METHODS OF STATUTORY INTERPRETATION IN THE HOUSE OF LORDS

PART I:

George Wimpey & Co. Ld. v. British Overseas Airways Corporation.

Principles of statutory interpretation have been laid down in thousands of cases, and the dicta in the cases have been collected into an elaborate system by text-writers. But for all this the lower courts continue to fall into error, or at any rate are often overruled by higher courts; and the members of the highest courts continue to disagree with one another as to the meaning of enactments which they are called upon to interpret. In some cases where the draftsman has failed to say clearly even what he was trying to say, disagreement as to what he was driving at is to be expected. For example, in *St. Aubyn v. Attorney-General* ([1952] A.C.15), where some of the provisions in question were described by Lord Simonds as being "of unrivalled complexity and difficulty and couched in language so tortuous and obscure that I am tempted to reject them as meaningless," it is not surprising that the trial judge was reversed by the Court of Appeal, and the Court of Appeal by the House of Lords. But even in this case the full extent of the disagreement (on three of the points that arose the House divided three-two in three different combinations, each member being in the minority on one or other of the points) was not due merely to the obscurity of the language. In this and in other cases there are disagreements that cannot be explained by the ineptness of the draftsman, or, furthermore, by any explicit difference of opinion as to the general canons of interpretation. There is something else which is merely implicit in the reasoning of the judges, and which is not dealt with in the textbooks. Nor, so far as the writer is aware, is it discussed in the periodical literature, which runs more to general criticism than to analysis of differences of opinion occurring in particular cases.

A good starting point for a detailed inquiry is *George Wimpey & Co. Ld. v. British Overseas Corporation* ([1955] A.C.169). In this case the cause of disagreement was clearly a difference in the method of approach by different members of the House of Lords to the construction of a statutory provision. An obvious line of further inquiry is to see how far

the same difference in approach explains other cases of disagreement in the House of Lords. But there are numerous recent cases in which the House of Lords (in various combinations of its members) has unanimously reversed the Court of Appeal or the Court of Session, and this suggests the existence of one or more methods of approach in the lower courts that are not to be found in the House of Lords, and at the same time a considerable degree of uniformity of approach in the House of Lords.

To pursue this matter one may take the decisions of the House of Lords over the last few years and inquire firstly, what is the general attitude (in so far as one exists) of the present and recent members of the House of Lords to a problem of construction, secondly, whether, where there has been disagreement within the House of Lords, the reason for it is the same as appears in *Wimpey's Case*, and thirdly, whether the cases in which the House of Lords has reversed the Court of Appeal or the Court of Session show any consistent difference of approach between the lower courts and the House of Lords. Privy Council decisions could be studied in relation to the first and third of these questions, but are less useful than House of Lords decisions since any dissent is not disclosed.

It is proposed to deal at this stage mainly with *Wimpey's Case*, and to pursue the further inquiry in a second part of this article: but the main impressions to be got from the recent decisions can be indicated briefly.

Firstly, it is clear that a "literal" as distinct from a "liberal" approach dominates the House of Lords. It operates most rigidly, of course, in the construction of taxing Acts, which in recent years have provided nearly half of the statutory interpretation cases in the House of Lords. The attitude in these cases is indicated by a dictum of Lord Simonds in *St. Aubyn v. Attorney-General (supra)*. He refers to "the constant refrain of learned counsel for the Crown that this or that is just the transaction at which this or that section is aimed," and goes on: "The question is not what transaction the section is, according to some alleged general purpose, aimed but what transaction its language, according to its natural meaning, fairly and squarely hits."[1] But an almost equally strict attitude is adopted in other cases by all the members of the House, and this accounts for a

1. But even this attitude leaves some room for disagreement. The point he was discussing was whether a person who had paid money to a company for shares had "made to a company . . a transfer of any property." On this point the House divided three-two.

surprising proportion of unanimous decisions. In any case carried as far as the House of Lords one might reasonably expect some difference of opinion; and yet of the 28 decisions involving statutory interpretation reported in the Law Reports from 1952 to the time of writing, 21 were unanimous. Furthermore, in 10 of the 28 decisions the House of Lords reversed the Court of Appeal or the Court of Session, and of these 10 reversals 7 were unanimous. In one case, *Richard Thomas & Baldwin's Ld. v. Cummings* ([1955] A.C.321)[2] the Court of Appeal construed words too literally even for the House of Lords; but on most occasions the lower court was reversed because it put on the words in question a meaning which it considered would avoid anomalies or injustice or give effect to what it conceived to be the general purpose of the legislation, whereas the House of Lords has consistently preferred to apply the plain or literal meaning of the words whatever the result might be. Thus in *East End Dwellings v. Finsbury Borough Council* ([1951], 1 K.B. 441; [1952] A.C. 109)[3] Bucknill L.J. said: —

