spirit," This rule must be followed in criminal statutes, for every provision, "whether its immediate purport is to direct the doing of anything . . . or to prevent or punish the doing of anything it deems contrary to the public good," is to be so construed: Paragraph (*i*) of section 6 of the Acts Interpretation Act, 1908.

"Occasion" can mean opportunity, event, or something happening. It was so construed in even a wider sense in a case as to the power of trustees in dealing with a charity: See *In re* Palatine Estate Charity (39 Ch.D. 54). The trustees had power to employ all rents, &c., of a small parcel of land "for and towards the reparations, ornaments, and other necessary occasions of the said parish church," &c. It was held that the words "necessary occasions" included all those things that were necessary and proper to fulfil the objects of a church, and hence a new spire was such. This seems to me to have eliminated points of time and made "occasions" mean events or happenings.

By our law, as well as by the law of England, each count may be deemed a separate indictment (see subsection 2 of section 397 of the Crimes Act, 1908). In Latham *v.* Reg. (5 B. & S. 635, at p. 642) Mr. Justice Blackburn said, "Where an indictment consists of several counts they are to all intents and purposes several indictments, and the same as if separate juries were trying them." If there had been separate indictments Rex *v.* Steele (29 N.Z. L.R. 1039) would have applied. If so, why must the Court not now treat the counts as indictments? It has to construe a section in an Act that has declared a count in an indictment may mean a separate indictment, and if it is to construe the Act as a remedial statute and in the way in which the terms of the statute must be carried out I think that it may construe each count as if it were a separate indictment; and, as the reading of each count was an occasion, there is nothing I can see wrong logically or philologically in so construing the word "occasions." The most that can be said is—and I do not desire to minimize the strength of the argument, which I appreciate—that in ordinary speech "occasions" means not contemporary or simultaneous happenings, but suggests some interval of time between one occasion and another. Looking, however, at the substance of what has happened, and at our Interpretation Act, and the object of section 29 of the Crimes Act, I am of opinion that the declaration made regarding the prisoner should stand.

Denniston, J.:—

To entitle the Court to declare any person an habitual criminal he must have been previously convicted on at least four occasions of any of the offences mentioned in classes 1 and 2 referred to in section 29 of the Crimes Act, 1908. The prisoner had before his present conviction been convicted of more than four such offences. The question reserved is, Has he been convicted on at least four occasions?

It was held by the Court of Appeal in Rex *v.* Steele (29 N.Z. L.R. 1039) that a prisoner pleading guilty on the same day and at the same time to five indictments for offences committed at different times was convicted on five separate occasions. That case is not identical with the present one, and there is nothing in the reasoning of any member of the Court which exactly applies here. The question, therefore, is still open to the Court to decide.

The circumstances in the second indictment mentioned in the case stated are identical with those in Rex *v.* Steele (29 N.Z. L.R. 1039), except that in the present case the offences are alleged not in separate indictments, but in separate counts in one indictment. The prisoner pleaded guilty to them all. He must, I think, be taken to have pleaded guilty, and his plea to have been recorded generally. That is, I think, shown from the fact that he has pleaded guilty to four separate offences, whereas he could only have been guilty of two actual offences, the first and second counts being alternative—stealing and receiving the same goods—offences which are incompatible as referring to one transaction, and the same being the case as to the third and fourth counts.

I think it very doubtful if that was the proper course. The common law in England on the subject will be found in Archbold's Criminal Pleading (24th ed. 81). Much of the learning on the subject there shown is made unnecessary by the provision in our Crimes Act (section 37) that any number of counts for any crime whatever (except murder) may be charged in the same indictment, that where there are more counts than one in an indictment each count may be treated as a separate indictment, and that the Court may order the accused to be tried upon any one or more of such counts separately.

