HIGH COURT OF JUSTICE (CHANCERY DIVISION)—28TH AND 29TH APRIL, 1953

COURT OF APPEAL—30TH NOVEMBER, AND 1ST AND 2ND DECEMBER, 1953

HOUSE OF LORDS—28TH, 29TH, 30TH AND 31ST MARCH, AND 5TH MAY, 1955

John Hudson & Co., Ltd.

v.

Kirkness (H.M. Inspector of Taxes)[1]

Income Tax, Schedule D—Vesting of railway wagons in British Transport Commission—Transport Act, 1947*—Compensation received—Balancing charge—Income Tax Act,* 1945 (8 & 9 *Geo.* VI, *c.* 32), *Section* 17.

The Appellant Company, which carried on business as coal merchants, owned a number of railway wagons which were requisitioned in 1939 *by the Minister of Transport on terms such that the Company were entitled to wear and tear allowances in respect thereof. On* 1*st January,* 1948, *the wagons were transferred to and vested in the British Transport Commission under Section* 29, *Transport Act,* 1947, *and compensation was subsequently paid under Section* 30 *of that Act. A balancing charge was raised on the footing that the transfer constituted a "sale" for the purposes of Section* 17 (1) (*a*), *Income Tax Act,* 1945.

On appeal before the Special Commissioners, it was contended on behalf of the Company that the compulsory transfer to and vesting in the Commission did not constitute a sale within the meaning of Section 17 (1) (*a*). *Alternatively, it was contended that, by virtue of Section* 22, *Finance Act,* 1936, *the Company should be treated as having carried on during the requisition period a separate trade of hiring wagons assessable under Case* VI *of Schedule D, which was permanently discontinued on the vesting date, and that following the decision of the Court of Session in the* "Girl Eileen" *case,* 31 T.C. 402, *no balancing charge could be made. On behalf of the Crown it was contended that the transfer, despite its compulsory nature, was a sale, that the Company had not, in fact, carried on a separate trade of hiring wagons and that Section* 22, *Finance Act,* 1936, *did not require the hiring of wagons to be treated as a separate trade during the period of requisition.*

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(1) Reported (Ch.D.) [1953] 1 W.L.R. 749; 97 S.J. 403; [1953] 2 All E.R. 64; (C.A.) [1954] 1 W.L.R. 40; 98 S.J. 10; [1954] 1 All E.R. 29; 217 L.T. Jo. 9; (H.L.) [1955] 2 W.L.R. 1135; 99 S.J. 368; [1955] 2 All E.R. 345.

The Special Commissioners decided in favour of the Crown on both points and dismissed the appeal. The Company demanded a Case.

In the High Court and above no argument was heard on the application of Section 22, *Finance Act,* 1936, *following the decision of the Court of Appeal in* North Central Wagon and Finance Co., Ltd. *v.* Fifield, 34 T.C. 59.

Held, *that the transfer, vesting and compensation did not constitute a sale for the purposes of Section* 17 (1) (*a*), *Income Tax Act,* 1945.

CASE

Stated under the Income Tax Act, 1952, Section 64, 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 27th September, 1951, John Hudson & Co., Ltd. (hereinafter called "the Company") appealed against an assessment made upon the Company for the year 1948-49 under Case I of Schedule D, Income Tax Act, 1918, in the sum of £29,021. The assessment was so made, in circumstances hereinafter appearing, in order to give effect to a balancing charge on the Company under Section 17 of the Income Tax Act, 1945.

2. The Company was incorporated on 6th April, 1920, to take over part of the business of a company of the same name which had gone into liquidation. The Company's business was that of coal merchants. It had a number of subsidiary companies which also carried on business as coal merchants.

3. The Company owned railway wagons which were used for the transport of the coal in which the Company and its subsidiary companies were dealing. The number of wagons owned by the Company was 545 on 1st April, 1939, and 663 on 1st April, 1947, the increase being due to its having taken over the wagons of two wholly-owned subsidiaries when these went into liquidation.

4. The Company has not at any time either manufactured wagons or dealt in them by way of purchase and sale; nor before 3rd September, 1939, did it hire out wagons to other persons.

5. On 3rd September, 1939, the Minister of Transport, acting under the powers contained in Regulation 53 of the Defence (General) Regulations, 1939, and S.R. & O. 1939 No. 1085, gave notice requisitioning privately-owned railway wagons. The wagons of the Company and its subsidiaries were requisitioned by the Minister under this Order.

