Simson whose autobiography 'FortyYears of Murder' has become famous. He tells us the story of a murderer who often pleaded insanity. In Feb 1949 Haigh murdered an old lady. This story has been recorded by Mr. Keith Simpson in his autobiography “**Forty Years of Murder**” The murderer put the body of the old lady into a 40 gallon still tanks into which he pumped concentrated Sulphuric Acid. After three days he poured it off. But Prof. Keith Simpson found a gallstone which was not dissolved in the Acid. It proved the murder clearly. Lord Denning further turns towards the civil cases tried by jury. He gives us an interesting account of **Bridges v LNER (1874) L. R. 7 H. L. 213.** In this case a train stopped at a station. There was a long platform. A passenger jumped out on to a pile of rubbish.
He was severely injured. The case was tried by one of the best of judges of the Realm, Mr. Justice Blackburn. There was no evidence to go to the jury. He directed a non-suit. The jury protested. They told the judge that they thought there was evidence and awarded £1,200. The case was appealed to the House of Lords. The judges were summoned to advise the House. All the way up there was a no similarity of opinion among them. Lastly the decision of the jury was upheld. Then Lord Denning tells us about R v Dudley (1884) 14 QBD 273. It is a horrible case. There were four people on a small English boat ‘Mignonett’ – three men and a cabin boy. It was going to Africa. There was no food and no water. They found some turtles in the water and fed on them. After some days when the three men were hungry, they killed the cabin boy and fed on his body and blood. They were caught. Their solicitor pleaded for Necessitus non habet legum (Necessary knows no law) It was rejected by Baron Huddleston and the capital punishment was infected. Their mercy petition was allowed by the Crown and the sentence was commuted to six months rigorous imprisonment.

In the times of Lord Denning even the divorce cases were tried by the jury. To prove this, he quotes Russel v Russel (1924) P-1. John Russell was the heir of the aristocratic Russell title and the huge dynastic estates. He married a beautiful young girl Christine in 1918. A son was born on 5 October 1921. He said he was not the father of the newly born son. He brought a petition for divorce on the grounds of her adultery. He charged her for continuously living in adultery with two named men and with an unknown man. The case was tried by a special jury. They acquitted her in respect of the two named men but disagreed as to the unknown man. The husband then brought a fresh petition charging her with adultery with another named man and also an unknown man. She was further charged for committing breach of promise. The jury found that she had not committed adultery with the other named man but that she had committed adultery with a man unknown. The judge thereupon granted a decree of divorce. Their decision was upheld by the Supreme Court of Appeal but it was reversed by the House of Lords. In this Apex Judicial Organ, three Law-Lords gave the concurrent judgment while two Law-Lords issued their separate dissenting judgments. In this case Lord Denning has given the academic importance of the dissenting judgments. The Age of Lord Denning witnessed tremendous reform in the jury system. They are as follows-[48]

1. No jury in civil cases
2. Acceptance of majority verdict.
3. No room complacency.
4. Any one can be jury.
5. Jury vetting- rival philosophies
7. Right to challenge
8. No juries in paltry cases.
9. Special juries for fraud cases.

Lord Denning has greatly contributed to the reformation of Law in relation to juries. The Act of 1967 is an outcome of his recommendations. He reformed the ancient democratic functioning of the jury system in such a way that it still remaining suitable for the 21st century. The jury system is prevalent in most of the Commonwealth countries. It is fully abolished in India. Lord Denning has even suggested the way of suggesting jurors. He stresses rut for any monetary limit but for good characters. Certain education and respect in the society as well as some knowledge of law are must for a person who wants to become a juror. Lord Denning condemns the political recommendations and states that the jurors must be appointed in the Apex Judiciary under the recommendations of the local magistrate. In England the juries in a criminal case are often 12 (twelve). There was discussion on reducing them to sever Lord Denning did not agree with such proposal. According to him the verdict must be discussed and issued by the large numbers. Hence there must be 12 juries he recommended – 1. Peremptory challenges abolished. 2. Complicated cases of fraud not to be tried by the jury. 3. Jurors no longer to be taken at random from the electoral register. 4. Jurors must be qualified persons having some knowledge of law.

