LAMB BUILDING, TEMPLE, E.C. 4,
*25th October* 1957.

The Editor,
*T.F.A.*

Dear Sir,

May I express my concurrence with the view of Mr. G. C. Robertson (*T.F.A.* 25, page 57) that the decision of Harman, J., in Bibby's case was based on two alternative grounds, and my dissent from the warning sounded by Mr. C. G. Myers in a written contribution to the discussion on Mr. Robertson's paper (*Ibid.*, page 83) that " Offices should beware of relying too much " on the second of these grounds (non-provision by the employee) because it might be held to be *obiter* ?

I suggest that a reading of the report in [1952] 2 All E.R. 483 will show that either of the two grounds would have sufficed alone. When a court gives two reasons for its decision the second is not necessarily *obiter*. (Jacobs *v.* L.C.C. [1950] A.C. 361.)

In practice the Inland Revenue gives Bibby's case a wider application than is required by the decision, and treats as non-dutiable a benefit under a non-contributory scheme arising on the death of a member, even though he entered employment when the scheme was already in existence, thereby abandoning its former view that the benefit is then partially provided by the employee, by virtue of the services he renders.

Yours truly,
WILLIAM PHILLIPS.

12 ASKHAM LANE, ACOMB, YORK,
*16th November* 1957.

The Editor,
*T.F.A.*

Dear Sir,

Mr. Phillips, in his letter of 25th October 1957, agrees that there is a risk that the second reason for a Court's decision might be held to be *obiter*, but apparently considers the risk to be slight. May I be allowed to comment on this point ?

In the Jacobs case, the House of Lords did not treat as *obiter* a second reason given in an earlier House of Lords decision. Allen, in *Law in the Making*, 5th Edn., pages 242-250, considers these cases, and others, and says " The real lesson to be drawn from these cases



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is that when a superior tribunal, and especially the ultimate tribunal, devotes much thought and dialectic to discussing a controverted problem of law, it is really quite artificial, and it is also quite impracticable, to put the fruit of its labour into an academic category of *dictum* and treat it as of no authority. . . . In Adams *v.* Naylor [1946] A.C. 453, there is an example of opinions which were manifestly and deliberately *obiter*, but which had an authoritative effect not only in the Court of Appeal but in consequential legislation. . . . In sum, if the eminence of the tribunal, the consensus of judicial opinion, and the degree of deliberation all combine to lend a special weight and solemnity to *dicta*, then their authority is for all practical purposes indistinguishable from that of *rationes decidendi.*"

In my view, these considerations imply that the risk (of a second reason being held to be *obiter*) is greater in the case of a decision by a lower court (as in Bibby's case) than it is with the decision of a higher court. If this is so when either ground would have sufficed alone (as Mr. Phillips suggests), even more so is it true if the second reason is a subsidiary ground (as Potter and Monroe suggest—*Tax Planning*, 2nd Edn., page 242), and even more so apparently in the opinion of MacGillivray and Houseman, for they did not mention this " reason " in Legal Notes, *J.I.A.* 69, Pt. 1.

Sufficient was said in Mr. Robertson's paper and the discussion about Inland Revenue practice to justify my not referring to Mr. Phillips' third paragraph.

Yours truly,

C. G. MYERS.

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