6. (1) An agreement was reached in June, 1940, on the terms of the requisition, to which the Company in common with all wagon owners affected was a party. This agreement is set out in a "charter", a copy of which is annexed, marked "A", and forms part of this Case[1].

(2) Paragraph 1 of the charter states:

> "The Government will undertake at their own cost repairs and maintenance but not replacement of the Wagons requisitioned."

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[1] Not included in the present print.

Thus the Government were not responsible for depreciation and wear and tear, such responsibility remaining with the wagon owners.

(3) Paragraph 3 provides for a compensation rental to be paid by the Minister of Transport during the period of requisition, according to a scale having regard to the age and capacity of the wagons.

7. It was admitted on behalf of the Company that it had not in fact carried on during the period of requisition a trade of hiring out wagons separate from its trade of coal merchants, but had during that period carried on one trade only, that of coal merchants. It was admitted on behalf of the Respondent that during the period of requisition the Company's wagons were let upon such terms that the burden of the wear and tear thereof fell directly on the lessor (the Company).

8. (1) On 1st January, 1948, the property in the requisitioned wagons was transferred to and vested in the British Transport Commission under Section 29 of the Transport Act, 1947.

The said Section provides as follows as regards each wagon:—

> "(*a*) the property in that wagon shall vest in the Commission on the date of transfer, free from any mortgage or other like incumbrance, and the requisition shall then cease; and
>
> (*b*) the Crown shall not be liable for any compensation under the Compensation (Defence) Act, 1939, or otherwise in respect of any damage to the wagon occurring during the period of requisition."

(2) Section 30 of the said Act provides that, where the property in any wagon vests in the Commission, the Commission shall pay, as compensation in respect of each wagon,

> "an amount determined, by reference to the type of wagon and the year in which the wagon was first built, in accordance with the Table set out in the Sixth Schedule to this Act."

(3) Section 32 provides that the amount so payable by way of compensation shall be satisfied by the issue to the person entitled thereto of British Transport stock.

9. The Company in due course received compensation for its wagons the property in which had vested in the Commission. The amount of the compensation was substantially higher than the written-down value of the wagons for Income Tax purposes as appearing in the Company's books. This written-down value was substantially lower than the original cost of the wagons. The balancing charge of £29,021, given effect to in the assessment to Income Tax for 1948–49 under appeal, represents, with the exception of £963 referable to other matters and not in dispute, the excess of the original cost over the said written-down value. For reasons hereinafter appearing it was said for the Company that it was not subject to any balancing charge in respect of the said excess.

10. The provisions under which the balancing charge was made on the Company are those of Section 17 of the Income Tax Act, 1945, the parts of which relevant to the consideration of this appeal are as cited below: the wagons concerned in the present case fall within the description of the machinery or plant in the opening words of the Section, and "the appointed day" was 6th April, 1946 (Finance (No. 2) Act, 1945, Section 18).

> "17.—(1) Subject to the provisions of this section, where, on or after the appointed day, any of the following events occurs in the case of any machinery or plant in respect of which an initial allowance or a deduction under Rule 6

of the Rules applicable to Cases I and II of Schedule D has been made or allowed for any year of assessment to a person carrying on a trade, that is to say, either—

(*a*) the machinery or plant is sold, whether while still in use or not; or

(*b*) the machinery or plant, whether still in use or not, ceases to belong to the person carrying on the trade by reason of the coming to an end of a foreign concession; or

(*c*) the machinery or plant is destroyed; or

(*d*) the machinery or plant is put out of use as being worn out or obsolete or otherwise useless or no longer required,

and the event in question occurs before the trade is permanently discontinued, an allowance or charge (in this Part of this Act referred to as 'a balancing allowance' or 'a balancing charge') shall, in the circumstances mentioned in this section, be made to, or, as the case may be, on, that person for the year of assessment in his basis period for which that event occurs . . .'

(3) If the sale, insurance, salvage or compensation moneys exceed the amount, if any, of the said expenditure"

—the capital expenditure of the person in question on the provision of the plant or machinery—

"still unallowed as at the time of the event, a balancing charge shall be made, and the amount on which it is made shall be an amount equal to the excess or, where the said amount still unallowed is nil, to the said moneys".

