THE DISORDERLY CONDUCT OF WORDS*

Hugh and Patricia were an attractive couple on the permanant plateau of prosperity, but Hugh had much more money than was good for them. They drifted apart and in the spring of 1929 came the divorce. Hugh placed a large block of government bonds in the hands of trustees. The settlement directed the trustees to pay the income to Patricia for life and the principal to her children, but"if she remarries" then the income is to go to the children at once. Next October Hugh's remaining investments suddenly shrank. As he was walking along Fifth Avenue feeling very blue, whom should he meet but Patricia in a new hat and more charming than ever. At her suggestion they went to her apartment for tea, and he soon found himself pouring his troubles into her sympathetic ears. Tea prolonged itself into dinner and dinner was succeeded by breakfast. After visiting the City Hall, Hugh and Patricia departed for a second honeymoon. While they were disporting on the beach at Waikiki the market crashed again. Whatever Hugh had left was wiped out, but Patricia said, "Never mind, darling, we can live on what you generously gave me while you are getting a fresh start." Soon came the expected long envelope from the trustees, but inside instead of the usual check was a formal letter stating that since she had "remarried" the trustees were now obligated to pay the income from the bonds to her children. And so, the story goes, Hugh and Patricia hurried home to be supported by their boys and girls.

This unreported case is a fair example of the problems presented by law and language combined. Observe that the difficulty is caused, not by any long commaless legal jargon, but by one plain word—"remarries." The trustees were merely echoing the joyous outcries of the couple's friends—"Have you heard the latest—Patricia and Hugh have remarried"!

Yet I have a strong guess that a court would not uphold the trustees' interpretation of "remarries." Why? Possibly the judge would declare: "The parties did not intend 'remarries' to include this eventuality." Yet, when the spouses signed the settlement on the bitter eve of divorce, nothing was farther from their thoughts than being reunited. The truth is, the only

*This article has been adapted from an address delivered to the Judicial Section of the New York State Bar Association on January 27, 1940.

The present article appeared originally in 41 Columbia Law Review 381, and is here reporduced by the courteous permission of that Journal and of the author.—ED.

person who had any intention about not applying "remarries" to the present situation is the judge himself. Whither should the judge go for help? That is the question to which I shall keep returning.

Words are the principal tools of lawyers and judges, whether we like it or not. They are to us what the scalpel and insulin are to the doctor, or a theodolite and sliderule to the civil engineer. So we need to know more about their imperfections. Several books have appeared recently about a new science of language called Semantics. Best known in the United States are *The Meaning of Meaning* (fourth edition, 1936), a technical and difficult work by C. K. Ogden and I. A. Richards, and *The Tyranny of Words* (1938), a popular discussion by Stuart Chase. I have gone to these for help, to see whether they supplement the efforts of judges and lawbooks to solve problems of legal interpretation.

I

The first lesson I have learned is, that language is not used solely for the communication of thought. That purpose is uppermost in our minds when we write opinions or briefs or law review articles, and hence we lawyers easily forget that words are frequently employed with quite a different object—to make somebody do something. Ogden and Richards stress this emotive function of language as distinguished from its communicative function; and illustrate this by printing Malinowski's observations on the speech of children and savages.[1] They do not employ language, he says, as a condensed piece of reflection and a record of fact or thought, as does the author of a book or inscription. With them, language functions as a link in concerted human activity, as a piece of human behavior. It is a mode of action and not an instrument of reflection. For example, among primitive people:

> A word, signifying an important utensil, is used in action, not to comment on its nature or reflect on its properties, but to make [the utensil] appear, be handed over to the speaker, or to direct another man to its proper use.

It takes anly a little thought for us to realize that among civilized adults language is largely employed for the same emotive purpose. One instance will suffice—the young wife who complained, "When I ask Charles if he loves me, he acts as if I were asking for information."

[1] Malinowski, supplement to OGDEN & RICHARDS, MEANING OF MEANING (4th ed, 1936) 309-321 *passim*.

What bearing has this emotive function on law? More than we like to admit. The clerk's prelude to the session of court,—"Oyez! oyez! oyez!"—aims to produce an attitude of seriousness and wrench us out of the careless moods of everyday life. The lawyer's address to a jury is only in part an attempt to organize the evidence clearly. In large measure, he seeks to evoke emotion and action, a favorable verdict. Nor can we say that the emotive function is always absent from the lawyer's argument before an appellate court. When Mr. Joseph Choate told the United States Supreme Court in 1895 that a 2 per cent income tax had "scattered to the winds the great fundamental principle of private property,"[2] he was not aiming to give accurate information but to create judicial hostility to the statute. Indeed, some experienced advisers consider that the main purpose of appellate argument is to make the judges want to decide your way. It is even said that the citation of authorities is a solemn pretext. My own view is quite different, but here too action is the end desired—a decision for one's client—and not merely the transmission of clear ideas.

When one gets into this vein, he discovers the emotive function operating in almost all speech and writing. The communication of facts and thoughts seems never completely separated from the desire to make somebody do something or feel somehow. Nothing appears sterilized from emotion except a quitclaim release. Even when the informative purpose is very strong as in a law-book, the author wants to write so that a publisher will print it and lawyers will buy it. Although a law review article gets no compensation, it may produce academic promotion or esteem among the elect. Most audacious of all is the idea that a judicial opinion is more than pure thought. Does not the judge hope thereby to win over a hesitating colleague, to reconcile the losers to their fate, and perhaps to make courts in other states eager to follow his views?

Why worry? It's one of the things language is for. Probably the distinction between the communicative and emotive functions is only a matter of degree. The transmission of information and the creation of an attitude in the listener are dual purposes in most speech, though in varying proportions. Because we believe reason to be our best guide, we must exert ourselves in legal expression to make our thoughts fit things and our words fit our thoughts, to keep down the emotional element, and above all to pick and choose among possible emotions. The

[2] See Pollock v. Farmers' Loan & Trust Co., 157 U. S. 429, 534 (1895).

evocation of a sense of fairness may be within the emotive function as truly as the stimulation of hatred and greed, but it is a much more legitimate aim.

However our major concern as lawyers is with the communicative function of language, to which my remaining observations will be devoted. My next main point is that *The Meaning of Meaning* gives us much help in understanding the true relation between a word and the object for which the word stands, (I use "object" loosely to embrace persons and abstract ideas as well as tangible things; the semanticists use instead the technical word "referent").

