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Equity and Reason of a Statute

Frederick J. DeSloovere

THE EQUITY AND REASON OF A STATUTE

FREDERICK J. DESLOOVÈRE

I. THE EQUITY OF A STATUTE

Conceived discrepancies between the intention of the legislature and the meaning of statutory words led at an early date to the doctrine of the equity of the statute, according to which courts might vary the explicit meaning of the text whenever by supposed equity such meaning ought for the sake of justice to be extended or restricted.[1] Some tracing of the reasons for the doctrine may show how firm are its roots in the law.[2] For example, it is an old doctrine that the plain meaning of the words of a remedial statute may be modified so as to bring a case, out of the letter, within the general object or mischief against which it was believed the statute was directed.[3] Lack of precision, particularly in early English statutes, has also been given as a reason for equitable or extensive interpretation.[4] In part, it has been due to the fact that the provinces of legislator and judge were not clearly distinguished,[5]

[1]"Equity is a construction made by judges, that cases out of the letter of a statute, yet being within the same mischief, or cause of the making of the same, shall be within the same remedy that the statute provideth; and the reason hereof is, that for the law-makers could not possibly set down all cases in express terms." Co. LITT. 24b, quoting Bracton's definition. See also Stradling v. Morgan, Plowd. 199, 205a, 75 Eng. Rep. 305 (1560); Eyston v. Studd, Plowd. 459, 465–468, 75 Eng. Rep. 688 (1573) note.

The term "equity of the statute," according to Austin, is used in several senses: (1) as a parity between a case within the statute and one to which the statute is extended; (2) as extensive interpretation *ex ratione legis*; (3) as an idea or principle by which extensions of statutes ought to be made; and (4) as the reason of the statute. Of course, these considerably overlap. See AUSTIN, LECTURES ON JURISPRUDENCE (4th ed. 1879) 1028–1029.

For further treatment of the doctrine, see LIEBER, HERMENEUTICS (1880) appendix, 285; GRAY, THE NATURE AND SOURCES OF THE LAW (2d ed. 1921) 179 *et. seq.*; Pound, *Spurious Interpretation* (1907) 7 COL. L. REV. 379; Loyd, *The Equity of a Statute* (1909) 58 U. OF PA. L. REV. 76; and PLUCKNETT, STATUTES AND THEIR INTERPRETATION IN THE FIRST HALF OF THE FOURTEENTH CENTURY (1922) 51–53, 121–127.

[2]2 COKE, INST. 107, 401; 10 Co. Rep. 30b; Gwynne v. Burnell, 6 Bing. N. C. (1840) 453, 461, *per* Ld. Ellenborough; 561 at 696, *per* Ld. Brougham.

[3]Co. LITT. 24b; BAC. AB. tit. "State". I, 5–6.

[4]In Wilson v. Knubley, 7 East, 128, 136 (1806), Lord Ellenborough says: "In ancient statutes no great precision of language prevailed, and the words were very loose and general."

[5]Bradlaugh v. Clarke, 8 App. Cas. 354 (1883). See also Stockdale v. Hansard, 9 A. & E1. 3 St. Tr. N. S. 723 (1937), in which it is shown that originally Parliament was consulted on points of difficulty; Hilder v. Dexter, [1902] A. C. 474.

and in part to "the ancient practice of having the statutes drawn by the judges from petitions of the Commons and the answers of the King."[6] The doctrine is found as far back as the Year Books.[7] Instances of its application are legion. In the Statute De Donis, for example, "lands and tenements" was interpreted to include uses, though strictly applicable only to estates at law.[8] Likewise, in a statute[8a] providing that certain rights of testators survive to their executors, the words "trespass" and "trespassers" were held to mean "wrong" and "wrongdoers" respectively.[9] So in the Statute of Gloucester,[9a] as to waste, "lessee for years" was interpreted to include a tenant for one year or less.[10] The doctrine may also have arisen in part from the theory of natural law that courts have the power to disregard statutes so far as they are contrary to reason and natural rights. But this theory was never fully established in England, for it was stated in some cases and retracted in others.[11] It had even been pronounced dangerous.[12] Finally, as a result of the contests between Parliament and the crown, limitations upon the power of Parliament were wholly overthrown.[13] At any rate, the real purpose of the doctrine of equitable interpretation was to construe the statute so as to give justice in the particular case, even though in so doing it was necessary to contravene the plain meaning of unambiguous language. It was also applied so as to give general scope to the meaning of special statutes or of statutes designating

[6]Co. Litt. 272a; Ilbert, Legislative Methods and Forms (1901) 5.

[7]See Plucknett, Statutes and their Interpretation in the Fourteenth Century (1922) 51–53; Loyd, *The Equity of a Statute* (1909) 58 U. of Pa. L. Rev. 76.

[8]Corbett's Case, 1 Co. 88 (1600). [8a]4 Edw. III, c. 7 (1329).

[9]Wilson v. Knubley, 7 East. 128, 136 (1806) *per* Ld. Ellenborough. The same statute was similarly construed to extend to all torts not involving personal injury in Williams v. Carey, 4 Mod. 403, 12 Mod. 71 (1695). *Cf.* Berwick v. Andrews, 2 Ld. Raym. 971 (1702); Bradshaw v. Ry. Co., L. R. 10 C. P. 189 (1875); Leggott v. Grt. No. Ry. Co., L. R. 1 Q. B. D. 599 (1876); Twycross v. Grant, L. R. 4 C. P. D. 40 (1878) *per* Bramwell, L. J.

[9a]6 Edw. I, c. 5 (1278).

[10]Co. Litt. 53a; 2 Inst. 302. See also Harper v. Taswell, 6 C. & P. 166 (1833); Wallace v. King, 1 H. Bl. 13 (1788); Pitt v. Shew, 4 B. & Ald. 208 (1821); Johnson v. Upham, 2 E. & E. 250 (1859); R. v. Cox, 2 Burr. 785 (1759); R. v. Younger, 5 T. R. 449 (1793).

[11]See Bonham's Case, 8 Co. 118a (1610); Day v. Savadge, Hob. 87 (1615); City of London v. Wood, 12 Mod. 687 (1700); 1 Bl. Com., Intro., 91; 1 Kent Comm. 447. *Cf.* the doctrine, *ut res magis valeat quam pereat*, in Curtis v. Stovin, 22 Q. B. D. 512, 517 (1889).

[12]R. v. Turvey, 2 B. & Ald. 520 (1819). *Cf. infra* note 25.

[13]Lee v. Bude (1871) L. R. 6 C. P. 580; see especially Pound, *Common Law and Legislation* (1908) 21 Harv. L. Rev. 383, 392–393.

specific instances, apparently on the theory that, although the expression was specific, the reason of the lawmaker was general.[14]

Equitable interpretation seems therefore to have evolved in England in part from the doctrine of interpretation by *voluntas* of the Roman law, in part from the doctrine that positive legislation was conceived to be declaratory of natural-law principles demanding an extension of statutory precepts to accord with the interpreter's own ideas, or those objectively established, as to natural rights and justice, in part from the civil-law doctrine that treats a statute as a principle, and in part from the influence of the equity courts with respect to poorly drawn and inadequate statutes of the time.[15] Gradually, however, the doctrine of literalness became the basis of English statutory interpretation according to which a statute was to be regarded as a rule covering a definite area of fact, to be applied to cases coming within that area as defined by the language of the text and to no other cases.[16]

Equitable interpretation of statutes, moreover, was often used in a

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[14]See 2 COKE, INST. 167; 6 Co. Rep. 107, where the STAT. WESTM. I, 3 EDW. I, c. 4 (1276), which provided that a vessel should not be adjudged a wreck if "man, dog or cat" escaped from it, was by equitable interpretation extended to any animal. Here, however, the contextual meaning, taking the enumerations as examples, justified the conclusion apart from any equity of the statute. See 2 INST. 256, where a special direction to the judges of the King's Bench was extended to judges generally. Similarly, see Platt v. Lock, Plowd. 35, 75 Eng. Rep. 57 (1550) where a prohibition (in 1 RICH. II, c. 12 (1378)) to the Warden of Fleet was applied to all jailers. Again, in 2 INST. 322, "London" in the STATUTE OF GLOUCESTER, 6 EDW. I, c. 11 (1278) was held to mean all cities and boroughs generally.

