A HIGH COURT OF JUSTICE
(CHANCERY DIVISION)—9 AND 18 NOVEMBER 1983

HOUSE OF LORDS—14 NOVEMBER AND 13 DECEMBER 1984

Payne (H.M. Inspector of Taxes) *v.* Barratt Developments (Luton) Ltd.[1]

B

Corporation tax—Stock relief—Whether available to builder on stock of houses and flats received from purchasers in part satisfaction of price of new houses, such houses and flats being sold on in existing state—Whether relief excluded for site of house or merely for its unbuilt-on-garden—Finance Act 1976, Sch 5, para 29.

C *Construction of an Act—Whether word to be given same meaning wherever it occurs in an enactment—"Land"—Interpretation Act 1889.*

The company carried on trade as a house-builder. It sold some of its houses on terms under which it accepted purchasers' properties in part satisfaction of the price. Properties so acquired were then sold on in their D existing state. At the end of its accounting period ended 30 June 1979 the company's closing stock included five such properties, being three freehold houses with gardens, a ground-floor leasehold flat with no exclusive garden rights and a second-floor flat with no garden rights.

Stock relief claimed by the company under s 37 of Sch 5 to the Finance Act 1976, was refused in respect of the five properties on the ground that they E were excluded from relief by para 29(2)(*b*) of the Schedule, being "land other than such as is ordinarily sold... only after being developed".

On appeal the Special Commissioners considered themselves constrained to follow the decision of the Court of Session in *Commissioners of Inland Revenue* v. *Clydebridge Properties Ltd.* 53 TC 313; [1980] STC 68 (decided on the precursor of para 29(2)(*b*)) and to hold that the five properties, other than F the unbuilt-on-gardens of the three freeholds, were trading stock not excluded from relief by para 29(2)(*b*). The Crown appealed.

In the High Court, the Crown formally submitted that *Clydebridge* was wrongly decided, but that, assuming the Court took the view, in the light of *Abbott* v. *Philbin* 39 TC 82; [1960] Ch 27 at page 49, that it ought to follow that decision, a distinction had to be drawn for the purposes of para 29(2)(*b*) G between buildings i.e. bricks and mortar on the one hand, which qualified for relief, and land, including any land underlying and enjoyed with a building on the other, which was excluded.

(1) Reported (Ch D) [1984] STC 65; (HL) [1985] 1 WLR 1; [1985] 1 All ER 257; [1985] STC 40; 129 SJ 18.

The Chancery Division, dismissing the Crown's appeal, held that the Court was under a duty to follow *Clydebridge* and that decision compelled the conclusion that land within the exclusion from the definition of trading stock in para 29(2)(*b*) comprehended only land which had no building or other structure upon it.

The Crown appealed to the House of Lords under the "leap-frog" procedure (ss 12–13, Administration of Justice Act 1969).

Held, in the House of Lords, unanimously allowing the Crown's (leap-frog) appeal, that there was nothing in the context of para 29, in particular the limited meaning required to be given to the word "land" in subpara (3), to exclude the application of the Interpretation Act definition of the word "land" (which includes "buildings") in para 29(2)(b). Accordingly all five properties in their entirety were excluded from stock relief.

Commissioners of Inland Revenue v. *Clydebridge Properties Ltd.* 53 TC 313; [1980] STC 68 overruled.

Per curiam: "The rule that the same word occurring more than once in an enactment should be given the same meaning wherever it occurs is a guide which must yield to indications of a contrary intention, and such an intention must necessarily be inferred here..."

"The fallacy in the reasoning of the Court (in *Clydebridge*) appears... to have been a failure to appreciate that subparagraph (2), in creating an exception within an exception, carved out from the generality of the meaning of the word 'land' a particular limited category of land, namely, such as was capable of being developed".

CASE

Stated under the Taxes Management Act 1970, s 56, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the High Court of Justice.

1. At a meeting of the Commissioners for the special purposes of the Income Tax Acts held on 22 February 1982 Barratt Developments (Luton) Ltd. (hereinafter called "the Company") appealed against an assessment to corporation tax for the accounting period to 30 June 1979 in an estimated sum of £7,000.

2. The name of the witness who gave evidence and particulars of the documents (all agreed) before us appear from our decision in principle which we delivered in writing on 16 June 1982. Copies of the documents are not annexed hereto as exhibits but are available for inspection by the Court if required.

3. The question for our determination, our findings of fact, the contentions of the parties and our conclusion also appear from our decision a copy of which is annexed hereto and forms part of this Case. Our decision was partly in favour of the Company and partly in favour of the Inspector.

4. Figures having been agreed between the parties, on 18 January 1983 we formally determined the appeal as follows:

(1) The amounts attributable to the value of the gardens of the three old properties which had gardens are:—

	Total Value	*Value apportioned to the garden*
	£	£
3 Neston Way	14,287	500
29 Whitebeam Close	14,725	800
8 Kingston Avenue	16,736	800

The £2,100 attributable to the gardens does not qualify for Stock Relief.

(2) The Stock Relief due is thus:—

	£
Close Stock at 30 June 1979	4,709,319
less	
Value of Gardens	2,100
	4,707,219
less	
Opening Stock at 1 July 1978	2,399,874
	2,307,345
less	
15% of Relevant Income (£801,883)	120,282
Stock Relief due	2,187,063

(3) The Company's Corporation Tax computation for its Accounting Period ended 30 June 1979 is:—

		£
Case I Profit after Capital Allowances		801,883
less		
Stock Relief		2,187,063
Adjusted Loss		1,385,180
less		
Section 177(2) Relief for current year:		
Rent	495	
Interest	1,547	2,042
Losses available for group relief or carry forward.		1,383,138

(4) Accordingly we discharge the assessment under appeal and declare that the losses available for group relief or carry forward are £1,383,138.

5. Immediately after the determination of the appeal both the Company and the Inspector declared to us their dissatisfaction therewith as being erroneous in point of law and in due time required us to state a Case for the opinion of the High Court pursuant to the Taxes Management Act 1970, s 56, which Case we have stated and do sign accordingly.

6. The question for the opinion of the Court is whether we erred in law in reaching our conclusion. A

J.D.R. Adams
A.K. Tavaré
} Commissioners for the Special Purposes of the Income Tax Acts

Turnstile House,
98–99 High Holborn,
London WC1V 6LQ B
16 June 1983

Decision

1. This is an appeal by Barratt Developments (Luton) Ltd. ("the Company") against an asssessment to corporation tax for its accounting period ended 30 June 1979. The Company was represented by Mr. S.J.L. Oliver Q.C. The case for the Revenue was presented by Mr. J.G.H. Bates of the Office of the Solicitor of Inland Revenue. C

2. The dispute concerns the extent to which the Company is entitled to stock relief under the Finance Act 1976 ("the 1976 Act"). The stock relief provisions in force for the accounting period under appeal are in the 1976 Act, s 37 and Sch 5. The broad effect of those provisions is that a trader is entitled D to relief in respect of the amount by which the value of his stock in trade in hand at the end of a period of account exceeds the value of his stock in trade in hand at the beginning of that period. The amount of that excess (subject to a small reduction) can be deducted from his profits for tax purposes. There is, however, a statutory definition of "trading stock" (in para 29 of Sch 5) the effect of which is that certain types of trading stock do not qualify for stock E relief. The following are the provisions in para 29 of Sch 5 to the 1976 Act which are relevant to this case:—

> "29—(1) Subject to the provisions of this paragraph, in this Schedule 'trading stock' means property of any description, whether real or personal, being either—(*a*) property such as is sold in the ordinary course of the trade, profession or vocation in question, or would be so sold if it F were mature or if its manufacture, preparation or construction were complete; or (*b*) ... and includes work in progress. (2) Sub-paragraph (1) above does not apply to—(*a*) ... (*b*) land, other than such as is ordinarily sold in the course of the trade, profession or vocation only—(i) after being developed by the person carrying on the trade, profession or vocation, or ... (3) In sub-paragraph (2) above, references to develop- G ment are references to the construction or substantial reconstruction of buildings on the land in question ..."