It is stated in Archbold's Criminal Pleading (24th ed. 85) that "the proper course is to enter up the verdict and the judgment separately on each count." For this O'Connell v. Reg. (1 Cox C.C. 413) and Latham *v.* Reg. (5 B. & S. 635) are cited. In Halsbury's Laws of England (Vol. ix, par. 665, p. 343) it is stated, "If several counts are joined in one indictment a verdict should be taken separately on each count, because if there is a general verdict and a general judgment on the whole indictment, and some of the counts should be decided to be bad, the whole judgment is vitiated"—citing only O'Connell *v.* Reg. (1 Cox. C.C. 413). If this is the correct course, I do not see that its not having been followed should interfere with the construction of the statute. If this course is followed, the only difference between this case and Rex *v.* Steele (29 N.Z. L.R. 1039) would be the fact that in the present case the offences are contained in one piece of parchment instead of four. I cannot see that this would make any substantial distinction between the two cases. In each case there would be, in my opinion, an independent happening, in the plea on each count, with necessarily an appreciable interval of time. Then, as to the first indictment mentioned in the case stated, that differs from the others in the fact that the plea to each of the five offences there charged was "Not guilty," and there was a trial and a general verdict of "Guilty." There, again, I have some doubt whether such a verdict is the proper one, as there were really only four offences, the second and third counts relating to the same matter. The observations I have made as to the second indictment apply, in my opinion, to this. This also does not seem to me to differ substantially from Rex *v.* Steele (29 N.Z. L.R. 1039). It is right to say that no injustice has been done to the accused in either of these instances, as the sentence is of course based on the offences actually disclosed on the indictments.

Before expressing any concluded opinions on these points I should wish to have the opportunity of looking more fully into the authorities. I do not think this necessary, as I have arrived at the same result by simpler considerations. The intention of the Act is, I think, clear. Two or four, as the case might be, previous convictions were to bring an accused within the category of persons liable to be sentenced to be declared habitual criminals. It is the fact of the convictions that is material—not the date of circumstances. The words of the section are: "Where such conviction" [that is, a conviction of any person on indictment] "is in respect of an offence" of one of the classes mentioned, "and such person has been previously convicted on at least two occasions" (or four, as the case might be) the liability has accrued. "Previously," of course, relates only to the relation in time between all the convictions relied on as creating the liability. The only reference to the number of the convictions and their circumstances is in the words convicted on at least two occasions." "Occasion" is not a term of art; it must be read according to the subject-matter and the context. Thus read "convicted on at least four occasions" appears to me to be only a somewhat roundabout way of saying "convicted at least four times." I cannot think it possible that anything so ludicrous could be intended as to make the liability to a declaration as an habitual criminal depend on whether the criminal had been convicted of four offences in four indictments or of four crimes in four counts in one indictment. Nothing but the plainest necessity would, in my opinion, justify such a construction. I think the construction I am accepting is a construction the words are quite capable of bearing, and at the same time attains the object of the Act and of the provision "according to its true intent, meaning, and spirit."

In my opinion the facts stated in the case show that the sentence as an habitual criminal was justified.

Edwards, J.:—

The provisions of sections 29 and 30 of the Crimes Act, 1908, are enacted with respect to matters the understanding of which requires no technical or special knowledge of any description. These provisions ought therefore, in my opinion, to be construed in the meaning in which they would be understood by any person of average intelligence and education—in a word, as they would be understood by the members of the Legislature which enacted them. Certainly no strained interpretation ought to be placed upon the words of an enactment which involves the detention in prison of offenders for an unlimited period, so as to bring within its operation any offender to whom it does not clearly apply.

Now, it appears to me to be plain that no person of average intelligence and education who was present in the Court and heard a prisoner tried and found guilty upon an indictment charging in four separate counts separate crimes would afterwards think that any one correctly stated what he had himself witnessed and heard who asserted that upon four occasions he had seen and heard the prisoner tried in the Supreme Court and convicted of crime. I agree, therefore, with Mr. Justice Chapman that the prisoner ought not to have been declared an habitual criminal, and that that part of his sentence should be quashed.

It is said that there is no difference in law between four separate convictions upon four separate indictments and a conviction upon one indictment containing four separate counts charging distinct crimes, and that to hold that there