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# Punctuation of Statutes

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# PUNCTUATION OF STATUTES*

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PUNCTUATION of statutes is the subject of this report. Legislative drafting involves that subject and justifies some report thereon. No other report of the committee on legislative drafting has touched that topic; and the chairman of the committee assumes full responsibility for this one. At every conference considerable time is spent in discussing the punctuation of proposed uniform acts. Hence some study of that topic may be worth while.

"Punctuation is no part of the statute" said Justice Harlan speaking for the court in *Hammock v. Loan & Trust Co.*[1] "Punctuation marks are no part of an act" of congress said Justice Sutherland speaking for the court in *United States v. Shreveport Grain & Elevator Co.*[2] "For the purpose of arriving at the true meaning of a statute, courts read with such stops as are manifestly required" said Chief Justice Fuller in *United States v. Lacher.*[3] In *Cushing v. Worrick* the court said: "It is unnecessary to resort to the draft of the bill as passed to be engrossed, in order to explain the statute as actually engrossed; for the general rule is that punctuation is no part of a statute."[4] The law of England is the same as ours: "Punctuation and brackets do not form parts of a statute, and if found on the Parliament Roll, or a statute as printed by the King's Printer, can only at the most be regarded as contemporanea expositio."[5] The last quotation is the entire text on punctuation in that monumental work of 31 volumes covering all the laws of England. Said Lord Esher in *Devonshire v. O'Connor*: "To my mind, however, it is perfectly clear that in an Act of Parliament there are no such things as brackets any more than there are such things as stops."[6]

The pronouncements above quoted are definite and should

*This is a copy of a report made to the National Conference of Commissioners on Uniform State Laws by the author as chairman of the Legislative Drafting Committee. Mr. Brossard is the revisor of statutes of the state of Wisconsin. "Punctuation of Statutes" has previously been printed in 24 ORE. L. REV. 157 (1945) and in 69 N.J.L.J., Nos. 9 and 10 (1946).

1 105 U.S. 77 (1881).

2 287 U.S. 74, 82 (1931).

3 134 U.S. 624 (1890).

4 75 Mass. 382, 385 (1857).

5 27 EARL OF HALSBURY, LAWS OF ENGLAND 122 (1907-17).

6 24 Q.B.D. 468, 478 (1890).

be accepted as final. Texas has clinched the point by enacting a statute which declares that "in no case shall the punctuation of a law control or affect the intention of the legislature in the enactment thereof."[7] All states should enact a like statute. Wisconsin has kindred provisions. Section 35.19, WISCONSIN STATUTES, provides that "subchapter, section, subsection and paragraph titles, and history notes constitute no part" of the law. That section should be amended by adding a provision like that of Texas upon the subject of punctuation. The alternative is to adopt some text-book on the subject as the official standard and decisive of all questions of punctuation. Some states have resorted to that expedient for settling disputed spellings and maybe capitalizing and compounding. That no state has adopted that alternative as to punctuation is a strong reason for suspecting that the idea is unsound.

Possibly this report should end here. The foregoing authorities assert a sound and sufficient rule for the guidance of courts in disposing of punctuation problems. Yet in spite of what was said and often repeated by the Supreme Court of the United States about punctuation of statutes the subject will not down. Attorneys continue to wrangle and worry over punctuation; and courts occasionally defend or fortify their decisions with commas—absent or present or misplaced. "There be men who can a hair divide 'twixt east and northeast side."

Although punctuation is no part of a statute still punctuation serves a very useful purpose; and no draftsman of statutes can afford to disregard the subject. In fact he should give very careful attention to the punctuation of his drafts.

PUNCTUATION DEFINED: "Punctuation in *writing* and *printing*, a pointing off or separation of one part from another by arbitrary marks; specifically, the division of a composition into sentences and parts of sentences by the use of marks indicating intended differences of effect by differences of form. The points used for punctuation exclusively are the period or full stop, the colon, the semicolon, and the comma. The interrogation and exclamation point serve also for punctuation in the place of one or another of these, while having a special rhetorical effect of their own; and the dash is also used, either alone or in conjunction with one of the preceding marks,

[7] TEX. REV. STAT. (1895) art. 3269; TEX. STAT. (Vernon, 1914) art. 5503; TEX. STAT. (Vernon, 1936) art. 11.