**LEGAL AID**

**Part-III** of the book is devoted to Legal Aid. According to Lord Denning, the system of Legal Aid is a great revolution in the law after the Second World War. In this part, he describes about the lawyers fees and expenses which are paid by the state and not by the party concerned. Before the Second World War, all the costs were first borne by the plaintiff. If he won the case, the cost would order the defendant to pay his cost. Lord Denning here introduces us to the literary classic
'Pickwick papers' written by eminent novelist Charles Dickens. He was the Pioneer of Legal Realism in World Literature. He depicts the human struggles and the interesting court scenes in many of his novels. Here he gives us his famous imaginary case BARDELL V. PICKWICK.[49] Mr. Pickwick faces a trial for breach of promise of marriage. The case is filed by Mrs. Bardell. Mr. Parker is the advocate of Mr. Pickwick, while Mr. Dodson is appearing for Mrs. Bardell. Lord Denning points out that the Lawyers engaged in the case were not paid properly. Mrs. Bardell's case is dismissed while Mr. Pickwick becomes free and Mrs. Bardell is imprisoned for costs. Here Lord Denning points out that, her lawyers Dodson and Fogg does not provide her the required co-operation. The matter is finally settled and the solicitors get their fees. Charles Dickens has also given us a scene from the Chancery in his other famous classic 'Bleak House'.

According to Lord Denning the Victorian system of Litigation was quite different. Here once again he traces a beautiful case Wallis v Duke of Portland (1797) 3 VJ 494. In this case there was an important matter in 1784 in relation to an election of a Member of Parliament for Colchester. The poll results clearly shew George Jackson to have a majority over his opponent George Tierney. The loser, George Tierney brought a petition claiming that George Jackson had bribed some of the electors and must be dismissed from the Parliament on account of the unfair practices. The Duke of Portland had strongly supported the petition of George Tierney. He had further promised to pay the legal expenses. The petition failed. The Duke did not keep his promise. He refused to pay anything. The solicitors sued the Duke but failed. Lord Chancellor Loughborough in his obiter stated thus- [50]

> 'Every person must bring his own suit upon his own bottom and at his own expense'.

Lord Denning tells us about contingency fee. Any agreement where the lawyer gets fees only after winning is nothing but champerty. The English law prohibits it. After the First World War, some solicitors became ready to help the poor in the court. Even Lord Denning as an Advocate appeared for such cases. It was the beginning of the Legal Aid system. The Legal Aid Act 1949 was passed on 30th July. The legal expenses including the lawyers’ fees and documentation are to be borne by the State. The scheme is only for the poor who in the opinion of the Legal Aid
Committee are facing injustice. There must be reasonable grounds to file before the Legal Aid Committee. Then Lord Denning has clearly pointed out certain drawbacks of the Legal Aid System – [51]

1. The lawyers don't show any interest in such matters.
2. The Legal Aid Committee can not assert in the exact nature of economic disability of the client.
3. How to find out the justice / injustice before the judgment. Lord Denning has advised the State to have an urgent fund for Criminal Legal Aid. He has asked to fix some particular income limit. He recommended the state.