[15]For an enlightening treatment of the doctrine from these angles, see LIEBER, HERMENEUTICS (1880) 287.

[16]"Three postulates underlie our technique of interpretation:

"(1) That the statutory formula provides one or more rules, that is, provides for definite legal consequences which are to attach to definite, detailed sets of facts.

"(2) That the formula was prescribed by a definite lawmaker; that the law making collectivity is analogous to the individual sovereign lawmaker of the Byzantine empire, and hence had a will the content of which is discoverable or to be discovered.

"(3) That the formula prescribed was meant to cover a certain definite area of fact, discoverable and to be discovered; hence that when the area is defined the formula is meant to cover all detailed situations of fact within it, and the intended rule for any such situation of fact is discoverable and to be discovered.

"It is easy to attack these postulates as not in accord with reality. Yet for practical purposes they come as close to the phenomena of finding and applying law as the phenomena come to the postulates of any body of organized knowledge." Pound, Introduction to DESLOOVÈRE'S CASES ON INTERPRETATION OF STATUTES (1931) p. vi.

different sense, namely, "the true intention of the lawmaker",[17] whatever the phrase may mean. In many early English cases, the courts, in attempting to reach satisfactory results under the guise of determining the legislative intention, which was regarded as something existing over and above the mere text of the statute,[18] would frequently contradict plain statutory meanings.[19] This approach was less often applied to penal legislation.[20] Thus, in the case law, a conflict between the doctrine of literalness and that of equitable interpretation gradually grew up, with no clear analysis of underlying distinctions or common elements. The problem persists even to our own time. Austin, however, crystallized the issue by distinguishing between genuine and spurious interpretation,[21] conceding that to contradict a clear, explicit meaning which is consistent with the whole text, in interpreting or applying it, is definitely unwarranted.[22] Even Lord Mansfield sometimes considered the equity of a statute synonymous with legislative intention.[23] The general belief, however, was simply that the letter and the intention were different things, and that the intention was always superior.[24] Sometimes the real legislative intention and equity of the statute were thought synonymous with statutory purpose,[25] and sometimes inter-

[17]Rex v. Williams, 1 W. Bl. 93, 95 (1758) *per* Ld. Mansfield; also Plowd. 205, 233; 11 Co. Rep. 73; Fulmerston v. Steward, Plowd. 109; Platt v. The Sheriffs of London, Plowd. 36 (1550); Buckley v. Rice, Plowd. 118, 125 (1556); Hill v. Grange, Plowd. 177 (1558). Compare 2 COKE, INST. 386, citing a case concerning II WESTM., c. 12 (which gave damages to an appellee upon his acquittal), in which it was held that if the appellee's life was never in jeopardy, he was not within the statute, even though within the letter thereof.

[18]PLUCKNETT, STATUTES AND THEIR INTERPRETATION IN THE FOURTEENTH CENTURY (1922) c. 2.

[19]PLUCKNETT, *supra* note 18, cc. 2 and 5, pp. 50–65 and 72–81. *Cf.* Margate Pier Co. v. Hannam, 3 B. & Ald. 266 (1819).

[20]"Lord Keeper Egerton ordered a vexatious plaintiff *in forma pauperis* to be whipped 'upon the equity of the statute 23 Hen. VIII, c. 15' ". 1 SPENCE, EQ. JUR. OF THE COURT OF CHANCERY (1846) 690, n. e; see also Eyston v. Studd, Plowd. 459, 465–468 (1573) n.; LIEBER, HERMENEUTICS (1880) 289.

[21]AUSTIN, LECTURES ON JURISPRUDENCE (4th ed. 1879) 596, 650, 1023 *et seq.* Pound, *Spurious Interpretation* (1907) 7 COL. L. REV. 379.

[22]Austin, 650. [23]R v. Williams, 1 W. Bl. 93, 95 (175[illegible]

[24]"Whoever would consider an Act well ought always have particular regard to the intent of it, and according as the intent appears he ought to construe the words." Willion v. Berkley, Plowd. 223, 231, 75 Eng. Rep. 339, 351 (1601).

"Everything which is within the intent of the makers of the Act, although it be not within the letter, is as strongly within the Act as that which is within the letter and intent also." Stowell v. Lord Zouch, Plowd. 353, 366, 75 Eng. Rep. 536, 556 (1569).

[25]See opinion of Byles, J. in Shuttleworth v. Le Fleming, 19 C. B. (N.S.) 687, 703 (1765), to the effect that the term, "within the equity," means "within the

pretation was considered a purely equitable doctrine to work justice in each case.[26]

It is important to notice that the key to the conflict between literalness and the equity of the statute lies in clearly understanding just how legislative intention has been sought, what it actually signifies in each case, and what limitations have been and ought to be placed upon the methods of determining it in our own theories of statutory construction today. It is submitted that in order to bring the equity doctrine within the realm of genuine interpretation as now understood, it should be confined to making a choice from two or more possible meanings that the words will bear by fair use of language, after all normal techniques for making such a choice have failed to give a solution.[27] Many cases based on the equity of the statute are not, when carefully analyzed, spurious interpretations in any sense. Some of the early cases signify only that the literal meaning is not to be followed if it leads to absurdity or injustice, or is contrary to the plain purpose of the statute as determined from the whole.[28] Many American cases purporting to adopt the doctrine of equitable interpretation go no further than the context, reason, and purpose, as determined from the whole statute, clearly warrant.[29] The doctrine ought not to be con-

mischief", but that it is a dangerous rule. *Cf.* Gutrie v. Fisk, 3 B. & C. 178 (1824); and COMYN'S DIGEST, tit. "Parliament", R. 13, 15.

Equitable interpretation taken, if not contrary to statutory purpose: Porter's case, 1 Co. Rep. 22 (1592). Interpretation to work convenience and accord with common practice: Chudleigh's Case, 1 Co. Rep. 120 (1589–95). Liberal construction to accord with the letter of the statute: Butler & Baker's Case, 3 Co. Rep. 25, 31a (1591). Liberal construction to accord with statutory purpose: Boynton's Case, 3 Co. Rep. 43 (1592).

[26]"If you ask me by what rule the judges guided themselves in the diverse expositions of the self-same word or sentence, I answer, it was by that liberty and authority that judges have over statute laws according to reason and best convenience to mould them to the truest and best use." Sheffield v. Ratcliffe, Hob. 345–346 (1616). In Riggs v. Palmer, 115 N. Y. 506, 22 N. E. 188 (1889) the doctrine of the equity of the statute was applied under the guise of "rational interpretation".

[27]deSloovère, *Steps in the Process of Interpreting Statutes* (1932) 10 N. Y. U. L. Q. REV. 1, 4–16.

[28]See Huxam v. Wheeler, 3 H. & C. 75, 80, 159 Eng. Rep. 454 (1864), *per* Pollock, C. J.: 1 Kent Com. 462; Hersha v. Brenneman, 6 Serg. & R. 2 (Pa. 1820); People v. Admire, 39 Ill. 251 (1866); Henry v. Tilson, 17 Vt. 479 (1845); State v. Clark, 29 N. J. L. 96 (1860). *Cf.* cases *supra* note 11.