To start with, the word is not the same as what it points to. Obvious as this statement may seem, the contrary belief is constantly cropping up; that words have existence and power, that they are equivalent to the things and persons they denote, or nearly so. It is something like the relation assumed by primitive or superstitious minds between the god and the image. A Harvard professor fell into conversation with a peasant in the Campagna, who asserted defiantly that there was no God. "I suppose you don't believe in the Devil either." Quick as a flash the peasant crossed himself and looked behind him with terror.

Although this identification of the word with the object is avoided by more sophisticated minds, they often slip just one peg down into the deeply-rooted notion that the word inevitably and unalterably belongs to a particular thing or person. A name is like a label chained around the object by God's order, which nobody must presume to detach. "And whatsoever Adam called every living creature, that was the name thereof."

An Englishman was lunching in a Paris restaurant. He knew no French, the waiter little English. They engaged in the friendly task of giving names in their respective languages to the things at which the Englishman pointed. Eventually he pointed at the bread. "Pain," said the waiter; and the Englishman burst out laughing. "What you call it, M'sieur?" "Bread"—and the waiter laughed. At this the Englishman got angry. "M'sieur," expostulated the waiter, "you laugh when I say 'Pain,' I laugh when you say 'Bread'." Back came the Englishman "But it *is* bread, you know."

Lawyers and judges are highly susceptible to this notion of an indissoluble link between the word and the thing. A sense of the inherent potency of words is natural with us. Words are the effective force in the legal world. In statutes, they result in heavy fines, long imprisonment or even death. In contracts

deeds, or wills, they transfer large amounts of property. Hence the persistent feeling in our profession that the right words must be used. You must in the old days say "*A* and his heirs" to give a fee, not "A and his descendants" or "*A* and his successors."

Nor can we flatter ourselves that we have wholly outgrown this tendency to believe that a word points to this object and only this, and that no other word can point to it. Look at a case in the House of Lords in 1914.[3] A testator who had spent all his life in Scotland bequeathed £500 to "The National Society for the Prevention of Cruelty to Children." These words corresponded to the charter name of a London society, which did no work in Scotland and of which the testator had never heard. Near his home was a branch office of The *Scottish* National Society for the Prevention of Cruelty to Children, whose activities he knew. Which charity should get the £500? The Scotch courts awarded the bequest to the Scottish society, as the testator pretty clearly intended. Yet the remote charity in London got the money, because the Law Lords said that "he had by name designated" the London society; that it was "the possessor of the name mentioned in the will." Lord Dunedin declared: " . . . the question for a Court of law is, ... what is the meaning of the words used?"

Here the Law Lords clung to the notion that the Scottish society had only one name, which the testator must use to reach that society just as Ali Baba couldn't open the door without saying "Open Sesame". Doubtless, a corporation should use its corporate name in formal documents for conveying land, *etc.*, but a moment's reflection makes it clear that the corporation may have other names too. Think of the names we give our pet charities in conversation and letters. We call government corporations R. F. C., H. O. L. C., and T. V. A. We specify railroads as the Big Four and the Soo. I work for an institution whose corporate name is the President and Fellows of Harvard College, but is that its only name? Most of the time people call it Harvard College, Harvard University, or Harvard. My guess is that many Scotchmen used the same name as the testator for the Scottish society, and that the Scotch courts were sensible in recognizing that fact.

Then, when the House of Lords said that its award to the London society was following "the meaning of the words," what did "meaning" mean? Not the intention of the testator, not common usage, not the opinion of the average reasonable Scotch-

[3] National Society v. Scottish Nat. Soc., [1915] A. C. 207.

man under the circumstances. Many American courts would speak of "the single plain meaning" of the words, and reach a similar result defeating the testator's intention.[4]

The need for analysis of this word "meaning" is obvious. Ogden and Richards constantly insist that words are only symbols of objects. These symbols do not arise from the nature of the objects, but are created by human beings for purposes of convenience, just like buoys and traffic-signals. So far there is nothing new. Wigmore, for example, has an admirable presentation of the symbolic quality of words.[5] But now comes a big contribution from Ogden and Richards. The relation of the word to the object is only indirect. Between these two factors, a third factor always intervenes, the thought of some person. Thus the object causes a thought in the mind of a speaker or writer, and he uses a word to express his thought. In listening or reading, the process is reversed. The word brings about a thought which refers to the object. The authors diagram their theory by a triangle. The word and the object are at the two base angles; the thought is at the apex. We never go directly across the base of the triangle, from word to object or *vice versa*, but always travel the long way around through somebody's thought at the top of the triangle. Of course, we telescope this process in popular parlance by saying that the word stands for the object, but in careful analysis we must always remember the whole series: object to thought to word, or word to thought to object.

The value of this analysis to law can be realized only after a full consideration of Ogden and Richard's book. I shall speak of only one application, to the problems of Mistake. Since the relation between the word and the object involves two steps, two different kinds of mistakes may occur. First, the thought may not adequately represent the object, as when parties buy and sell a racehorse which is in fact dead. This type of mistake I call Error. Second, the word may not correctly express the thought. For example, a deed describes the "east" half of Blackacre when the parties intended the west half to be conveyed. This I call a Mistake of Expression. This distinction is important because the usual remedy for Error is to call the bargain off (rescission), and for Mistake of Expression is to remould the writing to the actual intention (reformation).

[4] *E.g.*, Tucker v. Seaman's Aid Soc., 7 Metc. 188 (Mass. 1843); *See* Mann v. Mann, 1 Johns. Ch. 231, 236 (N. Y. 1814). *Cf.* Thomas v. Stevens, 4 Johns, Ch. 607 (N. Y. 1820).

[5] 9 WIGMORE, TREATISE ON EVIDENCE (3d ed. 1940) §2459.

Another big contribution of Ogden and Richards is their demonstration that this word "meaning", which we lawyers and judges use so blithely as if it were a clear path out of our tangles, is really a network of paths in which we are likely to get worse lost than ever. The authors list sixteen different main definitions of "meaning" and nine sub-variations, all derived from reputable sources. I mention only a few of these, as apt to occur in law: the other words annexed to a word in the dictionary; what the user of the word intends to be understood from it by the listener or reader (intention of the testator, etc.); that to which the user of the word actually refers; that to which the user of the word ought to be referring (this is common usage, the view held by Mr. Justice Holmes, who insists on "the ordinary meaning of the language in the mouth of a normal speaker situated as the party using the language was situated");[6] that to which the interpreter of a word refers; that to which the interpreter believes himself to be referring; that to which the interpreter of a word believes the user to be referring.