in some cases where the sense or the nature of the pause required can thereby be more clearly indicated. The modern system of punctuation was gradually developed after the introduction of printing, primarily through the efforts of Aldus Manutius and his family. In ancient writing the words were at first run together continuously; afterward they were separated by spaces, and sometimes by dots or other marks, which were made to serve some of the purposes of modern punctuation, and were retained in early printing. Long after the use of the present points became established, they were so indiscriminately employed that, if closely followed, they are often a hindrance rather than an aid in reading and understanding the text. There is still much uncertainty and arbitrariness in punctuation, but its chief office is now generally understood to be that of facilitating a clear comprehension of the sense. *Close punctuation,* characterized especially by the use of many commas, was common in English in the 18th century, and is the rule in present French usage; but *open punctuation,* characterized by the avoidance of all pointing not clearly required by the construction, now prevails in the best English usage. In some cases, as in certain legal papers, title-pages, etc., punctuation is wholly omitted. The principles of punctuation are subtle, and an exact logical training is requisite for the just application of them."[8]

"Punctuation. 1. The use of points or marks in written or printed matter, for any of the following purposes: (1) *grammatical punctuation,* to indicate a greater or less degree of separation in the relations of the thought, as by division into sentences, clauses, and phrases, to aid in the better comprehension of the meaning and grammatical relation of the words; (2) *rhetorical punctuation,* to indicate some peculiarity in the expression; (3) *etymological punctuation,* to indicate something in regard to the formation, use, or omission of words or parts of words; (4) *punctuation for reference,* to refer the reader to some other place in the page or book. . . .

". . . Two styles of applying punctuation are now in use. One is termed *'close,'* the other *'open.' Close punctuation* is formal and constrained, and lacks the natural flow of words which *open p.* produces. Close punctuation is to be found often

[8] CENTURY DICTIONARY AND CYCLOPEDIA.

in English books printed in the 18th and early in the 19th century."[9]

The primary and legitimate function of punctuation is to facilitate reading. The Style Manual of the United States Government Printing Office says: "Punctuation is a device to clarify the meaning of written or printed language. . . . Well-planned word order requires a minimum of punctuation. The trend toward less punctuation calls for skillful phrasing to avoid ambiguity and insure exact interpretation."[10]

No draftsman of statutes should rely upon commas to convey his meaning. The language employed should carry the sense. The meaning of a sentence should be the same whether the words are spoken or printed. A statute should mean the same when it is read to the court as when it is read by the court. And attorneys seldom pronounce the points when reading to the court.

Punctuation is not a science. Writers on the subject call punctuation an art, and those who teach the art disagree very much among themselves as to the meaning of punctuation marks within a sentence. There is not now and there never has been a definite, authoritative standard for the internal pointing of a sentence. The styles in punctuation—like those in dress—change from time to time; but the constitutions and statutes adopted fifty or one hundred years ago mean the same as when they were enacted. If punctuation is allowed to control the meaning of a statute it become necessary to know the rules of punctuation in use at the time the statute was enacted. Even contemporaries disagree especially about the use of the comma. One punctuator will insert a comma where another would strike it out.

One work on punctuation says "It is evident, that, in many cases, the use of the comma must depend on taste." A later work commenting on the punctuation of that rule of punctuation declares that each of the 3 commas used by the earlier author was either erroneous or unnecessary. The use of the comma depends largely on the "taste" of the punctuator! That accords with Sam Weller's idea of spelling. In the celebrated case of *Bardell v. Pickwick*[11] Justice Starleigh asked Mr. Weller whether he spelled his name with a V or a W. The

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[9] NEW STANDARD DICTIONARY OF THE ENGLISH LANGUAGE.
[10] STYLE MANUAL OF THE UNITED STATES GOVERNMENT PRINTING OFFICE 101.
[11] DICKENS, PICKWICK PAPERS

witness replied: "That depends upon the taste and fancy of the speller, my Lord."

"The principles of punctuation are subtle and an exact logical training is requisite for a just application of them."[12] The law has enough inherent subtlety of its own to warrant the rejection of the subtle principles of punctuation when we come to interpret statutes.

Some courts have said that when all else fails the court will look to the punctuation of statutes to ascertain the legislative intent. Usually the decisions go no farther. The courts do not tell us the meaning or significance of the marks. No authority or standard is cited which will inform the reader as to the language of punctuation. And the truth of the matter is that punctuation like nature "speaks a various language." Unless the weight or meaning of a punctuation mark is definite and certain nothing is gained by relying thereon. Distance is not determined by measurements made with a stick of unknown and unascertainable length. The punctuation of the opinions in decided cases furnishes good reason for concluding that the standard generally used by judges is their individual conception of proper pointing.