[29]A few of the significant cases of this type are the following: Lehigh Bridge Co. v. Coal Co., 4 Rawle 2 (Pa. 1833); Riddick v. Walsh, 15 Mo. 519 (1852); Jacob v. United States, 1 Brock (Marsh.) 120 (U. S. 1821); Woodbury v. Freeland, 82 Mass. 105 (1860); Johnson v. Gibbs, 140 Mass. 186 (1885); U. S. v. Freeman, 3 How. 556 (1844); Eshelman's Appeal, 74 Pa. 42 (1873); Davidson

sidered in the various substantive legal problems involved in applying the Statute of Frauds.[30] Part performance which takes a case out of the statute depends upon equities arising from such performance, and not upon any doctrine of interpretation.[31] Canons of interpretation, vaguely understood and often superficially applied, have also added to the confusion. Moreover, it is clearly incorrect to allocate the doctrine of literalness to law and that of equitable interpretation to equity,[32] even though both are historically intertwined.[33] Courts of equity cannot include by equitable construction what would not be included by a construction at law; for not only ought equity in this respect follow the law,[34] but any relation of statutes to traditional law today, when the two systems of thinking are becoming more inter-

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v. McCandlish, 69 Pa. 169 (1871); The County of Wayne v. Detroit, 17 Mich. 390 (1868); Maysville Electric Ry. Co. v. Herrick, 13 Bush 122 (Ky. 1877); Smiley v. Sampson, 1 Nebr. 56, 91 (1870) affirmed 80 U. S. (13 Wall.) 91 (1871), strained construction to avoid absurdity; State v. Comptoire Nat. D'Escompte de Paris, 51 La. Ann. 721 (1899), where the more beneficial of two possible, though justifiable, meanings was taken. See also Simonton v. Barrell, *infra* note 36. *Cf.* Perry v. Strawbridge, 209 Mo. 621, 108 S. W. 641 (1907).

[30]See Alderson v. Maddison, 8 App. Cas. 467 (1883), where the statute, though remedial, was held to bar remedies on contracts not in writing, as required by the words. See *id.*, 474; Crosby v. Wadsworth, 6 East 602, 611 (1805).

[31]See the opinion in Britain v. Rossiter, 11 Q. B. D. 123 (1882), *per* Cotton, L. J., who shows that decisions in equity charge the defendant on equities arising out of subsequent acts in part performance of the contract and not upon the doctrine of the equity of the statute. See also MAXWELL, INTERPRETATION OF STATUTES (7th ed. 1929) 221 *et seq.* and 249.

The conflict of the doctrine of literalness and the equity of the statute in the face of an evasion of a statute is a difficult one. In Smale v. Burr, L. R. 8 C. P. 64 (1872), the court, curiously enough, refrained from going beyond the plain meaning of the language in order to prevent fraud upon the statute, and thereby directly defeated its purpose.

[32]Equity can not grant relief against the express provisions of a statute: Cavendish v. Worsley, Hob. 203 (1616); *per* Lord Eldon and *per* Mellish, L. J. in Edwards v. Edwards, L. R. [1876] 2 Ch. 291, 297; CRAIES, A TREATISE ON STATUTE LAW (3rd ed. 1923) 74–76. See also Freund, *Interpretation of Statutes* (1917) 65 U. OF PA. L. REV. 207, 221–222.

[33]See Loyd, *loc. cit. supra* note 7.

[34]*Cf.* 1 BL. COMM. 61; 3 *id.* 431; STORY, EQUITY JURISPRUDENCE (1866) § 7. *Cf.* MAINE, ANCIENT LAW (3rd Am. ed. 1888) 27–29. The equity of the statute was not always recognized in the common law courts: Boydell v. Drummond, 11 East 142 (1809); Cockling v. Ward, 1 C. B. 858 (1845). The doctrine of the equity of the statute is restrictive as well as extensive: Sheffield v. Ratcliffe, Hob. 346 (1616). But the context of the whole statute may justify the choice of a meaning more restricted or more expansive than the literal meaning: Ayers v. Knox, 7 Mass. 306 (1811); Simonds v. Powers' Estate, 28 Vt. 354 (1856); Stockett v. Birds' Administrator, 18 Md. 484 (1862).

related, naturally includes equity. Indeed, canons of construction or techniques of statutory interpretation are employed in courts of equity as well as in courts of law on the assumption that statutes are framed in the light of both law and equity.[35]

In many early American cases the doctrine of equitable interpretation was adopted. In *Simonton v. Barrell*,[36] for instance, it was held that the statute might be extended by equitable construction even though the meaning was clear and explicit. As further justification the court referred to the many well known instances of equitable construction in England.[37] Thus, provisions against fraudulent feoffments were extended to other conveyances; a statutory right of writ of entry *in casu proviso* was extended by equity to a writ of entry *in consimili casu;* a statutory interest of a reversioner was extended to a remainderman; a provision as to the warden of Fleet was extended to all other jailers; and then the court goes on to say that "it would be strange, after all this, if courts could feel themselves so fettered by words, as to hold that a statute which gives a remedy by *scire facias* would not extend it to an action of debt."[38] The statute specifically saved other common law remedies, so that the spurious doctrine of equitable construction was unnecessarily invoked. Statements of the doctrine, now wholly discredited in its broadest meaning, may be found in many American cases in which, there being a choice of two or more justifiable meanings of the language used, the doctrine is not really applicable.[39] Although free construction seems to be similarly discredited today in

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[35]A. L. & E. F. Goss Co. v. Greenleaf, 98 Me. 456 (1904).

[36]21 Wend. 362 (N. Y. 1839). The statute provided that when a defendant was arrested on a *capias ad satisfaciendum*, the plaintiff might elect with the consent of the defendant not to enforce the judgment during the term, but proceed "by a new execution [meaning a *ca. sa.*] or such other processes as the nature of the case might require." An action of debt was permitted, on the ground that the statute, being remedial, should be given a liberal or equitable interpretation. "Debt" might well have come within the statutory words "such other process"; but the court restricted that general phrase to *scire facias*. The case seemed to reach a genuine result by spurious interpretation.

[37]*Id.* 364. [38]*Id.* 365.

[39]Simonton v. Barrell, 21 Wend. 362 (N. Y. 1839). Compare Riggs v. The Utica Ins. Co., 15 Johns. 358, especially at 380–381 (N. Y. 1818); Canal Co. v. R. Co., 4 Gill & J. 1, 152–154 (Md. 1832); Whitney v. Whituey, 14 Mass. 92 (1817); and Brown v. Somerville, 8 Md. 444, 456 (1855), where it is said: "The words of an Act may be disregarded where that is necessary to arrive at the intention of the law-makers but not where the Act admits of only one interpretation." See also Encking v. Simmons, 28 Wis. 272 (1871); Shellenberger v. Ransom, 41 Neb. 631 (1894). *Cf.* Jackson *dem.* Scofield v. Collins, 3 Cow. 89 (N. Y. 1824).

England,[40] it occasionally reappears there.[41] Indeed, there are plenty of American cases in which courts have thus spuriously interpreted statutes by finding an intention of the legislature different from or in contradiction of the actual meaning of the text.[42]

The doctrine of literalness must, it is submitted, be the point of departure of every theory of statutory interpretation in Anglo-American law; for, with all its limitations, it is thoroughly imbedded in the case law, and it is necessary in order to retain whatever certainty and stability we have on the statutory side of our law, where, by tradition and by growing techniques in legislative drafting, statutes are framed in the form of detailed regulations of specific situations rather than upon a tradition of legislative regulation in principle only. Thus a supposed legislative intention or purpose should not be set up to contradict the plain meaning of the statutory words or text.[43] Nor should the doctrine of reasonable interpretation permit contradicting plain words, either by extensive interpretation of remedial statutes or by restrictive interpretation of statutes in derogation of the common law; for reasonable interpretation (which is the basis of the well-known Golden Rule of interpretation)[44] demands that the single

[40]For example, see Ex parte Walton, 17 Ch. D. 146 (1881); Miller v. Salomons, 7 Ex. 475 (1852); Hill v. India Dock Co., 9 App. Cas. 448, 456 (1884), *per* Ld. Cairns; Irish Land Commission v. Brown [1904] 2 Ir. R. 200, 211. In Brandling v. Barrington, 6 B. & C. 467, 475 (1827), Lord Tenterden says: "I cannot forbear observing that I think there is always danger in giving effect to what is called the equity of the statute, and that it is much safer and better to rely on and abide by the plain words, although the Legislature might have provided for other cases had their attention been directed to them."

