HIGH COURT OF JUSTICE (CHANCERY DIVISION)—
25 AND 26 APRIL AND 11 MAY 1979

COURT OF APPEAL—24, 25 AND 26 MARCH 1980

Essex and Others v. Commissioners of Inland Revenue and Grugan[1]

Income tax—Avoidance of tax by artificial transactions in land—Information—Notice requiring particulars of action taken in connection with transactions in land involving persons resident abroad—Whether valid—Income and Corporation Taxes Act 1970, *ss* 488 & 490.

The first and second Plaintiffs acted as directors of the third and fourth Plaintiff Companies. On 16 February 1976 the second Defendant, an Inspector of Taxes, served on each of the Plaintiffs a notice under s 490 requiring them to furnish him with particulars of transactions or operations specified in the notices in connection with which they had (i) acted on their own behalf or on behalf of some other person or (ii) acted on behalf of a person by way of introducing, instructing or employing some other person to act on behalf of that person. The transactions and operations specified all involved dealings with land or interests in land involving persons not resident in the United Kingdom. The particulars required were the names and addresses of those persons and others concerned in ways specified in the notice including particulars of persons who had obtained or might obtain a benefit from the transactions; the nature of that benefit or possible benefit; and particulars of the transactions and operations themselves. All the notices were (*mutatis mutandis*) in the same form.

On 17 February 1978 the Plaintiffs brought an action in the Chancery Division for a declaration that the notices were invalid. It was contended for the Plaintiffs: (1) that on a true construction of s 490 the Inspector's demands for particulars of unidentified transactions or operations exceeded his express statutory authority, (2) that even if they were within the powers given by s 490 the notices were invalid (i) because they were unintelligible to any intelligent layman, necessitating constant reference to professional advisers for advice as to how to comply with them, and (ii) because of the obscurities and ambiguities in the notices they were burdensome and oppressive upon the Plaintiffs. (The Plaintiffs did not however adduce any evidence in support of their contentions.) For the Crown it was contended, *inter alia*, that the demands for particulars fell within the terms of s 490 and, if they were not *ultra vires*, the notices could only be held invalid if on the evidence adduced it was shown (i) that the Board or the Inspector acted in bad faith or (ii) that the Board or the Inspector in deciding that the particular information demanded of the particular recipient, in the particular form which such demand took, was necessary for the purposes of s 487 or s 488, reached a decision so unreasonable that no reasonable body or person could have come to it, or (iii) that ambiguities and obscurities contained in the notices necessarily rendered them meaningless to any recipient whomsoever.

(1) Reported (Ch D) [1979] STC 525; (CA) [1980] STC 378.

A In the Chancery Division, Slade J. held that the notices were valid and dismissed the action. The taxpayers appealed.

The Court of Appeal, unanimously dismissing the taxpayers' appeal, held that (1) s 490 authorises demands for particulars of unidentified transactions because, *inter alia*, the word "particulars" in subs (1) is synonymous with "information": the general powers conferred by subs (1) are not cut down by
B subs (2), which is directed to defining the duties of the recipient of a notice; (2) in the absence of evidence, the Court ought not to assume that a notice is unintelligible to the particular recipient, especially when that recipient is only required to answer questions to the best of his information, knowledge and belief.

Clinch v. *Commissioners of Inland Revenue* 49 TC 52; [1974] QB 76 applied
C and approved.

The facts are stated in the judgment.

The action was heard in the Chancery Division before Slade J. on 25 and 26 April 1979 when judgment was reserved. On 11 May 1979 judgment was given in favour of the Crown, with costs.

D *D. C. Potter Q.C.* and *C. H. McCall* for the taxpayers.

Brian Davenport for the Crown.

The cases cited in argument are referred to in the judgment.

Slade J.—This is an action in which the first two plaintiffs are individuals, namely, Miss Lily Suzanne Essex and Miss Catarine Eastty, and the third and
E fourth plaintiffs are companies, namely, Memotime Ltd. and Yardley Interests Ltd. There are two defendants, namely, the Commissioners of Inland Revenue and Mr. A. J. Grugan, who is an Inspector of Taxes in the Technical Division of the Commissioners. The action raises questions of law as to the nature and extent of the powers of the Commissioners under s 490 of the Income and Corporation Taxes Act 1970 (which, as amended, I will call "the Taxes Act"),
F to require persons to furnish them with information. Section 487 of the Taxes Act, which is the successor of s 31 of the Finance Act 1969, contains wide provisions which, broadly, are designed to render capital amounts received by individuals on the sale of income derived from their personal activities chargeable to income tax under Case VI of Schedule D if the conditions of the section are satisfied in the particular instance. Section 488 contains provisions which, as
G is expressly stated by subs (1), are "enacted to prevent the avoidance of tax by persons concerned with land or the development of land", though subs (14) excludes their application to any gain realised before 15 April 1969. Under subs (2), s 488 is expressed to apply wherever,

"(*a*) land, or any property deriving its value from land, is acquired with the sole or main object of realising a gain from disposing of the land, or (*b*)
H land is held as trading stock, or (*c*) land is developed with the sole or main object of realising a gain from disposing of the land when developed, and

any gain of a capital nature is obtained from the disposal of the land—(i) by the person acquiring, holding or developing the land, or by any connected person, or (ii) where any arrangement or scheme is effected as respects the land which enables a gain to be realised by any indirect method, or by any series of transactions, by any person who is a party to, or concerned in, the arrangement or scheme and this subsection applies whether any such person obtains the gain for himself or for any other person." A B

Subsection (3) specifies the consequences that follow when s 488 applies:

"Where this section applies, the whole of any such gain shall for all the purposes of the Tax Acts be treated—(*a*) as being income which arises when the gain is realised, and which constitutes profits or gains chargeable to tax under Case VI of Schedule D for the chargeable period in which the gain is realised, and (*b*) subject to the following provisions of this section, as being income of the person by whom the gain is realised." C

The succeeding subsections further define, and to some extent amplify, the circumstances in which s 488 is to apply and the consequences of its application. I shall refer to some only of these subsections. Subsection (4) provides that, for the purposes of the section, land is disposed of,

"if, by any one or more transactions, or by any arrangement or scheme, whether concerning the land or property deriving its value from the land, the property in the land, or control over the land, is effectually disposed of, and references in subsection (2) above to the acquisition or development of property with the sole or main object of realising the gain from disposing of the land shall be construed accordingly." D

Subsection (5) provides that for the said purposes, E

"(*a*) where, whether by a premature sale or otherwise, a person directly or indirectly transmits the opportunity of making a gain to another person, that other person's gain is obtained for him by the first-mentioned person, and (*b*) any number of transactions may be regarded as constituting a single arrangement or scheme if a common purpose can be discerned in them, or if there is other sufficient evidence of a common purpose." F

Subsection (6) specifies the methods to be adopted for the purpose of computing gains. Subsection (8) contains provisions which enable the liability to tax in some circumstances to be switched from the person realising the gain to another person. It reads as follows:

"If all or any part of the gain accruing to any person is derived from value, or an opportunity of realising a gain, provided directly or indirectly by some other person, whether or not put at the disposal of the first-mentioned person, subsection (3)(*b*) of this section shall apply to the gain, or that part of it, with the substitution of that other person for the person by whom the gain was realised." G

Subsection (12)(*a*) provides that in the section references to the land include references to all or any part of the land, and "land" includes buildings, and any estate or interest in land or buildings. Subsection (12)(*b*) provides that in the section references to "property deriving its value from land" include, H

"(i) any shareholding in a company, or any partnership interest, or any interest in settled property, deriving its value directly or indirectly from land, and (ii) any option, consent or embargo affecting the disposition of

land, and for the purposes of this section any question whether a person is connected with another shall be determined in accordance with section 533 of this Act."

Subsection (13) provides: "This section shall apply to all persons, whether resident in the United Kingdom or not, if all or any part of the land in question is situated in the United Kingdom."

Section 489 of the Taxes Act has effect to supplement ss 487 and 488 and in some respects substantially to expand the operation of those sections. For present purposes I need refer only to subs (9), which provides:

> "If it appears to the Board that any person entitled to any consideration or other amount taxable under the principal sections is not resident in the United Kingdom, the Board may direct that section 53 of this Act (payments not out of profits or gains brought into charge to income tax) shall apply to any payment forming part of that amount as if it were an annual payment charged with tax under Case III of Schedule D, but without prejudice to the final determination of the liability of that person, including any liability under subsection (8)(*b*) above."

Section 488, read in conjunction with s 489, is thus a section of formidable width, designed to prevent the avoidance of tax by what are described in the sidenote to s 488 as "Artificial transactions in land". This is the background against which was enacted s 490 of the Taxes Act, the section directly in issue in the present proceedings. This provides as follows:

> "(1) The Board or an inspector may by notice in writing require any person to furnish them within such time as the Board or the inspector may direct (not being less than thirty days) with such particulars as the Board or the inspector think necessary for the purposes of sections 487 and 488 above. (2) The particulars which a person must furnish under this section, if he is required by a notice from the Board or the inspector so to do, include particulars (*a*) as to transactions or arrangements with respect to which he is or was acting on behalf of others, and (*b*) as to transactions or arrangements which in the opinion of the Board or the inspector should properly be investigated for the purposes of the said sections notwithstanding that, in the opinion of the person to whom the notice is given, no liability to tax arises under those sections, and (*c*) as to whether the person to whom the notice is given has taken or is taking any, and if so what, part in any, and if so what, transactions or arrangements of a description specified in the notice. (3) Notwithstanding anything in subsection (2) above, a solicitor shall not be deemed for the purposes of subsection (2)(*c*) above to have taken part in any transaction or arrangements by reason only that he has given professional advice to a client in connection with the transaction or arrangements, and shall not, in relation to anything done by him on behalf of a client, be compellable under this section, except with the consent of his client, to do more than state that he is or was acting on behalf of a client, and give the name and address of his client."