Long years ago Hill's PRINCIPLES OF RHETORIC was used in universities. The author was a Harvard professor of rhetoric and oratory. His rules of punctuation are relegated to the appendix. We learn from rule one that "judgment and taste are . . . the guides to correct punctuation." Readers as well as professsors possess varying "judgment and taste." Lord Timothy Dexter must have thought of that when he produced "A Pickle for the Wise One" for he threw in a can of assorted commas and other marks to enable each customer to "season according to taste." The opening paragraph of the introduction to Summey's MODERN PUNCTUATION reads: "A Harvard professor of English, the author of a well known textbook on English Composition, has said of punctuation, 'I have never yet come across a book on the subject which did not leave me more puzzled than it found me'." After he had encountered all the books on that subject, "the last state of that man was worse than the first." Reading the case law on that subject may affect a lawyer the same way.

The index of the University of Wisconsin Library lists the following works on punctuation and only these:

[12] CENTURY DICTIONARY AND CYCLOPEDIA.

PUNCTUATION by Horace Teall (1897).
MECHANICS OF WRITING by Edwin C. Woolley, (1909).
WHAT IS ENGLISH by C. H. Ward, (1917).
MODERN PUNCTUATION by Geo. Summey, Jr., (1919).
APPLIED BUSINESS ENGLISH by H. A. Hagar, (1924).
THE ART OF WRITING AND SPEAKING THE ENGLISH LANGUAGE by Sherwin Cody, (1903).
BUTTERFIELD'S PUNCTUATION, (1858).
PUNCTUATION by Benj. Greenlief, (1835).
AN ESSAY ON PUNCTUATION by Joseph Robertson, (1785).

Professor Summey names 12 of the current works on punctuation, none more than 20 years old except Wilson's TREATISE ON ENGLISH PUNCTUATION which he characterizes as "The great 19th century authority" and "The traditionally standard textbook." Summey's list does not include a single one of the books on the card index of the University Library. The State Law Library lists nothing worth noticing. This gives some hint as to the perplexity of a hunt for an authoritative standard of the meaning or weight of punctuation points.

Some of the books lay down but few rules and others evolve a multitude of rules of punctuation. Woolley's MECHANICS OF WRITING gives 280 rules, classified as end punctuation, interior punctuation and designated punctuation. For the use of the comma he furnishes 199 rules. This is hair-splitting to the nth degree. In his NEW HANDBOOK OF COMPOSITION he reduces the comma rules to 10. And Mr. Teall, in his work, has a single rule for use of the comma: "Insert a comma after each slightest break of connection in the grammatical construction of a clause or sentence, but not where the words are closely connected in sense." Mr. Teall was the critical reader for the STANDARD DICTIONARY. He tells us that "This rule is very indefinite, as any sweeping rule must be." He also tells of the feeling, almost of despair, arising from a search for a reasonable and consistent treatise on punctuation; and his excuse for offering a new book on the subject is that a search made by him "failed to disclose a work that is worthy of unqualified recommendation." The excuse still holds good.

Nearly all of the discussions recorded in the law books upon the subject of punctuation involve the internal pointing of a sentence and 90 per cent involve the comma. "The questions in court relating to punctuation as affecting con-

struction have generally arisen on the presence, omission or misplacing of commas."[13]

Now if the points in a sentence are to decide its meaning there must be a code or standard to determine the meaning of the points in question. But there is no single standard. Double or multiple standards fail to answer the need. The many codes or systems of punctuation are not intended to serve that purpose. The textbooks on punctuation are intended as guides for composers and secretaries and compositors, for proof readers and printers. And all of those codes have for their purpose the making of printed matter easy to read. They proceed on the theory that a sentence is correctly punctuated when the marks enable the reader to extract the contained idea with the least mental exertion. The object sought to be obtained is much like that of the teacher of penmanship. The meaning of a sentence is the same whether it is scribbled or is written Spencerian style. The difference between the two is a difference in the labor required to read them. None of the codes of punctuation deals with putting meaning into the language used. It is assumed that the words used carry the author's meaning and that the reader can get along if all internal points were omitted, but that his progress would be much retarded. The punctuation aims at lifting the meaning of the words into plain view so that the reader may catch the sense at first glance and with the minimum of effort.