[41]Edwards v. Dick, 4 B. & Ald. 212 (1821); Wedderburn v. The Duke of Atholl [1900] App. Cas. 403, 419. It has long been contested, however. See Jones v. Smart, 1 T. R. 44, 52 (1785), *per* Buller, J.; Atty-Gen'l v. Sillen, 2 H. & C. 431, 532 (1863), *per* Ld. Bramwell; Greaves v. Tofield, 14 Ch. D. 563, 578 (1880), *per* Bramwell, L. J.; Bradlaugh v. Clarke, 8 App. Cas. 354 (1883).

[42]See, for example, People *ex. rel.* Wood v. Lacombe, 99 N. Y. 43, N. E. (1885); Bell v. Mayor of New York, 105 N. Y. 139, 11 N. E. 495 (1887); City Bank Farmer's Trust Co. v. New York Cent. R. Co., 253 N. Y. 49, 170 N. E. 486 (1930). One limitation upon equitable interpretation is suggested in POTTER'S DWARRIS ON STATUTES (1871) 240: Plain words must not be extended to mischiefs rarely happening for "the objects of statutes are mischiefs *'quae frequentius accidunt'*".

[43]On this point modern cases are legion. *Supra* note 42; *infra* note 46. *Cf. supra* note 39.

[44]"It is a very useful rule in the construction of a statute, to adhere to the ordinary meaning of the words used, and to the grammatieal construction, unless that is at variance with the intention of the legislature to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified, so as to avoid such inconvenience, but no

meaning of a statute (there being no choice of meanings) be followed, whether the statute is penal or remedial.[45] Such meaning, when found, should be given full force and effect, even though it is not in the opinion of the court the meaning which the legislature intended for the ease at hand; for not only is the latter at best pure speculation, but any systematic approach to the science of interpretation must always begin with the assumption that the unambiguous language of the text is the best evidence of the intention of the makers. Indeed, any legislative intention is necessarily speculative if it differs from the plain, single meaning of the text itself.

If a statute is susceptible of two or more sensible meanings that are consistent with the whole text, however, a different problem arises. But even in such a case, the choice must be limited to a meaning that the words will in good faith bear by fair use of language in its contextual setting. Statements and holdings in the earlier cases on equitable interpretation can therefore be approved as genuine interpretation only where the text of the statute involved was susceptible of more than one reasonable meaning and the equitable meaning was one contextually justified by the language used. In such cases, although the meaning chosen is regarded as the legislative intent or the equity of the statute, and even though it contradicts the literal meaning, it is not spurious if it is a contextual meaning that the words will bear, provided that the literal meaning is not consistent with the whole statute. In other words, if there is a choice from two or more justifiable meanings, the legislative intention is presumably the one which is most just or reasonable or equitable, provided that it accords with the subject matter, purpose, and extrinsic evidence surrounding the enactment. Of course, if the literal or obvious meaning can fulfill all these demands,

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further." This rule was first enunciated by Lord Wensleydale in Becke v. Smith, 2 M. & W. 191, 195 (1836); laid down later by him for all written instruments in Grey v. Pearson, 6 H. L. C. 61, 106 (1857); adopted by Willes, J., in Christopherson v. Lotinga, 15 C. B. (N.S.) 809 (1864); and in subsequent cases.

[45]An early American case distinguishing between equitable interpretation of remedial statutes and strict construction of penal statutes is Melody v. Reab, 4 Mass. 471 (1808). Strict and liberal interpretation can only rightly mean strict and liberal application. This signifies that the single meaning of all statutes is found by one process of textual and contextual interpretation without assuming an attitude in favor of or a prejudice against the statute. After the single meaning is thus obtained, however, it should be applied strictly in penal legislation where there is doubt whether the defendant comes within that meaning; that is to say, it should be resolved in favor of the defendant. In remedial legislation, after the single meaning is properly determined, it should be resolved, in close cases of application, in favor of the plaintiff. See deSloovère, *loc. cit. supra* note 27, at 14–22.

it naturally is superior to any other; but if it cannot, then it is not superior to a contextual meaning which fulfills these demands. That a literal meaning has therefore some absolute superiority over a contextual meaning, without more, has never been true in Anglo-American interpretation of statutes.

Where the words of any kind of statute, then, are plain and explicit and are not susceptible of another meaning by the context, the only meaning for the statute is the one expressed.[46] In such a case, it matters not what may be the consequences in applying that meaning in a particular case, unless the result is absurd;[47] and to choose a more just or equitable meaning on the presumption of finding the real legislative intention is unwarranted.[48] For example, in *Rosenplaenter v. Rosessele*,[49] the statute provided that "if any hotel keeper shall provide a safe for keeping any money, jewels, or ornaments belonging to his guests," and shall post a notice to that effect, the hotel keeper will not be liable for any loss of guests' personal effects by theft or otherwise, if they "shall neglect to deposit their money, jewels, or ornaments in such safe." The plaintiff's jewels were stolen about one hour after arrival as a guest at the defendant's hotel. The court held that there was no liability because the plaintiff's case came within the single meaning of the statute, even though it resulted in considerable inconvenience to require the guest to make such deposit so quickly after arrival. Convenience as a basis for equitable interpretation was rightly held to be irrelevant, as the statute was plain and explicit.[50] Of course, the words "neglect to deposit" took care of situations where theft occurred before there was opportunity to deposit.[51]

Now suppose that the single meaning is mischievous or absurd. If mischevious and the only meaning, it must be followed; if absurd, it

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[46]Douglass v. Chosen Freeholders, 38 N. J. L. 214 (1876); People v. Schoonmaker, 63 Barb. 44 (N. Y. 1871).

[47]Varying the meaning by reasonable interpretation in order to avoid absurd application of the statute has often been employed: Ex parte Walton, L. R. 17 Ch. D. 746 (1881); Jackson v. Collins, 3 Cow. 89 (N. Y. 1824); United States v. Hogg, 112 Fed. 909 (C. C. A. 6th, 1902); Carrigan v. Stillwell, 99 Me. 434 (1905); Mendles v. Danish, 74 N. J. L. 333, 65 Atl. 888 (1907).

[48]Today the cases on this point are legion. See, for example, Hyatt v. Taylor, 51 Barb. (N. Y.) 632; but compare the decision on appeal, 42 N. Y. 258 (1869), and Encking v. Simmons, 28 Wis. 272 (1871).

[49]54 N. Y. 262 (1873). [50]*Supra* note 48.