The Company is a subsidiary in the Barratt group. In the 1970's the group discovered that sales of new houses sometimes went off because the potential purchaser was unable to sell his existing house. To combat this the Barratt group adopted the policy of offering to buy the purchaser's existing house, H maisonette or flat at a valuation fixed by an independent expert less 5 per cent., if the purchaser was unable to sell it for a higher price himself. That was known in the group as the part-exchange scheme. (We shall refer to houses, maisonettes and flats purchased by companies in the Barratt group in

pursuance of the part-exchange scheme as "old properties".) The policy of the group was to sell the old properties as soon as possible in their existing state. The Company, in common with the other members of the Barratt group, operated the part-exchange scheme and in the accounting period under appeal the Company acquired 9 old properties of which 5 remained unsold at 30 June 1979, the end of that accounting period, and were thus included in the stock in trade in hand on that date.

The question in dispute is whether the Company is entitled to stock relief in respect of the old properties. That turns on whether they are "trading stock" within the meaning of the definition in para 29. It is common ground between the parties to this appeal that old properties are "sold in the ordinary course of the Company's trade" and therefore the requirements of para 29(1) are satisfied. The Revenue contend that, as the old properties were not developed but sold in their existing state, they are excluded from the definition of "trading stock" by para 29(2)(*b*). It is conceded on behalf of the Company that the old houses were not subjected to any development (as statutorily defined) either by the Company itself or by any other member of the Barratt group. The Company's case in brief is that the exclusion in para 29(2)(*b*) does not apply to the old properties on the grounds that the word "land" in sub-para (*b*) means bare land and does not include buildings. In the course of the hearing it became apparent that there was no dispute as to the facts; the points in issue between the parties are questions of law concerning the construction of para 29.

Findings of fact

3. A bundle of documents was put before us at the hearing comprising the following:—

Document No.	*Description*
1.	The Company's memorandum.
2.	Accounts of the Company for the year to 30 June 1979
3.	Copy of the notice of assessment.
4.	Copy of the notice of appeal.
5.	Copy of the Inspector's agreement to the postponement of payment of the tax charged by the assessment.
6.	Copy of the questions for determination.
7.	Statement of witness for the Company, Mr. A.F. Rawson.
8.	Four-part schedule accompanying that statement.
9.	Extracts from the board minutes of Barratt Developments PLC.
10.	Extracts from the board minutes of the Company.

Documents 1 to 6, and 9 and 10 are agreed documents. The status of documents 7 and 8 is explained below. In addition evidence was given before us by Mr. A.F. Rawson, a director of both the Company and its ultimate

parent. Prior to the hearing a written statement together with an accompanying four-part schedule was prepared by Mr. Rawson (documents 7 and 8). The course adopted at the hearing (without any objection being made by the Crown) was that Mr. Rawson's statement was read over to him by Counsel and Mr. Rawson then confirmed its accuracy. After that he was asked further questions in chief and then cross-examined. Since we are satisfied as to the accuracy of Mr. Rawson's statement we think the most convenient course is for us to reproduce the text of it in para 4 below, and then in para 5 to set out our findings based on his oral answers in chief and under cross-examination.

4. Mr. Rawson's statement (which we find to be entirely accurate) reads as follows:—

"(1) I am Mr. A.F. Rawson and I have been a director of Barratt Developments PLC ("Barratt") since 1st July 1975. I have also been a director of Barratt Developments (Luton) Limited ("the Company") since 30th November 1976. The Company was on 6th October, 1981 renamed Barratt Luton Limited and is a wholly-owned subsidiary of Barratt Southern Limited which in turn is a wholly-owned subsidiary of Barratt.

(2) In February 1976 Barratt acquired Barratt Southern Limited (at that time named H.C. Janes Limited) and its subsidiary companies, one of which was the Company (at that time named H.C. Janes (Homes) Limited). At the time of the acquisition the Company's principal trading activity consisted in the construction and sale to the general public of new residential properties. The acquisition of the H.C. Janes group constituted part of Barratt's overall strategy to extend its business activities throughout the United Kingdom and it was specifically intended that the new sub-group should form the basis of an expansion of these activities in the South of England.

(3) Following the acquisition, the new sub-group underwent a reconstruction so that it could be accommodated within the Barratt group structure. As part of this process of integration the management and reporting system within the Company was reorganised along the lines of a normal decentralised Barratt subsidiary. This meant that it became managed independently by its own board of directors, chaired by a main board director, myself, and operating within guidelines laid down by Barratt's main board.

(4) The other significant aspect of this integration process was that it involved the new sub-group adopting the marketing policies of the Barratt group which are aimed at maximising sales of newly-built dwellings. In order to provide assistance to prospective purchasers Barratt has developed a number of distinctive schemes or "purchasing aids", the principal ones in operation in the year ending 30th June 1979 being mortgage subsidy and deposit saving arrangements, mortgages of up to 95% and "£250 and Move In" schemes. In addition there was the Part-Exchange Scheme.

(5) Recognising that conditions in the property market are prone to variation, Barratt's main board has from time to time laid down guidelines as to the operation of these purchasing aids, leaving to individual subsidiaries a measure of discretion as to how and when to operate them in their local areas.

(6) For some years before February 1976 it had been realised within the Barratt group that to the majority of persons wishing to buy their

second house the critical factor was disposing of their old house. Since Barratt had more expertise in disposing of houses than members of the public it was sensible for Barratt to acquire the old house and dispose of it. The advantage to the public of this is that they can move into their new house as soon as it is physically complete without the delay of having to sell their own house and Barratt is able to achieve a fairly constant, and therefore efficient, level of production.

(7) By 1976, therefore, a number of Barratt companies in the North of England had begun to operate a part-exchange scheme. Having previously been employed by Barratts in the North West I introduced the scheme to the Company in the Spring of 1977 and five new houses were sold using this method.

(8) By 1977 it was decided that the part-exchange scheme should be the subject of a much more concerted effort throughout the Barratt group as a whole. This is demonstrated in the minutes of a series of meetings of Barratt's main board, the first of which is dated 9th August 1977. The purpose of the part-exchange scheme was summarised in a paper put to and (with certain amendments) accepted by a meeting of Barratt's main board on 12th October, 1977 as follows:—

> 'To increase our share of diminishing market by generating 10% of our sales from the scheme, not by using these selling aids as a last resort when developments are in trouble, but, if necessary, by offering part exchange houses as new developments where a good start is necessary to generate confidence. Also to be offered to avoid a build-up of stock houses to speed up the exchange of contract rate and guarantee cash flow of our subsidiaries.'

(9) At the board meeting of Barratt held on 12th October detailed guidelines for the part-exchange scheme were agreed. The maximum price to pay for any second-hand property should be 80% of the selling price of the new Barratt house and wherever possible a part exchange would be agreed at an early stage of construction of the new houses so that if possible the part exchange can be contracted to be sold before the new house is complete. The offer price for the part exchange house would be the value as assessed by an independent estate agent, less 5% to cover administration and selling expenses. These guidelines have been occasionally modified by the main board.