> "We have, therefore, to apply the words of the section as best we can, being guided in the main by the natural meaning of the words, and at the same time not giving to them a meaning which would be plainly unreasonable or contrary to the general spirit of the appropriate legislation."

In their decision in this case the majority of the Court of Appeal (Singleton L.J. dissented) were plainly influenced by what they considered to be the general principle of the legislation; but the House of Lords unamimously reversed their decision, applying what it took to be the plain meaning of

2. A workman helping to repair a machine (from which the fence had been removed) injured his hand while moving by hand one part of the machine in order to make another part turn over. The C.A. held the employer liable for breach of statutory duty to keep all fencing or other safeguards in position "while the parts required to be fenced or safeguarded are in motion or in use."

3. The owner of a block of dwellings totally destroyed by enemy action was entitled to compensation on the basis of "the value which it would have if the whole of the damage had been made good" at a relevant date. If a new building had been erected the standard rents applicable to the old building would not have applied to it, and the value would thus have been higher than the value of a similar building subject to the old standard rents. The Court of Appeal held that the appropriate compensation was the lower value the building woud have had if the old standard rents had applied as they did in the case of the destroyed building. They read the section as if it had provided for the value which the interest would have had if the damage had not been done. The House of Lords held that on the plain meaning of the words the higher value must be taken as the basis of compensation.

the words, though at the same time being more astute than the Court of Appeal to find reasons why the result of a literal interpretation might have been intended. Dicta from two of the judgments may be contrasted with that of Bucknill L.J. quoted above. Lord Porter said:

> "The primary duty of a tribunal is to construe the section, and if, upon the reading of its terms, it bears in its wording a plain meaning, the fact that an unsuspected result is occasioned is no reason for rejecting the obvious meaning and substituting something which might be conceived to be that which Parliament would be more likely to intend to bring about."

Lord Asquith said:

> "If the meaning of those words were cryptic or equivocal it would no doubt be permissible to interpret them in the light of a number of extrinsic considerations, including any scheme or policy which could be spelt out of this complex of legislation: and any anomalies which might follow from one construction and be avoided by another. . . . . Yet that meaning is the logical starting point: and is in my view in this case so plain, that none of these extrinsic factors can properly be invoked to repel or qualify it."[4]

Occasionally, however, some members of the House of Lords have, where two interpretations seemed reasonably open, been ready to prefer the meaning that gave a reasonable result, and this accounted for the dissent of Lords Oaksey and Porter in the reversal of the Court of Appeal decision in *London Corporation v. Cusack-Smith* ([1955] A.C.337)[5] and appears also in *Wimpey's Case*, to be considered in detail shortly.

4. Note the opinion of Lord Simonds in *Kirkness v. John Hudson & Co. Ltd.* ([1955] 2W.L.R.1135) that a difference of judicial opinion as to the meaning of words does not entitle an individual judge, who forms a clear opinion as to their meaning, to say that there is an ambiguity.

5. Section 119 of the Town and Country Planning Act 1947 defined "owner" as a person who "is entitled to receive the rack rent of the land or, where the land is not let at a rack rent, would be so entitled if it were so let." In this case land was let by a freeholder, but at less than a rack rent. In such a case the words "if it were so let" might refer to the actual letting, to be treated as if it had been a letting at a rack rent instead of a lower rent, in which case the freeholder would be the owner; or they might refer to a hypothetical letting, by the person who was in the position to let at a rack rent, i.e. the lessee in this case who could sublet at a rack rent. The majority adopted the latter view and held that the lessee and not the freeholder was the owner.