[51]There is a question in these cases as to whether negligence of the guest must be found in order to prevent his recovery. In Bendetson v. French, 46 N. Y. 266 (1871), the common law doctrine of negligence was rightly not read into the statute, on the ground that the word, "neglect," did not import the common law idea of negligence but rather took its popular meaning of oversight.

is probably not the only meaning;[52] but if it is, the statute must be regarded as unenforceable. Here again one must distinguish between absurdity of the single meaning of the text generally (that is, in the abstract, apart from any case) and absurdity of the single meaning in its application to some cases but not others. In such a situation, a presumption arises that the legislature had not such a case in mind when drafting it, so that the statute is not wholly inoperative but only inapplieable to that situation. There is thus a difference between what might be called absolute and relative absurdity. In most cases of absurdity the statute is susceptible of more than one meaning, so that the finding of a sensible one which the words will fairly bear contextually solves the problem.[53] To call this the equity of the statute does not make it spurious interpretation. In short, the presumption of the Golden Rule of reasonable interpretation on the part of the legislature in order to avoid absurdities is a genuine process if the meaning reached is one that the words will bear by fair use of language. The doctrine of literalness, however, does not permit avoiding the single sensible meaning that in applieation in particular cases gives an unjust, inequitable, or inconvenient result. It is a simple matter, of course, for courts to denominate a statute as absurd when its application is distasteful, for there is no objective standard by which to determine whether a meaning chosen for a statute is absurd generally or reaches absurdity in a given case. Such a test would be helpful, but none obtains or ean obtain. The only test is subjective, depending on the good faith and common sense of the court. At this point, the statute becomes an instrument in the hands of the judge by which he may model it by interpretation to his views without involving any formal problem of judicial legislation. His judicial training and experience, his sense of what is right and just, will at this point in all probability decide the question. It is a point at which judicial discretion must be exercised; and although it leaves what seems to be a matter of interpretation vague and uncertain, it is not a question of interpretation at all but an exercise of judicial discretion as generally understood and applied. After exercising such discretion as to whether a particular meaning is absurd, is the question on appeal whether the decision below was within the range of a reasonable exercise of discretion, or is it whether the result reached below is identieal with the one which the appellate court would have reached in the first instance? Probably the latter, as the question is too close to the meaning of the statute (that is to say, the decision creates a precedent as to meaning) not to be determined anew by the higher court. If the higher court finds the meaning, re-

[52] *Supra* note 47.

[53] *Supra* note 47.

jected as absurd below, to be reasonable, the meaning to be attributed to the statute and application in future cases will be wholly changed. At this point, then, subjective evaluations are a safety-valve against mechanical interpretation; and although they leave such elasticity in application of statutes that proper statutory meanings may be avoided, they cannot and should not be eliminated, because the justice in the individual case is certainly more important within this narrow realm of doubt than predictability.

In short, if the single meaning is sensible it must be applied to all cases coming within it, provided the result in the particular case is not absurd, even though there be hardship, inconvenience, or inequity.[54] Some cases, however, wholly distort an explicit meaning (upon the supposition of reasonable interpretation) in order to avoid mischievous or impractical consequences of applying the single explicit meaning. For example, the words "beyond the seas" have been interpreted to mean "out of the state" in order to widen the operation of such statutes.[55] Whether the avoidance of the difficulty in any case is nothing more than the rejection of an absurd literal meaning and the choice of a sensible contextual meaning is matter that can be determined only by a careful analysis of each case. Thus the normal meaning of words may be subject to contextual variance upon the whole purport of the statute without necessarily resulting in spurious interpretation. If the obvious or literal meaning is sensible and accords with the whole text, however, the purpose of the statute is crystallized by that meaning in such a manner that any supposed legislative purpose or policy or any injustice or inconvenience ought not to be regarded.[56] But even this, of course, is true only when such explicit meaning is not absurd. In other words, judicial construction under such circumstances must not become judicial legislation by seeking to contradict the plain meaning by a supposed legislative policy or purpose or by a so-called equity

[54]People v. Schoonmaker, 63 Barb. 44 (N. Y. 1871); James v. Patten, 6 N. Y. 9 (1851); Sneed v. Commonwealth, 6 Dana 338 (Ky. 1838); Putnam v. Longley, 11 Pick. 487 (Mass. 1831). *Cf.* Edrick's Case, 5 Co. Rep. at 118b (1603); Cearfoss v. State, 42 Md. 403 (1875).

[55]Pancoast's Lessee v. Addison, 1 Har. & J. 350 (Md. 1802). See also Faw v. Roberdeau, 3 Cranch 174 (U. S. 1805); Murray v. Baker, 3 Wheat. 541 (U. S. 1818); Shelby v. Guy, 11 Wheat. 361 (U. S. 1826); Bank of Alexandria v. Dyer, 14 Pet. 141 (U. S. 1840); Galusha v. Cobleigh, 13 N. H. 79 (1842). *Cf.* Lake Superior & M. R. Co. v. United States, 93 U. S. 442, 454 (1876) *per* Bradley, J.

[56]Abley v. Dale, 11 C. B. 378 (1851); Coe v. Lawrence, 1 El. & Bl. 516 (1853); Cearfoss v. State, 42 Md. 403 (1875); Maxwell v. State, *ex rel.* Baldwin, 40 Md. 273 (1874); Smith v. State, 66 Md. 215 (1886); United States v. Colorado & N. W. R. Co., 157 Fed. 321 (C. C. A. 8th, 1907); People v. Long Island R. Co., 194 N. Y. 130, 87 N. E. 79 (1909).

of the statute, even though it be justified by the use of extrinsic aids, for these approaches cannot be employed by the techniques of genuine interpretation to justify a meaning that the text will not reasonably bear by fair use of language.[57] Judicial legislation results in such cases when a supposed contextual meaning which the words will not bear is chosen to escape an inequity. It is not spurious interpretation, however, to choose a contextually justifiable meaning which contradicts an absurd literal meaning or one that is repuguant to the purpose or other parts of the statute. In a word, literal interpretation means only that the obvious or grammatical or customary or technical meaning of the language has a rebuttable presumption in its favor. In most cases it does not exhaust the meanings which the words will reasonably bear. The literal meaning is only one meaning. There may be one or more contextual meanings that are reasonable. If there is no other meaning for the words than the obvious one, then any contradiction of it by a supposed contextual meaning based on the equity of the statute ought to be regarded as spurious interpretation. In *Lake County v. Rollins*,[58] the court, having found the words susceptible of only one sensible meaning, rightfully rejected contextual interpolations which contradicted it, and rightfully added that no question of legislative purpose or policy was involved whenever the obvious meaning was not rendered doubtful by the context.

In short, the doctrine of literal interpretation of statutes is often misunderstood. It does not mean mechanical application of literal meanings of words. It rather signifies the finding of the specific meaning from the statutory text upon the assumption that the legislature wished to cover a definite, not indefinite, area of fact. It also sharply negatives the thought of dealing with a statute as a common law principle is dealt with, whereby analogous cases can be brought within it. It does not mean mere literal interpretation, but rather a process of determining the meaning of the words from the grammatical or customary possibilities of the language of the statute and other statutes *in pari materia*, by extrinsic aids, and in view of the traditional law. Any belief that the literal meaning (in the narrow sense) has some definite superiority over a contextual meaning that accords with the purpose and extrinsic aids is clearly unwarranted today. The problem is always one of finding the possible meaning which the text will justifiably bear by fair use of language, and then to choose the single meaning by techniques worked out without direct reliance upon canons or maxims of interpretation.

[57]Coffin v. Rich, 45 Me. 507 (1858); State *ex rel.* Hughes v. Reusswig, 110 Minn. 473, 126 N. W. 279 (1910). [58]130 U. S. 662, 9 Sup. Ct. 651 (1889).

Thus the doctrine of the equity of the statute, if taken carefully, means nothing more than contextual interpretation; and the maxim that a case may be within the words but beyond the intention, or beyond the words but within the intention, is simply another way of saying that, if these limitations are followed, there may be a contextual meaning which is superior to the literal or obvious one. Cases, however, where the single, sensible meaning is chosen but is not followed in application to the facts, are based on spurious interpretation, whether the process is called equitable, contextual, or literal interpretation.