When a lawyer or judge speaks of "the meaning of the word used," he needs to know clearly which of these numerous definitions is applicable. Sometimes a case on the interpretation of a will or contract or statute shows the judge employing "meaning" in three or four different senses and sliding unconsciously from one sense to another in a single sentence of his opinion.

I have spoken of two lessons for law to be gained from the writers on Semantics—first, the varied functions of language; second, the analysis of the relation between the word and the object. We now come to a third lesson, that words are very imperfect means of communication. A word doesn't stay put. It wabbles and slides around. This is illustrated by the migrations of "meaning," just discussed. Hundreds of examples arise in daily life. We pay dues to a golf-club and use a golf-club to hit a ball. Then we invite our fair partner to a ball at the clubhouse.

When the objects for which a single word stands are thus widely separated, no harm results except an occasional excruciating pun, from which even the law is not free. A Massachusetts doctor charged with procuring an abortion argued to the Supreme Judicial Court of Massachusetts that he was protected by the Statute of Frauds—no one should be held for the debt, default or "miscarriage of another" unless evidenced by some memorandum in writing.

[6] Violette v. Rice, 173 Mass. 82 (1899). To the same effect is Holmes, *The Theory of Legal Interpretation* (1899) 12 HARV. L. REV. 417.

However, when the same word signifies two ideas which are close to each other or overlap, confusion and obscurity are probable. The writer may fall into the terrible crime called the utraquistic subterfuge, of using the word in both its senses during the same discussion. This is said to be a frequent crime among philosophers. For example, "knowledge" may be used for both the content of what is known and the process of knowing. Such an error occasionally creeps into judicial opinions. For example, a case involves a serious misstatement of fact, but it is not clear that the speaker knew of the falsehood or intended to deceive. The judge begins by calling innocent misrepresentation "constructive fraud." After a while "constructive" drops out. Later on he cites a number of cases of intentional misrepresentations which stress the wickedness of "fraud." "Fraud" is an emotive as well as a communicative word, and the judge begins to warm up. Before long the speaker's knowledge of the falsehood is treated as irrelevant, and the judge concludes that an innocent misstatement should be heavily penalized because "fraud" is a vicious quality.

If words were perfect instruments of communication, such difficulties could be avoided. Ogden and Richards lay down as the first requirement of a satisfactory system of symbols, "One symbol stands for one and only one referent." ("Referent," as already stated, is their word for my "object,"—what one's thought refers to). Unfortunately, this requirement can only rarely be fulfilled. In mathematics, we have a specially devised system of symbols of such a character; *pi* always means the same thing. The natural sciences approximate this ideal. Our colonial ancestors used "robin" for an English relative of the sparrow and an American relative of the thrush, but an ornithologist calls each bird by a different Latin name. But it would be impossible to impose such precision on ordinary language, for it would go to pieces in the wear and tear of everyday intercourse. "Thus it constantly happens that one word has to serve functions for which a hundred would not be too many." Some attempts to introduce a specially devised symbolism into law have not been successful, as we shall see later. For the most part we must be content to let words remain imperfect symbols.

It is some consolation to realize that other kinds of symbols often possess the same difficulty. Stuart Chase would have us go back to gestures as far more accurate than words, but has he never been perplexed by the ambiguity of the arm motions of a traffic policeman? A red light symbolizes the rear of an auto-

mobile, a pile of dirt, a railway crossing, a fire alarm box, the port side of a steamer, and (on a lighthouse) the presence of rocks and shoals. Probably nobody has ever confused the port light of a boat with a moving automobile, but a lowered railway gate has been mistaken for such an automobile with disastrous consequences. Ordinarily we are able to attach the proper significance to the red light because of the environment, just as a word which is in itself ambiguous can often be understood in the light of the context and surrounding circumstances. But this is not always possible.

We find abundant examples in law of the trouble caused by a word which is capable of standing for two or more different objects, like "remarries" in the divorce settlement. Are canary birds subject to a tariff on "live animals"?[7] A life insurance policy makes the company not liable for death while "participating in aeronautics"; does the phrase apply when the insured is killed while a passenger in a commercial plane which crashes?[8] This quality of words was described by Mr. Justice Holmes in the first *Stock Dividend* case, where he made it plain that "income" in a revenue act did not necessarily mean exactly the same as "income" in the Sixteenth Amendment:

> A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used.[9]

Less familiar legal examples appear outside documents and cases on interpretation. Thus we very frequently say that a particular decision is "wrong" or "unsound." When we do this, it is well to bring ourselves up with a round turn and ask ourselves what the word signifies. Conceivably it means: (1) The decision offends our sense of justice. (2) It does not fit into the logical symmetry of earlier cases.. (3) It is likely to produce undesirable social consequences. (4) It is likely to be overruled or disregarded in later cases. (5) It has been already overruled or disregarded by courts. (6) Our client lost. The method just adopted of thinking up conceivable meanings of a doubtful word complies with a very useful piece of advice given by Ogden and Richards.[10] When we have completed such a list, we may discover that the various senses have no common denominator and that the single word is a sort of ashcan into which many different kinds of objects have been thrown during the course of years.

[7] Reiche v. Smythe, 13 Wall. 162 (U. S. 1871).
[8] Note (1938) 23 CORN. L. Q. 335.
[9] Towne v. Eisner, 245 U. S. 418, 425 (1918).
[10] THE MEANING OF MEANING, 131.

Of late years lawyers have been urged to stop concentrating on metaphysical reasoning and devote more attention to collecting facts. A thirst has grown for all sorts of legal statistics. The best known instance is the lists which appear frequently in the newspapers of "crimes known to the police" in various large cities. These contain surprising conclusions. Thus in one year Philadelphia was stated to have only a quarter as many thefts for its size as Toronto and only a fifth of the thefts of Washington, D. C. Miami in another year reported three hundred times as many robberies per hundred thousand inhabitants as Lowell. Newark reported twenty-four times as many burglaries proportionately as New York.[11] This illustration shows how the elastic nature of words can easily render legal statistics almost valueless. Two items may not be comparable although they bear tha same verbal label. Thus "thefts" as reported by the police in two cities may have quite a different scope, because the legal definitions of the crime differ from state to state, *e.g.*, in omitting or including temporary borrowings of automobiles by joy riders, because automobiles are reported as stolen merely to escape fines under parking regulations, or because some people faithfully list every offence sent in while others patriotically cut down the list to correspond to the number of arrests made in order to give a pleasing picture of activity. Plainly, before any inferences can be safely drawn from legal statistics, great care must be taken by somebody to insure that the standards of classification and the accuracy of reporting are approximately uniform. Utraquistic subterfuges may as easily occur in identical statistical headings as in judicial opinions and old-fashioned law-review articles.[12]