The reason why in this case the balancing charge in question was limited to the excess of the original cost of the wagons over their value as written down for Income Tax purposes appears from the provisions of Sub-section (4) of Section 17. The effect of this Sub-section is that no balancing charge may exceed the amount of the allowances already given, i.e. the difference between the original cost and the value as written down for Income Tax purposes.

By Section 58 (3) of the Income Tax Act, 1945, any references in the Act to a sale of any property are to be read as including a reference to the exchange of any property.

11. Other provisions to which reference was made in the contentions for the Company as hereinafter appearing are those of Section 22 of the Finance Act, 1936, and Sections 20 and 22 of the Income Tax Act, 1945. These Sections are cited below for convenience of reference. Finance Act, 1936, Section 22:—

"22.—(1) No account shall be taken of the value of non-rateable machinery in ascertaining the annual value—

(*a*) of any property in Great Britain according to the general rule of No. I of Schedule A; or

(*b*) of any property whatsoever for the purpose of Rule 5 of the rules applicable to Cases I and II of Schedule D, or for the purpose of section eighteen of the Finance Act, 1919.

(2) The profits arising to any person from the letting of any machinery the value of which is not taken into account for the purpose of assessment to income tax under Schedule A shall be deemed to be profits chargeable to income tax under Case VI of Schedule D.

(3) In this section . . .

(*b*) the expression 'machinery' includes plant, machines, tools, and appliances;

(*c*) the expression 'non-rateable machinery' in relation to any property, means machinery of any description the value whereof is not taken into account for the purposes of rating under the relevant rating enactment, or would not be so taken into account if that enactment had effect with respect to the valuation of the property;

(*d*) the expression 'relevant rating enactment' means—

(i) in relation to property in England or outside the United Kingdom, paragraph (*b*) of subsection (1) of section twenty-four of the Rating and Valuation Act, 1925".

Income Tax Act, 1945, Section 20(1):—

"20.—(1) Where machinery or plant is let upon such terms that the burden of the wear and tear thereof falls directly upon the lessor, there shall be made to him, for the year of assessment in which the appointed day falls and every subsequent year of assessment, an allowance on account of the wear and tear of so much of the machinery or plant as is in use at the end of the year.

(2) Paragraph (5) of Rule 6 of the Rules applicable to Cases I and II of Schedule D shall not have effect in relation to the year of assessment in which the appointed day falls or any subsequent year of assessment, and the preceding provisions of this Part of this Act and the remaining provisions of the said Rule 6 shall apply in relation to any such lessor of machinery or plant as is mentioned in subsection (1) of this section as if the machinery or plant were, during the period of the letting, in use for the purposes of a trade carried on by him, and as if any reference to deductions allowed under the said Rule 6 included a reference to any allowance made under the said subsection (1)."

Income Tax Act, 1945, Section 22:—

"22.—(1) Any allowance or charge made to or on any person under the preceding provisions of this Part of this Act shall, unless it is made under or by virtue of section twenty of this Act, be made to or on that person in charging the profits or gains of his trade.

(2) Any allowance made under or by virtue of section twenty of this Act shall be made by way of discharge or repayment of tax and shall be available primarily against income from the letting of machinery or plant.

(3) Any charge made under or by virtue of section twenty of this Act shall be made under Case VI of Schedule D."

12. It was contended on behalf of the Company:—

(1) that, for a transaction to constitute a sale, there must be mutual assent between the parties (reference was made to Benjamin on Sale, 8th edn., at page 1);

(2) that the law with regard to exchange is the same as that with regard to sale, mutual assent being equally required (reference was made to Halsbury's Laws of England, 2nd edn., vol. 25, para. 367 and vol. 29, para. 1);

(3) that consequently the compulsory vesting of the Company's wagons in the Transport Commission under Section 29 of the Transport Act, 1947, was not a sale within the meaning of head (*a*) in Section 17 of the Income Tax Act, 1945, nor (by reference to the fact that the Company received its compensation in British Transport stock) an exchange within the said meaning as extended by Section 58 (3) of the said Act;

(4) that the transaction in question did not fall within any of the events specified in the said Section 17, and that therefore no balancing charge could be raised in respect thereof;