(10) The main board minutes indicate that the scheme did not immediately become a significant item in the package of purchasing aids offered by the Barratt group as a whole. At the main board meeting of 5th April, 1978 the Chairman reported that no progress was being made with the scheme and stressed that it must be used by every subsidiary ready for the next downturn in the property market. At the main board meeting of 6th September 1978 it was again stressed that the scheme must be seen as a permanent feature of the Barratt group purchasing aids, and the Southern sub-group, of which the Company is a part, was asked to ensure the full implementation of the scheme. The Company itself was pressed to make greater use of the scheme, as evidenced by its own board minutes; for example at the meeting of 25th May, 1978 I directed that, as a matter of policy, the Company should establish itself in the part exchange method of selling in order to acquire expertise to cover the possible downturn in the property market. At that time I considered the fact that the Company was not using the part-exchange scheme as a purchasing aid was unsatisfactory. By the end of March 1979 four new houses were

contracted for sale making use of the part-exchange scheme and a further two properties were in the pipeline.

(11) Attached to this statement is a schedule of part-exchange houses and flats relevant to this appeal. Part I of the Schedule contains details of the property transactions during the accounting period ending 30th June 1979. Part II of the Schedule sets out physical details of the properties taken in part-exchange. Part III of the Schedule is a list of the properties held by the Company at the end of that accounting period, together with the cost of each property. Part IV of the Schedule contains the addresses and selling prices of the Company's houses against which the part-exchange houses were purchased."

[We have not thought it necessary to reproduce in this Decision the Schedule referred to above, because sufficient detail concerning the five old properties which are the subject-matter of the disputed claim for stock relief is included in our findings in paragraph 5 below. Should the matter be taken further we will annexe to the Stated Case a copy of that Schedule if requested to do so.]

"(12) It is worth noting that it has never been the group intention to derive additional profit out of the sale of part-exchange properties. At a Barratt main board meeting held on 11th October, 1978 the Chairman stressed that wider use of the part-exchange scheme was necessary and that profit was not the main consideration for its implementation. In addition it should also be said that from the outset it has been Barratt group policy to dispose of part-exchange properties at the earliest opportunity.

(13) The scheme today has become and continues to be one of the principal purchasing aids of the Barratt group and the Company."

5. On the basis of Mr. Rawson's oral answers we make the following further findings:—

(*a*) The Company intended to, and did, sell the old properties in their existing state without reconstructing or improving them. The only work done by the Company on the old properties was the minimum necessary to maintain them and insure that they remained in a saleable condition; such as preventing the garden becoming overgrown and keeping the premises secure to protect them from vandals.

(*b*) The Company had no old properties in hand at the beginning of the accounting period under appeal. Nine old properties were acquired in that period. Of those nine, five remained unsold at the end of that accounting period (30 June 1979) and were included in the stock-in-trade in hand at that date. The five were: 10 The Arcadian, Margate (a leasehold second-floor flat), 3 Neston Way, Gawthorpe (a freehold semi-detached house), 29 Whitebeam Close, Bedford (a freehold terrace house), 38 Mayfield Court, Sandy (a leasehold ground-floor flat), and 8 Kingston Avenue, Stoney Stratford (a freehold semi-detached house). The three houses each had gardens. The two flats were both in blocks of flats; 10 The Arcadian had no garden, 28 Mayfield Court had no exclusive garden rights. None of those old properties was suitable for redevelopment.

Summary of contentions

6. Mr. Oliver's contentions in opening may be summarised as follows:—

(1) The first and main submission for the Company is that "land" in para 29(2)(*b*) means bare land and does not include buildings on the land. In para 29(1) the words used are "property of any description whether real or personal" and that is an expression of very wide meaning. The Company contends that the draughtsman, knowing that "real property" has a very wide meaning, was using "land" in a more restricted sense. Paragraph 29(3) refers to "construction or re-construction of buildings *on the land in question*". This shows that land is used in contra distinction to buildings. It is a common form of drafing to lay something down in general terms and then to add provisions which restrict its scope. The restricting provisions must be given a limited construction.

(2) Stock relief is a relief given to traders. It is given in respect of specific physical things bought and sold in the ordinary course of the trader's business. The provisions should therefore be construed commercially and not technically.

(3) The Revenue rely on the Interpretation Act 1978, Sch 2, para 5(*b*) which defines "land" as including buildings. The Company contends that the Interpretation Act provision does not apply because a contrary intention appears in para 29(2) of the 1976 Act. In statutes dealing with conveyancing land has a wide meaning (see Law of Property Act 1925, s 205(1)(ix) and Settled Land Act 1925, s 117(1)(ix)), but land does not always bear its conveyancing meaning in tax statutes (see, for example, the Income and Corporation Taxes Act 1970, s 488(12)(*a*), Finance Act 1974, s 44(1), and Capital Gains Tax Act 1979, s 118). The indications in the context of para 29 of the 1976 Act which show that land does not bear its Interpretation Act or conveyancing meaning are: (i) the general point that stock relief is given for specific things dealt in and not for rights or interests in or over things; and (ii) para 29(3) distinguishes between buildings and land.

(4) The decision in *Commissioners of Inland Revenue* v. *Clydebridge Properties Ltd.*(1) [1980] STC 68 is authority for the proposition that land in paragraph 29(2) refers to bare land and not buildings. The decision in that case draws no distinction between ground floor flats and upper floor flats or between flats with and flats without gardens. The Revenue seek to distinguish the *Clydebridge* case on the grounds that it only applies to upper floor flats with no garden rights. There is no conceivable basis for such a distinction. The argument that a distinction is to be drawn between ground floor flats and other flats is firmly rejected by the Court of Session, (see particularly the opinion of the Court at page 72).

(5) The decision in *Clydebridge* is not just persuasive; it is the law of the United Kingdom. Words in tax statutes are to be construed in the same way in both parts of the Kingdom (see *Rank Xerox Ltd.* v. *Lane*, 53 TC 185 particularly at pages 216 and 217). Since para 29(2) has been authoritatively construed in one part of the Kingdom, that construction is also binding in the other part. Even if *Clydebridge* is not legally binding in England, it has very strong persuasive force and should be followed by the Tribunal.

(1) 53 TC 313.

7. Mr. Bates' submissions on behalf of the Revenue may be summarised as follows:— A

(1) The decision of the Court of Session in *Clydebridge*(1) is not binding upon the Special Commissioners when hearing an English appeal. Generally a Court is only bound by the *ratio decidendi* of a *higher* Court (although there are special rules in the case of the Court of Appeal). The Special Commissioners are thus only bound by the decision of a higher Court within B the jurisdiction in which they are sitting. The *Rank Xerox*(2) case merely decides that an expression in the tax legislation should be given the same meaning in both parts of the United Kingdom; it does not decide that a decision given by a Court in one part of the United Kingdom is binding on the Special Commissioners when sitting in the other part.

(2) In any event, however, *Clydebridge* merely decides that the extended C definition of "land" in s 3 of the Interpretation Act 1889 did not apply to para 16(2)(*b*) of Sch 10 to the Finance (No. 2) Act 1975 and that "land" in that context must therefore be given its ordinary meaning. On that basis the word "land" did not include the flats in the tenement blocks in question. The statutory provisions in force in the year under appeal in this case are para 5(*b*) of Sch 2 to the Interpretation Act 1978 and para 29 of Sch 5 to the 1976 Act, D but the wording is the same as that in the corresponding provisions in the earlier Acts which were under consideration in *Clydebridge*.