We come now to the differences of approach that exist in the House of Lords and occasionally lead to dissenting opinions there, as in *Wimpey's Case*. This case was concerned with the construction of s.6(1)(c) of the Law Reform (Married Women and Tortfeasors) Act, 1935. So far as relevant the subsection reads:—

> "Where damage is suffered by any person as a result of a tort (whether a crime or not)—
>
> (a) judgment recovered against any tortfeasor liable in respect of that damage shall not be a bar to an action against any other person who would, if sued, have been liable as a joint tortfeasor in respect of the same damage; . . . . .
>
> (c) any tortfeasor liable in respect of that damage may recover contribution from any other tortfeasor who is, or would if sued have been, liable in respect of the same damage, whether as a joint tortfeasor or otherwise . "

Before this Act was passed if a person recovered judgment against one joint tortfeasor his cause of action merged in the judgment, and he could not thereafter sue another tortfeasor who would have been jointly liable with him. Section 6 (1) (a) abolishes this rule. Furthermore, where two tortfeasors caused the same damage, whether by joint action or not, it was possible for one of them to be made to bear the whole burden of compensation to the injured person. Thus if P suffered damage through negligence by A and by B, P could sue either A or B and recover in full from the one sued: and if he sued and recovered judgment against both he could execute his judgment in full against one only. In both cases, if A paid he could not obtain any contribution from B Section 6(1) (c) affects these rules.

It alters the common law by giving A a right to contribution from B, but its wording does not clearly show a design to cover some of the special cases that may arise: e.g. where B can plead a limitation statute against P at the time when A is sued or when he seeks contribution from B: where A has admitted liability and settled with P: where P and B are husband and wife and so cannot sue one another in tort;[6] where A and B are husband and wife: and where P sues B as well as A.

6. This case is covered by s. 7 of the Queensland Law Reform (Tortfeasors Contribution, Contributory Negligence, and Division of Chattels) Act of 1952.

but fails against him (whether by collusion or not) because of failure to give a required notice, or on some other procedural ground, or by mishandling his case.

Wimpey's Case raised the question of the effect of a limitation statute. There was a collision between two vehicles owned by Wimpeys and B.O.A.C. respectively. Littlewood, an employee of B.O.A.C. travelling in their vehicle, was injured: and more than a year later he commenced an action against Wimpeys. Wimpeys issued a third party notice to B.O.A.C. claiming contribution and indemnity, and later Littlewood joined B.O.A.C. as defendants. At the trial Parker J. gave judgment for Littlewood against Wimpeys, but as against Littlewood B.O.A.C. successfully pleaded the Limitation Act 1939, under which, as under the legislation it replaced, the limitation period for actions against a public authority is one year. (Littlewood had been advised that B.O.A.C. was not a public authority.) In the third party proceedings Parker J. held that s. 6(1)(c) did not cover the case where the party from whom contribution is sought has been sued and held not liable, so that Wimpeys failed in their claim against B.O.A.C.

On the contribution issue Wimpeys appealed to the Court of Appeal, which by a majority (Singleton and Morris L.JJ., Denning L.J. dissenting) upheld the decision of Parker J. The majority held that the word "liable" in the phrase "who is, or would if sued have been, liable" must mean "held liable." They further held that the words could not be construed as covering a person who has been sued and held not liable. As Morris L.J. put it, the words "if sued" "postulate the case of someone who has not been sued." Consequently Wimpeys could not recover contribution from B.O.A.C., who having been sued were not within the second limb of the provision, and having been held not liable were also not within the first limb.

Denning L.J. dissented, taking the view that "liable" meant "responsible in law," so that special defences did not affect liability to contribution. Alternatively, if "liable" meant "held liable," he held that the words "if sued" should be read as meaning if sued at the time when the cause of action arose.

By a majority of three to two the House of Lords upheld the decision of the Court of Appeal. Lord Simonds was one of the majority and expressed his reasons quite briefly. As to the meaning of "liable" in the phrase "would if sued have been liable," he said: "I think it is plain beyond argument that it

means held liable in judgment. No other meaning can reasonably be attributed to it in the context 'would if sued have been,' for these words make a suit the condition of liability."