Quoting again from the STYLE MANUAL of the United States Printing Office: "The punctuation required even in well-phrased text should aid clearness. If the use of a punctuation mark is in doubt, the question to be asked is 'Why?' rather than 'Why not?' If doubt persists, the mark should be omitted to aid the smooth flow of words. Marks interrupt. They are needed only to make the thought clearer or to facilitate oral expression. Beyond that they are detrimental to speed, ease and exactness of understanding. Rules for punctuation may be arbitrary in origin and may be observed from habit or inertia."[14]

Not one of these punctuation codes deals with the subject from the standpoint of interpretation of statutes. That idea is scarcely suggested. No jurist has ever published a system of punctuation. Apparently each judge has his own notion of how

[13] SUTHERLAND ON STATUTORY CONSTRUCTION (Lewis 1904) 688.
[14] STYLE MANUAL OF THE UNITED STATES GOVERNMENT PRINTING OFFICE 101.

statutes and decisions should be punctuated. This is illustrated by what the jurist said in a case which arose upon a Michigan statute which provided that when the affidavit of a nonresident "is required, or may be received in judicial proceedings in this state, to entitle the same to be read, it must be authenticated" in a specified manner. It was contended that the requirement of authentication applied only to affidavits "received in judicial proceedings"; and did not apply to affidavits required elsewhere. The contention was rejected. The court said: "While punctuation is not of controlling importance, yet if the statute was intended to be limited to judicial proceedings it would have been more natural to omit the comma after 'required.'" What did the justice mean by 'it would have been more natural"? He may have meant that our nature takes care of punctuation. There are other reported cases indicating that judges rely upon feeling or some inner prompting or natural bent or bias for disposing of questions which turn upon the punctuation of statutes.

If the pointing of any passage which a judge is called on to interpret harmonizes with his notions of proper punctuation he holds the punctuation to be correct. Otherwise he condemns it as erroneous and disregards it or proceeds to do his own pointing. In short he refuses to have the meaning which the language conveys to his mind changed or modified by points which a bill-drafter or clerk or secretary or printer has inserted or omitted. The absence of a settled standard or rule by which to determine the value or effect of the marks forces the court to decide the contest in that way. It would be simpler and better to make no pretense of depending upon punctuation for ascertaining the legislative intent.

In not one of the many cases examined does the court cite a work on punctuation. Ask any judge or learned lawyer or law librarian to name an authority which will help to resolve a doubt which arises from the presence or absence of a comma in a statute and he will answer that he knows of no such authority or that he knows of no generally recognized authority. Put that question to a supreme court reporter or to the style critic or head proof reader in a large publishing house and quite likely he will hand you a copy of DeVinne on CORRECT COMPOSITION. Now if DeVinne lays down the rule for pointing the statutes that fact should be known to those who interpret

the statutes. But punctuators shall not tell the court what a statute means. Even lawyers are denied that privilege.

It would be easy to demonstrate by the punctuation of the opinions of supreme court justices that there is no generally accepted system of punctuation. In the same way it can be proved that there never was an authoritative standard. Contemporary justices do not punctuate alike. The little tempest that has long raged among schoolmen over the second comma in a triad appears in court opinions. These are examples: Brandeis, J: "They refrained from violence, intimidation, fraud and threats."[15] Holmes, J: "The superintendent, or the inmate, or his guardian, may appeal." The court "may affirm, revise, or reverse the order."[16] One justice omitted the comma at the conjunction. The other inserted a comma. "The sum of such trifles is a trifle." In *Crawford v. Burke* the court said: "In the enumeration of persons or things in acts of Congress it has been the custom for many years to insert a comma before the final 'and' or 'or' which precedes the last thing enumerated, apparently for greater precision, but without special significance. So little is punctuation a part of statutes that courts will read them with such stops as will give effect to the whole."[17]

"The whole problem of punctuation resolves itself into formulating a simple body of rules for the use of the comma," says Logan, in his QUANTITATIVE PUNCTUATION. "The comma is the least specialized of all points, therefore, the most elusive."[18]