(3) *Clydebridge* does not decide that "land" in the context of what is now para 29(2)(*b*) extends only to bare or virgin land and excludes land with buildings upon it. Otherwise it would rob the words "or substantial re-construction of buildings" in para 29(3) of any effect. Paragraph 29(3) clearly E pre-supposes that "land" in para 29(2)(*b*) includes land with existing buildings upon it.

(4) The word "land" in para 29(2)(*b*) bears its ordinary meaning. "Land" is used in its physical sense and not as including incorporeal property. The general meaning of "land" is land in its physical state including the buildings upon it, (see Halsbury's Laws, 3rd edn, vol 32, para 349). The three F houses, 3 Neston Way, 29 Whitebeam Close, and 8 Kingston Avenue, together with their gardens are all "land" within the meaning of para 29(2)(*b*). "Land" in that sub-paragraph also extends to the land on which ground floor flats stand. Such flats differ from upper floor flats because they enjoy more than a mere right of support from below. 38 Mayfield Court would therefore be "land" for the purposes of para 29(2)(*b*). G

(5) The definitions in other parts of the tax legislation which were referred to by Counsel for the Company are all cases where it is quite understandable that the draughtsman out of abundance of caution made specific reference to buildings. If the submission for the Company that "land" in para 29(2)(*b*) means bare land were correct, it would have anomalous consequences. In the case of farm land with a farmhouse and farm buildings it H would be necessary to subtract the farm buildings and farmhouse in order to find out what was "land". With the semi-detached houses in this case the houses themselves would qualify for stock relief but the gardens would not. That is unlikely to have been Parliament's intention.

(1) 53 TC 313. (2) 53 TC 185.

(6) The tenure of the property is irrelevant to the question whether it is land for the purposes of para 29(2)(*b*). The legislation should apply to leaseholds as well as to freeholds; that is supported by the *Clydebridge*[1] case where rented properties were also purchased.

(7) The wide provisions in para 29(1) would not be unduly restricted if the word "land" in sub-para (2)(*b*) were construed in the way contended for by the Revenue.

(8) The *Clydebridge* case is wrongly decided and ought not to be followed. There is no reason why the Interpretation Act definition should not apply to the word "land" in para 29(2)(*b*) but not in para 29(3). The principle of construction that the same word should be given the same meaning throughout a section or paragraph is not inviolate, (see Maxwell on Interpretation of Statutes, 11th edn, pages 311 to 312). Here the Interpretation Act definition applies to para 29(2), but is excluded in the case of sub-para (3) by indications to the contrary in the context.

(9) In the Revenue's submission the policy behind para 29(2)(*b*) is that dealers in land (as opposed to developers) should not be allowed stock relief.

8. Mr. Oliver made the following additional points in reply:—

(1) The argument based on the inclusion of the word "reconstruction" in para 29(3) is not a strong one. In the Company's submission the word "reconstruction" is included simply to ensure that a piece of ground which would otherwise qualify for stock relief is not excluded merely because it has a derelict building on it. A much stronger pointer to the meaning of "land" is the reference in para 29(3) to "buildings on the land in question".

(2) The general purpose of this legislation is that stated by Lord Emslie in the *Clydebridge* case [1980] STC at page 72. It would be strange if upper storey flats qualified for stock relief and ground floor flats did not.

(3) It may well be that the gardens do not qualify for stock relief and an apportionment will therefore be necessary. That might appear rather odd, but it would be even more odd if stock relief were available where a dwelling house abutted on the highway, but not if it had a front garden. The Company's submission is that, whatever may be the position concerning the gardens, the buildings themselves qualify for stock relief.

Decision on questions of law

9. The first question which arises is whether we are bound by the decision of the Court of Session in the *Clydebridge* case. There is no doubt that *Clydebridge* is binding upon this Tribunal when hearing Scottish appeals. Mr. Oliver, for the Company, contends that it is also binding upon us when sitting in England. Mr. Bates says that in England it is not binding on us, but merely persuasive. He submits that *Clydebridge* is wrongly decided and therefore we ought not to follow it here. There does not appear to be any authority on the question whether a tribunal such as this, which has jurisdiction in all three parts of the United Kingdom, is bound when sitting in one part of the Kingdom by decisions of the superior courts of another part of the Kindgom. We do not find it necessary to express a concluded view on that question,

(1) 53 TC 313.

because we consider that we ought, so far as possible, to follow such decisions whether or not they are technically binding upon us. In our opinion it would be undesirable to give statutory provisions which apply throughout the United Kingdom different meanings in different parts of the Kingdom. In Scotland *Clydebridge*(1) is binding authority on the construction of the word "land" in the stock relief part of the tax code and our view is that we should apply the same construction in England, unless and until we are constrained by binding English authority to do otherwise.

10. The next question we have to consider is what *Clydebridge* decides. That case was concerned with the definition of "trading stock" in para 16 of Sch 10 to the Finance (No. 2) Act 1975; but the wording of para 29 of Sch 5 to the 1976 Act is the same and it is common ground that whatever *Clydebridge* decides about the meaning of "land" in that earlier legislation applies equally to the corresponding provisions in the 1976 Act. Mr. Bates for the Revenue submits that the decision in *Clydebridge* is confined to upper storey flats and tenements. His case is that *Clydebridge* is no obstacle to his contention that houses and ground floor flats are "land" within the meaning of para 29(2)(*b*). He says that, although *Clydebridge* decides that the Interpretation Act definition of "land" does not apply to what is now para 29(2)(*b*), the word bears its ordinary meaning and land in its ordinary sense means land in its physical state including the buildings upon it. In our view *Clydebridge* cannot be distinguished or confined in that way. In our judgment *Clydebridge* not only decides that the Interpretation Act definition is inapplicable to the predecessor of para 29, it also decides that "land" in the context means *undeveloped* land and does not include buildings, (see the opinion of the Court [1980] STC at page 72(2), particularly the paragraph beginning just below the letter f). We accept the Company's contention that "land" in para 29(2) and (3) means bare land (i.e. land without buildings on it). That construction is further supported by the presence in para 29(3) of the words "buildings *on the land in question*".

11. In our opinion the consequences of construing "land" in para 29 as meaning bare land are as follows. The two flats, 10 The Arcadian Margate and 38 Mayfield Court, Sandy are not "land" within the meaning of para 29(2)(*b*) and therefore qualify for stock relief. In the case of the three houses, 3 Neston Way, Gawthorpe, 29 Whitebeam Close, Bedford and 8 Kingston Avenue, Stoney Stratford the position is less simple. The sites occupied by those houses together with the buildings themselves are not bare land and therefore qualify for stock relief. That leaves the problem of the gardens. In our view it follows from that construction of the word "land" that the gardens being bare land are within the scope of the exclusion in para 29(2)(*b*) and therefore do not qualify for stock relief. It does not seem to us feasible to regard the gardens as being other than "land" in the para 29(2) sense. Otherwise there could be extraordinary results. Compare the following two examples. Suppose A and B both carry on the trade of dealing in land, but neither is a builder or developer. A purchases ten acres of farm land, obtains planning permission for the erection of eighteen houses and then sells the land to a developer. B purchases a sizable house with ten acres of grounds. The house is sold to one purchaser for conversion into offices and B sells the ten acres of grounds to a developer with planning permission for the erection of eighteen houses. Clearly no part of the ten acres purchased and sold by A could qualify for stock relief because para 29(2)(*b*) would exclude relief. In our view it would be extraordinary if B's