The dispute in the present case has arisen in the following circumstances. On or about 16 February 1976 notices or purported notices, signed by Mr. Grugan as an Inspector of Taxes, were served by or on behalf of the Board of Inland Revenue, pursuant to s 490 of the Taxes Act, on each of the Plaintiffs,

(Slade J.)

requiring the recipients to furnish the Board with information which the Board or Mr. Grugan thought necessary for the purposes of s 488 of that Act. The notices were lengthy and elaborate, and required a large amount of information. Those addressed to Miss Essex and to Miss Eastty were each in the following form:

> "Dear Madam, Where you have either—i. acted on your own behalf or on behalf of some other person in connection with any transaction or operation specified in A, B or C below, or ii. acted on behalf of a person by way of introducing, instructing or employing some other person to act on behalf of that person in connection with any transaction or operation specified in A, B or C below you are required under Section 490 Income and Corporation Taxes Act 1970 to furnish me on or before 26 March 1976 with the particulars specified in paragraphs a. to e. in relation to each such transaction or operation, except that particulars are not required in relation to any transaction or operation concerned only with the disposal or acquisition by any person on whose behalf you acted of, or of any interest in, a dwelling-house which had been or was to be his private residence. Transactions And/Or Operations: A. Any contract, conveyance, lease, declaration of trust, or other transaction or operation whereby any legal, equitable or other interest in land situated in the United Kingdom passed to or from a person or persons, one or more of whom was not resident in the United Kingdom. B. Any option agreement or assignment of the benefit of such an agreement relating to land in the United Kingdom where one or more of the parties to the agreement or assignment was not resident in the United Kingdom. C. Any transaction or operation or any combination of transactions or operations whereby a benefit arose or might arise to a person resident in the United Kingdom if any one of such transactions or operations was of the type mentioned in A. or B. Particulars: a. The name and address of the persons specified in A, B or C above. b. Where any person specified in a. was acting for some other person or persons, the name and address of each such other person. c. Particulars of the transaction or operation. d. Where particulars of a transaction or operation are given in answer to c. above, as being a transaction or operation falling within C. above, give the name and address of the person who obtained or might obtain the benefit, and the nature of the benefit or possible benefit. e. The name and address of any persons introduced, instructed or employed to act on behalf of any person specified in A., B. or C. above. Particulars are required only in relation to transactions or operations taking place on or after 6 April 1970 except in a case where an operation or transaction undertaken before that date was taken in conjunction with or in combination with a transaction or operation occurring on or after that date or as part of a series of transactions one or more of which fell on or after that date. Answers should be given to the best of your information, knowledge and belief. For the purpose of this notice land has the enlarged meaning given that word by Section 488(12)(a) Income and Corporation Taxes Act 1970 which provides that references to the land include references to all or any part of the land, and 'land' includes buildings, and any estate or interest in land or buildings. A copy of Section 490 Income and Corporation Taxes Act 1970 is attached. A copy of this notice is enclosed should you wish to consult your professional advisers. Yours faithfully, A. J. Grugan, HM Inspector of Taxes."

The notices addressed to the corporate Defendants were in the same form as those addressed to the individual defendants save in two respects. First, the

A opening paragraph read as follows:

> "Where the company has either—i. acted on behalf of a person in connection with any transaction or operation specified in A, B & C below, or ii. acted on behalf of a person by way of introducing, instructing or employing some other person to act on behalf of that person in connection with any transaction or operation specified in A, B or C below the company
B is required under Section 490 Income and Corporation Taxes Act 1970 to furnish me on or before 26 March 1976 with the particulars specified in paragraphs a. to e. in relation to each such transaction or operation, except that particulars are not required in relation to any transaction or operation concerned only with the disposal or acquisition by any person on whose behalf it acted of, or of any interest in, a dwelling-house which had been
C or was to be his private residence."

(Thus, information was not required of the corporate Defendants as regards matters where they had acted on their own behalf.) Secondly, the notices stated that answers should be given to the best of the Company's information, knowledge and belief.

The Plaintiffs contend, in effect, that the notices addressed to each of them
D go beyond the Crown's statutory powers, substantially on the grounds, first, that they do not fall within the wording of s 490 when that wording is properly construed and, secondly, that the form of the notices is in any event so unreasonable and oppressive as to render them void. Sections 98 and 100 of the Taxes Management Act 1970 contain provisions for the imposition and recovery of penalties from any person who has been required by a notice served under
E s 490 of the Taxes Act to furnish particulars and fails to comply with the notice. It would have been open to the Plaintiffs to challenge the validity of the notices by way of resistance to proceedings for the recovery of penalties, if and when the Board elected to institute such proceedings. The Plaintiffs, however, have chosen to take the initiative themselves by issuing proceedings by writ followed by a statement of claim, in which they seek a declaration that each of the
F purported notices is void and of no effect. The Crown does not, at least before this Court, challenge the right of the Plaintiffs to attack the validity of the notices in this manner as a matter of procedure, though they deny entirely that the Plaintiffs' claims have any foundation in law.

The documentation before the Court has consisted solely of (1) the four notices themselves, (2) the writ, (3) the statement of claim, which merely refers
G to the notices and specifies reasons why they are said to be void, and (4) a very short defence which, in effect, admits service of the notices but denies that they were void. No oral evidence has been given on behalf of any party. The statement of claim does not allege that either the Board or Mr. Grugan did not think the information sought "necessary" for the purposes of s 488. Indeed, Mr. Potter, on behalf of the Plaintiffs, has made it plain that his clients do not seek in any
H way to attack the good faith of the Board and Mr. Grugan in serving the notices. He accepts that the Board and Mr. Grugan genuinely thought the information sought necessary for the purposes of s 488. Without attaching moral blame to them, however, he contends that, through an excess of zeal, they have abused or acted in excess of the powers conferred upon them by s 490.

(Slade J.)

Do the notices fall within the wording of section 490? The first principal ground upon which the validity of the notices is attacked is that, in the form which they took, they fell outside the wording of the type of demand for information authorised by s 490 of the Taxes Act and are *ultra vires* and void on this account. In this context the meaning of the word "particulars" as used in the section is of crucial importance. It was common ground, I think, between Counsel on both sides that the purpose of s 490(2) is to enlarge, at least in some respects, the meaning of the word "particulars" as used in s 490(1) and to remove possible doubts as to the specific particulars which the Board is entitled to require. This conclusion derives strong, if indirect, support from the recent decisions in *Royal Bank of Canada* v. *Commissioners of Inland Revenue*(1) [1972] Ch 665 and in *Clinch* v. *Commissioners of Inland Revenue*(2) [1974] QB 76. In the former case Megarry J. had to consider s 414(1) of the Income Tax Act 1952 (as amended). This was a subsection in terms very similar to s 490(1) of the Taxes Act, and, so far as material, read as follows:

> "The Commissioners of Inland Revenue or, for the purpose of charging tax at the standard rate, an inspector may by notice in writing require any person to furnish them within such time as they may direct (not being less than 28 days) with such particulars as they think necessary for the purposes of this Chapter . . ."

Section 414(3) of the Act of 1952 (as amended) began with the following words: "The particulars which a person must furnish under this section, if he is required by a notice from the Commissioners of Inland Revenue or, for the purpose of charging tax at the standard rate, an inspector so to do, include particulars . . ." Subsection (3) then proceeded, in paras (*a*), (*b*) and (*c*), to specify catergories of transactions and other matters to which a demand for particulars might relate. These three paragraphs correspond very closely (*mutatis mutandis*) with paras (*a*), (*b*) and (*c*) of s 490(2) of the Taxes Act.

Megarry J. rejected an argument that "particulars" in s 414(1) of the Act of 1952 referred to particulars of the matters dealt with in the relevant tax avoidance provisions, namely, "transfers of assets" and "associated operations". In this context he said [1972] Ch 665, at page 675 E–F(3):

> "I do not think that these contentions are sound. First, the statutory phrase is 'such particulars as they think necessary' for the purposes specified. Parliament did not think it requisite to confine the word 'particulars' in terms by stating of what the particulars must be. The word 'particulars' is quite capable of standing on its own in the sense of items or details or points, and the scope of the particulars is in terms limited by the words 'as they think necessary' for the specified purpose."

Then, a little later he said, at page 675 G–H(3):

> "I find it difficult to see why Parliament, in conferring powers to obtain information to prevent certain forms of avoidance of income tax, and in terms limiting those powers only by reference to what the commissioners think necessary for the purpose, should nevertheless intend, by some covert and implied limitation, to prevent the commissioners from obtaining part of the information that they think necessary."

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(1) 47 TC 565. (2) 49 TC 52. (3) 47 TC 565, at p 571.

A Megarry J., having first looked at the history of s 414(1) of the Act of 1952, then dealt with and rejected an argument that the word "include" meant "include and mean". He said, at page 676 C–E[1]:

> "Furthermore, the first category of particulars which under section 414(3) a person must furnish is particulars '(*a*) as to transactions with respect to which he is or was acting on behalf of others'. If subsection (3)
B were truly defining, and not extending or merely removing doubt, it is remarkable that the primary category does not consist of transactions in which the person concerned is acting on his own behalf and not on behalf of others. Indeed, it is not clear to me under which head at least some cases of a person acting on his own behalf could be brought. Mr. Nolan relied upon section 414(3)(*c*), but this seems to me to be an oblique and imperfect
C instrument for his purpose. Furthermore, section 414(3)(*b*), requiring particulars to be given 'notwithstanding that, in the opinion of the person to whom the notice is given, no liability to tax arises under this Chapter', seems to me to be essentially the type of provision which is inserted for the removal of doubt and the stopping up of possible loopholes, rather than for the purpose of primary definition."

D Ackner J., in *Clinch's* case[2] (to which I shall be referring in greater detail hereafter), had to consider s 481(1) of the Taxes Act, the successor of s 414(1) of the Act of 1952. He referred to the passage from the judgment of Megarry J. in the *Royal Bank of Canada* case[3], at page 676, which I have already read, and commented upon it as follows [1974] QB, at page 87 D[4]:

> "In dealing with the word 'include' in section 414(3) he held, at page
E 676, that this was not defining or restricting the breadth of section 414(1) but either enlarging its meaning or referring, for the avoidance of doubt, to specific particulars which the board were entitled to require. I respectfully agree."

