Editorial

Consulting Hansard

On 26 November, in *Pepper v Hart*, the House of Lords, re-convened as a seven-judge court after an earlier hearing, held that employees receiving fringe benefits (in this case, school teachers paying reduced fees for their children's education) are taxable only on the employer's marginal costs rather than on a proportion of the total costs, as contended by the Revenue. Apart from its substantive importance, the case led to an important modification of the long-established rule that forbids reference to *Hansard* as an aid to statutory interpretation.

This rule, criticised in the past (notably by Lord Denning), but firmly re-stated in various rulings of the House of Lords, has been supported by reference to Article 9 of the Bill of Rights 1689 (cited by the Attorney-General in *Pepper v Hart*) which provides "that the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament". There was no *Hansard* in 1689, and the modern rule is based on the judge's duty to give effect to the intentions of Parliament only as expressed in the words of the statute, and on the principle that citizens are entitled to rely on those words when ascertaining their legal rights and duties. It has been noted also that "parliamentary debate is seldom concerned . . . with precise problems of interpretation, and is an unreliable indicator of Parliament's intentions" (Miers and Page, *Legislation*, 2nd edn, 1990, p 178).

Lord Browne-Wilkinson acknowledged the constitutional importance of Article 9, but said that the purpose of relaxing the rule, far from impugning the independence of Parliament, would be to give effect to what had been said or done there. He held that reference to parliamentary materials should be allowed where (a) legislation was ambiguous, obscure or led to an absurdity; (b) the material relied upon consisted of one or more statements by a minister or other promoter of the Bill, together if necessary with such other parliamentary material as is necessary to understand such statements and their effect; and (c) the statements relied on are clear. Here the Minister had told the Commons that the statutory provisions (s 63 of the Finance Act 1976) referred to marginal costs.

The Lord Chancellor agreed that the appeal should be allowed, but dissented on the *Hansard* point. Relaxation of the rule would mean that, in most cases involving statutory construction, legal representatives would have to study *Hansard*, and this would result in an immense increase in the costs of litigation. He would not wish to be a party to a change that would have that effect. However, he did concede that the objections in principle to changing the rule were not strong and that, but for the practical consideration, it should not be adhered to.

This is a modest change of practice, hedged about with caveats. But it does loosen some of the rigidities of statutory interpretation. Meanwhile, the Lord Chancellor's misgivings are those of a minister, protective of the generality of taxpayers. However, we wonder how far such a *ministerial* perspective should colour the *judicial* approach to the position of particular taxpayers in litigation? As it happens, Lord Mackay found for the taxpayer in *Pepper v Hart*, but would justice have been seen to be done had he led a majority in favour of the Revenue? The case does raise again, albeit incidentally, the worrying constitutional issue of whether our Minister of Justice (in all but name) should also be entitled to preside over our final court of appeal.