(1) 53 TC 313. (2) *Ibid*, at p 318.

ten acres were to qualify for stock relief merely because they had been part of the grounds of a house when he bought them. In our judgment the whole ten acres purchased by B would be "land" within the meaning of para 29(2)(*b*) and excluded from stock relief. In our view what applies to ten acres of grounds must apply equally to a more modest garden even though it is sold with the house and not for separate development. That the flats and houses should qualify for stock relief and the gardens not is undoubtedly odd; but, in our view, that is the result both of the decision in *Clydebridge*[1] and the wording of para 29(2) and (3). It seems to us that the only sensible fiscal policy which can have been intended by the inclusion of para 29(2)(*b*) is that stock relief should be granted to builders, but not to land dealers. But the wording of para 29(2) and (3) does not seem apt to achieve that result. Even if we felt free to depart from *Clydebridge*, the presence in sub-para (3) of the words "buildings on the land in question" is a formidable, if not insuperable, obstacle to construing "land" in para 29 as including buildings. An amendment has been made to para 29(3) with a view to putting the matter right and denying stock relief in the case of land and buildings unless they are the subject-matter of development carried out by the trader concerned; but that amendment only applies to accounting periods beginning after 26 March 1980, (see the Finance Act 1980, s 40(*b*) and Sch 7, para 7).

12. Our conclusion is that the appeal succeeds in part. Our decision in principle is that the five old properties held by the Company on 30 June 1979 qualify for stock relief, except the gardens of the three houses. That will involve valuations and apportionments. They will fall to be dealt with at the figures stage. Having given this decision in principle we adjourn the case for the parties to consider the question of figures. When the figures have been ascertained we shall issue our formal determination of the appeal.

J.D.R. Adams
A.K. Tavaré
} Commissioners for the Special Purposes of the Income Tax Acts

Turnstile House,
94–99 High Holborn,
London WC1V 6LQ
16 June 1982

The case was heard in the Chancery Division before Vinelott J. on 9 November 1983 when judgment was reserved. On 18 November 1983 judgment was given against the Crown, with costs.

Robert Carnwath for the Crown.

S. J. L. Oliver Q.C. and *W. G. S. Massey* for the Company.

The following cases were cited in argument in addition to the cases referred to in the judgment:—*Yarmouth* v. *France* (1887) 19 QBD 647; *Ben-Odeco Ltd.* v. *Powlson* 52 TC 459.

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(1) 53 TC 313.

Vinelott J.—This is an appeal by way of Case Stated from a decision of the Special Commissioners. The facts are set out fully and clearly in the Decision, which is annexed to the Case Stated. In order to make this judgment intelligible without reference to the Case Stated, I shall briefly summarise those facts.

Stock relief was first introduced by s 54 of and Sch 10 to the Finance (No. 2) Act 1975. It was replaced with amendments by s 37 of and Sch 5 to the Finance Act 1976. Section 37 provides that Sch 5 is to have effect for affording relief for increases in the value of trading stock and work in progress in any period of account. Part II of Sch 5 deals with relief against corporation tax for trading companies. Paragraph 9 provides that a company which carries on a trade within the charge to corporation tax under Case I of Schedule D is to be entitled to relief by reference to the amount by which the value of its trading stock at the end of a period of account exceeds the value of its trading stock at the beginning of that period.

The expression "trading stock" is defined for this purpose by para 29. I should read the first three sub-paragraphs in full:—

> "(1) Subject to the provisions of this paragraph, in this Schedule 'trading stock' means property of any description, whether real or personal, being either—(*a*) property such as is sold in the ordinary course of the trade, profession or vocation in question, or would be so sold if it were mature or if its manufacture, preparation or construction were complete; or (*b*) materials such as are used in the manufacture, preparation or construction of any such property as is referred to in paragraph (*a*) above, and includes work in progress. (2) Sub-paragraph (1) above does not apply to—(*a*) securities, which for this purpose includes stocks and shares; or (*b*) land, other than such as is ordinarily sold in the course of the trade, profession or vocation only (i) after being developed by the person carrying on the trade, profession or vocation, or (ii) in the case of a company which is a member of a group, for the purpose of being developed by another company in that group; or (*c*) goods which the person carrying on the trade, profession or vocation has let on hire or hire- purchase. (3) In sub-paragraph (2) above, references to development are references to the construction or substantial reconstruction of buildings on the land in question and 'group' shall be construed in accordance with section 272 of the Taxes Act."

That is all I need say about the 1976 Act. Section 54 of and para 16 of Sch 10 to the 1975 Act were in the same terms as s 37 of and para 29 of Sch 5 to the 1976 Act.

The Respondent to this appeal, Barrat Developments (Luton) Ltd. (which I shall call "the company"), is part of the well known Barratt group of companies, which are, of course, primarily builders. In the course of its trade the company and the other companies in the group carry a large stock of land—a land bank—for future development. There is no doubt that the company is entitled to relief in respect of that land. In 1977 or 1978 the company and other companies in the group introduced a scheme to assist prospective buyers of new houses (more particularly houses in the course of construction) who had been deterred from entering into a concluded contract for the purchase of the new house because they would have to rely on selling an existing house, flat or maisonette to meet the purchase price of the new house.

Under the scheme a company in the group would offer to buy the prospective purchaser's existing house, maisonette or flat (which I shall call "the old property") at a valuation fixed by an independent expert less 5 per cent. unless the purchaser was able to sell it at a higher price before completion of the purchase of the new property. The company would then sell the old property as soon as practicable in its existing state. At the beginning of the accounting period in question the company had no old properties. During the accounting period the company bought nine old properties. Five of them remained unsold at the end of the accounting period; three were semi-detached freehold houses with gardens and two were leasehold flats, one a ground-floor and the other a second-floor flat. The question is simply whether the unsold old properties fall to be included in the company's stock in trade. The Commissioners felt constrained by the decision of the Court of Session in *Inland Revenue Commissioners* v. *Clydebridge Properties Ltd.*(1) [1980] STC 68, to hold that the flats and the houses (other than the unbuilt-on gardens of the houses) were stock in trade and were not excluded by para 29(2)(*b*). They apportioned the value of each house between the value of the site and the house on it, on the one hand, and the garden, on the other hand. They held that the aggregate of the values apportioned to the gardens was excluded from stock relief by para 29(2)(*b*).

If the question had been free from authority I would for my part have felt inclined as a matter of first impression to the conclusion that no part of the value of any of the houses or their gardens or the flats qualified for stock relief. Paragraph 29(1) contains a comprehensive definition of "trading stock" as meaning property of any description, real or personal; sub-para (2) then starts by excluding from this comprehensive definition, amongst other things "land"; and it then excepts from the exclusion land which (in very broad terms) is bought by a developer for the purpose of development. The word "land" in its ordinary or popular usage is a word which, while not strictly ambiguous, can be used in a more or less comprehensive sense. To adopt the words of Lord Wilberforce decribing the popular meaning of the word "interest", "the wide spectrum which it covers makes it all the more necessary, if precise conlusions are to be founded upon its use, to place it in a setting": see *Gartside* v. *Inland Revenue Commissioners*(2).

The word "land" can be used to describe only land which has not been built on; it can be used to discriminate between the site of a structure and the structure that has been placed on it; it can be used to describe a site and the structure on it; it can be used, though I think less commonly, to describe not only a site and the structure on it but the structure alone or part of it. Section 5 of the Interpretation Act, taken in conjunction with the First Schedule to that Act, provides that "unless the contrary intention appears" the word "land" is to be construed as including "buildings and other structures, land covered with water, and any estate, interest, easement, servitude or right in or over land". That definition corresponds to a precisely similar definition in s 3 of the Interpretation Act 1889.