(5) alternatively, that if (contrary to the above contentions) the compulsory vesting was a sale, the effect of the requisitioning order of 3rd September, 1939, and the charter relative thereto was to create the relationship of lessor and lessee of the wagons between the Company and the Transport Commission, the burden of wear and tear falling directly upon the Company as lessor;

(6) that Sub-section (2) of Section 22 of the Finance Act, 1936, applied in unlimited terms to any machinery the value of which is not taken into account for the purpose of assessment to Income Tax, Schedule A (the expression "machinery" being so defined in Sub-section (3) as to include wagons), and provided that the profits from the letting of any

(1) As amended by the Finance Act, 1949, Sixth Schedule, Part I, Para. 9 (11).

such machinery should be deemed to be profits chargeable to Income Tax under Case VI of Schedule D;

(7) that Section 20 of the Income Tax Act, 1945, dealt specifically with the case of lessors of machinery or plant, as distinct from earlier Sections which dealt with the case of persons using their machinery or plant in a trade carried on by them;

(8) that the said Section 20 provided (*inter alia*) that in relation to such lessors the provisions of the said Act with regard to balancing charges should apply as if the machinery or plant concerned were, during the period of the letting, in use for the purposes of a trade carried on by the lessor;

(9) that Sub-section (3) of Section 22 of the Income Tax Act, 1945, provided that any balancing charge made under or by virtue of the said Section 20 should be made under Case VI of Schedule D;

(10) that the statutory provisions referred to in contentions (6) to (9) above were inter-related, and had effect so that, for the purposes of Section 17 of the Income Tax Act, 1945, which deals with balancing charges, the Company must be deemed as a matter of law to have been carrying on a separate trade of hiring wagons during the period of requisition;

(11) that even if Section 22 of the Finance Act, 1936, did not apply to the present case, Sections 20 and 22 of the Income Tax Act, 1945, were alone sufficient to have the said effect;

(12) that such separate trade as aforesaid was permanently discontinued when the vesting took effect, and that the latter event did not occur before the discontinuance;

(13) that consequently on the authority of the "Girl Eileen" case, *Commissioners of Inland Revenue* v. *Reid*, 31 T.C. 402, no balancing charge could be made on the Company by reference to the said event.

13. It was contended on behalf of the Crown:—

(1) (*a*) that sale is the transfer of the ownership of a thing from one person to another for a money price (reference was made to Halsbury's Laws of England, 2nd edn., vol. 29, para. 1);

(*b*) that such a transfer took place on the compulsory vesting of the property in the Company's wagons in the Transport Commission under Section 29 of the Transport Act, 1947;

(*c*) that the mere fact that the vesting of the property in the wagons was compulsory in no way negatived a sale;

(*d*) that consequently the aforesaid transfer of the property in the wagons was a sale within the meaning of (*a*) in Sub-section (1) of Section 17 of the Income Tax Act, 1945, and was an "event" within the said Sub-section which, on the facts of the case, required a balancing charge to be made on the Company under Sub-section (3) of Section 17.

(2) As regards Section 22 of the Finance Act, 1936:

(*a*) that by reason of the definition of "non-rateable machinery" in Sub-section (3) (*c*) of the said Section, Sub-section (1) of the said Section is dealing with machinery

"so annexed to the freehold or realty as to form part of it"

(*Crawford* v. *R. S. Hudson, Ltd.*, 19 T.C. 434, *per* Finlay, J., at page 442);

(*b*) that the reference in Sub-section (2) of the said Section to

> "any machinery the value of which is not taken into account tor the purpose of assessment to income tax under Schedule A"

is a reference to the machinery mentioned in Sub-section (1) of the said Section ;

(*c*) that the application of the said Sub-section (2) is confined to the case where the letting of such machinery does not constitute or form part of a Case I trade carried on by the lessor ;

(*d*) that the requisitioning of the Company's wagons did form part of the single Case I trade carried on by the Company during the period of requisition ;

(*e*) that the said Sub-section (2) does not provide that the letting of such machinery is to be deemed to be a trade carried on by the lessor separately from any Case I trade which he may in fact be carrying on ;

(*f*) that the said Section 22 has no connection with or reference to the question whether or not a balancing charge is competent under Section 17 of the Income Tax Act, 1945, nor has it any connection with or reference to either Section 20 or Section 22 of the Income Tax Act, 1945 ;

(*g*) that the Company is not to be deemed, by virtue of Section 22 of the Finance Act, 1936, to have carried on during the period of requisition a separate trade of letting its wagons which was permanently discontinued on 1st January, 1948.