In the light of these passages from the judgments of Megarry J. and Ackner J. Mr. Potter did not seek to argue that the word "include" in the context of
F s 490(2) of the Taxes Act should be construed as "mean". He accepted and contended that s 490(2) clarifies and, in some respects at least, enlarges the meaning of s 490(1). As a crucial part of his argument, however, he pointed out that s 490(2)(*c*), unlike the preceding provisions of the subsection, is expressed to refer to ". . . transactions or arrangements of a description specified in the notice". In contrast, he submitted, s 490(1) and (2)(*a*) and (*b*) are confined to
G particulars of transactions *identified* in the relevant notice. He pointed out that the four disputed notices in the present case do not require particulars of identified transactions; they require particulars of unidentified transactions or arrangements of descriptions specified in the notices. Accordingly, he submitted, if the notices were to fall within the authority given to the Board by s 490(1) and (2) of the Taxes Act, this could only be by virtue of s 490(2)(*c*). However,
H the only question which para (*c*) authorises the Board to ask of the recipient of the notice is: "Have you taken or are you taking any, and if so what, part in any, and if so what, transactions or arrangements of a description specified in this notice?" The form of the four disputed notices manifestly falls outside that authorised by para (*c*) itself. Accordingly, it is submitted on the Plaintiffs'

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(1) 47 TC 565, at p 572. (2) 49 TC 52. (3) 47 TC 565, at p 572.
(4) 49 TC 52, at p 63.

(Slade J.)

behalf, the four notices are *ultra vires* the Board and void. Mr. Potter relied on two further particular points in support of his interpretation of s 490(1) and (2). First, he suggested, there would have been no point in Parliament inserting subs (2)(*c*) if subs (1) and subs (2)(*a*) and (*b*) had been intended to apply to unidentified transactions or arrangements of a description specified in the notice. Secondly, he suggested, the first limb of s 490(3), which purports to give protection to a solicitor against a general inquiry of the nature specified in s 490(2)(*c*), would afford no real protection and would have no true function if the same type of general inquiry could be put to him in reliance on subs (1) or subs (2)(*a*) or (2)(*b*).

Though I fully accept Mr. Potter's submission that s 490 falls to be read and construed as a whole, I think that, for the purpose of testing his propositions, it is first necessary to examine the wording of subs (1). For it is this subsection alone which confers the relevant power on the Board. Reading this subsection in isolation, I would consider that the word "particulars" therein contained is quite apt to embrace (*inter alia*) information as to unidentified transactions or arrangements of a general description set out in the relevant notice, in addition to information as to identified transactions or arrangements. I agree with the view expressed by Megarry J. in the *Royal Bank of Canada* case (1) [1972] Ch, at page 675, that the word "particulars" is quite capable of standing on its own in the sense of items or details or points. In my judgment, the word is likewise quite capable of standing on its own in the sense of particularised information, which I think substantially amounts to saying the same thing. The scope of the particularised information which s 490(1) of the Taxes Act authorises the Board or an Inspector to require is expressly limited by that same subsection to "such particulars as the Board or the inspector think necessary for the purposes of sections 487 and 488 above". Echoing the reasoning of Megarry J. in the *Royal Bank of Canada* case, I see no sufficient reason in principle why Parliament, in conferring on the Board powers to obtain information to prevent the avoidance of tax by artificial transactions in land, and in terms limiting those powers only by reference to what the Board or the Inspector think necessary for the purpose, should have nevertheless intended by some further limitation to prevent the Board or the Inspector from obtaining part of the information that they think necessary. Precisely the same observations as to meaning and intendment apply (*mutatis mutandis*) to s 490(2)(*a*) and (*b*). If, therefore, s 490(1) fell to be read in isolation, or if subs (1) together with subs (2)(*a*) and (*b*) fell to be so read, I think it reasonably plain that it or they would confer authority on the Board or the Inspector (*inter alia*) to require such particularised information as to unidentified transactions or arrangements of a general description set out in the relevant notice as they thought necessary for the purposes of s 487 or s 488.

Accordingly, though I do not think he accepted this, Mr. Potter's submissions as to the true construction of s 490 in my judgment necessarily involve the proposition that the *prima facie* width of the application of subss (1) and (2)(*a*) and (*b*) is cut down by subs (2)(*c*) and by subs (3). In my judgment this is not a tenable proposition. I cannot accept that para (*c*) would be otiose if subss (1) and (2)(*a*) and (*b*) were intended to apply to (*inter alia*) unidentified transactions or arrangements of a description specified in the notice. Even on this assumption, which I think to be the correct one, subs (2)(*c*) still serves the useful function of removing possible doubts as to the scope of subs (1), by specifically authorising

(1) 47 TC 565, at p 572.

A one form of generalised inquiry which the Board may wish to make. I cannot see that either expressly or by necessary implication it precludes other forms of generalised inquiry which the Board may think necessary for the purposes of s 487 or s 488. The first limb of s 490(3), on which the Plaintiffs also rely, likewise appears to me to be inserted for the purpose of providing the answer to one particular question which otherwise might have presented doubts, namely: If
B a solicitor receives a notice requiring him to state the matters specified in s 490(2)(*c*), is he bound to refer to transactions or arrangements as to which he has done no more than give professional advice to a client? The answer given by the section to this question is "No". The second limb of s 490(3) remains available to give more general protection to the solicitor in relation to anything whatsoever done by him on behalf of a client, so that the most he can ever be
C compelled to do under the section, in relation to any such thing, is to state that he is or was acting on behalf of a client and give the client's name and address. Accordingly, it seems to me that a perfectly rational explanation can be given for the inclusion of the first limb of s 490(3) without implying a restriction in ss 490(1) and 490(2)(*a*) and (*b*), precluding any generalised inquiry thereunder.

In the *Royal Bank of Canada* case the particulars requested (which are
D set out at page 670[1]) were particulars in regard to certain identified sales of stocks. In contrast, in *Clinch's* case particulars were sought in regard to unidentified transactions; the form of the notice is to be found in 49 TC 52, at pages 53–5. Ackner J. nevertheless stated [1974] QB 76, at page 88[2]:

> "In my judgment, section 481(1) of the Income and Corporation Taxes Act 1970, on its true construction, is wide enough in its terms to
E justify the commissioners in asking for the particulars set out in this notice. As I have already stated, the breadth of this subsection is not cut down by subsection (2). Moreover, the express terms of subsection (2) make it perfectly clear that an intermediary can be required to specify what part, if any, he has taken in any transaction of a description specified in the notice which could be relevant to this chapter. He is also obliged,
F if so asked, both by subsection 2(*a*) and (*c*) which overlap, to give particulars of the transaction."

Though Mr. Potter submitted that the passage which I have just read was incorrect in law, I respectfully agree with it. By similar reasoning, I think that s 490(2) does not operate so as to restrict the breadth of subs (1) thereof, the wording of which, as I have already said, is in my judgment wide enough to
G authorise notices in the form under dispute in this case. I think that all the paragraphs of subs (2) and also subs (1) are overlapping provisions. It follows that in my judgment the four notices are not *ultra vires* the Board or the Inspector merely because they require particulars of unidentified transactions or operations of descriptions specified in the notices, and do not fall within s 490(2)(*c*). Accordingly, in my judgment the first principal point raised on behalf of the
H Plaintiffs fails.

The power of the Court to interfere with notice served under s 490. The Plaintiffs' second principal point in this action, as I have indicated, is that even if, contrary to their first contention, the four notices apparently fall within the wording of the authority given to the Board by s 490, their form is so oppressive and unreasonable as to render them void. Before the form of the particular

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(1) 47 TC 565, at p 566. (2) 49 TC 52, at p 64.

(Slade J.)

notices is dealt with it will be convenient to consider the jurisdiction of the Court to interfere with notices which have been served by the Board in purported exercise of powers given by the section. A

In *Dyson* v. *Attorney-General* [1912] 1 Ch 158 the Court of Appeal had to consider a series of requisitions which the Commissioners had served on the plaintiff in purported exercise of the authority given to them by s 26(2) of the Finance (1909–10) Act 1910. This subsection obliged any owner of land, on being required by notice from the Commissioners, to furnish them B

> "a return containing such particulars as the Commissioners may require as to the rent received by him, and as to the ownership, tenure, area, character, and use of the land, and the consideration given on any previous sale or lease of the land, and any other matters which may properly be required for the purpose of the valuation of the land, and which it is in his power to give . . ." C

The request directed to the plaintiff in that case, who was the owner and occupier of the relevant land, included the following requisition: "If the person making the return is also the occupier state the annual value; that is the sum for which the property is worth to be let to a yearly tenant, the owner keeping it in repair". The Court of Appeal held that this requisition was unauthorised by the Statute D and that therefore the whole of the form of requisitions addressed to the plaintiff was void. The grounds of their decision on the main point adequately appear from Farwell L.J.'s judgment, at page 171:

> "I am of opinion that this is not authorised by the Act: if it can be justified at all, it must be under the words 'and any other matters which may properly be required for the purposes of the valuation of the land'. E But the valuation to be made by the Commissioners must be made in accordance with the usual rules of law: the opinion of the owner (not being an expert) as to the value of his or her land is not only immaterial but is inadmissible on the issue of value; the only object of the question appears to be to compel the owner to commit himself or herself to some admission by estimate, and this too in the face of sub-s. 3 of the same s. 26, F which expressly authorizes the owner to furnish the estimate of value if he thinks fit. It is, in my opinion, unjustifiable in the face of this sub-section to attempt to compel the owner to give an estimate of value."