Again, apart from authority I would have felt at least inclined to the view that there is nothing in the context of the 1976 Act which impliedly precludes the word "land" from bearing the wide meaning attributed to it by the Interpretation Act. Indeed, at first sight there seem to be indications in para 29 which would justify the conclusion that the word "land" is used in the most comprehensive sense (which, as I have said, is a sense in which the word

(1) 53 TC 313. (2) [1968] AC 553.

"land" is sometimes used particularly in legal contexts) without recourse to the Interpretation Act. For the exception from the exclusion of "land" comprehends land "sold in the ordinary course of the trade only (i) after being developed by the person carrying on the trade", and under sub-para (3) references to development are to be read as references to "the construction or substantial reconstruction of buildings on the land in question". So the exception from the exclusion comprehends land which is bought with a view to the demolition of the buildings on it and the redevelopment of the land or to the reconstruction of the buildings. The exclusion itself must therefore comprehend land which is fully built on.

It does not follow this that flats (at least, flats above ground-floor level) or ground-floor flats which do not carry any freehold or lease-hold interest in the underlying site are "land". Although "land" is commonly used to describe a site and the buildings on it, it is less common to use the word "land" to describe a part of a building, in particular a flat above the ground floor. However, that is a possible meaning and it is difficult to discern any intelligible policy which could have led the Legislature to exclude from stock relief the stock of houses owned by a dealer who buys and sells houses in the course of his trade and to give stock relief to a trader who buys and sells flats in the course of his trade, or to withhold stock relief in respect of a stock of houses and extend it to the stock of flats held by one who carries on the trade of buying and selling both houses and flats. So far as any policy is to be discerned, it appears to me to deny stock relief to traders who buy and sell securities or who buy and sell land without doing anything to enhance its value and to goods which have in substance been disposed of by being let on hire or on hire-purchase.

Mr. Oliver submitted that the legislative intention to be inferred from para 29 is to exclude from stock relief land owned by that well known object of fiscal discrimination, the man who buys land not with a view to himself developing it but with a view to selling the site for development by others. He does not contend that "land" within the exclusion should be restricted to land which has no structure on it. He submitted that land with buildings on it is excluded from stock relief if and only if it is in substance bought by a dealer in land with a view to realising a profit from the value of the underlying site. An example will make this clear. Suppose that a dealer buys an old-fashioned block of offices in the City of London. If he takes the view that the block as it stands, perhaps with some refurbishment but without any substantial reconstruction, is undervalued and buys it with a view to realising a profit on a resale, it can be said that what he has bought is in substance the building and not the site. He is entitled to stock relief: the building is not "land". So also if he buys a block of mansion flats which are let on short leases with a view to selling long leases to the tenants or to other purchasers.

By contrast the site of the office block may have a potential for redevelopment by, for instance, the erection of a modern office block with a larger number of floor which is such that its value as a site is greater than the value of the building. If a trader buys the block with a view to demolishing the block and redeveloping the site or substantially reconstructing it, he is entitled to relief; although what he has bought is in substance the site with a view to realising its value as a site (so that it is "land" within the exclusion) being a developer he is within the exception from the exclusion. If he buys it with a view to demolishing the building and selling the site, or with a view to, for instance, obtaining planning permission and selling the land and the buildings to someone who will either demolish the building and redevelop the site or who

A will substantially reconstruct the building, he is not entitled to stock relief; what he has bought is in substance the site, which is "land" within the exclusion, and he is outside the exception from the exclusion.

Mr. Oliver's alternative explanation for the reference in para 29(3) to the "substantial reconstruction of buildings" was that it was directed to the case of a developer who buys land for development which includes a building of
B architectural merit which, because of some planning or other restriction, he cannot demolish; he is entitled to reconstruct it for some other use so long as the exterior is preserved. The reference to the "reconstruction of buildings", it is said, is apt and intended to ensure that he obtains stock relief for the whole of the land.

These analyses of the language of para 29 seem to me to have little merit
C beyond their ingenuity. As an exegesis of the probable legislative purpose to be inferred from the Act as a whole they seem to me to be as far-fetched as anything I have ever heard. It would, it seems to me, be wholly arbitrary to afford relief to a dealer who is not a developer if the land and buildings have a greater value as they stand than the cleared site and to deny relief if the site has a value for development in excess of the existing value of the buildings on it.

D As I have said, apart from authority I would have felt inclined, or even strongly inclined, to the view that the word "land" when it first appears in sub-para (2)(*b*) should be construed in the wide sense I have indicated. However, the question is not free from authority. In *Inland Revenue Commissioners* v. *Clydebridge Properties Ltd.*(1) [1980] STC 68, the taxpayer was a company which dealt in property—primarily the purchase and sale of
E flats in tenement blocks in Glasgow. It had never bought a complete tenement block, nor had it at any given time owned all the flats in a tenement block. It was held by the Court of Session that the company was entitled to stock relief. It was argued on behalf of the Crown that the company could not on any tenable construction of para 16 of Sch 4 to the 1975 Act (which, as I have said, was in precisely the same terms as para 29) be entitled to stock relief in respect
F of ground-floor flats carrying the freehold or leasehold interest in the underlying site. As to that argument, the Lord President, giving the judgment of the Court, said at page 71(2):

> "It should be noted at this stage that there is no finding in fact that the stock-in-trade of the company included any ground floor flats. It is clear from the arguments recorded in the case stated and the reasons given
G by the Commissioners for their decision that no reference was made to ground floor flats at the hearing of the appeal. We heard speculative argument on the possible treatment of ground floor flats held as stock-in-trade. In our opinion that investigation into the possible special position of ground floor flats was irrelevant to the point in issue before us and we proceed within the bounds of the case."

H Then, having cited the definition of "land" in the Interpretation Act 1889, and para 16, he said at page 72(3):

> "If an attempt is made to apply the whole definition to para 16(2)(*b*) it becomes completely meaningless. If it is permissible to extract the word 'building' and use it as 'land' then para 16(2)(*b*) as necessarily construed

(1) 53 TC 313. (2) *Ibid*, at p 316. (3) *Ibid*, at pp 317–8.