A fourth and final lesson is taken from a Polish exile Korzybski. This I call the hierarchical nature of words. All words are symbols, but some of them are much nearer than others to the five senses. Thus, at the bottom level we have "John Marshall," "Ford sedan No. 1,207,643" and "26 Broadway." On a higher level come generalized words for persons and things, like "judge," "automobile," "office-building." Above these are "men," "chattels," "real estate." Still higher come abstractions like "mankind" and "property." Some

[11] 1 REPORTS OF NATIONAL COMMISSION ON LAW OBSERVANCE AND ENFORCEMENT (Wickersham Commission), No. 3, *Report on Criminal Statistics* (1931) 39; Warner, *Crimes Known to Police* (1931) 45 HARV. L. REV. 307, 312.

[12] See Dr. F. G. Crookshank's account of the breakdown of English official classifiation of supposed different types of infantile paralysis, in supplement to THE MEANING OF MEANING, 347-354.

writers, especially Stuart Chase, stress the dangers that we run as we get up on the heights. The more abstract the word, the greater the risk that any proposition in which it is used will not be true of all the persons and things within the class denoted by the word, and the more liable we are to forget that at bottom we are talking about persons and things. An ardent advocate of female rights will assert that "Women are oppressed by men" regardless of several hen-pecked husbands she knows. With this inexactness of abstractions goes another danger, their emotional quality. Men are stirred to frenzy by words like "democracy," "un-American," "New Deal" without taking the trouble to specify to themselves the individual persons and practices which they purport to admire or hate.

Similar dangers exist in the legal use of abstractions. "Property" is a striking example. It includes a great range of things from my home to my interest in a free access to prospective customers and employees. Suppose that an official, acting under a statute, is compelling me to bargain with a union or alter my management of a holding company in which I have majority control. Because he is restricting my "property," I begin to feel and talk as indignantly as if I were turned out of my home or forbidden to cruise in my own sloop. Mr. Justice Holmes, who has given as much thought to the meaning of words as any American judge, recognized this danger in *Truax* v. *Corrigan*.[13]

> Delusive exactness is a source of fallacy throughout the law. By calling a business "property" you make it seem like land, and lead up to the conclusion that a statute cannot substantially cut down the advantages of ownership existing before the statute was passed.

Some kinds of property like a home or a savage's spear and canoe would be owned even though there were no courts and legislatures, under

> The good old rule, the simple plan,
> That they should take who have the power,
> And they should keep who can.

But an owner cannot control other kinds of property, like contracts and corporate shares and good will, just by fighting for them. He must have the help of legal process. What the law gave, it can to some extent take away. It can abridge or regulate or fail to protect such intangible property within wider

[13] 257 U. S. 312, 343 (1921) (dissenting opinion), See also White-Smith Music Pub. Co. v. Apollo Co., 209 U. S. 1, 19-20 (1908).

limits than is permissible in the case of the immediate instrument of life.

However, it is one thing to say that abstractions must be used cautiously, and quite another to urge, that, unless they can be verified by the methods of the natural sciences, they must not be used at all. The higher ranges of the hierarchy of words are indeed dangerous, but so are high buildings and high voltages. Modern life would be hampered without these; and every department of intellectual activity including law would be slowed down almost to a standstill if we did not employ shorthand expressions to denote great masses of related facts.

As part of this attack on abstractions, widely sold books are persuading the lay public that "negligence," "good faith," "reasonable" and the very word "law" are weasel words which do not really serve to settle disputes. Precedents are marked for slaughter, for if universals are to be abandoned we should admit that we live in an atomistic world where one legal case lacks any significance for another legal case. The proposed substitute for "law" is very simple. Get the sort of judge "who can wisely decide situations in a real world, now, using whatever practical rules may be necessary." Man would be "willing to take his decision, if he were a good judge, without the ornament of citations."[14]

As an antidote to this frequently held layman's ideal of leaving everything to the common sense of judges, we lawyers need to bestir ourselves and popularize numerous aspects of John Adam's principle of a "government of laws, not men." One can begin by pointing out that the substitute just described embodies abstractions far removed indeed from the five senses. When is a case "wisely" decided? Cynics say it is when your side wins. What rules are "practical"? What we agree with is apt to seem practical, and what we dislike theoretical. Who is the "good" judge? It depends on the point of view. Judge Jeffreys was a good judge to James II.

The evils of abolishing general phrases in law will become clearer to laymen if they be led to consider its effect upon the kind of law with which they are most familiar — criminal law. The substantive definitions of crime would disappear. For example, treason would not consist only "in levying war against the United States or in adhering to their enemies, giving them

[14] CHASE, TYRANNY OF WORDS (1938) 321, 327.

aid and comfort" and be further limited by centuries of judicial precedents. Instead, the government would be at liberty to imprison or execute anybody if a tribunal decided that he was an objectionable person or not sufficiently enthusiastic about the policies of the administration. Our law would be like that of Germany, where a man can be punished without having committed any defined crime, merely because his conduct is considered not to be "according to healthy public sentiment."[15] Harold Laski tells a story about the Round Table Conference that met in London to draft the new Constitution of India. The Conference was at work on the Bill of Rights and had reached the provision that *habeas corpus* should not be suspended. One of the native princes asked what this clause signified. After listening to a lengthy explanation, he asked, "Do you mean I shan't be able to put a man in prison when I wish, except for committing some specific crime?" "That's exactly what it means." "Well," said the Maharajah, "I don't want anything like that in my dominions!"

Even if judges should give up their abstractions and swear never to create any more, the law will still be crowded with concepts imposed by statutes, like "restraint of trade" in the Sherman Act, "unfair methods of competition" and "unfair or deceptive acts or practices" in the Federal Trade Commission Act, "gifts in contemplation of death" and "income" in Tax Acts, "advocate the overthrow by force or violence of the Government" in the Deportation Act, and "obscene" in the Tariff and Postal Acts.

