IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO 2006 HCV 0176

BETWEEN	**PETAL ELEANOR MURRAY**	**CLAIMANT**
AND	**KENNETH ANTHONY NEITA**	**DEFENDANT**

IN CHAMBERS

Mr. Joseph Jarrett instructed by Joseph Jarrett and Company for the claimant

Mr. Ravil Golding instructed by Lyn-Cook, Golding and Company for the defendant

July 28 and August 18, 2006

STATUTORY INTERPRETATION, USE OF PARLIAMENTARY DEBATES AND MINISTERIAL STATEMENTS, SECTION 2 (1) OF THE PROPERTY (RIGHTS OF SPOUSES) ACT, RULE 26.3 (1)(C) OF THE CIVIL PROCEDURE RULES

SYKES J

1. The issue in this case is whether a man who is lawfully married but separated from his wife for over twenty years and during the period of separation was living with another woman is a single man within the meaning of the word *spouse* as defined in section 2 (1) of the Property (Rights of Spouses) Act 2004.

2. Miss Murray, the claimant, is a single woman who has lived for over twenty years with Mr. Kenneth Neita. It is common ground that Mr. Neita was married on December 8, 1972. It also agreed that his wife is still alive and they are not divorced although they have separated for over twenty years. Miss Murray's relationship with Mr. Neita has now ended. She brings a claim by way of fixed date claim form dated May 15, 2006, in which she is claiming up to fifty percent of the property owned by Mr. Neita including JA$119,000,000.00 he won in the Jamaican lottery game known as Lotto. According to Miss Murray, Mr. Neita's success in the Lotto has made him more appealing in the eyes of a particular young woman in his community. This young lady has succeeded in dislodging Miss Murray from Mr. Neita's affection. The claim is brought under the Property (Rights of Spouses) Act ("the Act").

3. The fixed date claim form was accompanied by an application for a freezing order. Mr. Neita's riposte was an application to strike out the claimant's statement of case on the

ground that it discloses no reasonable cause for bringing the claim. Both applications are before me. Although Miss Murray's application for the freezing order was filed first in time I have decided to deal with Mr. Neita's application first because success for him concludes the claim under the Act.

4. Mr. Golding's submission is simple yet devastating. He submits that the definition of *spouse* in the Act does not include the defendant because he is not a single man. This is an application under rule 26.3 (1)(c). Under that rule no evidence can be utilised. The court simply looks at the claim and decides whether as framed it is maintainable in law.

The statutory words to be interpreted

5. Section 2 (1) of the Act defines spouse in these terms:

Spouse includes –

(a) a single woman who has cohabited with a single man as if she were in law his wife for a period of not less than five years;

(b) a single man who has cohabited with a single woman as if he were in law her husband for a period of not less than five years

immediately preceding the institution of proceedings under this Act or the termination of cohabitation, as the case may be.

Section 2 (2) states:

The terms "single woman" and "single man" used with reference to the definition of "spouse" include widow or widower, as the case may be, or a divorcee.

The role of Parliamentary debates

6. Mr. Jarrett sought to put before me parts of Hansard which I was assured would illuminate the point under consideration. He relied on the well known case of ***Pepper v Hart*** [1993] A.C. 593. The implications of this case have to be carefully examined to see if I should accept Mr. Jarrett's invitation. In that case Lord Browne-Wilkinson laid down the threshold that must be met before recourse can be had to the debates in Parliament and in particular to any ministerial statement about the legislation in question. As taken from the head note the House held that subject to any question of Parliamentary privilege, the rule excluding reference to Parliamentary material as an aid to statutory construction should be

relaxed so as to permit such reference where (a) the legislation was ambiguous or obscure or led to 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 was necessary to understand such statements and their effect and (c) the statements relied upon were clear.

7. It is my view that the majority of the House of Lords in ***Pepper v Hart*** did not give the weight that ought to have been given to the separation of powers between the courts and the legislature. There is the possibility that if the case is taken to its logical conclusion the separation of powers between the court and the legislature might be blurred. It is now appreciated that if the courts are going to rely on ministerial statements, then it is not farfetched that a promoter of any particular legislation, might, with an eye on future interpretation by the court, produce a well crafted statement which he hopes the courts may look at in order to influence the interpretation of the enactment.