PART – 4 PERSONAL INJURIES

Part-IV of the book is devoted to personal injuries. Lord Denning has resented over the shelving of the Report of Royal Commission it is in relation to the civil liability and compensation for personal injuries. In this chapter, he has given us the various aspects of negligence. He gives us the important case 'Cotton v Wood' (1860) 8 CBNS 568. In this case a woman was runover by a horse carriage and killed. The driver admitted that he was speaking with the conductor. The jury decided in favour of the plaintiff but the court set their verdict aside. Then Lord Denning turns to tell us about the famous Davis v Mann (1842) 10 M & W 546. In this case the plaintiff had a donkey. It was left to graze on grass at the side of the highway. It was attached to the tether with a strong rope. It could not go off any distance. The defendant came along with a wagon pulled by three horses. It was going in full speed. It knocked down the donkey. The jury decided in favour of the plaintiff. The court upheld the verdict. They did it because, although the owner of the donkey was at fault, the driver of the wagon was also going too fast. The case was decided by The Rt. Hon. Mr. Baron Parke. According to him a man might justify the driving over goods left on a public highway, or even over a man or animal lying there; it is the duty of the judges and the juries to see who had the last opportunity to avoid the accident. Lord Denning pointed out that, there was no insurance in old days. He then points out the various aspects of the modern times. According to him the law must also be changed according to the changes in the society. He gives three aspects of change-[52]
A) The speed and danger of motor traffic.
B) The introduction of compulsory insurance.
C) The introduction of social benefits.

Lord Denning further gives us an interesting account of 'Fitter v Weal' (1701) 12 Mod 542 In this case Veal struck Fitter a heavy blow on the head. Fitter brought an action of trespass and recovered £ 11 damages for the 'beating and causing grievous hurt. Afterwards he faced severe side effects. He therefore brought a second action. The defendant pleaded that it was barred because of the recovery in the first action. The court held that the plaintiff could not bring a second action. Chief Justice Holt said-

“This is a new case, and none to be found that we know like it: for every man that recovers damages, it is supposed he has received according to the damage that he has received. If the plaintiff's surgeon had come at the last trial, and shew that the plaintiff was not cured, the jury would have considered that matter; and then was his time to consider of the heinousness of the battery, and to give evidence of it …. And it shall be intended here that the jury gave entire satisfaction for the battery.”

He then gives us Benham v Gambling (1941) AC 157. This is a leading case on negligent driving which caused the death of a little child aged 2 ½ years. His father sued for damages on behalf of the baby's estate. It was a queer idea – that the dead baby's estate could recover damages. But the House of Lords held that the baby's estate could sue because the baby's life had been shortened. It had lost its expectation of life. But then what about assessment? The House of Lords said that the measurement must be done by 'loss of prospective happiness'. How can you possibly guess whether the child would have a happy life or a sad life to be measured in the form of money? The Lord Chancellor specially constituted an Ad-hoc Committee with himself and five Law Lords. He said-[53]

'Such a problem might seem more suitable for discussion in an essay on Aristotelian ethics than in the judgment of a court of law…

The Damages of £ 200 were calculated and the same was awarded. Later cases saw the hike upto £ 500. He further traces 'Picket v British Rail' (1980) AC 136. In this case Mr. Pickett
was man of fifty years of age. He was very fit. He had a wife and two children. He worked for the railway. His duty was to build the railway coaches. It involved contact with asbestos dust. He lost his health in 1974 at the age of fifty-one and died at the age of fifty-six. He sued the Railways. The House of Lords held that in this action he should be awarded damages for his 'lost years' that is, for the years from age fifty-six to sixty-five during which we would have continued working had he not been ill. The House overruled *Oliver v Ashman* and stated that Mr. Pickett had died in the course of employment. That decision in *Pickett's* case has given a broad interpretation to the term the course of employment.

**PART – 5 : LIBEL**

Part V of the books is fully devoted for the academic discussion of the Law of Defamation. He starts his treatise by quoting the importance of The Star Chamber Court. Lord Denning points out its existence in Shakespeare's 'Merry Wives of Windsor'. He has also traced its abolition, after the *Pryne case*. Lord Denning further tells us the position of common law over defamation. He traces an old case *'Crop v Tilney' (1693) 3 Salk 225*. When the King James II was about to quit, his Queen Mary and their baby son James were sent to France. This baby son was the Prince of Wales (afterwards known as the Old Pretender and his son Bonnie Pritte Charli, the Young Pretender). In 1693 the British were at war with France. There was an election for Parliament. One candidate accused the other of saying these words in support of the Old Pretender: [54]

> ‘There is a war with France, of which I can see no end, unless the young gentleman on the other side of the water be restored’.