(3) As regards Sections 20 and 22 of the Income Tax Act, 1945 :

(*a*) that Section 20 of the Income Tax Act, 1945, is confined to the case of a lessor whose letting of machinery or plant does not constitute or form part of a Case I trade carried on by him, and whose title to any allowance for wear and tear under Rule 6, Cases I and II, Schedule D, had previously fallen not under Paragraph (1) but under Paragraph (5) of the said Rule, which latter Paragraph was repealed by Sub-section (2) of the said Section 20 ;

(*b*) that the requisitioning of the Company's wagons did form part of the single Case I trade carried on by the Company during the period of requisition ;

(*c*) that, in the case of a lessor falling within the said Section 20, Sub-section (2) thereof does not provide that he should be deemed to be carrying on a trade of letting machinery separate from any Case I trade he may in fact be carrying on ; it provides, as regards wear and tear, that he should be entitled to an allowance to which by reason of the repeal of the said Rule 6 (5) he would not otherwise have been entitled ;

(*d*) that consequently the said Section 20 does not apply to the Company ;

(*e*) that consequently neither does Section 22 of the Income Tax Act, 1945, apply to the Company ;

(*f*) that the Company is not to be deemed, either by virtue of Sections 20 and 22 of the Income Tax Act, 1945, alone or by virtue of those Sections read in conjunction with Section 22 of the Finance Act, 1936, to have carried on during the period of requisition a separate trade of letting its wagons which was permanently discontinued on 1st January, 1948.

(4) that the balancing charge made in respect of the said transfer of the wagons (such transfer being, as aforesaid, a sale) had been correctly raised under Section 17 of the Income Tax Act, 1945, and that the relative assesment should be confirmed in principle.

14. We, the Commissioners who heard the appeal, gave our determinations as follows:—

(1) John Hudson & Co., Ltd. (hereinafter called "the Company") appeals against an assessment under Case I, Schedule D, for the year 1948–49 in the sum of £29,021 in respect of a balancing charge under the provisions of Section 17 (1) and (3), Income Tax Act, 1945. The question at issue before us concerns an amount of £28,058 included in the charge: this amount is referable to a number of railway wagons previously owned by the Company, the property in which vested in the Transport Commission (hereinafter called "the Commission") under the provisions of Section 29 (*a*), Transport Act, 1947, on the date of transfer, i.e. 1st January, 1948.

(2) The first point taken by the Company is that the said railway wagons, being admittedly machinery or plant, were not sold on the said transfer date, or at any subsequent date, within the meaning of Section 17 (1) (*a*), because, it is said, there was not in this case an agreement for sale nor an actual sale, nor any mutual assent between the parties, nor a price or a promise to pay a price. It is further said that, even if the extended meaning of sale as including exchange is invoked, there was still no contract involving the consent of both parties. In support of this contention we were referred in particular to Benjamin on Sale, 8th edn., page 1.

(3) We are unable to take such a view. Under the provisions of Section 17 (3) a balancing charge shall be made

> "If the sale, insurance, salvage or compensation moneys exceed the amount, if any, of the said expenditure still unallowed at the time of the event".

While insurance and salvage moneys may arise only in the event of the destruction of the plant (Section 17 (1) (*c*), which is not in point here), it appears to us that compensation moneys—an inappropriate term to apply to an ordinary sale between a willing vendor and purchaser—must usually arise under Section 17 (1) (*a*), which specifies the event where "machinery or plant is sold".

(4) However this may be, what took place was in our opinion a

> "transfer of the ownership of a thing from one person to another for a money price"

(Halsbury's Laws of England, vol. 29, page 5, para. 1), and we hold that it was a sale. We do not doubt that the wrongful confiscation of a chattel, although accompanied by a subsequent payment of a sum called "compensation", would not constitute a sale. In this case, however, Section 29 of the Transport Act, 1947, vested the property in the Company's wagons, which were already lawfully in the possession of the Minister of Transport under S.R. & O. 1939 No. 1085, in the Commission, and the same enactment, by Section 30, provided compensation, to be computed under the provisions of the Sixth Schedule, which we hold was a money price. We think also that, if assent is necessary to the conclusion of a valid sale, it must be assumed to be present when a Statute, such as the Transport Act, 1947, becomes law, since the Company as a person living within the jurisdiction of the British Crown must assent to all such laws as are duly enacted, including the enactments

contained in Sections 29 and 30 aforesaid. We are to some extent fortified in this opinion by reference to Section 8 of the Transport Act, 1947, which deals with the "compulsory purchase of land", as in our opinion the assent necessary in the vendor to give a valid title in land to the Commission as purchaser is therein assumed to be compatible with a "compulsory" sale of real property.