The need for general words is plainest to laymen in the many important statutes which are mainly enforced by government officials, so that it would be impossible to rely merely on the "common sense" of judges and juries. Examples are the Internal Revenue Acts, the Interstate Commerce Act, and the National Labor Relations Act. The standards laid down by such a statute for the officials to apply to ordinary citizens must be framed in pretty broad terms in order to embrace the varied situations which may arise and which cannot possibly be all foreseen so as to be listed by the legislature in concrete terms. The resulting lack of precision gives rise occasionally to amusing problems, whether hen's eggs are "bird's eggs" within the free list of a tariff act, or whether tomatoes are "vegetables" or "fruit" under a similar statute.[16] These legal jokes, we are told, render the whole system of laws ridiculous. Of course,

[15] See McIlwain, *Government by Law* (1936) 14 FOREIN AFFAIRS 185.

[16] Nix v. Heddon, 149 U. S. 304 (1893), ridiculed by ARNOLD, SYMBOLS OF GOVERNMENT (1935) 78.

a few such borderline cases are bound to arise and prove nothing. Precision cannot be attained in the administrative process until its final stage — the ruling of an official on a given set of facts. Detailed statutory wording would fetter official action, while the total omission of prescribed standards from statutes would leave government employees free to deport and regulate and tax us and seize our property as they pleased. A citizen would soon come to understand all this, if there were more readable books on law, based on wisdom rather than wisecracks.

This long reply to the superficially tempting plan of dropping general concepts out of the administration of justice does not take the position that all such concepts are now satisfactory or that they are all wisely handled. Every sensible judge or lawyer or law teacher is well aware of the fact that these legal phrases are not accurate measures like the yardstick in the Bureau of Standards. They can more fairly be compared to a chart of colors, which is constructed to give some indication of the difference between scarlet and crimson, and so forth, in spite of the fact that its maker knows that every color shades by imperceptible degrees into every other. Furthermore, judges and law teachers should be constantly engaged in the task of making these phrases fit present conditions better. We need a big spring cleaning to see which terms embody useful principles like "good faith", and which are enough worn out to throw away like "malice" and "conclusive presumption." Finally, I shall be sorry if my argument sounds like a pharisaic belief that laymen have no right to question legal doctrines and practices. Surely the common man who feels the impact of the law has the best of rights to point out its imperfections, and he can often call attention to matters which professional habit makes us overlook. We should be glad indeed to have the help of able economists and journalists in our task of improving and modernizing the concepts which have been handed down to us. But the fact that the houses in which we live happen to be ugly or inconvenient is no reason for tearing them down and sleeping in the woods.

II

Thus far I have talked of the help we men of law can get from the writers on Semantics. Now I want to speak briefly about the help they can get from us.

Our case-law provides a vast storehouse of examples of the imperfect symbolism of language. It offers four centuries of

reflection by judges on the meaning of words, some of it very acute. Long before the problem of interpretation received systematic attention from non-legal writers, it was explored by such able lawyers as Hawkins, Holmes, Thayer, Wigmore, and Williston.[17]

There are strong practical reasons why the contributions of law to the problem of language are very carefully thought over. First, when a judge is confronted with a word whose meaning is not clear, he must force himself to understand it if this be possible. An ordinary listener could let the word slide by him as not worth bothering about, but the judge has to try and apply the word to real life. To use the terminology of Ogden and Richards, the judge must find referents (objects) for the verbal symbol. Secondly, a lawyer who is drafting an important document also acts under compulsion in just the opposite direction. He searches for words to fit objects. He must probe his client's mind to ascertain his wishes for all the contingencies that are likely to occur, and then do his best to put into the document a phrase which describes the persons or things the client desires — every one of them and no more. Furthermore, the lawyer must be sure that when the document later gets before the court, the judge will reverse the lawyer's process and go back from the phrase to those very persons and things. Thus the lawyers who wrote wills or contracts and the judges who interpreted them have acted under a very heavy responsibility.

At times lawyers have found common speech inadequate to their purposes, especially in dealing with real property and trusts, and have made some use of technical terms, which form "a specially devised symbolism," resembling so far as it goes the method employed by mathematicians and chemists in making up a language that is more accurate than regular English words.[18]

[17] WIGRAM, EXTRINSIC EVIDENCE IN AID OF THE INTERPRETATION OF WILLS (3d ed. 1840); Hawkins, *On the Principles of Legal Interpretation with Reference Especially to the Interpretation of Wills* (1860) 2 JURID. SOC. PAPERS 298, reprinted in THAYER, *op. cit. infra*, 577; Nichols, *On the Rules which Ought to Govern the Admission of Extrinsic Evidence in the Interpretation of Wills* (1860) 2 JURID. SOC. PAPERS 351; Elphinstone, *The Interpretation of Formal Documents* (1867) 3 JURID. SOC. PAPERS 251; THAYER, PRELIMINARY TREATISE ON EVIDENCE (1898) 390-483; Holmes, *The Theory of Legal Interpretation* (1899) 12 HARV. L. REV. 417; Phipson, *Extrinsic Evidence in Aid of Interpretation* (1904) 21 L. Q. REV. 245; 9 WIGMORE, TREATISE ON EVIDENCE (3d ed. 1940) §§ 2458-2478; 3 WILLISTON, TREATISE ON THE LAW OF CONTRACTS (1936) §§ 601-603. For recent collections of legal materials, see MORGAN AND MAGUIRE, CASES ON EVIDENCE (1934) 891-899; GARDNER, CASES ON CONTRACTS (1939) 211-250; LEACH, CASES ON FUTURE INTERESTS (1935).

[18] See COHEN AND NAGEL, AN INTRODUCTION TO LOGIC AND SCIENTIFIC METHOD (1934) 119-120.

Unfortunately, in some of the situations that call for such special symbols, the client either writes the document himself or hires an incompetent lawyer, leaving it for others to struggle with the inadequate symbols drawn from everyday speech. "The jolly testatrix who makes her own will" supplies remunerative semantic investigations for the bar.

The fact that judicial insistence on technical language in such situations will often defeat the intention of the parties has prompted the courts to sheer away from the special symbolism exemplified by "A and his heirs," and adopt a liberal construction. In so doing, they lose exactness by giving effect to non-technical phrases which are capable of several different meanings. I am by no means sure that this is to be deplored. Indeed, my previous adverse criticism of the Scottish charity case stressed the disadvantages of extreme precision. Years ago James Bradley Thayer emphasized the hopelessness of the ideal which lawyers have long cherished, of treating all the language in legal documents as a specially devised symbolism :[19]

> The Chief Justice [Holt] here retires into that lawyers' Paradise where all words have a fixed, precisely ascertained meaning; where men may express their purposes, not only with accuracy, but with fulness; and where, if the writer has been careful, a lawyer, having a document referred to him, may sit in his chair, inspect the text, and answer all questions without raising his eyes. Men have dreamed of attaining for their solemn muniments of title such an absolute security; and some degree of security they have compassed by giving strict definitions and technical meanings to words and phrases, and by rigid rules of construction. But the fatal necessity of looking outside the text in order to identify persons and things, tends steadily to destroy such illusions and to reveal the essential imperfection of language, whether spoken or written.