He then stated the question as follows: "Contribution is recoverable from one who in an actual suit by the injured man has been held liable by judgment: it is recoverable from one who, if sued, would in that hypothetical suit have been held liable. Is it also recoverable from one who has been actually sued by the injured man and held not liable?" He pointed out that the question would arise not only where, as here, the Limitation Act had been successfully pleaded, but also where the claimant tortfeasor alleged that the defence, though it succeeded on the merits, was successful only because the case had been inadequately presented or even because the judge or jury had taken a wrong view of it. A construction leading to such a result should only be accepted if the language fairly admitted of no other meaning:

> "But so far from this being the case, in my opinion the subsection plainly contemplates two classes only of persons from whom contribution can be claimed, viz. those who have been sued and those who have not been sued but would, if sued, be held liable. If the intention had been to include a third class of persons who, having been already sued and found not liable, might yet in hypothetical proceedings be sued a second time and then found liable (an extravagant intention, as it appears to me, to impute to the legislature) I should have expected to find it expressed in clear and appropriate language. Not only is it not so expressed, but on the contrary I find in the words actually used the clear indication that the class of persons who 'if sued would have been liable' does not include persons who, having been sued have been held not liable. As Morris L.J. aptly puts it, the words 'if sued' postulate the case of someone who has not been sued."

This judgment, it is suggested, illustrates the line of approach which seeks to give to the words used the meaning or scope which was in the mind of the draftsman when he chose them, or in the minds of the members of the legislature when they considered them. Lord Simonds did not construe the words in the light of what would have been the probable attitude of the legislature or would have been a reasonable or just provision as to this unforeseen case. He looked for what, judging by the

words used, was actually in the mind of the draftsman or the members of the legislature. When they used the words "would if sued have been liable" they could not have intended to cover the case of a person sued and held not liable, for if they had they would have used other and more appropriate words. On the other hand he did not ignore the question of reasonableness, for he would accept a construction involving a reconsideration of the merits (for the purposes of the hypothetical action) only if the language fairly admitted of no other meaning. But this also, it is suggested, though he did not clearly state it, was on the probability that the draftsman and legislature did not actually have in mind something contrary to ordinary principles.

Lord Tucker's view was similar, in that the construction approved by the majority of the Court of Appeal appeared to him "to give effect to the natural meaning of the subsection read as a whole." Referring to the argument that, as the judgment in favour of the person from whom contribution was claimed was not res judicata, there was no impediment to his being brought within the second limb of the subsection, he said:

> "My Lords, this seems to me to do violence to language which is tolerably plain—albeit inapt to cover a situation clearly never envisaged by those responsible for its enactment. It is to be remembered that this Act is giving to the claimant in a new cause of action against the contributor which did not previously exist, and it would, in my view, require very clear language to lead to the conclusion that in addition to the categories consisting of (1) those sued and held liable, and (2) those not sued but who, if sued, would have been held liable, there is to be added a third class consisting of those who have been sued and held not liable but who may now be proved liable in further proceedings."

Thus Lord Tucker, like Lord Simonds, was disinclined to give to the words an extended meaning involving a result which he thought the legislature was unlikely to have intended. Even apart from this, as already indicated, he considered that the narrower meaning was the natural meaning of the words. "The words 'if sued' necessarily involve a contrast between those who have been sued and those who have not been sued and cannot, in my view, be read so as to include persons who have been sued."

Lord Reid agreed with Lord Simonds and Lord Tucker that B.O.A.C. were not liable to contribution, but not for the

same reasons. He agreed that the word liable meant liable by judgment. If one tortfeasor is held liable the first question is whether the second tortfeasor has been held liable. If he has, and the other conditions of the section are satisfied, he is liable to contribute. If he has not, the further question must be asked: would he if sued have been held liable? There are many cases where this question as it stands cannot be answered Yes or No. It depends on the time at which the second person is considered to be sued in the hypothetical action. This might be immediately after the damage was suffered, or when the first tortfeasor was sued, or when the contribution was claimed, or any time between the damage and the claim for contribution. The words must be construed as referring to some time and as contemplating that the second person had not in fact been sued at that time. To the argument that the words "if sued would have been liable" imply that the tortfeasor has not in fact been sued at any time, his reply was that he would agree if the words "if sued" did not refer to any particular time. But they must be construed as referring to some particular time, and this being so all that can be implied is that the tortfeasor was not in fact sued at that time. Thus if, for example, the correct time was immediately after the damage was done, the fact that in this case B.O.A.C. were sued unsuccessfully at the wrong time would not alter the fact that if sued at the right time they would have been held liable.

He proceeded to consider what, on the proper construction of the sub-section, was the time contemplated. After discussing the wording of the section he turned to the mischief against which the section was directed. This arose usually in two cases, firstly, where a plaintiff who successfully sued two tortfeasors proceeded to recover the damages from one only, and secondly where a plaintiff chose to sue one only. In each case there was no right to contribution. The words "who would if sued have been liable" were designed to cover the second case.