8. The extent to which a ministerial statement should be attributed to the whole legislature was not adequately addressed by the House. In addition to the possible blurring of the separation of powers between the courts and the legislature Lord Browne-Wilkinson's also failed to have sufficient regard to the fact the there is also a separation of powers between the executive and the legislature. The executive has no power to enact any legislation under the Jamaican Constitution. It can only propose laws but the enactment of legislation is conferred, by the Constitution, on the legislature (see section 48 of the Constitution). To get laws passed the executive has to submit a Bill to Parliament for discussion and debate. It is by this process the Parliament is able to exercise control over the executive's legislative programme. The necessity to introduce the Bill to Parliament means that public scrutiny is also possible. Parliamentary oversight and public scrutiny may force the executive to agree to amendments to the law which they might have thought about or having thought about them, rejected them. The minister or promoter of a Bill usually makes some statement indicating in general terms, when the Bill is introduced in the legislature, what he or she hopes to achieve by the law if enacted. The final version of the law when passed may be a far cry from what the minister or promoter envisaged. Because of the debate, sometimes acrimonious, that takes place, concessions are made and amendments included to such an extent that the final enacted version is quite different from the Bill that entered Parliament. This process prompted one writer to say that what comes out of the legislature is what

9. If the legislature is to be regarded as separate from the executive then this fact alone should alert one to the danger of attributing to a group of law makers, as a whole, the views of one member who may or may not also be a member of the executive. A ministerial statement is at best a statement of the executive's intention but it is indeed perilous to use that statement as representing the "intention of Parliament". If Lord Browne-Wilkinson's prescription is not closely circumscribed there is the risk that the executive not only has its views attributed to Parliament (through the ministerial statement) but also controls the interpretive function of the courts. Thus the voice of the executive is not only heard in Parliament but is given pre-eminence in court under the guise of interpretation. This to my mind is not what the Constitution envisioned. It seems to me that one possible peril in Lord Browne-Wilkinson's approach is that the court, in looking at a ministerial or a promoter's statement, may well be giving effect to a particular point of view instead of giving effect to the legislature's intention as expressed in the legislation thereby circumventing the shackle placed on the executive by the Constitution. What I am saying is that unless regard is had only to what the Parliamentarians have enacted (which may be quite different from what the minister or promoter intended) there is the risk that the courts may interpret the legislation in a manner consistent with the stated view point of the minister or promoter when that view point may have either been rejected or partially accepted by the Parliamentarians who would then have enacted a law in accordance with their views and not in accordance with the view of the minister or promoter. It may be said that these criticisms of Lord Browne-Wilkinson are unjustified since he stated that he did not think relying on Parliamentary debates and ministerial statements would confuse the role of Parliament and the courts. That may be so as a matter of words but as a matter of conduct what the Law Lord proposed was to use the words of the Minister as authoritative and almost determinative of what the enacted law means. It is one thing to say that the courts can use Parliamentary material as background to a statute but it is quite another to say that if the enacted law is unclear then the minister's words, provided it is sufficiently clear, is authoritative. If this occurs then the courts may be likened to the ventriloquist's dummy.

10. It cannot be said that since ***Pepper v Hart*** the House of Lords' excursions into the thicket of Parliamentary debates and ministerial statements have been risk free. One of those risks is creating a judicial statement of mind that allows ministerial statements to be accepted as authoritative even in contexts where there is no need to refer to such material. If this happens often enough there is the risk that judges may begin to ask, "What did the minister or promoter say?" rather than "What do the words mean?" Bad habits of thought may lead to egregious errors. An example of improper use of Parliamentary debates can be found in ***Regina v Warwickshire City Council, Ex parte Johnson*** [1993] A.C. 583. Lord Roskill offended the ***Pepper v Hart*** rule without any justification. He interpreted the relevant provisions and came to his conclusion without any assistance from Parliamentary debates. This meant that the necessity to invoke the ***Pepper v Hart*** exception to the rule that generally courts do not look at Parliamentary debates to assist in the interpretation of a statute did not arise. Despite this Lord Roskill found himself in the unfortunate position of looking at the debates. The question is why did he do this? There is no easy answer but it seems that in the context of that case the most reasonable explanation is that he was looking to see if his interpretation was consistent with the minister's statement. It raises the uncomfortable question of whether his views would have changed had the Hansard revealed that the parliamentarians or the minister had a view different from that pronounced by him.