There was no mention by name of James’s son. The issue was whether an innuendo was to be considered? In his pleading the plaintiff alleged that the young gentleman on the other side of the water referred to the Prince of Wales. Chief Justice Holt held that the words could be made actionable by an innuendo. He did so in sentences which expressed the law as it is today.

He said –[55]

> ‘Scandalous matter is not necessary to make a libel, it is enough if the defendant induces an ill opinion’.
It is interesting to note that in the case R v Bear, Chief Justice Holt declared 'God Save the King', will not excuse him' (1698) 2 Salk 417. In this case we find the lawyers of the seventeenth and eighteenth centuries had a stronger word for some libels. They called them *libelli famosi*. These were always heard by the jury e.g. the trial of the Seven Bishops, or the trial of the publishers of *The Letters of Junius*. It was defended by Thomas Erskine. He stressed for the intention rather than the actual utterance in the cases of defamation. An example from an early date is the case of R v Bear at the Devon Assizes in 1698. Bear was convicted and fined 500 marks. He wrote words supporting 'the young gentleman on the other side of the water' but added words apparently favourable to the King. He took exception to his conviction on the ground that his publication is only set out part of the words and not the whole. Chief Justice Holt rejected the arguments and said- [56]

'Regularly, where a man speaks treason, God save the King will not excuse him'.

Lord Denning then turns towards the Law of Defamation as it was in the 19th century. Here he traces the famous case Thorley v Lord Kerry (1812) Taunt 355. In this case, the churchwarden of a parish wrote a letter to Lord Kerry and handed the envelope to a servant which was easy to open. He opened it and read it thus- [57]

“I sincerely pity the man (meaning Lord Kerry) that can so far forget what is due, not only to himself, but to others, who, under the cloak of religious and spiritual reform, hypocritically, and with the grossest impurity, deals out his malice, uncharitableness, and falsehoods”.

Lord Kerry brought an action for libel. The jury awarded him £ 20. The churchwarden said that was erroneous. It was held that there was no libel. Then Lord Denning traces the famous Case R v Wilkes of 1770 and then points out that in the 18th century, the serious libels were tried by the criminal courts while the general libels were under the jurisdiction of the civil courts. In the above case the information against him was a criminal information that he caused to be printed and published a seditious and scandalous libel in *The North Britton* and an obscene and impious libel in An Essay on Woman (R v John Wilkes 1770 Burr 2527)
Thus at the close of the eighteenth century we find that serious libels were constantly tried and punished in the criminal courts but the less serious libels were the subjects of proceedings in the civil courts. Lord Denning further points out Newstead v London Express (1940) 1 KB 377. In this case the then Adv. Denning (after words Lord Denning) appeared for the plaintiff, Mr. Harold Newstead who was a bachelor hair dresser from Camberwell. The following news printed in –

**London Express**

**HAROLD NEWSTEAD, 30, COMMITTED BIGAMY**

Adv. Denning was engaged by Mr. Harold Newstead who instructed him to demand exemplary damages from the defendant. He relied upon Hulton v Jones [1910] He only got a pyrrhic victory. Damages of only £ 1/- were awarded. Lord Mac Kinnon declared thus-[58]

‘We sit here to administer justice, and not to supervise a game of forensic dialectics’

This case is the only detailed record of a case which Lord Denning has traced from his career as a Barrister. Then he tells us an interesting account of Cassidy v Daily Mirror (1929)2 KB 331. In this case one Cassidy described himself as a Mexican General. He was in fact a race horse owner. It was said in a newspaper that he was engaged with a beautiful damsel. Neither he nor that damsel complained. His real wife filed a suit for defamation. The Jury awarded £ 500/- as damages. Lord Geer dissented.

Lord Denning has deeply discussed the position of exemplary damages before and after 1964. He concludes with the case 'Hulton v Jones (1910)', and then provides his immortal suggestions.