together with para 16(3) reads as follows: '(2) Sub-paragraph (1) above does not apply to a building other than such is ordinarily sold in the course of the trade only after the construction or substantial reconstruction of buildings on the building in question', and that result is plainly inoperable. It illustrates that there is obviously an intention in the 1975 Act contrary to the application of s 3 of the 1889 Act and that therefore the extended definition of 'land' in that Act does not apply. Further it is clear that the wording of para 16 of Sch 10 does recognise the existence of land with a building on it. This alone demonstrates the futility of attempting to apply s 3 of the 1889 Act. That section if once applied to interpret the word 'land' must be consistent in its application. It cannot be used in one sense in para 16 of the schedule and used in another sense, or departed from, to suit the convenience of argument. Unless selective meanings could be permitted, the argument for the Crown fails. Again, s 54 of, and Sch 10 to, the 1975 Act are plainly designed to confer a tax benefit on traders holding stock and, as has been noted already the widest meaning is attached to the words 'trading stock'. To take the trading stock of a company such as the taxpayer out of a statutory benefit would require a positive provision to that effect or the clearest of implication arising from the wording of the relevant parts of the schedule. Sub-para (2) does exclude certain stock-in- trade from benefit, but as has been shown the stock of the company is not caught by these provisions. There is no implied exclusion to be found elsewhere and, indeed, where the 1975 Act expressly excludes certain types of stock-in-trade from tax benefit, as it does, it is almost impossible to suggest that other exclusions would be left to implication. In debate some attempt was made to suggest that the rights or interests of flat owners in subjacent support or in the land occupied by the ground floor flat favoured the Crown's contentions. This is a last desperate resort to cling to an unstable position. The Special Commissioners dealt with this matter in the penultimate paragraph of the reasons given for their decision when they say: 'Any rights which an owner may have in the solum in common with others, appears to be of a tenuous kind.' We agree with this disposal of that argument, although the word 'tenuous' could be more fully expressed. If the word 'land' in para 16(2)(*b*) of Sch 10 is used in its ordinary connotation, no difficulty arises. There is excluded from benefit dealings in land which is undeveloped and it is not difficult to see that there may well have been a policy decision to check speculation in land as such. If ordinary words used in their ordinary meaning result in a plain and sensible interpretation to be placed on a statutory provision, any attempt to displace that ordinary meaning by a tortuous argument which results in incomprehensibility must fail."

In *Abbott* v. *Philbin*[1] [1960] Ch 27 at page 49, Lord Evershed, M. R., explained the duty of the Court of Appeal faced with a decision of the Court of Session upon the construction of fiscal legislation applicable throughout the United Kingdom in the following terms:

"It is, of course, quite true that we in this court are not bound to follow the decisions of the Court of Session, but the Income Tax Act and the relevant Finance Acts apply indifferently both north and south of the border, and if we were to decide those questions in a sense diametrically opposite to the sense which appealed to the Scottish judges, we should lay down a law for England in respect of this not unimportant matter which would be completely opposite to the law which was applied, on exactly the

(1) 39 TC 82, at p 112.

same statutory provisions, north of the border. I cannot think that that is right. In a case of a revenue statute of this kind it is the duty of this court, unless there are compelling reasons to the contrary, to say, expressing such doubts as we feel we ought to do, that we should follow the Scottish decision."

That approach was commended by Lord Reid in the subsequent appeal to the House of Lords when he said (1961 AC 352 at page 373)([1]):

> "In the present case the Court of Appeal, though not bound to do so, very properly followed the decision of the Court of Session in *Forbes's Trustees* v. *Inland Revenue Commissioners*([2]). I say very properly, because it is undesirable that there should be conflicting decisions on revenue matters in Scotland and England."

Mr. Carnwath submitted that the decision of the Court of Session is nonetheless distinguishable at least as regards the three houses. He submitted that an apportionment must be made between the value of the houses (in respect of which, in the light of the decision of the Court of Session, stock relief is available) and the value of the sites on which the houses stand, which he submitted are clearly land within the exclusion. I should observe in passing that Mr. Oliver did not challenge the Commissioners' decision that the unbuilt-on gardens of these three houses are land within the exclusion and that an apportioned part of the value of the houses corresponding to the value of the gardens is excluded from stock relief. I do not think that Mr. Carnwath's suggested apportionment between the value of the houses and the value of the sites on which they respectively stand is consistent with the reasoning in the judgment of the Court of Session. It is I think clear, in particular from the last paragraph of the passage I have cited, that the Court of Session construed the word "land" where it first appears in sub-para (2) as comprehending only undeveloped land. The Court of Session would I think have included Mr. Carnwath's submissions as an attempt to displace the ordinary meaning of that word or as a "tortuous argument which results in incomprehensibility".

Moreover, if it had been the intention of the legislature that in the case of a fully developed site bought by a dealer without any intention of clearing and developing it or substantially reconstructing the buildings on it stock relief should not be allowed in respect of the value of the site without the buildings and should be allowed in respect of the value of the buildings alone, then the schedule would, it seems to me, have provided a machinery for apportionment. It would have specified the way in which the value of the site was to be ascertained—whether by valuing the site on the assumption that the buildings on it had been demolished or by valuing the whole and then deducting the value of the buildings, attributing any residue to the value of the site. It is no answer to say that an apportionment must in any event be made between the value of each house and the value of its garden. It not infrequently happens that the value or the price paid for a bundle of assets has to be apportioned between them; for instance, if a trader buys a bundle of assets, some of which are of a capital and some of a revenue nature. It is quite another thing to discriminate between the value of a building and the value of the site on which it stands, although of course there may be specific contexts where such an apportionment is specifically provided for.

([1]) 39 TC 82, at p 122. ([2]) 38 TC 12; 1958 SC 177.

In my judgment the decision of the Court of Session compels the conclusion that land within the exclusion from the definition of trading stock comprehends only land which has no building or other structure on it. It follows that this appeal must be dismissed.

Appeal dismissed, with costs.

Certificate granted to the Crown to appeal direct to the House of Lords pursuant to s 12, Administration of Justice Act 1969.

The Crown's appeal was heard in the House of Lords (Lords Scarman, Keith of Kinkel, Bridge of Harwich, Brandon of Oakbrook and Brightman) on 14 November 1984 when judgment was reserved. On 13 December 1984 judgment was given unanimously in favour of the Crown, with costs.

N. Phillips Q.C. and *Robert Carnwath* for the Crown.

S.J.L. Oliver Q.C. and *W.G.S. Massey* for the Company.

The following case was cited in argument in addition to the case referred to in the Speeches:—*Gilmore* (Valuation Officer) v. *Baker-Carr* [1962] 1 WLR 1165.

Lord Scarman—My Lords, I have had the advantage of reading in draft the speech to be delivered by my noble and learned friend Lord Keith of Kinkel. I agree with it, and for the reasons he gives I would allow the appeal.

Lord Keith of Kinkel—My Lords, the principal trade of the Respondent taxpayers is the building of houses for sale. They found that potential buyers were often inhibited because they encountered difficulty in selling their existing dwellings in order to raise the funds necessary for their intended purchases. So they adopted a scheme whereby they accepted customers' properties in satisfaction or part satisfaction of the purchase price of houses which they had for sale. The properties so acquired were sold as soon as possible in their existing condition.

At the end of their accounting year to 30 June 1979 the Respondents had on their books five properties acquired under this scheme, namely, two freehold semi-detached houses with gardens, a freehold terraced house with garden, a ground-floor leasehold flat without exclusive garden rights and a second-floor leasehold flat with no garden rights. They claimed stock relief in respect of all five properties unders 37 of and Sch 5 to the Finance Act 1976. By virtue of para 9 of that Schedule a trading company, where the value of its trading stock at the end of an accounting period exceeds its value at the beginning of that period, is entitled to relief against corporation tax assessed on Case I, Schedule D income tax principles. The amount of the relief is the amount of the increase in stock value during any accounting period less 15 per cent. of the relevant income of the trade for that period.

"Trading stock" is defined in para 29 of the Schedule, which in so far as material provides:

"(1) Subject to the provisions of this paragraph, in this Schedule 'trading stock' means property of any description, whether real or personal, being either—(*a*) property such as is sold in the ordinary course of the trade, profession or vocation in question, or would be sold if it were mature or if its manufacture, preparation or construction were complete; or (*b*) materials such as are used in the manufacture, preparation or construction of any such property as is referred to in paragraph (*a*) above, and includes work in progress. (2) Sub-paragraph (1) above does not apply to—(*a*) securities, which for this purpose includes stocks and shares; or (*b*) land, other than such as is ordinarily sold in the course of the trade, profession or vocation only—(i) after being developed by the person carrying on the trade, profession or vocation, or (ii) in the case of a company which is a member of a group, for the purpose of being developed by another company in that group; or (*c*) goods which the person carrying on the trade, profession or vocation has let on hire or hire-purchase. (3) In sub-paragraph (2) above, references to development are references to the construction or substantial reconstruction of buildings on the land in question and 'group' shall be construed in accordance with section 272 of the Taxes Act [Income and Corporation Taxes Act 1970]."