Similar reasons were expressed by Cozens-Hardy M.R., at pages 165–6 and by Fletcher Moulton L.J., at pages 169–70. The grounds for the decision in *Dyson* v. *Attorney-General* were thus that the relevant requisition fell outside the G express wording of the authority conferred by Parliament on the Commissioners, because it was directed to subject-matter upon which the relevant statute did not expressly authorise the Commissioners to require answers. In any such case the court can and will hold the relevant requisition void without the need to imply any restriction on the authority given to the Commissioners by the statute. H

The present case does not fall within this category. In view of my answer to the Plaintiffs' first point on the construction of s 490, the particulars sought are "particulars" within the meaning of s 490(1). Furthermore, as the Plaintiffs do not dispute, the Board or the Inspector think them "necessary" for the purposes of s 488. In these circumstances, on the face of it, the notices fall

A fairly and squarely within the wording of the authority given to the Commissioners by Parliament. If, as is claimed, the notices are nevertheless void, this can, in my judgment, only be because it is necessary to imply some further limit on this statutory authority and because the notices exceed this limit. There is a long line of decisions which illustrate the somewhat narrow restrictions which the courts are willing to imply in relation to a statutory discretion conferred by B Parliament on an executive authority. Perhaps the best known is the decision of the Court of Appeal in *Associated Provincial Picture Houses, Ltd.* v. *Wednesbury Corporation* [1948] 1 KB 223, to which frequent reference was made in the present case. Lord Greene M.R. there pointed out, at page 228, that when an executive discretion is entrusted by Parliament to a body (such as the local authority there concerned), what appears to be an exercise of that discretion C can be challenged in the courts only in a strictly limited class of case. Having, at page 229, pointed out that bad faith and dishonesty stood by themselves, Lord Greene M.R. summarised the principles applicable in every other class of case by saying, at pages 233–4:

> "The court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which D they ought not to take into account, or, conversely, have refused to take into account or neglected to take into account matters which they ought to take into account. Once that question is answered in favour of the local authority, it may be still possible to say that, although the local authority have kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that E no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere. The power of the court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority have contravened the law by acting in excess of the powers which Parliament has confided in them."

F In essence, therefore, Lord Greene M.R. was saying that the court could interfere with the apparent exercise of an executive discretion entrusted by Parliament to an executive authority if, but only if, it was shown that the authority either (i) had exercised its discretion dishonestly or in bad faith, or (ii) had taken into account matters which it ought not to have taken into account or had refused or neglected to take into account matters which it ought to have G taken into account, or (iii) had come to a conclusion so unreasonable that no reasonable authority could ever have come to it. These, in my judgment, are the three restrictions which the court will ordinarily be prepared to imply where it finds that Parliament has conferred on an executive authority a discretion fettered by no express provisions. The legal justification for the court's interference in these three instances also appears from the judgment of Lord Greene H M.R. It is, I think, based on the premise that Parliament, even though it has chosen to confer a discretion on the authority concerned, cannot have intended an exercise of the discretion to be valid in any of these three circumstances and correspondingly that a restriction falls to be imposed, by necessary implication, on the express authority conferred by the Statute. This, in my judgment, appears, for example, from the following passage of his judgment, [1948] 1 KB 223, at I page 228:

> "If, in the statute conferring the discretion, there is to be found expressly or by implication matters which the authority exercising the discretion ought to have regard to, then in exercising the discretion it must

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> have regard to those matters. Conversely, if the nature of the subject-matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question, the authority must disregard those irrelevant collateral matters."

It also appears from the penultimate sentence of Lord Greene M.R.'s judgment, at page 234, where he said that the power of the court was not one to override a decision of the local authority, but that its only concern was to see "whether the local authority have contravened the law by acting in excess of the powers which Parliament has confided in them".

In my judgment, therefore, there is no general power in the court to interfere with the exercise of an executive discretion conferred by Parliament on an authority, such as the Commissioners, merely because it may consider that the exercise of the discretion in a particular case is oppressive, burdensome or unreasonable. As Lord Greene M.R. said, at page 232 of his judgment, in the *Wednesbury Corporation* case[1], it has no overriding power to decide what is reasonable and what is unreasonable. Likewise, in my judgment, it has no overriding power to decide what is oppressive or burdensome. In my judgment it can interfere only if it is satisfied that the body concerned has acted, is acting or is about to act in excess of the powers conferred on it by Parliament, either because the express wording of the statute does not permit the act contemplated or because some restriction on this express wording is to be implied which renders the act impermissible. I have already extracted from Lord Greene M.R.'s judgment three types of restriction which the court will ordinarily be prepared to imply where it finds that Parliament has conferred a discretion on some executive authority. But Parliament is the master and, if it saw fit, could, by appropriate express language, absolve the body to which it delegated a discretion even from all or any of these restrictions and, correspondingly, *pro tanto* remove or limit the power of the court, even to this extent, to interfere with the exercise of the relevant discretion.

Further decisions seem to me to support the conclusion that, if the court is to interfere with what is on the face of it an exercise of a discretion conferred by Parliament on an executive authority, the interference must be justified by some implied limitation to be read into the statute conferring the discretion. In *Royal Bank of Canada* v. *Commissioners of Inland Revenue*[2] [1972] Ch 665, at page 677, Megarry J. suggested that one of the particular questions addressed to the bank in that case under s 414 of the Act of 1952 might have been said to be unduly burdensome or oppressive. A little later he said he would be

> "slow to read s. 414(1) of the Income Tax Act of 1952, or any similar section supported by penal sanctions, as if the phrase 'such particulars as they think necessary for the purpose of this Chapter' were followed by words such as 'however burdensome or oppressive this may be'."

It would thus appear to have been Megarry J.'s view that an implied limitation should be read into the statutory power conferred by s 414(1) to the effect that it should not be exercised in an unduly burdensome or oppressive way. This point, however, was not (it appears from the report) argued by the plaintiff's counsel in the *Royal Bank of Canada* case. It was merely one taken, *obiter*, by the court, which had not (it seems) been referred to the *Wednesbury Corporation* case. I think therefore that the decision is of limited assistance in the present context beyond indicating the legal basis upon which the Court might in the future conceivably declare such an exercise void.

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(1) [1948] 1 KB 223. (2) 47 TC 565, at p 573.

A In *Clinch's* case(1) Ackner J. had directly to consider the extent (if any) to which oppression would operate to render a notice under s 481 of the Taxes Act invalid. The plaintiff in that case sought a declaration that the relevant notice was invalid on the grounds that (1) there was no statutory authority entitling the Commissioners to ask questions of an intermediary about unidentified transactions on behalf of an unidentified principal; (2) they had failed to B exercise their statutory powers reasonably, in that the requirements of the notice were unduly burdensome and oppressive because (*a*) it would involve undue time and expense to extract the required information from the records and (*b*) owing to the obscurities and ambiguities in the notice, the plaintiff would require constant legal and accounting advice as to how to comply with it. On the basis of the *Wednesbury Corporation* decision(2) it was submitted that a notice could C be held invalid on the grounds of unreasonableness only if it was so unreasonable either as to constitute bad faith or that no reasonable person could consider it necessary for the purposes of the statute. These suggested tests were not in terms accepted by Ackner J. He said [1974] QB 76, at page 91(3):

> "I am accordingly satisfied that the plaintiff does not have to go to the extent of establishing bad faith against the commissioners. The commis- D sioners may have had regard to quite irrelevant considerations or may have acted quite unreasonably in the sense defined by Lord Greene, M.R., but yet be entirely innocent of dishonesty or malice." A little later on he said at page 92(3): "Accordingly, if the particulars sought went substantially beyond that which was required for this purpose, so that they could be properly described as unduly oppressive or burdensome, I have no doubt E that a court would be entitled to intervene, and declare the notice invalid. One of the vital functions of the courts is to protect the individual from any abuse of power by the executive, a function which nowadays grows more and more important as governmental interference increases."

On the particular facts of *Clinch's* case, Ackner J. held that the notices were void on neither of the grounds put forward. However, having dealt with the F suggestion that the notices would involve too much time to answer, he continued as follows, at page 94(4):

> "Sir Elwyn further contends that the notice is unduly burdensome and oppressive because the plaintiff would have to have a lawyer and an accountant at his elbow, constantly advising him as to how to comply with it, due to its obscurities and ambiguities. I would accept in principle that a G notice could well be inordinately burdensome or oppressive and therefore invalid if it had the consequences described by Sir Elwyn .But this is not the case here. The interpretation clause of the notice removes many problems that otherwise might have arisen. Although it may well be necessary for the plaintiff to refer, on occasions, to his legal advisers or to his accountants for advice, this is by no means an unusual situation where H information is sought by the revenue. I am not satisfied that there is any substantial degree of ambiguity or obscurity in the notice, the subject matter of these proceedings, whatever may have been the criticisms that could have been levelled at the previous notice which had been served."

In the present case, Mr. Potter, as I understood him, relied on the passages which I have read from pages 91, 92 and 94 of Ackner J.'s judgment as authority I for the general proposition that the court has power to declare a notice served

(1) 49 TC 52. (2) [1948] 1 KB 223. (3) 49 TC 52, at p 67. (4) *Ibid*, at p 69.

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under s 481 or s 490 of the Taxes Act void in any case where it regards it as inordinately burdensome, oppressive or unreasonable. If, in these passages in his judgment, Ackner J. intended to assert any such broad proposition as this, I would, with great respect, feel bound to disagree, for reasons which will have already appeared. If, however, as I think probable, he was merely intending to state that the Court would have jurisdiction to interfere within the limits indicated by the *Wednesbury Corporation* decision(1), I would agree.

My conclusion that the power (if any) of the court to interfere in a case such as the present must be based on some implied restriction, to be read into the statute conferring the relevant powers, finds further support from the judgment of the Court of Appeal in *Wilover Nominees Ltd.* v. *Commissioners of Inland Revenue*(2) 49 TC 559. This was a case where the plaintiff brought an action for a declaration that it was under no obligation to furnish certain particulars required by the Revenue under s 453 of the Taxes Act. One of the grounds of the application was that the questions under attack were on any view so wide as to be oppressive. Goulding J. in the court of first instance (at page 562) referred to the passage from Ackner J.'s judgment at page 92(3), which I have already read, in terms which left no doubt that he thought the court would have had jurisdiction to declare the notice invalid, if the particulars sought went substantially beyond what were required for the relevant statutory purpose so that they could properly be described as burdensome or oppressive. However, he was not satisfied that the particulars in that case were burdensome or oppressive, and in the event dismissed the action. His decision was upheld by the Court of Appeal, which affirmatively held that the particulars sought were necessary for the relevant purpose. Stamp L.J., however, in delivering the judgment of the court, included (at page 569) a passage which indicated the basis upon which it considered that the Court might have been entitled to intervene if oppression had been shown to exist:

> "Mr. Bathurst went further, in suggesting that the requirement embraced minutes on a question to which of the objects of a discretion the Company should pay income. If these submissions were well-founded, one would have to consider very carefully the question whether the particulars required were not oppressive in the sense that Parliament cannot have contemplated such an intrusion into personal affairs. In our judgment, however, the wording of question (v) will not tolerate such an extended meaning."