(5) Further, we notice a provision contained in the Seventh Schedule to the Finance Act, 1947, which deals with Income Tax in relation to assets transferred under the Coal Industry Nationalisation Act, 1946. Certain of these assets were to be transferred to the National Coal Board "without option" (Section 5 (1) of the said Act, and Part I of the First Schedule thereto).

The provision in the Seventh Schedule to the Finance Act, 1947, to which we refer is that of Paragraph 3 of Part III ("Liability to Income Tax of the Board"), which is as follows:—

> "The vesting of, or of an interest in, any relevant property shall not be treated as a sale, or as a purchase, for any of the purposes of Parts I, II, III, V and VI of the Income Tax Act, 1945, or of Part IV of the Finance Act, 1944".

Our attention was not called to this provision by either party to the present appeal, and we have not had the advantage of any argument upon it. But *prima facie* it clearly implies that the Legislature regarded a sale for the purposes of the Income Tax Act, 1945 (including the purposes of Section 17 thereof, which falls in Part II of the Act) as including the vesting of any property on a compulsory transfer. Otherwise there would have been no need or occasion for the said provision.

(6) The alternative contention for the Company assumes (as we have held to be the case for reasons given above) that there was a sale of the railway wagons on 1st January, 1948, by the Company to the Commission. It is said that such sale did not occur before the trade was permanently discontinued, and that consequently no balancing charge is competent. The chain of reasoning is as follows. The requisitioning of these railway wagons by the Minister of Transport under S.R. & O. 1939 No. 1085, under the terms laid down in the charter, created the relations of lessor and lessee between the parties to this agreement. Under the provisions of Section 22 (2) of the Finance Act, 1936, the profits arising to the Company from letting these wagons must be deemed to be profits chargeable to Income Tax under Case VI, Schedule D, and not under Cases I and II. Further, for the purposes of Section 17 of the Income Tax Act, 1945, the Company must be deemed by the provisions of Section 20 (2) of that Act read together with those of Section 22 (2) of the Finance Act, 1936, to have been carrying on a separate trade of hiring railway wagons between the year 1939 and the date of the vesting of those wagons in the Commission on 1st January, 1948, on which date such trade was permanently discontinued within the meaning of Section 17 (1). Thus, on the authority of the case of the "Girl Eileen", 31 T.C. 402, no balancing charge is competent, since the discontinuation of this notional trade or business was simultaneous with the sale.

(7) We find ourselves quite unable to accept these contentions. It is admitted for the Company that in fact it continued during the requisition period, lasting till 1st January, 1948, to carry on one trade only. In these circumstances it is, we think, clear that under the general provisions relating to Case I of Schedule D the compensation moneys

paid to the Company under paragraph 3 of the charter were receipts such as, in the absence of provision to the contrary, must come into the computation of its Case I liability. It would, in our opinion, be surprising to find a provision taking such receipts out of Case I and putting them into Case VI. It is said, however, that a mandatory provision requiring them to be charged under Case VI is to be found in Sub-section (2) of Section 22 of the Finance Act, 1936.

(8) We must seek to interpret the said Section 22 according to its own terms, and here we think that the contention of the Crown is right. Sub-section (1), when it speaks of non-rateable machinery, is dealing only with machinery which, because it is attached to the freehold, would but for the Sub-section be taken into account in ascertaining the annual value of property assessable under No. I of Schedule A. It seems clear to us that the terms of Sub-section (2) are closely related to those of Sub-section (1). The matter would have been clinched beyond all question if the words " any machinery " in Sub-section (2) had been " any such machinery " or " any machinery as aforesaid ", but we can feel no doubt that the qualifying words which follow " any machinery " must be read as having the same effect, and that Sub-section (2) is limited to the same narrowly limited class of machinery as Sub-section (1). Reliance was placed for the Company on the definition of " machinery " in (*b*) of Sub-section (3), but this in our opinion is subordinate to the definition in (*c*) of " non-rateable machinery " with which the Section as a whole is concerned, as " machinery of any description the value whereof is not " or would not be " taken into account for the purposes of rating ". So read, the definition of " machinery " appears, it is true, to be unnecessarily wide, but we think it would be altogether an undue strain to take it in isolation and apply it to Sub-section (2) so as to enlarge the meaning of the machinery dealt with in that Sub-section.