11. Another example is that of the Judicial Committee of the Privy Council in ***Devendranath Hurnam v The State*** PCA No 53 of 2004 (delivered on December 15, 2005), on appeal from the Supreme Court of Maritius, referred to a speech of the Minister of Justice and Attorney General, when there was absolutely no basis for doing so. No one suggested that the words of the statute were difficult to interpret, ambiguous or obscure in meaning. Not one shred of legal justification was put forward by Lord Bingham who delivered the advice to Her Majesty. All he said was that "[t]he Board was referred, without objection, to the speech of Mr. Peeroo, the Attorney General and Minister of Justice." That I daresay was nowhere close to the ***Pepper v Hart*** standard. The lack of objection on the part of opposing counsel is not the ***Pepper v Hart*** standard.

12. Of course once there is use of Parliamentary debates and statements of ministers and promoters the question of the extent to which the material can be used has to be addressed. This issue arose in the case of ***Regina v Secretary of State for the Environment, Transport and the Regions*** [2001] 2 A.C. 349. There was profound

13. The passage from Lord Nicholl's highlights the flaw in Lord Browne-Wilkinson's proposition that the intention of Parliament can be gleaned from the stated intention of any single Parliamentarian who may happen to me a minister.

14. After a decade of experience with ***Pepper v Hart*** it is obvious that the House of Lords was not happy with the results. The House itself has sought to curb these unnecessary excursions by judges into the halls of Parliament by emphasising the constitutional role of Parliament and judges in this business of enacting and interpretation of legislation. This it did in ***Wilson v First County Trust (No. 2)*** [2004] 1 A.C. 816. While not overruling ***Pepper v Hart*** it is obvious that there ought not to be a recurrence of Lord Roskill's and Lord Bingham's unjustified use of Parliamentary debates and ministerial statements.

15. We would do well to bear in mind the observations made by the Irish Supreme Court in ***Crilly v T. and J. Farrington Ltd*** and in particular her Ladyship Mrs. Justice Denham and Murray and Fennelly JJ. Although she did not deliver a full judgment on the issues Mrs. Justice McGuiness was uncomfortable with the use of Parliamentary debates in the judicial function of statutory interpretation. To give a flavour of the weight of the problem as explained by the Irish Supreme Court I shall cite a few passages. Denham J. said at paragraphs 45 subparagraphs 6 – 8 and paragraph 46:

> *6. It has long been the common law that words spoken in parliamentary debates are not admissible in court in construing statutes.*
> *7. The law of other common law countries was opened in the submissions in this case. It is clear that decisions have been made in other jurisdictions to admit in evidence parliamentary debates. However, it is also clear that such approach has not been without its problems and that in certain instances there appears to have been attempts thereafter to limit the admissibility of such evidence. Consequently, it is not an approach which heralds a panacea for all ills.*
> *8. To hold that parliamentary debates are admissible would be an alteration in the law and an alteration which would have a profound effect. For example, it could have a negative effect on presumptions, such as the presumption of the constitutionality of legislation. Canons of construction and presumptions, which are the product of many years of common law, could be called in question. In addition, it could have an effect on the Dáil [lower of parliament of the Republic of Ireland] and Seanad [upper house]*

which might feel bound when debating each bill to state what is meant by each section of a bill. It is possible that a minister's speech would then be drafted with a view to persuading a court of a certain approach. This would bring a new aspect to the parliamentary process in addition to its current roles. It might render the processing of legislation more complex. In addition, if a Minister's statement in the Dáil is to be accepted, are those of the opposition to be excluded? Their interpretation may be radically different. Further, bills are often amended as they proceed through the Dáil and Seanad. These amendments may significantly alter the intention expressed in the original ministerial speech. Are all speeches then to be analysed together with the amendments to obtain the expressed intention on the meaning of an act?
46. For well established reasons, including those I have just stated, the speeches made by ministers in the Dáil and Seanad when introducing legislation have not been admissible in court when the court is construing statutes. I am not persuaded that good reason has been indicated in this case for changing or developing the common law in this jurisdiction.