**PART – VI: - PRIVACY AND CONFIDENCE**

Lord Denning introduces the part by citing Article 8 and Article 10 of the European Convention of Human Rights. He has given us the details of the classic Victorian case Prince Albert v Strange (1859) This is also called the Case of the Royal Etchings. According to Lord Denning,
**Prince Albert v Strange** is the foundation of the Modern Law of Privacy. Lord Denning referred the important matter in a speech which he delivered in the Grand House of Lords in 1861 and threw ample light upon this emerging branch of the modern law. In 1849 family photographs were not so common among the people. The Queen-Empress Victoria and the Prince Consort, His Highness Albert, ordered to make sketches. They made drawings of the children, relatives and of the close friends. They were much pleased with them. Then they had impressions made of them by means of a private press. The impressions were made of nearly 63 important sketches. They kept them in their private apartments at the Grand Windsor Palace of the Royal Family. There was a Royal Printer called Brown to make the impressions. He further employed a man, Middleton. It was, after all an illegal action because the delegate cannot further delegate. It is the cardinal principle of the Common Law throughout the Queen’s Realms, scattered all over the globe. However, in this case this Middleton copied the Royal Sketches and sold them to a man. Then this man secretly took them to a publisher, Strange, who made thousands of the reproductions of them and prepared a catalogue with the following title - [59]

*A Descriptive Catalogue of the Royal Victoria and Albert Gallery of Etchings*

Every purchaser of the Royal Paintings will be presented with a *fac-simile* of the autograph of either Her Majesty or His Highness, however for such ‘duplicate’ signed sketches, the purchasers must pay an extra coin of Sixpence. When Prince Albert heard of such a ‘signed sketch’ he was annoyed. It was nothing but a great shock to the Royal Couple. The Prince consulted his Barristers and it was decided that Strange, the immediate possessor of the illegal copies must face a severe legal battle for the breach of privacy of the Royal couple. Exemplary damages were also demanded so that no one living in any part of the Commonwealth Realms should dare to look through the Royal Household. The then Lord Chancellor, The Rt. Hon. Lord Cottenham immediately summoned Strange. He issued an affidavit and stated on oath that he struck off 51 copies only and then broken up the type. He did not sell any or offer them for sale because he heard that the Queen and the Prince had disapproved of it. So he submitted to an injunction about the impressions themselves. Strange wanted to publish the catalog. The Prince strongly objected the publishing of the catalogue. Strange disputed it. The only question was about the right to publish the catalogue. The Lord Chancellor granted an injunction. He said that the information (from which the catalogue was complied) must have originated in a breach of
trust, confidence or contract in Brown or some person in his employ and that an injunction was very properly granted to stop the publication of such confidential information. Then he traces *Wyatt v Wilson* (1820-1-Hall & Twells 25). In that the obiter of Lord Eldon is highly important. In those times it was heard that the Royal Physician was going to publish the Emperor’s Diary which the Emperor had handed over to him in illness. He was the Lord Chancellor at a crucial time, when King-Emperor George III had recently died. He was the last Emperor of vast American colonies which, according to the poet Walt Whitman were lost due to his own stubborn nature. Whatever the cause may be but the King-Emperor had started to live under a tremendous mental tension. Most of the Royal Tasks were handed over to the Crown Prince. Lord Eldon wanted to protect the privacy of the Monarch at any cost. He said- [60]

*If one of the late king's physicians had kept a diary of what he had heard and seen, this court would not in the king's lifetime, have permitted him to print or publish it.*

That observation is significant. Here Lord Denning distinguishes minutely between the Right of Privacy and the Right of Confidence. The King had not given any confidential information to the physician. But by publishing the diary, the physician would infringe the King's right of privacy. After citing two cases in relation to English Royalty, he turns towards the English Aristocracy. He traces the famous case *Duchess of Argyll v Duke of Argyll* 1967 CH 302.

The aristocratic couple had married in 1951. The divorce took place in 1963. They agreed to tell all about their previous private life to each other. The Duke started to sell her secrets to the periodical *The People*. The Lady sued for the breach of confidence. Justice Thomas Ungoid granted an injunction.