We conclude for the above reasons that Section 22 (2) has no application to the present case.

(9) It follows that the nexus between Section 22 of the Finance Act, 1936, and Section 20 of the Income Tax Act, 1945, which it is sought to establish in the alternative contention for the Company, breaks down.

(10) It is nevertheless said, as we understand the argument, that, even if this be so, Section 20 of the Income Tax Act, 1945, applies to the case of the Company so far as it was a lessor hiring wagons; that under Section 22 (3) any balancing charge made by virtue of Section 20 is to be made under Case VI of Schedule D; that consequently any balancing charge on the Company so far as relating to the hiring of wagons is to be made as if the wagons were in use for the purposes of a separate trade carried on by the Company, which separate trade was permanently discontinued on the date when the wagons were sold; and that therefore no balancing charge is competent.

(11) We think that this contention fails *in limine*. It seems clear from the terms of Sub-section (2) of Section 20 that no such lessor as is mentioned in Sub-section (1) in fact has machinery or plant " in use for the purposes of a trade carried on by him ". In other words, Section 20 is solely concerned with cases where the letting does not in fact constitute a trade, or part of a trade, carried on by the lessor for the purposes of which the machinery or plant is used; in such cases of pure letting the Section grants to the lessor an allowance for wear and tear such as previously he could only have claimed under Rule 6 (5) of Cases I and II of Schedule D, which is repealed by Sub-section (2) of the Section.

The case of the Company is entirely different. During the period of requisition it continued in fact to carry on a single trade, part of which was represented by the hiring of wagons to the Minister of Transport. In our opinion allowance for wear and tear as respects those wagons was due by reference to Rule 6 (1) to the exclusion of Rule 6 (5). The wagons belonged to the Company, which was responsible for the burden of wear and tear. While they may have been used by the Minister for purposes of carrying goods, etc., they were none the less "used for the purposes of the trade" of the Company in terms of Rule 6 (1), i.e. for the purposes of hiring wagons, which hiring formed part of its single trade.

(12) We therefore conclude that the Company cannot be deemed to have carried on a separate trade of hiring. The hiring formed part of its single trade as coal merchants, which was not discontinued when the wagons were, as we have held in paragraph (4) above, sold on 1st January, 1948, and the hiring can only be treated as part of that still continuing trade. We hold that the balancing charge for the year 1948–49 was properly made under the provisions of Section 17 of the Income Tax Act, 1945, and confirm it in the sum of £29,021.

15. The Appellant Company immediately after the determination of the appeal declared to us its dissatisfaction therewith as being erroneous in point of law and in due course required us to state a Case for the opinion of the High Court pursuant to the Income Tax Act, 1918, Section 149, which Case we have stated and do sign accordingly.

16. The question of law for the opinion of the High Court is whether, on the facts stated in this Case, the Appellant Company is subject to a balancing charge under Section 17 of the Income Tax Act, 1945, as respects the compensation received by it from the Transport Commission on the Company's wagons vesting in the Commission under Section 29 of the Transport Act, 1947.

G. R. Hamilton,
A. W. Baldwin,
} Commissioners for the Special Purposes of the Income Tax Acts.

Turnstile House,
94-99, High Holborn,
London, W.C.1.

27th June, 1952.

The case came before Upjohn, J., in the Chancery Division on 28th and 29th April, 1953, when judgment was given against the Crown, with costs.

Mr. F. Grant, Q.C., Mr. John Senter, Q.C., and Mr. Anthony Barber appeared as Counsel for the Company, and Mr. Cyril King, Q.C., and Sir Reginald Hills for the Crown.

Upjohn, J.—This is an appeal by John Hudson & Co., Ltd., whom I will call "the Company", against an assessment made upon them for the year 1948–49 under Case I of Schedule D of the Income Tax Act, 1918, in the sum of £29,021. The assessment was made in order to give effect to a balancing charge on the Company under Section 17 of the Income Tax Act, 1945.