The position in the present case was very different. By the limitation statute, after a year B.O.A.C. had a complete defence against the plaintiff. However if the relevant time in relation to the words "would if sued have been liable" was the time immediately after the damage was done, or, as was ultimately contended by the appellants, the time most favourable to the plaintiff, this defence would be immaterial on the question of contribution. But to hold this and so give Wimpeys a right to contribution would be in effect to hold that Parliament

in 1935 partially withdrew the protection of the limitation statute. Lord Reid could see no indication of an intention to do this. It was clear that the draftsman had failed to notice that cases like this might occur and had failed to make any express provision for them. "This is therefore an example of the not uncommon situation where language not calculated to deal with an unforeseen case must nevertheless be so interpreted as to apply to it. In such cases it is, I think, right to hold that, if the arguments are fairly evenly balanced, that interpretation should be chosen which involves the least alteration of the existing law." Hence the time when the cause of action first arose was excluded as the time to which the hypothetical action should be attributed, and the proper time might therefore be either the time when contribution was sought or the time when the tortfeasor seeking contribution was sued. In either case Wimpeys failed, and it was not necessary in the present proceedings to decide which was the proper time.

Lord Porter disagreed with the Court of Appeal decision. He began by setting out "the position of tortfeasors before the Act was passed and the mischief which the Act was designed to remedy," and then went on to analyse the meaning of the relevant provision.

He did not agree that the words of par. (c) covered only two classes, viz. persons sued and held liable, and persons who had not been sued but who if sued would have been held liable. If the provisions of par. (a) were to be read as parallel with those of par. (c) there might be some support for that view: but to him they seemed to deal with essentially different matters. In the first paragraph there is only one person to sue, and the person liable can only be sued or not sued as the case may be by the person injured. Referring to the construction put on the second paragraph by the Court of Appeal he said he saw no reason to add the words "who have not been sued" to give the meaning contended for by the respondents. Nor would he bolster up the appellants' case by adding or implying "if sued in time." The wording seemed to him to refer naturally to persons who were implicated in the tort. B.O.A.C. were implicated and therefore would have been liable if sued.

> "I prefer to interpret the section as it stands. It stipulates nothing as to time, but, to my mind, B.O.A.C. in terms come within the category of those who would have been liable if sued and, unless some qualification is placed

> upon these words, Wimpeys can recover the contribution they ask. In my view, the two types of person referred to are simply those who have been sued or those who would have been liable, if sued, and I see no reason for making the classes mutually exclusive."

He said he reached this view on the wording alone, but if there was thought to be any ambiguity, in his view the ambiguity should be resolved in favour of the appellants. On the other view it would still be possible for a plaintiff to choose the party he wished to make liable. (He appears to have been referring to such a case as this, where by delay beyond a limitation period applying to one tortfeasor a plaintiff could throw the whole liability on the other, and may also have had in mind Denning L.J.'s suggestion that the plaintiff might release one wrongdoer.) Nor did he see much force in the argument that to allow a second trial on the merits would be an unexpected or undesirable result; for there are other cases in which there may be two actions and two courts may give different decisions on the same facts. He concluded by saying that "having regard to the language used and the mischief desired to be cured, both in construction alone and in case of ambiguity," he would allow the appeal.

Lord Keith agreed with Lord Porter that the appeal should be allowed, but his argument was not quite the same. Like Lord Reid he treated the essence of the matter as being the time at which the hypothetical action was to be considered as having been brought. Assistance was to be got from other parts of s.6. The words "who would if sued have been liable . . . . . in respect of the same damage" appear in par. (a) as well as in par. (c). In his view the only relevant time for the hypothetical action contemplated by these words in par. (a) was the time when the cause of action arose. It might be that when action was actually brought against the second joint tortfeasor he would have a defence such as a time bar, but par. (a) was concerned only with removing the bar raised by the common law rule that the cause of action merged in the judgment obtained in the first action, and so was not concerned with anything but the original liability of the second joint tortfeasor. There was nothing to indicate that the words meant "would have been liable if sued at the same time as the other joint tortfeasor."