In the light of the authorities I therefore proceed to ask myself what are the restrictions (if any) to be implied, as a matter of statutory interpretation, on the apparently unfettered discretion conferred on the Board by s 490 to require "such particulars as it thinks necessary for the purposes of sections 487 and 488". It will be observed that the extent of the power is not limited by any phrase corresponding with "which may properly be required", as was to be found in the statute under consideration in the *Dyson* case(4). Nor has the legislation chosen to use the words "as are necessary for the purposes", etc. It has deliberately left the decision as to what is necessary to the Board or the Inspector concerned. In these circumstances, following (*mutatis mutandis*) the reasoning of the *Wednesbury Corporation* decision, I can see grounds for implying three restrictions, but three restrictions only, on the authority conferred

(1) [1948] 1 KB 223. (2) [1974] 1 WLR 1342. (3) 49 TC 52, at p 67.
(4) [1912] 1 Ch 158.

A on the Board by s 490. In my judgment a notice requiring information under the section may be held invalid if, but only if, the recipient can satisfy the court either (1) that the decision that the particulars sought were necessary was taken by the Board or the Inspector concerned in bad faith, or (2) that the Board or the Inspector, in reaching such decision, took into account matters which it or he ought not to have taken into account or failed to take into account matters B which it or he ought to have taken into account, or (3) that the Board or the Inspector, in deciding that the particular information demanded of the particular recipient, in the particular form which such demand took, was necessary for the purposes of s 487 or s 488, reached a decision so unreasonable that no reasonable body or person could ever have come to it. This last-mentioned category of case might well, of course, include a case where the form of notice was inordinately C oppressive or burdensome. In my judgment, however, oppression does not by itself render a notice under s 490 void or entitle a taxpayer to refuse to answer it. I add this comment. In defining this category, I have deliberately used the phrase "of the particular recipient in the particular form which such demand took" because it has been common ground before me, as it apparently was before Ackner J. in *Clinch's* case (see [1974] QB 76, at page 80 of the argument(1)), D that what may be an appropriate form of notice for one recipient may be inappropriate for another.

Are there any remaining grounds upon which the notices are invalid? In the light of my conclusions thus far, I now turn to consider whether there are any remaining grounds upon which the Plaintiffs can successfully attack the particular notices in the present case. If these conclusions be correct, it becomes E apparent that a recipient such as the Plaintiffs, who, unlike the plaintiffs in *Clinch's* case and the *Royal Bank of Canada* case(2), relies solely on the form of the notice addressed to him for the purpose of attacking it and correspondingly elects to call no evidence at the trial, can attack the notice only on a very limited front. In the absence of evidence, he cannot (and the Plaintiffs do not in the present case) allege either that the Inspector acted in bad faith or that, in F reaching his decision that the particulars were necessary, he took into account irrelevant matters or failed to take into account relevant matters. If, after pleading his case appropriately, a recipient adduced evidence, he might conceivably be in a position to show that the particulars sought went so far beyond what were in fact necessary for the purpose of s 487 or s 488 of the Taxes Act in his peculiar circumstances that no reasonable body could have thought them G necessary for such purpose. This I infer is the point that Ackner J. had in mind in the passage at page 92 in *Clinch's* case(3), when he referred to particulars going substantially beyond that which was required for the relevant purpose, so that they could be properly described as unduly oppressive or burdensome. In the absence of evidence, however, this particular line of attack is not open to the Plaintiffs in the present case.

H Again, I suppose, a plantiff who, having pleaded his case appropriately, adduced evidence, might conceivably be in a position to show that no reasonable body could have thought the particular demand addressed to him really necessary for the statutory purposes, having regard to the amount of work and time and/or the amount of professional fees to which the provision of answers would expose him. This I infer is the point which Ackner J. had in mind when he analysed I the evidence adduced on behalf of the plaintiff as to the time factor and the

(1) 49 TC 52, at p 56. (2) 47 TC 565. (3) 49 TC 52, at p 67.

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alleged obscurity of the notice in *Clinch's* case(1), at pages 92–4. Again, however, in my judgment this particular line of attack is not open to the Plaintiffs either on the pleadings or the evidence in the present case. In the absence of oral evidence, I am not justified in making any assumptions as to the amount of labour and time which would require to be taken in the provision of answers to the notices or as to the extent (if any) to which the recipients would require to take professional advice. For all I know the labour and time might be very great or very small. For all I know, while detailed professional advice from both lawyers and accountants might be necessary, the Plaintiffs could manage perfectly well without any professional advice at all. Accordingly, I conclude that, in the absence of evidence, there is only one remaining line of attack open to the Plaintiffs—that is to assert that the form of the notices is so ambiguous and obscure that no reasonable Inspector could have thought them necessary for the purpose of s 488. Since the Plaintiffs have adduced no evidence and have not pleaded them, they can and do rely on no difficulties in answering the requisitions, peculiar to themselves or arising from their own particular circumstances. In my judgment, therefore, to succeed on this point they have to satisfy the Court that the terms of the notices are, on the face of them, *so ambiguous and unintelligible that no reasonable Inspector could have thought it necessary to require any recipient whomsoever to answer them.* The onus falling on the Plaintiffs is thus, in my judgment, a heavy one.

On their behalf, Mr. Potter, as I understood him, substantially, though not in terms, accepted that the onus falling on them was as I have described it. Frequently in the course of his address he characterised the form of the notices by the colourful description "gobbledegook". "Gobbledegook" as defined in the Concise Oxford Dictionary, 5th edn., means "pompous official jargon"; and the primary meaning given to "jargon" by the same dictionary is "unintelligible words, gibberish". The claim thus made by Mr. Potter on behalf of the Plaintiffs, as his second main point, thus I think amounts to a claim that the notices, or alternatively substantial parts of them, are so ambiguous and obscure as to be unintelligible. Though Mr. Potter characterised the whole of the forms as "gobbledegook", the attack thus made by him centred round the use of four particular words or phrases in the forms. These were the phrase "in connection with", which appears in each of the opening paragraphs numbered "i" and "ii"; the word "resident", which appears in paras A and B; the phrase "legal, equitable or other interest in land", which appears in para A; and the word "benefit", which appears in paras C and d. In my judgment the criticism which has by far the most substance, and has caused me the greatest concern, is that based on the phrase "in connection with". This phrase is very important in the context of the four forms, since it constitutes a crucial part of the definition of all the transactions and operations to which the notices are stated to apply. There can be no dispute that the phrase "in connection with" is a phrase of very wide import which, in the absence of further definition, may give rise to doubts and uncertainties in particular cases. The phrase "connected with" itself came under strong criticism by the House of Lords in *Customs and Excise Commissioners* v. *Top Ten Promotions Ltd.* [1969] 1 WLR 1163, in the context of s 7(2) of the Finance Act 1964, which defined the amount on which pool betting duty was to be computed. Lord Donovan (at page 1175) said:

> "Like your Lordships, I have found section 7(2) difficult to construe. The difficulty arises from the use of phrases of wide import such as 'benefiting from' and 'connected therewith' with no attempt to define these terms

(1) 49 TC 52 at pp 67–9.

A so as to avoid the absurdities to which a literal interpretation inevitably leads. This is to shirk a responsibility which rests initially on the legal advisers of the commissioners; and persistence in this policy will lead one day to serious discomfiture for the department, when the obscurity of an enactment which it has sponsored, or the uncontrollable width of its language, compels a court to find that no reasonable construction is
B available and that the taxpayer is therefore not to be charged."

Lord Wilberforce (at page 1178) said:

"Thirdly, the subsection uses words 'benefit', 'ancillary', 'connected' which are very general and capable of a very extensive meaning. And it is easy enough to give extreme instances which reduce their application to the absurd. In using them the legislator runs the risk that the courts may find
C themselves so totally unable to draw the line as to decide nothing more than that the subject has not clearly enough been taxed. There were times during the argument when I felt almost driven to this extremity. But, though no precise definition of 'benefit' or 'connected' can be made, I have been convinced that they can be given a sufficient commonsense application to enable cases under the subsection to be decided."

D In the event the House of Lords concluded that the relevant subsection could be given a sufficient meaning to enable cases under it to be decided. In the face of such strong judicial criticism as this, however, Mr. Potter submitted, the use of the phrase "in connection with" without further definition and in the context of mere notices, as opposed to a statute, is *a fortiori* unpardonable and must vitiate the whole of the notices.

E In *Clinch's* case the Commissioners had taken the precaution of inserting in the notice a definition of references to the recipient "acting in or in connection with" a specified transaction: (see 49 TC, at page 53E). This could, perhaps, be a desirable course for them to adopt in some other cases. I was impressed by Mr. Potter's extreme examples which could, in particular circumstances, reduce the application of notices such as the present to the absurd. Nevertheless,
F as Mr. Davenport said on behalf of the Crown, the phrase "in connection with" appears, without further definition, in other statutes besides the Finance Act 1964: (see, for example, s 16(1) of the Taxes Management Act 1970). Significantly, s 460 of the Taxes Act itself contains provisions designed to enable the Inland Revenue to cancel tax advantages obtained "in any such circumstances as are mentioned in section 461". Section 461, in setting out such circumstances, uses
G the phrase "in connection with" over and over again. Section 460(6) contains a provision entitling a potential taxpayer to make a statutory declaration to the effect that the section does not apply to him. Parliament thus plainly contemplated that the phrase "in connection with" would be of sufficiently clear meaning to enable the Crown, taxpayers and the courts to operate the section. To the best of my knowledge, despite Lord Donovan's warning in the *Top Ten*
H *Promotions Ltd.* case[1], no one has ever suggested the contrary. In these circumstances, however undesirable in principle the use of the phrase "in connection with" may be, it seems to me that it is now really too late to suggest that it is, on the face of it, void for uncertainty, whether it be contained in a statute or a notice served in pursuance of a statute. It may perhaps be that a taxpayer could show, by appropriate evidence, that a s 490 notice which used

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[1] [1969] 1 WLR 1163.