The interior marks of a sentence are usually inserted after the sentence is completed; and the meaning of the sentence is the guide to pointing it. Judge Caldwell says, "The words control the punctuation marks, and not the punctuation marks the words."[19] When punctuation is contended for as fixing the meaning of a statute the judge asks himself how he would punctuate the passage if he were its author. If he finds that the punctuation tallies with his notions of what is "natural" he holds that the punctuation is correct; otherwise he holds that the punctuation is erroneous and proceeds to do his own punctuating. This is but another way of saying that punctu-

[15] 274 U.S. 59 (1927).
[16] 274 U.S. 206 (1927).
[17] 195 U.S. 176, 192 (1904).
[18] SUMMEY, MODERN PUNCTUATION 205.
[19] Holmes v. Phoenix Insurance Co., 98 Fed. 240 (1899).

ation is no part of a statute. The points help to unfold the meaning; they do not originate or create the meaning. The meaning is there independent of the points and ahead of them. The punctuation aids in reading just as legibility of writing helps; just as scope notes and black-faced titles to sections of the statutes assist the reader. They create nothing, they destroy nothing, they change nothing.

There are general rules of punctuation which all literate persons are agreed upon. The marks to be used at the end of a sentence (terminal points) are beyond dispute. The period is not involved in this discussion, neither is the parenthesis. Consider court opinions. It is an interesting fact that courts say nothing of the punctuation of their decisions. Punctuation marks should have the same significance in court opinions as in statutes. Quite likely judges exercise a closer and more complete control over the pointing of their opinions than the legislature does over that of its enactments. If punctuation carries any part of the meaning of a court opinion we should expect that later opinions would sometimes explain the meaning to be attached to commas found in earlier opinions. They never do that. This also tends to show that contending about commas in statutes is a modern pastime of no great importance.

CONSTITUTIONS: We next consider punctuation of state constitutions. Constitutions are prepared with great care by learned lawyers. Meticulous attention is given to style and grammar and punctuation.[20] You would expect that many decisions applying constitutional provisions turned on punctuation. Only 2 cases have been cited in the digests and textbooks examined.

In *Attorney General v. Blossom* Justice Smith for the court said that the motion before the court was "based exclusively upon the third section of the 7th article of the Constitution of this state."[21] "It (section 3) is not altered in any respect, from the article as reported by the Judiciary Committee, except as to a material punctuation. I will transcribe it here, as it was reported by the chairman of the Judiciary Committee of the convention."[22] A semi-colon had been substituted for a period. The court restored the period but made no further allusion to the alteration.

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[20] Lavery, *Punctuation in the Law*, 9 A.B.A.J. 255 (1923).
[21] 1 Wis. 317, 318, (1853).
[22] *Id.* at 323.

The Arkansas Constitution provides that: "In all criminal and penal cases, except those of treason and impeachment, the governor shall have power to grant reprieves, commutations of sentence and pardons after conviction; and to remit fines and forfeitures under such rules and regulations as shall be prescribed by law." The court said: "The words 'in all penal and criminal cases' and also the words 'after conviction' qualify the other part of the sentence, and confine the whole power of the executive to such cases. The fact that a semicolon follows the word 'conviction' instead of a comma, as in the similar clause in the Constitution of 1836, can not be treated as altering the meaning of the sentence." "Punctuation is generally the least reliable guide to the true meaning of a sentence and should be given a controlling effect only when other tests fail."[23]

Legal textbooks on construction demonstrate that we are considering a strictly modern subject. In 1857 Sedgwick published his work on CONSTRUCTION OF STATUTORY AND CONSTITUTIONAL LAW. Punctuation is unmentioned. A second edition of Sedgwick appeared in 1874. It contains a short note which cites 3 cases on that subject. On the other hand Black on INTERPRETATION OF LAWS (2nd ed. 1911) devotes 6 pages to a discussion of the punctuation of statutes. This subject is briefly treated and the decisions are cited under the title Statutes in 59 C. J. Section 590.