Then as to par. (c) tortfeasors other than joint tortfeasors were covered by the paragraph, and it had always been open to

an injured party to sue such tortfeasors in separate actions. Accordingly here also there was no reason for holding that the words "would if sued" meant if sued at the same time or in the same action as the tortfeasor seeking contribution.

Lord Keith supported this view by an argument drawn from the meaning of the word "liable" in the first limb of the paragraph. Where used second in par. (a) and par. (c) the word clearly meant "found liable." In par. (b), where there is reference to an action being brought against tortfeasors "liable in respect of the damage" it could not mean held liable. Where the same words were used at the beginning of par. (c) Lord Keith was unable to give them a different meaning.

> "I reach the result that 'liable' where first found in subsection (1) (c) does not mean 'found liable'. If so, the words 'would if sued have been liable' cannot be read as 'would if sued in the same action in which the tortfeasor seeking contribution was found liable.' The date to be attached to the words 'if sued' is thus thrown completely loose and, in my opinion, the words should be referred to a time at which the words will be given efficacy in all cases, a time at which the question of liability for the damage can be the sole issue to the exclusion of all special defences."

As to the result of this construction Lord Keith said:

> "It may seem a strange result that the action by the injured man against the respondents failed for being out of time and that the action for contribution against them is in time. But no question of policy in this matter can, in my opinion, be appealed to as an aid to arriving at the proper construction of the statute."

It can readily been seen that the line of approach followed by Lords Porter, Reid, and Keith differs from that followed by Lords Simonds and Tucker and briefly analysed above. Although the reasoning of each of the three was different in detail, and led to disagreement amongst themselves, there is, it is submitted, a common element in their general attitude. As compared with that of Lord Simonds and Tucker, there is less of an attempt to ascertain what was in the mind of the legislature, and more of a disposition to treat the words as having an independent operation. The statutory provision is a text to be construed; and the question is, not what was the legislature

trying to say, but what do the words mean? The words are not treated as being merely the means of communication between mind and mind, and therefore to be limited in their operation to what was in the mind of their author. On the contary the instrument created by the legislature may have an operation unforeseen by its creator.

This appears very clearly from the judgment of Lord Reid. He expressly treats this as a case "where language not calculated to deal with an unforeseen case must nevertheless be so interpreted as to apply to it." He obviously does not regard the function of the interpreter as being limited to discovering what was in the mind of the legislature. Instead, he begins by recognising that the words in themselves are literally capable of bearing more than one meaning, and then, applying a closely method of exegesis, he proceeds to determine which of the possible meanings best suits the context or is it to be preferred on other grounds warranted by the canons of interpretation.

Similarly Lord Porter was concerned with the meaning of the words in themselves, but was less ready than Lord Reid to recognise that they might be ambiguous. He was prepared to give them their full literal scope. If at any time a person might have been held liable if he had been sued, that person was covered by the words "who would if sued have been liable:" and, since the description made no reference to the time of hypothetical suing, the fact that he had been sued at a certain time and held not liable did not alter the fact that he was within the description, so long as he would have been liable at some time. The argument that the legislature could not have been thinking of this case was not considered by him, and this tends to show that he did not regard this as a relevant argument. That is to say, he was not concerned with what was in the mind of the legislature, but only with the meaning of the words it used. He did not of course reject any argument from the context or the object of the section. If there was an ambiguity he was prepared, on the basis of the object of the section, to resolve it in favour of the person seeking contribution. Thus although adopting the same general approach of textual exegesis, he differed from Lord Reid, firstly in considering that the words had a definite meaning in themselves, and secondly, if they did not, in taking a different view of other considerations affecting the construction.

Lord Keith also sought to ascertain the meaning of the text, and like Lord Porter and Lord Reid, was not influenced

by any indication in the language used that the case in question was not actually in the mind of the legislature. Like Lord Reid, he did not consider that the meaning of paragraph (c) was clear from the words themselves. He construed the words in the light of their context, especially the use of similar words in other parts of the section, and did not find it necessary to resort to further considerations such as the object of the provision (which influenced Lord Porter) or its relation to the limitation statute (which was decisive for Lord Reid). His view that the words should be referred to a time at which they would be given efficacy in all cases seems to have been a matter rather of giving them their literal meaning (i.e. the fullest scope warranted by the words themselves) than of carrying out the general object of the legislation; for he expressly repudiated policy considerations.