The Appellant inspector of taxes accepted that the five properties were such as were sold in the ordinary course of the Respondents' trade, but he rejected the claim on the ground that they were excluded by sub-para (2) as being land other than such as was ordinarily sold only after being developed by the Respondents. The Respondents appealed to the Special Commissioners, who held that they were entitled to relief except in respect of the gardens of the three freehold properties. The Appellant in turn appealed to the High Court. On 18 November 1983 Vinelott J. [1984] STC 65[1] dismissed the appeal, but granted a certificate under ss 12(1) and (3)(*b*) of the Administration of Justice Act 1969. Leave to appeal directly to this House was given on 20 February 1984. The principal reason why the certificate and the leave to appeal were granted was the existence of a previous decision directly in point by the Inner House of the Court of Session, namely, *Commissioners of Inland Revenue* v. *Clydebridge Properties Ltd.*[2] 1980 SC 68, which Vinelott J. felt constrained, somewhat reluctantly, to follow.

That case was decided under s 56 of and Sch 10 to the Finance (No.2) Act 1975, which were reproduced by s 37 of and Sch 5 to the Act of 1976, para 16 of the former Schedule corresponding to para 29 of the latter. The facts were that the taxpayer company carried on the trade of buying and selling small residential flats in tenement properties. Apparently its stock of such flats during the material period did not include any ground-floor flats. The First Division (Lord President Emslie, Lord Cameron and Lord Avonside) held that the flats were trading stock of the company, not being excluded by sub-para (2) of para 16. The opinion of the Court was delivered by Lord Avonside (not, as stated in the report at 53 TC 313, by Lord President Emslie.) Having referred to the definition of "land" in s 3 of the Interpretation Act 1889, viz. "In very Act... unless the contrary intention appears.... The expression 'land' shall include messuages, tenements, and hereditaments, houses, and buildings of any tenure," he said, at page 72[3]:

"The argument appears to be that section 3 of the 1889 Act should be applied, therefore a flat is 'land' and that 'land' is taken out of paragraph

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[1] Page 324 *ante*. [2] 53 TC 313. [3] *Ibid*, at pp 317–8.

16(1)(*a*) by the provisions of sub-paragraph (2)(*b*)(i) unless it is 'developed.' In the first place it is more than doubtful whether it is permissible to take from the definition of 'land' in the Interpretation Act only one of the terms used. If an attempt is made to apply the whole definition to paragraph 16(2)(*b*) it becomes completely meaningless. If it is permissible to extract the word 'building' and use it as 'land' then paragraph 16(2)(*b*) as necessarily construed together with paragraph 16(3) reads as follows:—'(2) Sub-paragraph (1) above does not apply to a building other than such as is ordinarily sold in the course of the trade only after the construction or substantial reconstruction of buildings on the building in question,' and that result is plainly inoperable. It illustrates that there is obviously an intention in the 1975 Act contrary to the application of section 3 of the 1889 Act and that therefore the extended definition of 'land' in that Act does not apply. Further it is clear that the wording of paragraph 16 of the Schedule does recognise the existence of land with a building on it. This alone demonstrates the futility of attempting to apply section 3 of the 1889 Act. That section, if once applied to interpret the word 'land,' must be consistent in its application. It cannot be used in one sense in paragraph 16 of the Schedule and used in another sense, or departed from, to suit the convenience of argument. Unless selective meanings could be permitted the argument for the appellants fails."

So in the result it was held that the only kind of heritable property which was excluded from the definition of trading stock by sub-para (2)(*b*) was land in a completely undeveloped state, i.e. such as had no buildings or structures on it of any kind. That was supported by the Respondents in the instant appeal and sought by them to be applied in a corresponding situation in England. Counsel for the Appellant, on the other hand, argued that the Interpretation Act definition of land was to be read into sub para (2).

It is clear that the proper construction of sub-para (2)(*b*) would present no difficulty if it were not for the presence of sub-para (3). Applying the Interpretation Act meaning of "land" to that word in sub-para (2)(*b*) would have the result of demonstrating that no land, in that wide sense, was intended to have the benefit of stock relief unless it was such as was not ordinarily sold in the course of the trade by the person carrying on the trade except after development by that person. That would evince an entirely reasonable and intelligible policy. The fact that land can embrace various species of property which by their nature are not capable of being developed would not present any problem. It would only be such species as were capable of being developed that would fall into the privileged class, if they were not ordinarily sold in an undeveloped state. The purpose of sub-para (3) is to define the meaning of references to development in sub-para (2), and it prescribes a more limited meaning than would, in a planning context, be applicable to such references. Here again, the definition can only have relevancein connection with such species of land as are capable of being developed. Having regard to what is the clear purpose of sub-para (3), it cannot, in my opinion, be relied on so as to attribute to "land" in sub-para (2)(*b*) a special limited meaning, excluding the application of the Interpretation Act. If it had been the intention of the draftsman to limit the meaning to land which is unbuilt on, one would have expected him to say so expressly. Further, it seems to me that the references to "reconstruction of buildings on the land in question" recognises that some land which is within the ambit of sub-para (2) may be land with buildings on it. Obviously the land the buildings on it form one hereditament. The

A Interpretation Act does not require an artificial separation between land and a building erected on it, contrary to the *maxim quidquid solo plantatur solo accedit*. For these reasons I am of opinion that there is nothing in the context to exclude the application of the Interpretation Act definition to the word "land" in sub-para (2)(*b*), whereas the context of sub-para (3) necessarily requires its limitation there to such land as is capable of being developed by the B construction or reconstruction of buildings on it. The rule that the same word occurring more than once in an enactment should be given the same meaning wherever it occurs is a guide which must yield to indications of contrary intention, and such an intention must necessarily be inferred here. A further consideration in favour of that view is that the contrary one would require a separation of the site of a building from the building itself with relief being C available in respect of the latter but not in respect of the former. This would involve an apportionment of value, for which no machinery is provided.

The fallacy in the reasoning contained in the opinion of the Court in *Commissioners of Inland Revenue v. Clydebridge Properties Ltd.*(1) 1980 SC 68 appears to me, with respect, to have been a failure to appreciate that sub-para (2), in creating an exception within an exception, carved out from the D generality of the meaning of the word "land" a particular limited category of land, namely, such as was capable of being developed. I conclude that the case was wrongly decided and should be overruled.

My Lords, for these reasons I would allow the appeal.

Lord Bridge of Harwich—My Lords, for the reasons given in the speech of my noble and learned friend Lord Keith of Kinkel, with which I agree, I E would allow this appeal.

Lord Brandon of Oakbrook—My Lords, I have had the advantage of reading in draft the speech prepared by my noble and learned friend, Lord Keith of Kinkel. I agree with it, and for the reasons which he gives I would allow the appeal.

Lord Brightman—My Lords, I also would allow this appeal for the F reasons given in the speech of my noble and learned friend, Lord Keith of Kinkel.

Appeal allowed with costs.

[Solicitors:—Messrs. Slaughter & May; Solicitor of Inland Revenue.]

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(1) 53 TC 313.