Speaking of the 2 schools of punctuation (the open and the close) Ward informs us that "very little is heard of those terms nowadays, for they merely describe a revolution (begun in the 60's and concluded in the 90's) against the copious Wilsonian commas."[24] Open punctuation is modern: close punctuation is old style. Yet the some judges construe old statutes and new ones and most likely they apply the same pointing views to the one as to the other. Obviously that should not be if punctuation is a key to the meaning. "The words of a statute must be construed as they would have been the day after the statute was passed, unless some subsequent statute has declared that some other construction is to be adopted or has altered the previous statute."[25]

The decisions pay little attention to the fact that the printed statute may differ in punctuation from the enrolled act, or

[23] Hutton v. McCleskey, 132 Ark. 391, 394, 200 S.W. 1032, 1033 (1918).
[24] WARD, WHAT IS ENGLISH 184.
[25] Lord Esher in Share v. Wakefield, 22 Q.B.D. 242 (1888).

to the fact that the bill as passed may differ from both. Obviously, if the intent of the legislature is to be found in the punctuation it must be the punctuation of the bill as the legislature passed it.[26] The decisions apparently assume that the punctuation found in the statute books is identical with the punctuation of the printed bills on the desks of the members of the legislature at the time those bills were passed. That is a dangerous assumption because it is often at variance with the facts. Probably in a majority of the cases where punctuation was considered the provisions under construction were read from compiled statutes where at times the original wording was somewhat changed. Even in the printing of revised acts where the words are identical with those of the enrolled acts the punctuation may vary. A striking example of such variation is found in the WISCONSIN STATUTES (1898).

The legislature authorized the revisers to publish those statutes and said that "in performing the said work the revisers may correct punctuation." The legislature did not refer to the pointing of the enrolled acts; and the revisers paid little heed to that punctuation. They acted on the theory that the punctuation—at least the comma—was no part of the law. That is evident from the liberty which the revisers took in preparing the printer's copy for the STATUTES of 1898. Section 1689 is given here with the punctuation found in the original act:

"Section 1689. No person, company or corporation shall ( , ) directly or indirectly ( , ) take or receive in money, goods ( , ) or things in action, or in any other way, any greater sum ( , ) or any greater value ( , ) for the loan or forbearance of money, goods ( , ) or things in action ( , ) than at the rate of ten dollars upon one hundred dollars for one year; and in the computation of interest upon any bond, note ( , ) or other instrument or agreement ( , ) interest shall not be compounded, nor shall the interest thereon be construed to bear interest ( , ) unless an agreement to that affect is clearly expressed in writing ( , ) and signed by the party to be charged therewith." The 11 commas which are enclosed by curves were struck out by the revisers under said authority to "correct punctuation." In the STATUTES of 1898, this section has only 7 commas. They should have been reduced to 4. An examina-

[26] McPhail v. Gerry, 55 Vt. 174 (1882); Taylor v. Caribou, 102 Me. 401, 405, 67 Atl. 2, 4 (1907).

tion of many sections indicated that on the average 5 commas per section were dropped from the former statutes by the revisers in editing the WISCONSIN STATUTES of 1898. If this rate holds good for the 7,000 sections it represents a saving of 35,000 commas. Not an instance of an insertion of a comma was found. There was no addition; it was all subtraction. The revisers were Arthur L. Sanborn (a learned lawyer and long time a United States district judge) and John R. Berryman for many years librarian of the State Law Library. Judge Sanborn did not misunderstand the authority given him by the legislature. He knew that he had no power to change the law; and it never entered his mind that changing the punctuation by striking out thousands of commas might be changing the meaning. The printed page bristling with points offended his taste. He preferred the open punctuation. He substituted the modern system (the newspaper and periodical code of pointing) for the system which prevailed in 1878.

Sanborn & Berryman's idea of commas is in harmony with that of Dean Henry Alford. He said: "The great enemies to understanding anything printed in our language are the commas. . . . I have some satisfaction in reflecting, that, in the course of editing the Greek text of the New Testament, I believe I have destroyed more than a thousand commas which prevented the text being properly understood."[27] Dean Alford insisted that the meaning controlled the punctuation. He did not get the sense from the original punctuation but punctuated from the sense.

A rather amusing example of this variation of punctuation is afforded by a much cited but unimportant English case. *Barrow v. Wadkins.*[28] The statute in question was passed in 1773 and the action arose in 1857. The trial was before the Master of the Rolls. He had the original roll and two editions of the statute. The roll was not pointed. The points in the prints were unlike. This was the question: Should the troublesome word be read "aliens," or "aliens' "—should the symbol be a comma or should it be an apostrophe? It looks like "much ado about nothing." The Master ruled that common sense and the text made for the possessive case. Really no rule of punctuation was involved. A school child knows the sign of possession. Punctuation experts could shed no light on the

[27] A PLEA FOR THE QUEEN'S ENGLISH 98, 99.
[28] 24 Beavan's Reports 327, 330 (1857).

problem. No one could know for sure what Parliament intended. If the word "aliens" was in the possessive case the meaning was different from what it would be if the word were in the nominative or objective case. The Master sensed the situation and suggested an appeal.