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this phrase, addressed to him in his particular circumstances, was in its context quite unintelligible. In the absence of such evidence, however, I cannot go so far as to say that the phrase, as appearing in the notices in the present case, is meaningless.

Sections 487 and 488 of the Taxes Act are sections of sweeping width, designed to attack specified forms of tax avoidance. The Legislature no doubt intended that they should be very wide, and correspondingly, in enacting s 490, must have contemplated that Inspectors of Taxes, in exercising their powers under the section, might think it necessary to deliver demands for information of very wide import and complexity. In relation to almost any complex legal document the ingenuity of taxpayers and their professional advisers is likely to be able to discover words or phrases raising conceivable ambiguities. In my judgment, however, if faced with a plea that ambiguities render a demand for information, or part of a demand, meaningless and therefore void, the court must strike a balance. It cannot oblige a taxpayer to answer questions which it is satisfied are truly meaningless. On the other hand, it must not render assistance to a taxpayer who is seeking to resist (or, for all the court knows, obstruct) an exercise by the Commissioners of their powers under s 490 on the grounds under discussion, merely because it considers that the demand could have been better worded, unless it is satisfied that the relevant question or questions is or are so imprecisely formulated as to be incapable of a proper answer. Applying this test in the present case, and while recognising that the phrase "in connection with" as appearing in the opening paragraphs of the disputed notices is somewhat imprecise, I am not satisfied that its use must necessarily render the notices meaningless to any recipient whomsoever. Though examples of hypothetical borderline cases can be imagined, I think that, in the great majority of cases, a person will have no difficulty in answering the question whether or not he has acted "in connection with" an identified transaction or a transaction of a properly defined character. If the Plaintiffs had adduced evidence indicating that their particular circumstances were such that the use of the phrase gave rise to such ambiguities and uncertainties that it was really impossible to know to what transactions or arrangements they should refer in affording their answers, the position might have been different. In the absence of such evidence, however, I see no sufficient grounds for assuming that the use of the phrase "in connection with" will cause them any genuine difficulty in deciding which transactions or arrangements fall within the ambit of the notice. As Stamp L.J. said in the *Wilover* case (49 TC 559, at page 570):

> "Of course, one of the duties of the Court today, as always, is to protect the individual from abuse of power by the executive; but, as Goulding J. indicated in somewhat different terms, it is also the function of the Court not on fanciful grounds to assist a taxpayer to obstruct a fair and proper exercise of the powers with which the officers of the Revenue are armed for the performance of their duty to collect taxes which are exigible."

I can deal much more shortly with the other particular words and phrases in the notices which are the subject of criticism. The statement of claim makes complaint about the use of the word "residence" in regard to each of the categories of transactions and operations specified in paras A, B and C of the notices. It claims that

> "it is not possible to determine the true meaning and effect of such categories without a definition of the meaning of the concept of residence for the

A purpose of the said categories and without knowledge of the personal circumstances of persons other than the plaintiffs which knowledge the plaintiffs do not and should not be expected to enjoy."

The second limb of this plea has not been pursued in argument and indeed, I think, could not have been pursued in the absence of evidence. Mr. Potter, however, forcibly pursued the first limb. He pointed out that the concept of B residence raises mixed questions of fact and law which may, on particular facts, give rise to very difficult problems inside and outside the field of taxation. He referred me to a number of decisions which indicate that the words "reside", "residing", "resident" have no single definite meaning but may bear different meanings according to the context in which they appear. He cited by way of example in this context In re *Bowie* (1880) 16 Ch D 484; *Levene* v. *Commis-* C *sioners of Inland Revenue*(1) [1928] AC 217; *Commissioners of Inland Revenue* v. *Lysaght*(2) [1928] AC 234 and *Unit Construction Co., Ltd.* v. *Bullock*(3) [1960] AC 351. If a notice under s 490 is to be a valid notice, he submitted, the questions raised by it must be factual, clear and expressed in language which a layman can understand. In his submission, if the recipient is asked questions involving the concept of residence, but the word is not defined, this amounts to asking him D to express an opinion as to the law in answer to a question of uncertain import; such questions, it is said, cannot fall within the authority conferred by s 490.

As will have already appeared, I cannot accept the proposition that, if a s 490 notice is to be valid, its form must be intelligible to the man on the Clapham omnibus. However laudable this may be as an aspiration, it would seem to me quite unrealistic if expressed as a legal principle. Section 490 is, after all, E ancillary to three sections (ss 487–9) which are themselves of enormous complexity and could not possibly be understood by any layman, save perhaps the most intelligent. In my judgment, Parliament must have contemplated that Inspectors, when exercising their powers under s 490, might correspondingly have to address notices of considerable complexity, which on occasions would oblige the recipient to seek advice from lawyers or accountants. To any suggestion that F the phrase "resident in the United Kingdom" is meaningless, as used in the four notices, there appears to me at least one conclusive answer. The same phrase is used in s 488 (namely, in subs (13)) and in s 489 (namely, in subs (9)) without further definition. Though it may well give rise to difficulties of interpretation on particular facts, it has not been suggested, and I do not think could be, that the phrase is void for uncertainty in the context of ss 488 and 489. In my G judgment it is reasonably clear that the phrase, as appearing in the context of the disputed notices served pursuant to s 490, must be taken to bear the same meaning as it bears in the two preceding sections. This could make it necessary for the recipients to take legal advice as to what that meaning is, but I do not think that this invalidates the notices. In relation to the phrase "legal, equitable or other interest" in the land, the Plaintiffs submitted that the inclusion of the H words "other interest" gives rise to insuperable difficulties of interpretation, bearing in mind that, according to ordinary legal parlance, all interests in land in England are either legal or equitable. To this point, however, Mr. Davenport has in my judgment provided the short answer. The notices refer to land in "the United Kingdom", which includes Scotland, where reference to "legal and equitable interests" may not be appropriate: (see, for example, the closing I words of s 488(6) of the Taxes Act). This point alone suffices to explain and

(1) 13 TC 486. (2) 13 TC 511. (3) 38 TC 712.

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justify the use of the words "or other" and I see no reason why, on the face of it, these words should cause a recipient insuperable difficulty and embarrassment in answering the notices. A

Finally, the Plaintiffs attack the use of the word "benefit" as it appears in paras C and d of the notices. They point out that it is a wide word, which can bear different meanings in different contexts. It may bear the meaning of "financial benefit" in the strict sense. It may bear a wider meaning as, for example, in the context of s 1 of the Variation of Trusts Act 1958 (see In re *C.L.* [1969] 1 Ch 587). The Plaintiffs, it is submitted, cannot be expected to answer questions which involve ambiguities of this kind. They can only be expected to give clear factual answers to clear factual questions. In this instance, so far as I can see, the Plaintiffs and their advisers can obtain no direct guidance as to the meaning of the word "benefit" from ss 488 and 489, where I do not think that the word is used. Nevertheless, s 15(7) of the Taxes Management Act 1970 (as amended) provides a precedent for the Legislature expressly empowering Inspectors of Taxes to require returns stating, in respect of an employee to whom they relate, whether any "benefits" are or have been provided for him by reason of his employment such as may give rise to tax under certain stated statutory provisions. The notices in the present case have to be read in the context of a principal section (s 488), which is designed in certain circumstances to catch gains of a capital nature obtained from the disposal of land. In the ordinary case I think that most persons who received notices in the forms used in the present case would, at least with the help of legal advice, have little genuine difficulty in knowing the sort of "benefit" which the Inspector had in mind in posing his questions. If, however, a taxpayer's circumstances were such that he genuinely considered that no reasonable Inspector could have thought it necessary to put the particular notices to him in this particular form, he could first voice his complaints to the Inspector and then, if they were not accepted, seek an appropriate declaration from the court on appropriate evidence. In default of such evidence, I see no sufficient reason for holding that the disputed notices are void because of the reference therein to "benefits", any more than on the other grounds asserted. B C D E F

Conclusions. In the course of his address Mr. Potter emphasised over and over again the need for notices such as these to be drafted in good, plain, intelligible and unambiguous English. No one is better entitled than he to make this comment and in principle I entirely agree with it. In reaching the conclusions which I have reached, I do not wish to be taken as commending the form of notices adopted in the present case. They do seem to me very cumbersome and involved documents. Furthermore, like much modern fiscal legislation, they mix inextricably questions or matters of fact and law. They contain phrases which do give rise to undeniable ambiguities. If, for the purposes of rendering their own answers clear and unambiguous, the Plaintiffs were to adopt their own definitions, which were themselves reasonable and clear, I would have thought that the Commissioners scarcely could legitimately complain. Nevertheless, for all Mr. Potter's powerful and persuasive arguments, the Plaintiffs have failed to convince me, either that any of the questions asked fall outside the express wording of the authority conferred on the Inspector by s 490 or that they are (to use Mr. Potter's own phrase) so much "gobbledegook" that no reasonable Inspector could have thought it necessary to require any recipient whomsoever to answer them. In the absence of evidence, for reasons which I have tried to explain, in my judgment they could only have succeeded if they had established one or other of those points. In the circumstances, though this G H I

A further question was argued, it is not necessary for me to consider whether the Plaintiffs would have been obliged to answer any part of the notices if part, but part only, had been shown to be bad. I must dismiss this action.

Action dismissed, with costs.

The taxpayer's appeal was heard in the Court of Appeal (Buckley, Brightman and Shaw L.JJ.) on 24, 25 and 26 March 1980 when judgment was given unanimously in favour of the Crown, with costs.

D. C. Potter Q.C. and *C. H. McCall* for the taxpayers.

Brian Davenport for the Crown.