16. Murray J. in his judgment made it clear that he had grave reservations about using Parliamentary debates. He said at paragraphs 81 - 84:

81. As has often been said by this Court, the Courts are one of the organs of government, the judicial organ of government, referred to in Article 6 of the Constitution. Included in their role is the task of applying Acts of the Oireachtas [Parliament] in justiciable disputes between citizens or between a citizen and the State and for that purpose to interpret them. It is frequently said that in interpreting Acts of the Oireachtas the Court seeks to ascertain the "intent" of the legislature or as Blackstone put it at page 59 of his Commentaries "the will of the legislature". The phrase "intent of the legislature" is, on a casual view, ambiguous because it does not expressly convey whether it is the subjective intent or the objective intent of the legislature which is to be ascertained. Manifestly, however, what the Courts in this country have always sought to ascertain is the objective intent or will of the Legislature. This is evident for example from the rule of construction according to which when the meaning of the statute is clear and definite and open to one interpretation only in the context of the statute as a whole, that is the meaning to be attributed to it. There has never been any question of examining the statute further in the light of external aids so as to ascertain whether parliament had an intent which it failed to adequately express, at variance with that to be clearly found in the statute.

82. The role of the courts in the interpretation of statues, as a matter of principle, is summed up with great clarity by Lord Nicholls in R -v- Secretary of State for the Environment etc ., at 216 (cited above) when he said " Statutory interpretation is an exercise which requires the Court to identify the meaning borne by the words in question in the particular context . The task of the Court is often said to be to ascertain the intention of parliament expressed in the language under consideration. This is correct and maybe helpful, so long as it is remembered that the 'intention of parliament' is an objective concept, not subjective. The phrase is a shorthand reference to the intention which the Court reasonably imputes to Parliament in respect of the language used. It is not the subjective intention of the Minister or other persons who promoted

the legislation. Nor is it the subjective intention of the draftsman, or of individual members or even of a majority of individual members about the house. These individuals will often have widely varying intentions. Their understanding of the legislation and the words used may be impressively complete or woefully inadequate. Thus when the Courts say that such and such a meaning 'cannot be what Parliament intended', they are saying only that the words under consideration cannot reasonably be taken as used by Parliament with that meaning. As Lord Reid said ... 'We often say that we are looking for the intention of Parliament, but that is not quite accurate. We are seeking the meaning of the words which Parliament used' ."

83. The principle of objective intent at the root of the role of the Courts in interpreting statutes is, as I have indicated, the same in this country. The intent of the Oireachtas is imputed to it on the basis of the text of an Act adopted and promulgated as law in accordance with the Constitution.

84. Any proposal that the Courts should go behind the constitutionally expressed will of the Oireachtas so as to rely on the statement of one member of one house, whatever his or her status, must be approached with circumspection and constitutional prudence. To go behind a will so expressed so as to look at such statement and impute an intent expressed by one member to the Oireachtas as a whole may, and I use that word guardedly, risk compromising the legislative process and the role of other members of the Oireachtas. Thus the question as to whether reliance should be placed by the Courts on the parliamentary history of an Act raises considerations which in my view render the issue sui generis and not to be equated with reliance on other external aids such as reports of Commissions which give a contextual background to legislative history. The use of such external aids has a different provenance, gives rise to different considerations and although they too must be relied on with circumspection, we are not concerned with them in this case.

<u>General Considerations</u> :

...

88. A Minister or promoter of a Bill may feel constrained when intervening in the cut and thrust of parliamentary debate to choose her or his words carefully for fear of giving rise to any misunderstanding as to her or his intent on a subsequent parsing of those words in a court of law. On the other hand it has been suggested that a clear and deliberate statement on the part of the Minister or other promoter of the Bill as to the purpose for which it [has] been introduced could be a helpful aid to interpretation. Apart from other considerations which I will refer to, there is the foreseeable risk that the promoter of the Bill would feel constrained to make statements calculated specifically for interpretative purposes, something which has occurred in the United States. Even if a Minister did not feel so constrained, the fact remains that Ministers or other promoters of Bills do routinely inform the House in question of the general purposes of the Bill and the reasons for its introduction. Statements, calculated or otherwise, promoting a Bill passing through a politically contentious process would not necessarily constitute a neutral aid to construction. If the courts were to go behind an Act and look at the proceedings in the Houses of the Oireachtas and statements made by the promoter of a

Bill for the purposes of interpreting the Act adopted, it would place an onus on other members of the Oireachtas to examine his or her spoken words for its implications as to the ultimate effect of a Bill when it becomes law. They would have to do so from a perspective which they have never had to do and which does not currently arise.