Thus Lords Porter, Reid, and Keith agreed in treating their task as being to find what set of circumstances could reasonably be regarded as being covered by the words used by the legislature, rather than what sets of circumstances were actually contemplated by the legislature. But they followed different paths of inquiry, and even reached different conclusions, because they differed as to the extent to which the words needed elucidation. Lord Porter, although he considered the subsection as a whole, did not get much help from other paragraphs, and was able to find the meaning of par. (c) from the words of that paragraph themselves. Lord Keith had to look beyond par. (c), but was able to determine the meaning from the language of the subsection as a whole. Lord Reid, examining the subsection as a whole, was still in some doubt, and so resorted to a general principle of construction, that of adopting, in a doubtful case, the construction involving the least change in the existing law.

The above discussion has been directed mainly to showing one distinction between different methods of statutory construction illustrated by the judgments in *Wimpey's Case*, i.e. on the one hand the method governed by the principle that the words used are not to be given a scope extending beyond what was actually contemplated by the legislature, and on the other a method which does not recognise this limitation but allows the words to be given an unintended scope warranted by the literal meaning of the words and by other considerations deemed relevant. The writer does not wish to suggest, however, that the different attitudes behind these different met-

hods are disclosed or make a difference in all cases. Very commonly, when a subject of legislation is such that various different cases may arise, there is nothing in the language used to show which of the possible cases were actually in mind; and where this is so the interpreter must assume that all cases literally covered by the words were intended to be covered, except in so far as the general purpose disclosed by the legislation or other general considerations suggest restrictions.

Some further distinctions may now be noted. The words "plain," "ordinary," and "literal" are frequently used to indicate the sense in which the words of a statute are to be construed (i.e. where the interpreter considers that they do have a plain, ordinary, or literal meaning), and to indicate that some special or secondary meaning is not to be adopted in order to avoid a casus omissus, or anomalies, or results which the interpreter considers unreasonable or unjust. None of the members of the House of Lords would dissent from the principle that words in a statute are to be construed according to their ordinary or literal meaning: but the differences of opinion in *Wimpey's Case* show that there is not one single conception of this principle. A distinction may be drawn between the meaning in ordinary usage and the literal meaning of words. No one could say that the words "who would if sued have been liable" are the words that would ordinarily be used to describe persons originally liable on the merits including persons actually sued and held not liable otherwise than on the merits. But taken literally they can be viewed as covering such persons. Lord Simonds and Tucker applied the ordinary usage test. Lords Porter, Reid, and Keith on the other hand looked for a literal meaning.

This distinction between an ordinary and a literal construction is perhaps more clearly illustrated by one of the provisions construed in *St. Aubyn v. Attorney-General* and mentioned above. The question was whether a person who pays money to a company on a subscription of shares is one who "has made to a company . . . . a transfer of any property." Literally he is. Money is property, and he has transferred that property to the company. But as Lord Simonds said: "No one, lawyer, business man or man in the street, was ever heard to use such language to describe such an act." Nevertheless Lords Radcliffe and Tucker held that there was a transfer of property within the section, though they were influenced by a "deeming" provision in another section giving a somewhat artificial meaning to the term transfer of property.

But there are degrees of literalness. In *Wimpey's Case* Lord Porter's construction was literal in the extreme. He concentrated on the words themselves, whereas Lords Reid and Keith took more of the context or subject matter within their view. Furthermore, the method of seeking the literal meaning of words may lead to the conclusion that the words are ambiguous, with a broader or a narrower construction open, whereas on the "ordinary usage" approach one construction (whether narrower or broader) alone would be open. This leads to something of a paradox. Where one interpreter with a literal approach finds an ambiguity, he may resort to extrinsic considerations to resolve it, and the course of reasoning may be much the same as where another interpreter, recognising that the more natural meaning is restricted, nevertheless is prepared, on a "liberal" approach, to give the words a more extended application in view of the general object of the statute or considerations of what is reasonable or just.

A further point which may be noted at this stage, but not discussed at length, is that the ordinary meaning of words is not necessarily the meaning that will be applied by those who look for what was in the mind of the legislature or in certain cases even by those who adopt the more literal approach. There are many cases in which general words, wide in scope on their ordinary meaning, have been cut down on the assumption that the legislature had only a limited application in mind.

In the second part of this article it is proposed to pursue this inquiry over a wider range of cases, to see how far the different methods of approach appearing in *Wimpey's Case* appear also in them.

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