The following cases were cited in argument in addition to those referred to in Brightman L.J.'s judgment:—*Dyson* v. *Attorney-General* [1912] 1 Ch 158; *Wilover Nominees Ltd.* v. *Commissioners of Inland Revenue* 49 TC 559; [1974] 1 WLR 1342.

Buckley L.J.—I have asked Brightman L.J. to deliver the first judgment in this case.

Brightman L.J.—This is an appeal from a decision of Slade J. in an action brought by two individuals and two companies against the Commissioners of Inland Revenue and an Inspector of Taxes. The Plaintiffs seek a declaration that notices served upon them under s 490 of the Income and Corporation Taxes Act 1970 were void and of no effect. Slade J. dismissed the action, and from that decision the Plaintiffs now appeal.

Section 490 authorises the Revenue to require persons to provide "particulars" relating to the tax avoidance activities of people under ss 487 and 488 of the Act. Section 487 is a section which is designed to counteract avoidance of tax by a transaction whereby a high-earning taxpayer sells his income potential in order to enjoy the proceeds of sale as capital. Section 488 is designed to counteract the avoidance, by means of artificial transactions in land, of tax on gains of a capital nature obtained from the sale of the land. In each case the capital so generated is treated as taxable income. To assist the Revenue in the raising of assessments under those two sections, s 490 provides as follows:

> "(1) The Board or an inspector may by notice in writing require any person to furnish them within such time as the Board or the inspector may direct (not being less than thirty days) with such particulars as the Board or the inspector think necessary for the purposes of sections 487 and 488 above. (2) The particulars which a person must furnish under this section, if he is required by a notice from the Board or the inspector so to do, include particulars—(*a*) as to transactions or arrangements with respect to which he is or was acting on behalf of others, and (*b*) as to transactions or arrangements which in the opinion of the Board or the inspector should properly be investigated for the purposes of the said sections notwithstanding that, in the opinion of the person to whom the notice is given, no

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liability to tax arises under those sections, and (*c*) as to whether the person to whom the notice is given has taken or is taking any, and if so what, part in any, and if so what, transactions or arrangements of a description specified in the notice. (3) Notwithstanding anything in subsection (2) above, a solicitor shall not be deemed for the purposes of subsection (2)(*c*) above to have taken part in any transaction or arrangements by reason only that he has given professional advice to a client in connection with the transaction or arrangements, and shall not, in relation to anything done by him on behalf of a client, be compellable under this section, except with the consent of his client, to do more than state that he is or was acting on behalf of a client, and give the name and address of his client."

Section 490 does not stand alone; s 481 confers a similar power on the Revenue in much the same language, enabling the Board or an Inspector to require any person to furnish them with such particulars as they may think necessary for the purposes of Chapter III of Part XVII of the Act; that contains provisions for the preventing of avoidance of tax by means of a transfer of assets abroad. Section 453 contains an abbreviated version on the same lines, empowering an Inspector to require a party to a settlement to furnish him with such particulars as he thinks necessary for the purposes of any of the provisions of Chapter III of Part XVI, which deals with revocable settlements and the like. Section 443 is on the same lines, in relation to settlements on children. The operation of ss 490, 481, 453 and 443 seem plain enough at first sight.

In the present case notices were served by the Inspector on each of the four Plaintiffs, Miss Essex, Miss Eastty, Memotime Ltd. and Yardley Interests Ltd., in substantially the same terms. Each notice was dated 16 February 1976 and was addressed to the recipient at No. 9 Wimpole Street, London. There was no evidence before the Court as to the precise relationship of Miss Essex and Miss Eastty to the two companies.

I turn now to the notices. They are fairly lengthy and complex documents and I think it will be more helpful to analyse their contents rather than to recite the notices. The principal feature of each notice, upon which the Appellants fasten, is that it does not identify any transaction, or any property, in regard to which particulars are sought; the inquiry is expressed entirely in the abstract. The notice begins by defining the ambit of the inquiry; it confines the inquiry to any occasion on which Miss Essex, to take her notice as the prototype, has acted (I am now paraphrasing) on her own behalf or on behalf of X in connection with any transaction or operation specified in later paragraphs; or any occasion on which Miss Essex has acted on behalf of X by way of introducing, instructing or employing Y to act on behalf of X in a like connection. The relevant transactions or operations are then defined by reference to three lettered categories as follows. Category A is any transaction or operation whereby any interest in land in the United Kingdom passed to or from a non-United Kingdom resident; in fact interest in land is expressed as "any legal, equitable or other interest in land". Category B relates to any option agreement, or assignment of the benefit of an option agreement, relating to United Kingdom land where any party to the option agreement or assignment was not a United Kingdom resident. Category C relates to any transaction or operation or any combination of transactions or operations of the category A or category B type whereby a benefit arose, or might arise, to a United Kingdom resident. Particulars are then sought as to the names and addresses of the relevant persons and of the

A relevant transactions and operations and the names and addresses of beneficiaries thereunder. The inquiry in relation to beneficiaries is worded as follows: "Where particulars of a transaction or operation are given . . . give the name and address of the person who obtained or might obtain the benefit, and the nature of the benefit or possible benefit." The Inspector of Taxes says, a little later: "Answers should be given to the best of your information, knowledge and B belief". There is a little more to the notice, but nothing which in my opinion is significant.

The writ was issued on 17 February 1978. The validity of the notices was challenged in the amended statement of claim on, in effect, the five following grounds: First, as to each of the categories it is not possible to determine the true meaning of such categories without a definition of residence. Secondly, C as to category A, the phrase "any legal, equitable or other interest in land" has no meaning because of the apparent reference to an interest in land which is neither legal nor equitable. Thirdly, category C is not capable of being given precise meaning, because of the vagueness of the word "benefit". Fourthly, the notices are worded with such obscurity and width of language that it is inordinately burdensome and oppressive that the Plaintiffs should be required D to answer them. Lastly, the notices ask questions so general that they go beyond what is authorised by s 490. The Plaintiffs then claimed a declaration that each of the notices was void and of no effect. The Plaintiffs called no evidence; neither did the Crown. The action therefore fell to be tried on admissions in the pleadings, which were confined to the contents and service of the notices. The learned Judge found against the Plaintiffs on all the issues.

E I should mention at this stage that ss 98 and 100 of the Taxes Management Act 1970 impose penalties on a person who fails to comply with the requirements of a notice served under s 490 of the other Act. It would therefore have been open to the Plaintiffs to challenge the validity of the notices in any proceedings which might have been brought under ss 98 and 100 of the Taxes Management Act instead of claiming a declaratory judgment, as has been done in the present F action. The Crown did not object in the Court below to the procedure adopted and have not objected to it in this Court; but in the light of a recent decision to which Counsel for the Crown referred, but not a decision read to us, which is said to bear on this point, the Crown seek to reserve their position for the future as to whether or not the procedure adopted is appropriate. It is not in dispute that the particulars sought by the Inspector were those which he bona G fide thought necessary for the purposes of the relevant section, in this case s 488.

The main attack on the validity of the notices has been based on a submission that s 490(1) does not authorise the Board or an Inspector to require information in relation to a transaction or arrangement which is not identified in the notice. The only provision, it was submitted, which authorised the Board or the Inspector to require information of unidentified transactions or arrange- H ments falling within a genus was para (*c*) of subs (2), "as to whether the person to whom the notice is given has taken or is taking any, and if so what, part in any, and if so what, transactions or arrangements of a description specified in the notice". But, as will be seen, that inquiry is limited to ascertaining whether the addressee has taken part in transactions or arrangements of the specified description, while the form of the notices served in the instant case go beyond I the type of notice authorised, it is said, by para (*c*). As a result, it is submitted that each notice is void in its entirety. Put shortly, s 490, so the argument runs,

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does not authorise general as distinct from specific requisitions, save to the limited extent authorised by subs (2)(*c*). Subsection (1) is limited in terms to asking for particulars; the word "particulars" in that subsection is not synonymous with information, nor is such a meaning supported by any dictionary definition; "particulars" means items or details of some statement, or of some information, and the word cannot be sensibly used except in relation to an identified fact or allegation. This construction of subs (1) was said to be supported by subs (2)(*b*), which presupposes that an inquiry has been made by the Board or an Inspector in relation to a given transaction or arrangement which the recipient of the notice is in a position to evaluate and to form a view about as attracting no tax liability. It is also said to be supported by subs (3), the opening words of which confer immunity on solicitors by reference to subs (2)(*c*). Why, it was asked, should solicitors be protected only from answering a generalised inquiry under subs (2)(*c*) if a generalised inquiry could additionally be made under subs (1)? The fact that immunity is conferred by subs (2)(*c*) suggests that subs (1) does not authorise a general inquiry to specified facts. Furthermore, it was said that para (*c*) of subs (2), which does authorise a general inquiry, would be otiose if a general inquiry were authorised by subs (1).

In my view the Appellants' submissions fail on this issue, because they are based on an incorrect analysis of subs (1) and subs (2). Subsection (1) is expressed to define the power of the Board or an Inspector to address an inquiry to a person for the purposes of ss 487 and 488. Subsection (2) is looking to the corollary of that power. It is expressed to define the duty of the recipient of the notice, not the power of the Board or the Inspector. It defines the duty of the recipient in three special cases. Paragraph (*a*) imposes on the recipient of the notice the duty, if so required by the notice, to give particulars of agency transactions; in other words the recipient may not omit to answer the notice because he was merely an agent for another. Paragraph (*b*) imposes upon the recipient the duty to answer, notwithstanding that, in his opinion, there is no tax liability; in other words the recipient may not omit to answer because the transaction or arrangement in question will not, in his view, or in the view of his professional advisers, fall within ss 487 or 488. Paragraph (*c*) imposes on the recipient a duty, if so required, to answer a generalised question as to whether or not he has taken part in transactions or arrangements of a specified character; in other words, he may not object because the inquiry is a general one and not in relation to an identified transaction or arrangement.

