

Interpreting Taxing Statutes # 109 – Codifying Acts

In so far as the Act constitutes codification (with or without amendment) of common law rules, relevant case law may be referred to. But where the common law rule is replaced by an enactment that is not intended to codify the rule, the enactment should be construed without reference to earlier case law. [Ben 24.8]

SYNOPSIS

Codification consists of restating the law on a topic, common law and statutory, to form a single coherent code. A codifying Act may also embrace custom, prerogative and practice.

Codification and consolidation have much in common since in both cases the legislature sets a new legislative scheme that is intended to be a statement of the law that citizens can safely rely on as having its ordinary meaning. It is therefore unsurprising that the approach to interpreting codifications and consolidations is similar.

The correct approach to the interpretation of codifications was laid down by Herschell LC in *Bank of England v Vagliano Bros*: [(1891) AC 107]

‘I think the proper course is, in the first instance, to examine the language of the statute, and to ask what is its natural meaning uninfluenced by any considerations derived from the previous state of the law, and not to start with enquiring how the law previously stood, and then, assuming that it was intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view. If ... treated in this fashion it appears to me that its utility will be almost entirely destroyed and the very object with which it was enacted will be

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frustrated. The purpose of such a statute surely was that on any point specifically dealt with by it, the law should be ascertained by interpreting the language used, instead of, as before, by roaming over a vast number of authorities ...’