II. The Reason of a Statute

In many cases it is said that if the literal meaning is not in accord with the "reason of the statute" or *ratio legis*, the latter rather than the literal meaning should be taken. In Roman and civil law, according to which statutes are regarded not as rules but as principles declaratory of natural law or natural justice,[59] the reason of a statute means the principle or basic idea of the statute. In the common law, however, literalness is a rather settled dogma upon which all legislating and interpreting proceeds, so that treating statutes as principles or as declaratory of natural law seldom occurs today. The doctrine of literalness and the doctrine of *ratio legis* as points of departure for statutory interpretation seem on the surface to be irreconcilable. Yet if the latter means no more than the statutory purpose, the two doctrines are not inconsistent. For example, Austin attempted to explain the relation of each doctrine to the other when he said that if the interpreter cannot discover in the literal meaning of the words any such definite and possible purpose, he may seek the meaning in the reason of the statute, in extrinsic aids, or in other statutes *in pari materia*.[60] Here, it seems,

[59] "*Ratio legis*," says Austin, "is the scope or determining cause of a statute law: that is to say, the end or purpose which determines the law giver to make it, as distinguished from the intention or purpose *with which* he actually makes it . . . Consequently, not withstanding the clearness and the precision with which he conceives and expresses his actual intention or purpose, the statute may be fitted imperfectly to accomplish the end or purpose by which he is determined to make it. And hence the spurious interpretation, *ex ratione legis*, through which a statute, unequivocally worded by the law giver, is extended or restricted by the judge." Austin, *op. cit. supra* note 1, at 649–650.

For the Roman Law, see Pound, Readings in Roman Law (1914) 14–16; for the modern civil law, see *ibid.* 16–21. See also Pound, *Common Law and Legislation*, (1908) 21 Harv. L. Rev. 383, 385.

[60] Austin, at 645.

"*Ratio decidendi* must be carefully distinguished from that, which is commonly called *ratio legis*. The latter is the end or purpose which moved the legislator to establish a statute law. Or it is the end or purpose of any of its particular provisions: an end or purpose which is subordinate to the general design of the statute." *Ibid.* 648.

Austin would have restricted the meaning of the term, "reason of the statute", to statutory purpose.[61] And this seems proper, since "reason of the statute" in the sense of the declaratory principle would leave Austin's statements misleading, in view of his theories as to spurious extensive and restrictive interpretation.[62] If a statute is declaratory of anything in our legal system, it would seem to be declaratory only of the common law.

It is unfortunate that this common expression has been used to mean so many different things. Sometimes the "reason of the statute" connotes a contextual meaning, sometimes the statutory purpose, sometimes the subject-matter (in the light of extrinsic aids), sometimes legislative policy as seen from the entire statute or other statutes *in pari materia*, sometimes declared principle of natural justice, and often it has been used to mean the equity of the statute. In Austin's view, the only proper meaning is statutory purpose — to be found, if possible, from the statutory text.[63] But suppose the text is ambiguous? If the literal or obvious meaning does not harmonize the entire act, all probable meanings are then brought out by contextual techniques.[64] Of two or more meanings, that one should be chosen which accords with both the subject-matter treated and the reason (the object and purpose) of the statute.[65] Contradicting a plain meaning which is consistent with the whole statute, however, is spurious interpretation, in that it abandons the basic doctrine of literalness. Austin, at any

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[61] *Ibid.* 645–651.

[62] "Instead of interpreting a statute obscurely and dubiously worded, the judge modifies a statute clearly and precisely expressed: putting in the place of the law which the law giver indisputably made, the law which the reason of the statute should have determined the law giver to make. Consequently, where the judge in show interprets the statute restrictively, he abrogates or annuls it partially. And where the judge in show interprets the statute extensively, he makes of its reason a judiciary rule by which its defect is supplied. He makes of the reason of the statute a general ground of decision which provides for the class of eases overlooked and omitted by the law giver." AUSTIN, *op. cit. supra* note 1, p. 1026; see also *ibid.* 648–654.

[63] "In the process of interpretation (properly so called), the purpose, therefore is to get at the meaning of the expressions in which the legislator has attempted to convey his intention. For, owing to the abstract form of a statute law, the very terms in which it is expressed are necessarily the main index to the legislator's purpose." *Ibid.* at 650.

[64] Myers v. Perigal, 2 De G. M. & G. 619 (1852), the opinion of Lord St. Leonards, which was approved by Lord Cairns in Brooks v. Badley, L. R. 2 Ch. App. 672 (1868).

[65] *Per* Isaacs, J., in Irving v. Nishimura, 5 Com. L. R. 233, 238 (Australia, 1907); Minister for Lands v. Priestly, 13 Com. L. R. 537, 543 (1911) *per* Griffith, C. J.; *ibid.* p. 553, *per* O'Connor, J.

rate, could hardly have meant more by "the reason of the statute" than statutory purpose, to be found from the words of the statute if plain and explicit, and if not plain, to be sought in extrinsic aids and in the light of other relevant legislation and of the common law.[66] It is clear today, and also in accordance with Austin's view, that if the statutory text has only one sensible, consistent meaning, this crystallizes the statutory purpose.[67] If, however, the reason of the statute is taken to mean the equity of the statute, spurious interpretation is likely to result. In *Simonton v. Barrell*,[68] for instance, one ground for the decision was that the two remedies were *in pari ratione*, citing as an example an early case extending to administrators a statute relating only to executors. Kent puts the same idea in a different way when he says that if the statutory expression is "special or particular, but the reason general, the expression should be deemed general."[69] Here is a theory that a special declaration is to be generalized into a principle and not to be restricted to the specific area of fact denominated by the statutory language. Further confusion of the same type is found when courts declare that cases within the words of a statute may not be within the spirit as found by the reason of the statute or by an examination of the evil which it was designed to remedy, — thus confusing the reason (as declared principle), the equity, and the purpose of a statute. Neither the purpose nor the equity of a statute, however, justifies contradicting an obvious meaning not in conflict with the context of the whole statute, even though such meaning neither eliminates the evil toward which the statute was directed nor provides the supposedly desired remedy.[70] The possible meanings from which the choice is to be made must, of course, be linguistically justifiable by fair use of language.[71] In *Humiston v. Universal Film Manufacturing Company*,[72]

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[66] *Supra* note 60; see also Heydon's Case, 3 Co. 7b, 8 (1594).

[67] "But if he be able to discover in the literal meaning of the words, any such definite and possible purpose, he commonly ought to abide by the literal meaning of the words, though it vary from the other indices to the actual intention of the legislature. AUSTIN, *supra* note 59, at 645.

[68] 21 Wend. 362 (N. Y. 1839). See also Town of Ryegate v. Town of Wardsboro, 30 Vt. 746 (1858); People v. The Commissioners, 95 N. Y. 554 (1884).

[69] 1 KENT COM. 462, which accords with the maxim: *Quando verbis statuti sunt specialia, ratio autem generalis, generaliter statutum est intelligeo. Cf.* Whituey v. Whitney, 14 Mass. 88 (1817).

[70] *Cf.* Heydon's Case, *supra* note 66, for the basis of the misunderstanding. See United States v. Sanders, 22 Wall. 492 (U. S. 1874). The principle was not followed in Church of the Holy Trinity v. United States, 143 U. S. 457, 12 Sup. Ct. 511 (1892).