For the most part, the language of lawyers is likely to possess a good deal of the indefiniteness of the language everybody speaks. It is significant that the technical terms suggested by Wigmore and Hohfeld to clarify legal discussion, like "autoptic proference" and "no-right", have not been widely accepted by the bench and bar or even by law schools.

Let me describe a few legal difficulties about non-legal words, which seem of value to the writer on Semantics. Few of these have to do with abstractions of high order. Most of the worries of Ogden and Richards are about words like "beauty," "meaning," "knowledge," "good," where the user of the words had no specific objects clearly before his mind. Judges and

[19] THAYER, A PRELIMINARY TREATISE ON EVIDENCE (1898) 428-429.

lawyers worry a great deal about words on the lower levels of the verbal hierarchy such as "children" or "issue", where the person who wrote down the words was thinking of something pretty definite, but it is hard later on to know what it was.

The first group of cases involve ordinary concrete words in a document which were intended to indicate just one person or thing, but the interpreting tribunal discovers that the words are conceivably a symbol for two persons or things. To which shall they apply? The Scottish charity case is an illustration. Here proper names cause great difficulty though they are not abstract at all. Suppose a will leaves a large legacy to "my nephew Joseph Grant"; two Joseph Grants claim it, the testator's nephew and his wife's nephew, with whom he was much more intimate.[20] Enemies of Senator Norris of Nebraska almost succeeded in putting the name of a mute, inglorious George W. Norris of Broken Bow on the ballot along with the Senator's name, to leave the voters hopelessly confused between two identical symbols.[21]

In a second situation the writer had several persons or things or acts in mind and used one generic word to describe his intention, but uncertainty subsequently arises as to the exact limits of the class. Thus "remarries" in my opening illustration was obviously intended to include possible remarriages to many different persons; the only doubt was whether union to the writer of the word was within the class of forbidden acts. Many cases turn on the limits of "children" and "grandchildren."[22] For example, after a life estate a fund is given "to my grandchildren." Does this include a lawful child of the testator's illegitimate son? An illegitimate child of the testator's lawful daughter? Her adopted child? Grandchildren born after the testator's death? Grandchildren who died before the distribution of the fund? Grandchildren born after that date?

A third problem is suggested by a recent New York case.[23] A former Wellesley professor had written a book on education containing a chapter entitled "Words and Their Meaning." Thereafter she wrote her own will. . Among other gifts, some money was bequeathed to Arthur Garfield Hays "to use at his discretion in promoting the ends of justice." A serious con-

[20] Grant v. Grant, L. R. 5 C. P. 727 (1870).

[21] State *ex rel.* Smith v. Marsh, 120 Neb. 287, 232 N. W. 99 (1930), *see* (1931) 9 NEB. LAW BULL. 467-468.

[22] See Casner, *Class Gifts—Definitional Aspects* (1941) 41 COLUMBIA LAW REV. 1.

[23] Matter of Hayes, 146 Misc. 660, 263 N. Y. Supp. 730 (Surr. Ct. (1933), *aff'd*, 263 N. Y. 219, 188 N. E. 716 (1934).

troversy followed as to the extent of the legacy to Mr. Hays. The testatrix undoubtedly had in mind some portion of her property, but did not clearly say what portion. She left it uncertain whether the benevolent purposes she mentioned were to absorb the bulk of her estate, or only a small fund. Here, there was a need for the special symbols devised by lawyers to indicate a rather complex process. Words of common speech proved inadequate. However, the courts managed to find sufficient evidence to give the bulk of the estate to Mr. Hays to promote the ends of justice.

Finally, we have the interesting situation where the writer employs a usual word in an unusual sense. May "a thousand" be construed to mean twelve hundred as it does in the rabbit business?[24] Can the court take "white" for "black" in a contract about "white selvage," as the trade calls something definitely dark?[25] Here Sir George Jessel declared to counsel that "nobody could convince *him* that black was white"; but the Court of Appeal reversed him. Even if we are thus willing to ignore the usage of ordinary speech and derive our system of symbols from the special language of a trade or profession, what shall we do with a testator who writes a will in his own peculiar code or a business man whose contract employs words in a sense unfamiliar to the other party? The difficulty of this problem of the divergence between ordinary and special meanings has caused sharp conflict of opinion between such great thinkers as Dean Wigmore and Mr. Justice Holmes.

One important warning must be given to non-legal students of words who resort to law for material. The information which can be employed by a legal tribunal during interpretation is somewhat limited by rules based on tradition or policy. When we lawyers are dealing with an operative document like a will or deed or contract or judicial decree or statute, we have a special purpose. As Hawkins says, "We desire not solely to obtain information as to the intention or meaning of the writer . . . , but also to see that that intention or meaning has been expressed in such a way as to give it legal effect and validity."[26] We must not let our attention wander far away from what has been properly authenticated by the formalities required by law, such as a seal for a deed or witnesses for a will or the execution of a written contract or a lease by both parties.

[24] Smith v. Wilson, 3 B. & Ad. 728, 110 Eng. Rep. 266 (K. B. 1832).
[25] Mitchell v. Henry, 15 Ch. D. 181 (1880).
[26] Hawkins, *op. cit. supra* note 17, reprinted in THAYER, PRELIMINARY TREATISE ON EVIDENCE (1898) 580, 581.

For example, if an office holder writes a letter which makes some obscure statement about his not running again, political columnists can elucidate his meaning by all his oral references to the subject. But if a testator makes an obscure disposition in his will, his contemporaneous oral statements about his intention cannot ordinarily be collected to explain the will, because they are not surrounded with the safeguards imposed by law—writing and execution in the presence of witnesses. There is danger that to some extent we might be setting up an oral will.

Again, if A offers in writing to rent a house to B, a stranger for "fifty-nine dollars" a month and B accepts, B can have it for that amount even though dozens of witnesses testify that ever since the United States went off gold A has been accustomed to use the words "fifty-nine dollars" to describe $100 in bills. Yet if A uses the same phrase in a political speech, his friends can afterwards explain his arithmetic by telling about his verbal whim. To introduce this private joke into the lease would be unfair to the tenant and deprive him of the safeguards offered by the writing on which he relied.