89. As the legislative organ of State the Oireachtas has, subject to the constitution, exclusive responsibility for the conduct of its proceedings so I refer to these general considerations primarily for the purpose of indicating that any decision to rely on statements made in one or other House as an aid to the construction of an Act could have implications for the conduct of the legislative process which is another reason for the Courts to consider this question with prudence.

...

95. Having regard to the considerations I have outlined above concerning the role of the Oireachtas recourse to statements of ministers could have implications for the parliamentary process, I put it no further than that, which the courts should avoid unless there are cogent and countervailing judicial reasons for doing so. In my view the existence of such cogent or countervailing judicial reasons have not been demonstrated by the Appellants.

96. Another disadvantage in this context is that there is nothing before us to indicate that the statement of a Minister in one House is available or taken into account by the other House when considering the Bill. A Court could have material before it which was never considered by one House.

...

99. Having regard to the respective roles of the Oireachtas and of the courts and all the considerations which I have mentioned, I am not satisfied that it has been shown that recourse to ministerial statements as an aid to the construction of statutes is sufficiently neutral useful or efficient to outweigh, from a judicial policy point of view, the disadvantages or possible inconveniences of abolishing or modifying the exclusionary rule. I do not in this case consider it necessary to go so far as to say that this should be decided as a matter of principle.

100. Maintaining the classical exclusionary rule also has the advantage of avoiding a potentially dangerous dichotomy entering into the interpretative practice of the courts. The Courts seek the objective intent of the legislator while the purpose of looking at parliamentary debates as a source of interpretation is to seek the subjective intent. Even in contemporary circumstances applying the traditional exclusionary rule is more likely to promote certainty in the interpretation of statutes than to dilute it. It also has the advantage of avoiding any risk that in abolishing or modifying the exclusionary rule the courts might, even unwittingly, affect the legislative process of the Oireachtas and the role of the members of the two Houses.

17. Mrs. Justice McGuiness said at paragraph 110:

> *The process of legislation by the Oireachtas is essentially collective. It is the Oireachtas as a whole which legislates. It would in my view be a misleading oversimplification of this process to rely, in interpreting a statute, on ministerial statements alone. Particularly in the case of more complex statutes, which pass through a lengthy Committee Stage, contributions come from all sides of both Houses of the Oireachtas. The statute as finally enacted may well have been extensively amended and may differ crucially from the Bill as introduced by the Minister's initial introductory statement at the Second Stage. For the Courts to rely on ministerial statements in interpreting statutes would not, therefore, reflect the will of the Oireachtas as a whole. Yet to search the entire Parliamentary Debates for indications as to the proper interpretation of statutes would be both complex, time consuming and extremely difficult in practice. Such a procedure would be open to all the criticisms voiced by both Mr. Justice Murray and Mr. Justice Fennelly in their judgments.*

18. The passages I have cited have explained far more eloquently that I could why judges should hesitate before embarking on an examination of the Parliamentary debates to see what a statute means. I was not persuaded that the provision to be interpreted required reference to Hansard and I declined to do so. On this point I refer to the article of Mr. Francis Bennion, ***How They All Got It Wrong***, B.T.R. 1995, 3, 325 -331. Mr. Bennion has shown that ***Pepper v Hart*** could have decided by adhering to the orthodox principles. In of ***Wilson's case*** the principle is now so hemmed in and qualified that it has been reduced to virtually a dead principle. The ability to use the principle has been so severely curtailed that it must now be open to doubt if the principle other than by name.