Let it be noted in this connection that publishers of our general laws say nothing about punctuation. They do not tell us who did the punctuating or where it came from. If you doubt this statement look at your own statute books. The rule is as here stated. There may be exceptions but none has been noted.

Do most lawyers and judges know the details of legislative procedure in other states? Do they know it in their own state? Unless they are familiar with those details they do not know who punctuated the statutes. Luce in his LEGISLATIVE PROCEDURE tells us how that is done in Pennsylvania: "There a bill is punctuated when introduced, but then for the use of members is printed without any punctuation, and so it goes through the Senate and House and is approved by the governor. In the laws as published and as placed in the hands of the courts and the people, there is such punctuation as is inserted by the clerks in the office of the secretary of the Commonwealth but the courts pay it no attention."[29] That is rather surprising information to those who live outside of the Keystone state.

And how about the punctuation of the uniform acts? It is not easy to ascertain who punctuated them. There is no original roll, no master copy. The members of the conference are not sure whose punctuation is found in the pamphlet copies which carry the proposed uniform laws to the several states. But passing that point it is safe to assert that the uniform laws that are adopted are not identically punctuated in all states. The bills for their enactment are prepared by experts in many instances who have set notions about punctuating. They do just as they see fit about the matter.

A word or two should be said about the punctuation of municipal ordinances. In its broader sense a statute is "any authoritatively declared rule, ordinance, decree or law."[30] The system which applies to the punctuation of legislative enactments applies to municipal ordinances, court rules of pro-

[29] LUCE, LEGISLATIVE PROCEDURE 560.
[30] NEW STANDARD DICTIONARY.

cedure and administrative regulations. Who punctuated them is past finding out and seldom is any question raised about it.

WHO GOVERNS PUNCTUATION: Prof. Summey's survey shows that present day authors and publishers use the comma sparingly; that some leading dailies and magazines average less than one comma per sentence. They have concluded that their readers prefer few stops to many. Who makes the rules for punctuating? "Publishers. It cannot be denied that influential printers are the real developers of punctuation. The producers of books always have been * * *. Today the greatest influence behind our manuals is the judgment of a New York printer, De Vinne. (De Vinne supervised the publishing of the CENTURY DICTIONARY). * * * If you could know the practice of twenty good houses in any matter, and should find them all agreeing, you would feel assured that you knew the best usage."[31]

But publishers do not enact our statutes; neither do they interpret them. To permit their punctuation to control the meaning of statutes is to substitute printers for legislatures and courts.

De Vinne, "the greatest influence behind our manuals," tells us that the treatises we had when he wrote gave but little help to the compositor and that he wrote to help the compositor; that different systems of pointing prevail in different houses; that it is generally understood that punctuation is the duty of the printer; that punctuation is not included in the exact sciences; that the most useful rules are those that the compositor makes for himself after a careful study of punctuation in good editions of the writers; that the "comma is often inserted where it muddles the sense" so that "the compositor often has to read the sentence twice or thrice before he can discern its meaning;" that the compositor must study the rules prevailing in the house in which he is employed; that rules are of value but they can never take the place of an understanding of the subject matter; that the antiquated teaching that the comma must be used to indicate pauses of the voice is responsible for much of its misuse; and that "to correct wrongly pointed copy the compositor should cogitate and understand each sentence, and mentally determine the points needed before he sets the first word."[32] De Vinne

[31] WARD, WHAT IS ENGLISH 145 (1917).
[32] PRACTICE OF TYPOGRAPHY; CORRECT COMPOSITION 242-61.

emphasizes his point that rules can never take the place of an understanding of the subject matter by a short sentence punctuated 2 ways: "The prisoner said the witness was a convicted thief. The prisoner, said the witness, was a convicted thief." Evidently De Vinne expected the compositor would be guided by his "understanding of the subject matter" in pointing the sentence. But a printer's understanding of the subject matter of a statute is not to be presumed superior to the courts. No court, high or low, would tolerate such a presumption.

