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Stat LR [Spring 1981] pp. 63-64

Letter in Statute Law Review

First year of the Statute Law Review

Page 63

Sir,

My comment on the first year of the Statute Law Review is that it is sheer delight to have a journal whose every article (one might almost say whose every word) is of riveting interest. There are buffs in all fields, and they mostly have their journals. As an unashamed statute law buff I hail the arrival of this Journal—devoured and redevoured from cover to cover.

The standard of contributions in the first year is excitingly high. Long may it continue! In this letter I pick out a few points which move me to comment, sometimes critically. Absence of comment betokens, almost universally, nothing else but respectful admiration.

My friend Bill Leitch (p. 8) approvingly quotes the dictum of the late (and much lamented) Rupert Cross that at the level of general principle statutory interpretation does not lend itself to legislative elucidation. As I have explained elsewhere, this betrays an attitude I venture to think misconceived.[1] Parliament enacts the laws, so Parliament can prescribe how they are to be interpreted (and should, where interpretation goes astray). Mr. Leitch also errs in saying (p. 13) that the Interpretation Act 1978 "probably does almost as much as can be done in an Interpretation Act to shorten and simplify Acts." As co-author with you, Sir, of the notable Interpretation Act of Northern Ireland, Mr. Leitch knows perfectly well that this remark is true only if *probably* and *almost* are allowed to qualify the proposition virtually out of existence.

Another friend, Jack Clarence Smith says (p. 19) that clear drafting has never been misinterpreted. This overlooks deliberate delegation by ellipsis or the broad term. Drafting error is not the sole doubt-factor. Miers and Page rightly say (p. 25) that a statutory provision cannot be paraphrased and still be law. In drawing from this the conclusion that there are "no leeways for interpretation through the manipulation of the form in which the rule is expressed" they overlook static processing devices such as composite restatement.

Dorothy Johnstone (p. 67) comments on a parliamentary question by Ivan Lawrence M.P. Having instigated (though not phrased) the question, I was chagrined when it misfired. It was intended to challenge Sir Henry Rowe's famous ukase, also quoted by Mrs. Johnstone, refusing consultation with Parliamentary Counsel "before, whilst or after." There would, as Mrs. Johnstone says, be wire-crossing if draftsmen held direct consultations on a particular Bill. My aim was different, namely to open channels of discussion with draftsmen on general aspects of their technique, using specific Bills for illustration only.

Mr. Jamieson (p. 78) arouses admiration for managing to base an entire article on the so-called principle of Longmead's case.[2] I have often wondered why successive editors of Craies think it useful to preserve an eighteenth

[1] See Francis Bennion, *Statute Law* (1980), pp. 214-218.
[2] (1795) Leach C. C. 694 at p. 696.

century dictum of such crashing obviousness. The legislature are not bound to use any precise form of words when legislating because no precise form, exists which they could be bound to use (quite apart from such overriding considerations as the sovereignty of Parliament).

Alec Samuels (p. 90) allows some merit to my idea of composite restatement, but raises two objections. Will the user be content not to check the primary sources, and is it not better to concentrate on improving *their* quality? What I call static processing or text manipulation requires the user to place some trust in the processor. An official restatement (as an alternative to consolidation) would have added authority. As for improving the primary sources themselves, there is limited scope for this: parameters constraining the text are formidable.[3] Another point made by Mr. Samuels concerns the efficacy of statutory licensing. He says (p. 107) that the Consumer Credit Act system is proving "much too cumbersome," and advocates the simpler device of withdrawal of the right to practise on proof of misconduct. The "Director General of Fair Trading disagrees: "the licensing process has revealed that, over the years, unacceptable working practices had grown up ... the licensing powers conferred by the [Consumer Credit] Act have enabled me to discover, and start to deal with, a variety of unfair and harmful practices." [4]

In the final issue of the *Review* for 1980 my attention was caught by two things. One was a remark by Alec Samuels on *R v. Cuthbertson*.[5] He disagrees strongly with this House of Lords decision and says (p. 169): "rules of statutory-interpretation that permit convicted criminals to retain the fruits of their crimes either must be wrong, or wrongly applied, or call for change." This seems, with respect, to be a very strange proposition. Surely the change called for (if any) is in the Misuse of Drugs Act 1971, the wording of which irresistibly led to this result, and not in any rule of interpretation. We should not look to rules of interpretation to reverse the plain meaning of statutory words. The other point relates to an article of mine mentioned in Materials on Legislation (p. 178). In very helpfully summarising the article you, Sir, state that I describe textual amendment as Scatter. My intended meaning was the opposite. Scatter is a vice of statute law which involves the same point being dealt with in a number of different texts. The great virtue of textual amendment is that when the amended provision is reprinted duplicity of texts is avoided.

It would be churlish if I ended this letter without expressing appreciation of the kind words you, Sir, express (p. 4) about my part in the launching of the *Review*.

Francis Bennion

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[3] See Francis Bennion, *Statute Law Obscurity and the Drafting Parameters* (1978) 5 BJ.L.S. 235; *Statute Law* (1980:, Chaps. 3 and 11.

[4] Annual Report of the Director General of Fair Trading for 1979, p. 10.

[5] [1980] 3 W.L.R. 89.