A considerable portion of the judicial opinions and writings on legal interpretation are concerned with this question of preserving proper safeguards and of enforcing the document rather than something else. In this respect they may not be very helpful toward solving the question what words mean.

III

In concluding, I should like to draw together a good deal of what I have been saying into a few suggestions about two unsolved problems of interpretation. I am not pretending to be able to solve them, but perhaps I can bring the solution a bit nearer.

It is high time that I wound up the case of Hugh and Patricia. It touches the broader problem—what part does the user's intention really play in the determination of the legal effect of words.? My first suggestilon is, that we should firmly resolve never to speak of the intention of a testator or other writer on a given point except after we have carefully convinced ourselves that that point was actually in his mind when he wrote the words in question. For example, we will never say "He intended this result" when we merely think that if he had foreseen the present contingency (which he didn't) then he would have intended this result. That consideration may be helpful, but it is not his

intention. Again, what the judge would have intended in the circumstances of the writer or what a reasonable man would have intended or what the normal speaker of English would have intended may also be helpful, but they have even less to do with the mind of the man who used the words. My guess is, that if we stick by this resolve, we shall soon find that his intention is a much less important factor in the decision than the frequent uncritical use of the word in judicial opinions and law books would lead us to suppose. Once in Providence the relatives of a testator contested his will and eventually all the parties interested agreed on a compromise will, which under the Rhode Island statute was probated as *the will* of the testator. Subsequently a dispute arose about a clause which the contestants had put into the compromise will, so they had a suit to construe that will, during which the judge frequently referred to "the intention of the testator".

Ogden and Richards give dire warnings about the obscurity of defining "meaning" either as what the writer intends to be understood from the words by the reader, or as that to which the reader believes the writer to be referring.[27]

To clarify the problem, go back to my earlier statement that legal interpretation is a passing from the word to the object through somebody's mind. Whose mind? Not that of the author of the document. Indeed, if it be a will he is dead. It must be the mind of the judge. Although his mind may be influenced by what he believes the testator or other user to have thought, the mental operations of the two men cannot fully correspond. Other important factors beside the supposed intention of the testator, *etc.*, contribute to the thought which the judge ultimately frames before applying the words to the outside world.

Therefore, my next suggestion is that the "meaning" of language in operative documents is a combination of several of the different senses in which judges use "meaning", only one or two of which involve the intention of the writer; and that the relative importance of his intention varies considerably with the type of document under consideration. It is most important in a will, which Lord Blackburn called "the language of a testator soliloquizing".[28] It is less important in a contract, where the fair expectation of the other party has to be given effect. "It makes not the least difference," says Judge Learned Hand,

[27] THE MEANING OF MEANING, 195, 208.
[28] Grant v. Grant, L. R. 5 C. P. 727, 728 (1870).

"whether a promisor actually intends that meaning which the law will impose upon his words. The whole House of Bishops might satisfy us that he had intended something else, and it would make not a particle of difference in his obligation."[29] Intention is even less important, I venture to say, in the interpretation of a statute, in writing which hundreds of persons participated with widely varying degreees of attention and with very little chance of envisaging the contingencies that have arisen later. This important point was cleared up by Morris Cohen years ago,[30] so that a single illustration must suffice.

Years ago I drafted an intestacy act for the Rhode Island Bar Association. After hearing my explanation, the Association accepted the draft and had it introduced in the legislature. At the committee hearing I again explained the bill. The legislature enacted it, largely because the Association recommended it. Later the Rhode Island Supreme Court had to decide whether the words "real estate" in the statute included a peculiar interest in land.[31] Both sides wrote me to learn my intention. In two identical replies I said that I had never thought of this point before, but that I now considered the interest to be "real estate" within the act. Both lawyers offered to read my letter to the court, which very properly refused to listen to it. So the intention of the only person who had given prolonged thought to the bill was ignored, and in fact he had no intention on this point. The court decided the case according to my subsequnet view, and said that this construction was "not inconsistent with the manifest intent" of the legislature. As Gray writes, "When the judges are professing to declare what the legislature meant, they are in truth themselves legislating to fill up *casus omissi*."

My last suggestion is that a judge faced with an interpretation case may wisely follow Ogden and Richard's plan of listing all the senses in which he employs "meaning" that is all the factors which he proposes to use in forming his thought-picture in reacting to the disputed words. Then when he comes to write his opinion, it will be very profitable if, instead of jumbling these factors, he takes them up one at a time, always making it clear what he is doing at the moment.

[29] Eustis Mining Co. v. Beer, Sondheimer & Co., Inc., 239 Fed. 976, 984 (S. D. N. Y. 1917). See the same judge in Hotchkiss v. Nat. City Bank, 200 Fed. 287, 293 (S. D. N. Y. 1911).

[30] *Legal Theories and Legal Science* (1915) 38 REP. N. Y. ST. BAR ASS'N 177, reprinted in revised form in his LAW AND THE SOCIAL ORDER (1933) 112ff. See also Gray, THE NATURE AND SOURCES OF THE LAW (2d ed. (1921) 170-188; Chafee in AMERICA NOW (1938) 310-312.

[31] Fischer v. Scott, 44 R. I. 368, 117 Atl. 417 (1922).

So I venture to put myself in the place of a judge deciding Hugh and Patricia's suit against the trustees. First, the actual intention of the parties when signing the settlement is considered and rapidly dismissed, since the possibility of reunion to Patricia was out of Hugh's mind, and equally out of hers.

Next, other clauses of the settlement are examined for help. For instance, there might be a clause expressly mentioning a reconciliation between spouses. Nothing is found.

Then common usage is invoked and dictionaries are pulled down, but they merely sanction both proposed interpretations. Holmes's "normal speaker of English" would sometimes use "remarries" to apply to a new marriage between the same persons and sometimes only to a new marriage with a new spouse. Indeed, I suspect that common usage is much less important in this kind of litigation than Holmes maintains. There are of course thousands of occurrences out of court every day when members of a family or business men or administrative officials settle the effect of a document by common usage. But for the most part, it is only when this kind of arbitration fails that litigation begins. The disputants don't usually start suing each other except when, as here, each party can find a dictionary definition which backs up his side of the case. For example, how useless "good use" is in all the will-cases about "children" and "grandchildren." Common usage resembles the banks of a river. The court must keep within it, but it doesn't tell where the proper channel lies.