Mr. Jarrett's other submissions

19. Mr. Jarrett attempted to refer to an affidavit filed in proceedings under the Domestic Violence Act ("DVA") in which Mr. Neita admitted that Miss Murray was his spouse. The affidavit cannot be used in these proceedings because the DVA had a different purpose than the Act under consideration. The DVA has different definitions.

20. Counsel next submitted that the purpose of the Act was to protect the rights of co-habiting couples who have lived together for more than five years. He also submitted that the definition of spouse was designed to exclude homosexual and lesbian relationships and also polygamous unions. He added that the expression single woman and single man in some other contexts have been held to include a married woman and a married man. Therefore, says he, given the purpose of the Act Mr. Neita is a single man within the Act. He prayed in aid cases such as ***Whitton v Garner*** [1965] 1 W.L.R. 313 and ***Watson v***

Tuckwell (1947) 63 T.L.R. 634 among others. In both these cases a married woman was held to be single woman for the purposes of the Affiliation Proceedings Act and the Bastardy Law respectively. I do not find these cases helpful.

The interpretation

21. As Lord Reid said in ***Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG*** [1975] A.C. 591, 613 to speak of the intention of Parliament is inaccurate. The task is to find the meaning of the words actually used in the statute since the job is not to find out what the legislators meant, subjectively, but the true meaning, objectively determined, of the words used in their context. I give to the word "context" the same meaning given to it by Viscount Simonds and Lord Somervell ***Attorney General v Prince Augustus of Hanover*** [1957] A.C. 436.

22. Lord Simon observed in ***Stock v Frank Jones (Tipton) Ltd*** [1978] ICR 347, 354, that in a society under the rule of law citizens act according to what is said in the statute and not what the law makers intended to say.

23.I am convinced that Mr. Jarrett could not be correct. The Act is a statute of general application pertinent to persons of all walks of life. In Jamaica when the word *spouse* is used no one needs to have it defined because it is understood to mean a husband or a wife in heterosexual unions. If *spouse* is intended to be used in an unusual way then one would expect the legislature to indicate this unusual use by providing a definition. This is what was done in this case. It is to be noted that the statute did not say *spouse* means a husband or a wife in a heterosexual union and also a single man and a single woman living together for the stated period. It said spouse *includes* which could only mean the ordinary meaning of *spouse* is already included and need not be stated. A single person is not normally included in the word *spouse* that is why it was necessary to expand the definition once the legislature decided to use the same word to include persons who would not normally be included. It chose to use the word usually reserved for married couples.

24. Within the extended meaning of the word *spouse* the adjective *single* appears before "woman" and "man". Single must have some meaning in this context. *Single* is an ordinary word which usually means unmarried. The word *single* restricts the class of men and women who can live together and be regarded as spouses under the Act. Had it been

intended that *spouse* includes any man and woman living together then *single* would not have been included in the definition.

25. I am confirmed in my view by section 2 (2). This section is what I would call a "removal of doubt provision", that is, a provision that is not strictly necessary but is nonetheless desirable in order to put doubts to rest. What is crucial and ultimately determinative in my view is that Parliament did not extend section 2 (2) to include a person who is lawfully married but separated from his or her spouse and living with some other person as if he or she were a single person. The case of the separated married person who might be living with someone else is so obvious that if there were the intention to include such a person within the definition of spouse the ideal place to have made this clear would be section 2 (2). The fact of its omission is a powerful and determinative argument in favour of the conclusion that such a person was not intended to be a single man or single woman for the purposes of the legislation.

26. The next stage in Mr. Jarrett's submission was the appeal to the perceived injustice that would befall Miss Murray. He said that she has given over twenty years of her life to Mr. Neita. These arguments are not for me but for the Parliamentarians. If they believe that persons like Mr. Neita should be regarded as a single person within the meaning of the Act then I have no doubt that they will amend the law accordingly. Judges do not question the wisdom of Parliament. They only interpret and apply the enacted law. I therefore have to accept that what the Parliamentarians have enacted is what they meant.

Conclusion

27. Mr. Kenneth Neita is not a single man for the purposes of the Property (Rights of Spouses) Act 2004. It necessarily follows that the claim based on this statute cannot succeed. The statement of case is struck out as disclosing no reasonable basis for bringing the claim. Each party to bear own costs. Leave to appeal granted.