[71] "As the intention . . . cannot be collected from the words themselves, we are in the first place to look to the context, and see if we can collect from the

for example, the statute prohibited the publication of "a name, portrait or picture of any living person" for "advertising purposes, or for the purposes of trade." The statute gave an equitable action and damages to any person injured thereby. The plaintiff, a well-known detective, was filmed by a current weekly newsreel while at work on a case. The picture with her name attached was also shown on public posters. The court found for the defendant, upon the ground that publication of news was not for advertising or trade purposes in view of the public interest in the dissemination thereof. Hardship upon the defendant was considered only in view of protecting a clear social interest. If the words "for advertising purposes or purposes of trade" include indirect trade purposes, the defendant has come within the prohibition, so that hardship ought to be immaterial. But the statute was not applied to indirect advertising or trade purposes, — a reasonable solution as the distinction between direct and indirect trade purpose was not inconsistent with the statute as a whole. These are hardly two distinct meanings. They are rather shades of the single meaning, direct and indirect advertising purposes. Each accords equally with the context of the whole statute, and as the purpose is not explicit in the words of the statute, the court chose the one giving the most satisfactory result in view of the social interests involved. This is not spurious interpretation.

In a word, genuine interpretation is in no way inconsistent with the application of shades of meaning of words or phrases when the statutory context does not demand one any more than another.[73] As this is a contextual problem, the meaning so chosen must, of course, accord with the whole statute and with its reason or purpose.[74] Often,

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general scope and object of the Act, as expressed in its other provisions, what the intention of the Legislature upon this point was, and if we see that it was the intention to give the larger measure, then to determine whether the words in question are sufficient to give effect to that intention." *Per* Lush, J., in Hammersmith, etc., Ry. Co. v. Brand, L. R. 4 Eng. & Ir. App. Cas. 171, 186 (1869).

[72]189 App. Div. 467, 178 N. Y. Supp. 752 (1st Dept. 1919).

[73]People v. Alfani, 227 N. Y. 334, 125 N. E. 671 (1919); Surace v. Dano, 248 N. Y. 18, 161 N. E. 315 (1928); Employers' Liability Cases, 207 U. S. 463 (1908); People v. State, 49 Cal. 67 (1874); deSloovère, *The Functions of Judge and Jury in the Interpretation of Statutes* (1933) 46 HARV. L. REV. 1061, 1101 *et seq.*

It is a curious bit of misunderstanding of interpretation to set forth the various ways particular statutory words have been construed in the cases. Such accumulations of meanings are of no value in interpreting other statutes because contextual meanings in different statutes are never the same.

[74]Heydon's Case, 3 Co. 7a (1584); Simpson v. Unwin, 3 B. & Ad. 134 (1832); Green v. Kemp, 13 Mass. 515 (1816); Hammer v. Dagengart, 247 U. S. 251, 38 Sup. Ct. 529 (1918); Roschen v. Ward, 279 U. S. 337, 49 Sup. Ct. 336 (1929).

however, the several shades of meaning of words or phrases (as in the *Humiston* case) may all be within the context and purport of the whole statute. It then becomes a matter of doing justice in applying the statute to the case at hand, in view of the immediate ends and interests involved. Statutory purpose or the reason of the statute, then, is (1) a primary guide in making a choice from different statutory meanings but it is (2) equally significant in applying a shade of meaning of a word or phrase to the case at hand. If, perchance, neither the meaning nor the purpose is clear, and no other criteria for determining the meaning offer a definite solution, genuine interpretation then permits (3) a wider range of judgment and discretion, in that the interpreter can select a meaning which will give the most satisfactory result in view of the social and individual interests involved.[75]

Vague phrases have been and still are commonly used in describing the interpretative process. They are employed more often when courts are squirming to reach results that they instinctively feel are desirable, although not justified by the text. Also, the cry of absurdity for meanings not desired must be guarded against in all interpretative techniques. That the application of a single sensible meaning in a given case is inequitable or inconvenient is no justification for calling the result absurd because it is contrary to the reason of the statute, or for speculating (in the sense of the equity) as to what the legislature would have done if the case had been before it.[76] Another meaning that the words will justifiably bear by fair use of language is usually available when the one chosen results in actual absurdity in a particular case. To reach satisfactory results in view of the individual and social interests involved and yet remain within the realm of genuine interpretation, courts must (1) find the possible meanings upon the basis of definite techniques which will properly harmonize the textual and contextual processes, in view of extrinsic aids, other legislation, and the common law; (2) permit the statutory purpose to direct a choice from such

[75]"In the application of statutes we have to take account of the needs of those who must advise and of those who must decide. Those who advise demand predictability. There must be certain fixed assumptions from which they may proceed with reasonable assurance whenever a legislative formula is not to be adhered to rigidly. On the other hand, those who decide demand a margin for doing justice in the particular case. They seek a freedom to mold application of the formula to the exigencies of unique as contrasted with generalized states of fact. The law seeks to maintain the general security and uphold the economic order by postulating a legislative intent to be derived from the given text by a known technique, and to secure the individual life by the scope of adjustment to particular circumstances afforded by that technique." Pound, Introduction to DE-SLOOVÈRE'S CASES ON THE INTERPRETATION OF STATUTES (1931) p. vii.

[76]GRAY, *supra* note 1.

meanings; and (3) exercise judicial discretion with good judgment, good faith, and common sense at points where such techniques and the reason (purpose) of the statute fail to direct a solution. Fortunately, however, courts often find and apply proper meanings without consciously employing established techniques of genuine interpretation.[77] Techniques carefully worked out in detail in statutory interpretation would, it is submitted, greatly reduce guessing, would eliminate the taking of *a priori* attitudes toward legislation when choosing meanings for ambiguous texts, and would avoid recourse in the first instance in difficult cases to the spirit or equity of the statute, — all forms of spurious interpretation.[78]

Nevertheless, equitable interpretation has a limited but very definite place in statutory interpretation. To illustrate: if the context justifies two or more meanings and if all other *indicia* fail to direct a solution, choice of the one most satisfactory upon the basis of justice or equity in view of the interests involved or in accordance with policies crystallized in particular types of legislation is not spurious interpretation, because, by the prior use of genuine techniques in determining the possible meanings, the choice is limited to two or more meanings that the words will justifiably bear.[79] Whichever is chosen is genuine, as all normal techniques for reaching a choice in that case have already been employed.[80] But another danger still remains: the plain or chosen meaning may be distorted in application even though all established techniques for choosing among several justifiable meanings have been properly employed. These, as well as speculating as to legislative intent to a point beyond fair use of the language of the statute in apply-

[77]For cases involving the same problem as the Humiston case, see Robertson v. Rochester Folding Box Co., 171 N. Y. 538, 64 N. E. 442 (1902); Jeffries v. N. Y. Evening Journal Pub. Co., 67 Misc. 570, 124 N. Y. Supp. 780 (Sup. Ct. 1910); Colyer v. K. K. Fox Pub. Co., 162 App. Div. 297, 146 N. Y. Supp. 999 (2d Dept. 1914).

[78]For two cases showing clearly a lack of any definite technique of interpretation see In re Howard's Estate, 80 Vt. 489, 68 Atl. 513 (1908); Curry v. Lehman, 55 Fla. 847, 47 So. 18 (1908).

[79]If the meaning remains ambiguous after review of the context, statutes *in pari materia* and the common law, the meaning which accords with the statutory purpose or, if doubtful, which gives a just rather than an unjust result in the particular case should be chosen provided it is one that the words will justifiably bear: Railton v. Wood, 15 App. Cas. 363 (1890). See also Phillips v. Phillips, L. R. 1 P. & D. 169, at 173 (1866); The R. L. Alston, 8 P. D. 5, at 9 (1883); Hill v. East and West India Co., 9 App.Case. 448, at 456 (1884) *per* Ld. Cairns; Heritable Reversionary Co. v. Milliar, [1892] A. C. 598.