Paragraph (*c*) of subs (2) seems to me to undermine the Appellants' main submission. As subs (2) defines the duty of the recipient of the notice in the three cases dealt with, it must inevitably follow that the power of the Board, or of the Inspector under subs (1), is sufficiently wide to authorise the giving of a notice in each of such cases, otherwise the duty defined by subs (2) could not arise. It follows that subs (1) must confer power on the Board or the Inspector to give a notice unrelated to an identified transaction or arrangement, because subs (2)(*c*) in express terms imposes a duty to answer such an inquiry.

This conclusion is in line with a decision reached by Ackner J. in *Clinch* v. *Commissioners of Inland Revenue*[1] 49 TC 52, which was decided on the comparable wording of s 481 of the Act. I also think it derives some support from the language of subs (2)(*c*) of s 490. This provides, so far as it is relevant to read it for present purposes, that the particulars that a person must furnish include

(1) [1974] QB 76.

A "particulars as to whether" the person to whom the notice is given has taken part in any transaction, etc. "Particulars as to whether" is an unusual turn of phrase, which makes no sense if "particulars" is read as "details"; "details as to whether" is meaningless. "Particulars", does make sense if treated as synonymous with "information"; "information as to whether" means something. If "particulars" in line 3 of subs (2) is given the meaning of "information", B then surely "particulars" in line 1 of subs (2) must have the same meaning. "Particulars" in line 1 is a reference back to "particulars" in subs (1), so "particulars" in subs (1) must logically also mean "information". In the result, I am in agreement with the decision of the learned Judge on this point. On the analysis of s 490 which I have suggested, it seems to me that subs (3) falls quite neatly into place. Subsection (3) is not a qualification on the power of the Board, C or of the Inspector, to raise an inquiry, but a qualification on the duty of the recipient once the inquiry has been raised. So it seems to me that the proper function of subs (3) is to qualify subs (2) and that is exactly what it is expressed to do.

The second ground of the attack launched by the Plaintiffs on the notice was based on the proposition that the ambiguities and obscurities said to be D found in the notices rendered them bad in law as oppressive and burdensome. It was submitted that the wording of each notice was such that it gave rise to a presumption that the notice was oppressive and burdensome, because the wording was unintelligible even to an instructed layman; I think "presumption" was suggested because there is no evidence in the case. It was argued that there is an implied limitation on the power of the Revenue to serve a notice under E s 490; the notice must be reasonably intelligible, unambiguous and clear. It was said that it must be drafted with the precision of an Act of Parliament, a deed or a written agreement, because failure to comply with it would, or might, involve the imposition of a penalty; the recipient of the notice must be able to appreciate exactly what his duties are. Counsel described the notice as possessing a sort of latent form of *ultra vires*; a tax authority has no power to serve a F notice which is oppressive, and it was said that a notice is oppressive if phrased in language which it is impossible to understand, or which is equivocal. The defects of obscurity relied upon are the use of the word "residence" without benefit of definition; an interest in land which is neither legal nor equitable; a benefit which has no definition attached to it, and the phrase "in connection with". I would accept the submission that a notice under s 490 is of no legal G effect to the extent that it is both unintelligible to the ordinary reader and, on the facts of the case, is unintelligible even to the actual recipient. I am not sure that I would base this conclusion on the doctrine of *ultra vires*; I would think that an unintelligible notice is no notice at all. I am also content to accept for the purposes of argument, without expressing any concluded opinion, that a notice may be objected to on the ground of oppression.

H I turn now to the particular defects relied upon; I shall take them in the order in which they appear in the notice. "Acting in connection with any transaction": "In connection with" is an expression with somewhat nebulous boundaries. It came in for considerable, but not in the end lethal, criticism in *Customs and Excise Commissioners* v. *Top Ten Promotions Ltd.* [1969] 1 WLR 1163. There is, however, to my mind a world of difference between the use of an I imprecise expression in a taxing statute and an imprecise expression in a statutory notice which does no more than require the recipient to answer "to the best of his information, knowledge and belief". That is a comment which

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equally applies to the other charges of ambiguity. Furthermore, the expression "in connection with" has come to be acceptable statutory language, at any rate in the context in which it has been used: see s 461 of the Statute under consideration; s 487 (1)(*b*); and s 490(2). A

Next: "Any legal, equitable or other interest in land". If there be an ambiguity in the expression "other interest", it is in my view a completely irrelevant ambiguity. If the recipient of the notice did act in a transaction whereby a legal or equitable interest in land passed, the recipient will so state; if no interest at all passed, then *cadit quaestio*—no problem arises. However, perhaps "other interest" is intended to cover an interest in land in Scotland, in respect of which perhaps the words "legal or equitable" are inappropriate—I do not know; there is no evidence before us of Scottish law. B

"Persons resident or not resident in the United Kingdom"; Counsel for the Appellants pressed upon us the difficulty of attaching a meaning to the word "residence", particularly as it is not necessarily the residence of the recipient of the notice which is in question. Admittedly "residence" is susceptible of different shades of meaning, but if a person who is required to provide information dependent upon an assumption as to the residence of a person is only required to provide that information to the best of his information, knowledge or belief, I do not see where the problem arises. The recipient is not bound to search for information or knowledge that he does not possess; nor is he required to warrant the truth of his information. C D

"A person who obtained, or might obtain, a benefit"; admittedly "benefit" is susceptible of different shades of meaning, varying from direct benefit in the form of money or money's worth at one end of the spectrum, to indirect benefits of an amorphous nature at the other end of the spectrum. It is for the Commissioners, or the courts, to construe "benefit" where it is used in a taxing statute and to decide whether a given advantage comes within the precise meaning of the word. It is unnecessary and inappropriate for the recipient of a s 490 notice to apply the same precise test to a question the answer to which is intended to have no legal effect but is merely required for the purpose of providing a lead-in to action on the part of the Revenue; furthermore, an answer which is only sought to the best of the answerer's information, knowledge and belief. E F

Looking at the matter more broadly, there was no evidence before the Court that Miss Essex, Miss Eastty, or the directors of the defendant companies if they be different, would experience the smallest difficulty in replying to the notice, or that any of them feels the smallest degree of oppression or embarrassment. For all I know, each of them might say in evidence that he or she found no difficulty at all in answering the request for information. Why, in those circumstances, I ask myself, should the Court go out of its way to declare void, as oppressive on account of obscurity, a notice which the recipient can in given circumstances respond to with ease and accuracy? Are the Plaintiffs to have an advantage because they give no evidence? Is it to be assumed in their favour that the notices are, in the particular circumstances, impossible to answer because the Plaintiffs do not choose to go into the witness box and say so? To my mind the answer plainly is No. G H

For the reasons which I have endeavoured to express I agree with the decision of the learned Judge that the Plaintiffs fail on this issue also. I would dismiss the appeal. I

A **Shaw L.J.**—I add only a postscript to the judgment that has just been delivered by Brightman L.J.

As I read subss (2)(*a*) and (2)(*b*) of s 490 of the Income and Corporation Taxes Act 1970, they have reference to specific transactions, identified in the notice from the Board or an Inspector; and subs (2)(*c*) relates to a class or category of transaction in regard to which the recipient of the notice is required
B to identify specific transactions or arrangements in which he has played some part. However, this does not appear to me to affect the outcome of these present proceedings. It is clear that the effect of s 490(2) is to define an area within which the person to whom the notice is directed cannot challenge its requirements, provided always that it falls within the general scope of the power conferred by subs (1). It is equally clear that subs (2) does not have the result
C of limiting that power in other respects; it serves only to emphasise the obligation of the recipient of the notice to give the particulars—that is, the information —when it falls within the bounds of subs (2). In the present case it was not in dispute that the Inspector thought that the information sought was necessary for the purposes of ss 487 and 488 of the Act.

Accordingly, apart from the incidental question of construction, I respect-
D fully agree with the judgment of Brightman L.J. I too would dismiss this appeal.

Buckley L.J.—I also entirely agree with the judgment which has been delivered by Brightman L.J.

I would only add these very few words: the notices which have been served in the present case upon the four Plaintiffs, which are all substantially in the same form, are undoubtedly complex documents; but Mr. Potter,
E appearing for the Appellants, has expressly disclaimed any intention of contending that mere complexity is a ground for holding the notices to be bad. There is nothing to suggest that the notices are in the nature of a common form document, intended to be served upon large numbers of members of the public. Their effectiveness must, in my judgment, be determined in relation to the particular persons and bodies upon whom they were served. There is, as
F Brightman L.J. has observed, no evidence that the recipients or any of them would be unable to understand the notices, with professional advice if necessary.

It appears to me that the question to which we should address our minds is whether any of the recipients would be unable to answer the requirements of the notices with such expert advice of a professional kind as might be appropriate to the matters to which the notices relate. Only if the notices are
G such that it is apparent on their face that they would really certainly be unintelligible to the recipients would we be justified, in my judgment, in saying that the notices were bad on the ground of unintelligibility, or on the ground that they were difficult to understand.

The four matters which have been particularly relied upon by the Appellants, to which my Lord has referred in his judgment, that is to say, the expression
H "in connection with", the expression "legal, equitable or other interest", the expression "not resident" and the expression "whereby a benefit arose or might arise" are not concepts which are scientifically precise in their nature; they are concepts perfectly intelligible to the ordinary educated man, although he might require some assistance from a professional adviser as to whether the particular transactions which he had to consider fell within the scope of any

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one or more of those expressions. But, as has been pointed out by Brightman L.J., the person upon whom the notice is served is only required to answer it "to the best of his information, knowledge and belief" and I cannot discern in these notices any obscurity so profound as would lead to the conclusion that the recipient of the notice would be likely to be unable to answer the questions put to him. On those grounds, which have been elaborated more extensively by Brightman L.J., I think the Appellants' case fails on that part of it which relates to obscurity or unintelligibility. Upon the point of construction, the more strictly *ultra vires* point, I do not wish to add anything to what has been said by Brightman L.J.

For these reasons, and for those set out in the judgment which Brightman L.J. has delivered, I agree that this appeal fails and that it should be dismissed.

Appeal dismissed, with costs. Leave to appeal to the House of Lords refused.

[Solicitors:—Meacham & Newbold; Solicitor of Inland Revenue.]

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