Sometimes a rule of construction established by statute or prior decisions gives a presumptive meaning to a phrase, especially if it be technical — the specially devised symbolism already mentioned — but "remarries" has, I assume, not been thus defined.

At last I am thrown back to a device judges frequently use and rarely admit. To be frank, the parties have left a hole in the instrument and the court must fill up this hole with the plan that will work most fairly to all concerned under the circumstances. It is something like invisible mending, except that the hole was there from the start; the same requirements prevail, — the hole must not be a big one and the added material must fit into the old pattern. Hugh and Patricia did not say what was to happen if they were reunited, so the court must draft its own clause to cover the situation. There would be some sense in preventing a second husband from living off Hugh's bounty, but that contingency has not arisen. To give

the money to the children, now that their parents are reconciled, serves no useful purpose, so the trustees were wrong. What then? Perhaps the fund should go back to Hugh, on the ground that the life of the trust ends with the life of the divorce. But I am apprehensive that the marriage once broken may not be very well mended, and I should like to keep the trust alive awhile to take care of a possible second smash-up. This may be too strong-armed an exercise of judicial power, although the continued supervision over alimony is analogous. At any rate, I direct the income to be paid to Patricia until the court decrees otherwise, and shall not be unduly grieved if Hugh ungraciously appeals and I am reversed.

In short, what is commonly called "the intention of the parties" is in large measure the intention of the judge, subject to all sorts of traditional restraints on his range of choice. When all is said and done, the court of last resort in an interpretation case can echo quite a bit of the famous boast of Humpty Dumpty :

> "When I use a word," Humpy Dumpy said, in rather a scornful tone, "it means just what I choose it to mean—neither more nor less."
>
> "The question is," said Alice, "whether you can make words mean so many different things."
>
> "The question is," said Humpy Dumpy, "which is to be master—that's all."

Still more complex is the problem of interpreting a document written many years ago, like the Constitution of the United States. Some critics of the Supreme Court like to demonstrate that words like "commerce" had a different meaning for the framers than for us, in view of the great changes in economic and social conditions since 1787. And "due process" was always a vague phrase. So they go on to the conclusion that, apart from the rules of the Constitution for governmental machinery, "its power today is largely ritualistic, and so without much useful meaning for practical problems."[32] One of two consequences seems logically to follow. First the Supreme Court justices might frankly exercise an unlimited veto power over statutes, without professing any longer that they are obligated to do so by a document which, we are told, was written to surmount a crisis that was surmounted more than a century ago. Or secondly (what these critics probably prefer) the justices might recognize every federal or state statute as valid. Either way, most of the Constitution would have the same historical interest

[32] CHASE, TYRANNY OF WORDS, 316.

as the Declaration of Independence and the same lack of present legal effect.

Here again the problem is far less simple than these writers make out. No doubt we are forced to broaden our conception of the "meaning" of a word, when we are dealing with language which is applied many years after it was originally written. Those who used the word knew of definite persons or things which fell within its terms. Many of these tangible realities have long since disappeared. Others have come into existence of which the writers never thought. But must we necessarily say that the word has now become meaningless? Permanence and change are not always inconsistent. Even a solid object like a table, as Eddington tells us, is not really the same from one instant to another, for there is an ever-shifting dance of molecules or electrons. Yet for all the practical purposes of life, we can say that the same table stands there year after year. Or take a river. The drops of water that compose it pass steadily on, but something stays there which is distinct from its physical constituents.

> I see what was, and is, and will abide;
> Still glides the stream, and shall not cease to glide;
> The Form remains, the Function never dies.

Indeed the ever-changing Tiber has outlasted all the buildings that once stood motionless along its banks.

> Disce hinc quid possit fortuna; immota labascunt;
> Et quae perpetuo sunt fluitura, manent.

An even closer analogy to an enduring phrase is found in a human individual. He is considered to be the same person from birth until death, although his tissues replace themselves, his mind develops, and his external relations may be completely altered. Gladstone, whom Macaulay in 1839 called "the rising hope of those stern and unbending Tories", was not a different person from the man who was too radical for half of the Liberal Party in 1886. Some kind of identity persists through changes that startle even the person concerned. As the old lady exclaimed when her mind went askew,

> If I be I, as I think I be,
> Then will my little dog know me!

Therefore it is not correct to say, with Stuart Chase, that "we cannot expect the meaning of written constitutions to survive extensive changes in culture." Of course a clause

acquires new significations as external conditions alter and many cases are decided. It becomes applicable to more tangible objects or to fewer. It grows like a human being, or like a university, which has a continuous life although older professors and students are gradually replaced by younger men. Thus the study of words raises one of the deepest philosophical problems, that of identity, which the Greeks expressed in the paradox of the Argo: Was the ship still there though all the timbers had been renewed? It is the small boy's "same old jack-knife with six new blades and five new handles."

The problem of long-enduring words extends far beyond constitutions. Even if courts could disregard constitutional phrases limiting the national government at the risk of disrupting the federal system, they would not be equally free to reject the responsibility of interpreting words in old statutes (some of them long antedating the Constitution, like the Statute of Frauds of Charles II's reign) and old contracts and deeds. In 1933 a United States court had to interpret the gold clause in a lease of water power executed just before the Civil War.[33]

Nor is it always sufficient to determine what objects the words were applied to at the time they were written. A grant of the dramatic rights in a popular novel, given before the invention of motion pictures, may conceivably include screen rights; and few will follow the lawyer who wrote a book to prove that Congress could not regulate railroad rates under its powers over "commerce" because the only transportation in 1787 was by boats and wagons.[34] When those who used words contemplated their long continued application, these words must eventually acquire a new content, especially when, as Marshall said, "It is a Constitution that we are interpreting."

Let me end with a story about Robert Browning. Toward the close of his life he received a letter from Professor Hiram Corson of Cornell, asking whether one of his early obscure poems meant what Corson supposed it did. Browning replied, "I didn't mean that when I wrote it, but I mean it now."

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[33] Holyoke Water Power Co. v. American Writing Paper Co., Inc., 68F, (2d) 261 (C. C. A. 1st, 1933). See also Nashua Hospital Association v. Gage, 85 N. H. 335, 159 Atl. 137 (1932) (construimg deeds executed in 1850).

[34] PRENTICE, FEDERAL POWER OVER CARRIERS AND CORPORATIONS (1907).