[80]See Pound, *Spurious Interpretation* (1907) 7 COL. L. REV. 379, 381.

ing it, are other modes of spurious interpretation.[81] Indeed, to distort the plain and explicit meaning of the text, even to avoid hardship or inequities, is a form of judicial law-making. But choosing from shades of meaning which the words will contextually bear in order to reach an equitable result is not unwarranted.[82] Contextual interpretation of a statute includes, however, special techniques with respect to the subject-matter, the purpose, the several parts of the statute in relation to the whole, extrinsic aids, statutes *in pari materia,* the evil and the remedy, and the relation of the statute or statutes to the common law. These, however, must be applied in detail in every case and fail to give a solution, before the use of sociological or equitable criteria can be said to be genuine.[83]

In this paper, only the purpose of a statute as the basis for determining the statutory meaning is dealt with. The history of the bill, conditions at the time of enactment, the language of the statute, other statutes *in pari materia,* and the evils toward which it was apparently directed, are all available in determining the statutory end or purpose. This greater freedom in determining the purpose, when it is not explicit in the statutory text, gives likewise a wider scope to the whole interpretative process, inasmuch as in most cases the statutory purpose determines the choice from several sensible meanings of the text. The purpose is therefore the objective or motivating force behind the legislation; the meaning is a determinate area of regulation in line with the objective purpose. Thus if the statute is to be applied by a jury, the single meaning chosen as well as the statutory purpose should be definitely included in the instructions as aids to the jury in applying shades of the single meaning.[84] A legislative policy as determined from legislation *in pari materia* may well delineate the real statutory purpose; but legislative and judicial policies set up as easy substitutes for the real purpose of a statute are spurious unless the indicia already mentioned have failed to show what the statutory purpose really is. So, if there are possible shades of meaning of words and phrases, the one which accords with the purpose of the statute should be chosen, as was rightly done in the Humiston case.[85]

The decision in that case, even in view of the decision in *Binns v.*

[81]*Cf.* GRAY, THE NATURE AND SOURCES OF THE LAW (2d ed. 1921) 178–187; AUSTIN, JURISPRUDENCE (4th ed. 1879) 1025.

[82]Compare Pound, *supra* note 80, at 384; Scott, *Progress of the Law (1918–1919): Civil Procedure* (1919) 33 HARV. L. REV. 236, 240.

[83]See Pound, *supra* note 80, and *The Enforcement of Law* (1908) 20 GREEN BAG 401.

[84]deSloovère, *loc. cit. supra* note 73.

[85]*Supra* note 72.

The Vitagraph Company of America,[86] was in no way spurious in theory or result, as it was merely the application of a shade of meaning as to advertising not inconsistent with the context.[87] The case can therefore be distinguished from those in which pictures were placed upon articles of merchandise without the consent of the person for the direct purpose of stimulating sales. In both types of case, advertising and trade purposes were rightly construed to mean direct, not indirect, purpose. In the *Binns* case, the representation in the film, not being news but pure fiction, was rightly brought within the statute. Here the interests involved were in accord with the purpose of the legislation. Reason and common sense, employed in applying either a statute that has only one meaning or a statute that has been reduced to a satisfactory meaning in accord with the context and statutory purpose or policy, is all that genuine application of statutes demands.

Conclusion

In short, (1) to seek what the legislature would have done had the case been before it rather than to determine the meaning of the language;[88] (2) to contradict a plain and explicit statute (one having but a single sensible meaning) by any supposed equity, spirit or reason of the statute; (3) to contradict or distort the clear meaning in order to avoid inconvenience, hardship, or seemingly unjust results; (4) to choose from possible meanings on the basis of attitudes, hardship, convenience, or the equity of the statute, before the contextual techniques involving the statutory purpose have been employed and failed to give a solution; (5) to apply the properly chosen meaning in such a way that the result is one that the language in its context of the whole statute will not reasonably bear; or (6) to make an extensive or restrictive interpretation or application of statutes not justified by the text:[89] these are all modes of spurious interpretation. Such approaches do not properly correlate or balance the social interest in predictability and

[86]210 N. Y. 51, 103 N. E. 1108 (1912). In this case the plaintiff's name was used without his consent in a motion picture and it was held to be within the statute.

[87]See, for example, Jeffries v. N. Y. Evening Jour. Pub. Co., and Colyer v. K. K. Fox Pub. Co., both *supra* note 77, where it is made clear that publication in a newspaper or periodical for the dissemination of information is not a direct trade purpose and therefore beyond the statute.

[88]For example, in Town of Ryegate v. The Town of Wardsboro, 30 Vt. 746 (1858), the court determines the statutory meaning by speculating as to what the legislature would have intended, had such case been before it. See also People v. Commissioners of Texas of City of New York, 95 N. Y. 554 (1884). *Cf.* Corrigan v. Stillwell, 99 Me. 434, 59 Atl. 683 (1905).

[89]See Austin, Jurisprudence (4th ed. 1879) 1025.

certainty of legislation and the social or individual interests or justice of the case at hand.

Equitable interpretation, then, is at best subjective; it can have no weight as against explicit language, the context of the whole instrument, statutory purpose, extrinsic aids, or a meaning which is contextually necessary in view of legislation *in pari materia*, and of relevant common law. As statutes which are literally plain may be rendered doubtful by the context of the whole[90] statute, a contextual meaning that the words will bear ought to take precedence over a literal meaning which is not consistent with the meanings of the other provisions of the statute on the same topic. On the other hand, if the literal meaning is sensible and not in conflict with the meaning of the whole statute, it exclusively determines the meaning, purpose, or reason of the statute.[91] Nor does it matter in such a situation whether the consequences in a given case are unjust or inequitable, if they are not absurd.[92] Fortunately, in most cases where the question of absurdity in meaning arises, further study of the context, purpose, and extrinsic aids will reveal that the absurd meaning is not the real one, and that there is another meaning which the text will justifiably bear that is not absurd. Literal meanings often result in absurdity when applied to uncommon situations. Proceeding on the assumption that the legislature did not desire absurd meanings or absurd results is clearly justified in all cases. Certainly a sensible contextual meaning is superior to an absurd literal meaning or to a sensible literal meaning that results in absurdity, even though such literal meaning apparently accords with an obvious statutory purpose. If, therefore, the meaning chosen is absurd or gives an absurd result, either the interpretation or application of the statute is probably faulty. Difficult cases often require the interpreter to find the purport of a series of relevant statutes in order to get at the basic distinctions implicit in the text. Borderland cases requiring deeper study of the context often bring to light prior inaccurate meanings.

Thus the question arises whether, to avoid absurd results when all techniques of genuine interpretation fail to give sensible meaning, the doctrine of the equity of the statute may be legitimately employed, upon the assumption that no legislature ever wishes to issue absurd commands. There are several possible precedent solutions. (1) An absurd

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[90]See Douglass v. The Chosen Freeholders, 38 N. J. L. 214 (1876).

[91]On this point the cases are legion. See, for example, People v. Schoonmaker, 63 Barb. 44 (N. Y. 1871).

[92]Rosenplaenter v. Roessele, 54 N. Y. 262 (1873); Hyatt v. Taylor, 42 N. Y. 258 (1869); Encking v. Simmons, 28 Wis. 272 (1871); ENDLICH, INTERPRETATION OF STATUTES (1888) 6-8.

meaning or absurd result seldom arises if all genuine techniques of interpretation have been carefully employed. (2) Often the absurdity lies in an insistence in taking the literal meaning, when a contextual meaning which is sensible is discoverable. (3) If both a literal meaning consistent with the purpose and whole text and a contextual meaning are sensible in the given case, the literal meaning is presumptively preferred;[93] but if either meaning is absurd the other must be chosen. (4) If, however, both meanings are inconsistent with the whole statute or are absurd, and the purpose of the act and extrinsic aids give no further aid in avoiding the dilemma, the meaning can not be extended, restricted, or otherwise changed upon the basis of the equity of the statute in the light of the various interests involved, because that is not a justifiable meaning of the text. The statute, in a word, must be held void or unenforcible, as having no meaning that makes sense.

[93]See Lake County v. Rollins, 130 U. S. 662, 9 Sup. Ct. 651 (1889).