De Vinne's instructions are to printers. Printers are not permitted to rewrite their copy. They must take the composition as it is. They try to clarify by punctuating. On the other hand the bounden duty of the draftsman of a statute is to clarify by revision by rewriting until his composition will stand up without the aid of punctuation props. The sentence last quoted from De Vinne is really proof of how easy it is to construct an ambiguous sentence. That sentence would not depend on points if it were reconstructed thus: The prisoner said that the witness was a convicted thief; or the witness said that the prisoner was a convicted thief. Similar examples of bad syntax have been used to prove that meaning may hang on a comma. Here is one: "Woman, without her, man would be a savage." "Woman, without her man, would be a savage." Or take this school boy riddle: "Would you rather a lion eat you, or a tiger?" The comma is relied on to keep the lion from eating the tiger. Those are a mere play on words. Word juggling may be indulged for amusement; but a statute is no place to "conjure with us in a double sense."

If the punctuation is important it is important to know who does the punctuating. We have already seen what De Vinne and other textbook authors say upon the subject generally. The courts also have spoken on that point. The Wisconsin Supreme Court said: "In giving construction to a statute, the punctuation is entitled to small consideration, for that is more likely to be the work of the engrossing clerk or the printer, than of the legislature."[33]

The Supreme Court of Maryland said: "With us the punctuation is the work of the draftsman, the engrossers or the printer."[34] The Supreme Court of Louisiana said: "It is but

[33] Morrill v. State, 38 Wis. 428, 434 (1875).
[34] Manger v. Board of Examiners, 90 Md. 659, 669, 45 Atl. 891, 893 (1900).

the work of a draftsman or amanuensis, engrosser, or often of a printer."[35] The Supreme Court of Oklahoma said: "Punctuation is generally the act of the clerk or printer."[36] "The presence or absence of a comma, according to the whim of the printer or proofreader, is so nearly fortuitous that it is a wholly unsafe aid to statutory interpretation."[37]

Clerical and typographic errors must not be confused with deliberate or intentional punctuation. A mechanical mistake is one thing; a misapplication of rules is quite another matter. *U. S. v. Isham*[38] is frequently cited to show that the meaning of a statute may be controlled by the punctuation. An act of Congress required stamps upon commercial paper. The court said: "There is probably an error in the punctuation of the statute in regard to the item which reads 'memorandum, check, receipt, or other written or printed evidence of an amount of money to be paid.' It should read 'memorandum-check (with a hyphen between the words), receipt or other written or printed evidence.'" That was simply a clerical or typographical mistake. The art of punctuation was not involved. In compounding words the hyphen is universally used to join the words compounded. A clerk or stenographer evidently thought the compound word was 2 words, and that mistake let to separating the words by a comma. Everyone knows that "memorandum-check" is not the same as "memorandum, check." And everyone knows that horse, colt are 2 animals and that mule-cow is only one. Mistakes of this character have no more to do with systems of punctuation than the use of the wrong word has to do with rules of grammar.

Both reason and experience are against reliance upon punctuation. The interior points of a sentence and their absence should not control the meaning or make it different from what it would be if there were no such marks. We go to the dictionaries for the meaning of words, be they spoken or written. Where should a law student look for a standard work on punctuation, if there is such a standard applicable to the construction of statutes? In the law libraries. Well, there is no work (standard or otherwise) on that subject in the Wisconsin State Law Library. If there were agreement as to the meaning or significance of a comma we might safely use

[35] State v. Desforges, 47 La. Ann. 1167 (1895).
[36] *Ex parte* Hunnicutt, 7 Okla. Cr. 213, 123 Pac. 179 (1912).
[37] Erie R.R.Co. v. United States, 240 Fed. 28, 32 (1917).
[38] 17 Wall. 496 (1873).

it to help convey our ideas. In the absence of such common understanding we are, if we rely on the presence or absence of commas, in the predicament of Boy Scouts trying to wig-wag without having a common system of signals.

Punctuating is interpreting. For he who points a statute thereby puts his construction upon it. Now the interpretation of statutes is the prerogative of the judicial branch of our government. The Supreme Court is the final word. Any other theory throws our political structure out of plumb. Beyond the word-definitions inserted in the statute, the legislature does not control the meaning of the language which it employs. The same holds true of punctuation. Paraphrasing the advice Dick gave to Jack Cade at Blackheath: "The first thing we do let's kill all the commas."[39]

[39] Shakespeare, HENRY VI, Part 2, Act. 4.

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