Here Lord Denning had provided us *Mulholland case* (1963 QB 477). As it has already been discussed in his previous books, The Due Process of Law, it is shortened here by just stating two lines. Here, the journalists were sent to prison by cause they refused to answer Lord Radcliffe. Then Lord Denning turns to describe the various aspects of *British steel v Granada Television* (1980) 3 WLR 774. This is the one of the most controversial cases of modern times. One person ‘X’ in the British Steel Corporation knew a lot of information about the confidential documents. They were marked 'Secret'. This person ‘X’ of British Steel was also called the 'mole' because he worked underground secretly and no one knew what he was up to. This ‘X’
handed over the said confidential documents to a journalist ‘Y’ employed by the Granada Television. It must be noted that Granada is a part and parcel of the vast Commonwealth Realms under the QMEM Elizabeth II. The Commonwealth citizens of this part of the Realm are also the subjects of Her Majesty. They are not treated as aliens in the UK. When ‘Y’ thought that they contained dynamite. It could be used to devastate British Steel. He took them to the head of current affairs in Granada and reported-[61]

'Look what I have got hold of. I will not tell you how I got them. But they are top-secret papers of British Steel'.

Granada's head of current affairs got their assessment. He decided that there were a number of points which were of considerable importance for all the Commonwealth Realms and the subjects living in the respective parts. He thought that a TV Program of some episodes is bound to increase the income from advertisements. They decided to invite Sir Charles Villiers, the Chairman of British Steel, to take part in the first episode. Accordingly, the programme was telecasted and became very famous. British Steel felt that the programme had made them infamous. They issued a writ against Granada Television. British Steel wanted more information of ‘X’. The only dissent was put forwarded by His Lordship, Lord Salmon in the House of Lords. Lord Salmon, in this case firmly issued the principles of the professional ethics for the investigative journalism the emerging new branch of social studies and said –[62]

'It seems to me that the principles which Lord Denning MR has laid down in the present case and with which I agree and the many authorities which he has cited in support of those principles, if they are as correct as I believe them to be, make it wrong to dismiss this appeal'.

It is one of the last important cases in the glorious career of Lord Denning. Lord Denning concludes the part by advising the Law commission to draft a new exhaustive bill to introduce the various aspects of privacy and confidence. He further wants to establish a new ‘Tort’ by recognizing ‘Right to Privacy’ as a fundamental right under the Unwritten Constitution of the United Kingdom. India is called an infant republic because the democratic Constitution was promulgated only in 1949. We have the longest Written Constitution and our Fundamental Rights contain the reflections the Right to Privacy.

PART – VII : BILL OF RIGHTS
Part VII of the book gives us an interesting account of the various bills of rights in the constitutional history of England. He first traces the Magna Carta of 1215. It is interesting to note that Lord Denning had a role in the legal and the constitutional history of the world. He gladly accepted the special invitation of the American legal experts who lovingly compelled him to become a chief guest at ‘The Magna Carta Exhibition-1985.’ (Photo- 35). He then gives us the importance of the Petition of Rights 1628. Lastly he traces the Bill of Rights 1689. Lord Denning has further compared the Constitutions of the United States with the English Principles. The political differences between the UK and the USA had nothing to do for the academic interests of Lord Denning. Then he gives us the importance of The Universal Declaration of Human Rights (1948). He has also discussed the present approach of the English Courts.

PART – VIII : MISUSE OF POWER

Part VIII of the book is fully devoted to misuse of power. As the aspects of this chapter are already discussed previously the researcher glance them with a birds eye view. Here Lord Denning discusses the misuse of power by the Kings, the Governor-Generals, the Prime Ministers, the Crown Ministers, The High Officers, the Legislators, the Media, the Trade Unions, and last but not least the Judges. He concludes the chapter by suggesting the effective measures. There is an exhaustive epilogue which describes the Opening Ceremony of the Parliament. He concludes with a parody of Lewis Caroll, the famous poet –

'You are an old Master of the Rolls'.