The Appellant Company are coal merchants, and in connection with their business they owned in the year 1947, 663 railway wagons. Those railway wagons had in fact been under requisition to the Ministry of

Transport from some date in 1939. That fact is irrelevant to the point which I have to consider (except to bring the matter within Section 29 of the Transport Act, 1947, referred to later); but I mention it because there is a second point in the case to which that fact is directly relevant. That is a point which depends upon Section 22 of the Finance Act, 1936, but the Company is precluded from arguing it in this Court by reason of the recent decision of the Court of Appeal in the case of the *North Central Wagon and Finance Co., Ltd.* v. *Fifield*[1], [1953] 1 All E.R. 1009. The point is formally reserved by the Company for argument should this case go to a higher Court.

The point I have to consider is purely one of the construction of certain Acts. When the Transport Act, 1947, came into force on 1st January, 1948, the property in the Company's railway wagons was transferred to and vested in the British Transport Commission under Section 29 of the Transport Act, 1947.

It is argued by the Crown, and was so held by the Special Commissioners, that that transfer was a sale for the purposes of making a balancing charge under the provisions of Section 17 of the Income Tax Act, 1945. That is the whole question. I must turn straight away to that Section; its general object appears to be this. If plant and machinery have been depreciated in the Company's books and the appropriate Income Tax allowances have been made, and the plant or machinery is subsequently sold at a higher price than its depreciated price, then the excess of the one over the other is subject to a balancing charge upon which Income Tax could be levied. On the other hand, if the price for which the plant or machinery is disposed of is less than its written down price, an allowance is to be made to the taxpayer.

The exact terms of Section 17 are these:

> "Subject to the provisions of this section, where, on or after the appointed day,"

—that was 6th April, 1946—

> "any of the following events occurs in the case of any machinery or plant in respect of which an initial allowance or a deduction under Rule 6 of the Rules applicable to Cases I and II of Schedule D has been made or allowed for any year of assessment to a person carrying on a trade, that is to say, either—"

—(*a*) is the important one—

> "(*a*) the machinery or plant is sold, whether while still in use or not; or (*b*) the machinery or plant, whether still in use or not, ceases to belong to the person carrying on the trade by reason of the coming to an end of a foreign concession; or (*c*) the machinery or plant is destroyed; or (*d*) the machinery or plant is put out of use as being worn out or obsolete or otherwise useless or no longer required, and the event in question occurs before the trade is permanently discontinued, an allowance or charge (in this Part of this Act referred to as 'a balancing allowance' or 'a balancing charge') shall, in the circumstances mentioned in this section, be made to, or, as the case may be, on, that person for the year of assessment in his basis period for which that event occurs".

I need not read any more in Sub-section (1). Sub-section (3) is in these terms:

> "If the sale, insurance, salvage or compensation moneys exceed the amount, if any, of the said expenditure still unallowed as at the time of the event, a balancing charge shall be made, and the amount on which it is made shall be an amount equal to the excess or, where the said amount still unallowed is nil, to the said moneys".

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(1) 34 T.C. 59.

(Upjohn, J.)

The Special Commissioners seem to have thought that that reference to "compensation moneys" was a reference to a sale, and that was an element, I think, which induced them to come to the conclusion that the transfer under the Transport Act was a sale. But, when reference is made to the definition Section, Section 68, where

> "sale, insurance, salvage or compensation moneys"

are defined, it is perfectly clear that the words "compensation moneys" are inserted to deal with the case where a foreign concession has come to an end, or where there has been some loss to the plant and compensation by way of damages or otherwise is paid. Therefore, those words do not assist me one way or the other.

As I have said, it is common ground that the sole point I have to consider is whether the transfer to the Transport Commission falls within Section 17 (1) (*a*)—that is: has there been a sale?

I turn next to the Transport Act. The relevant Section dealing with railway wagons is Section 29. It is in these terms:

> "Where, immediately before the date of transfer, any privately owned railway wagon is under requisition by virtue of an exercise of the powers in that behalf conferred by Regulation 53 of the Defence (General) Regulations, 1939—(*a*) the property in that wagon shall vest in the Commission on the date of transfer, free from any mortgage or other like incumbrance, and the requisition shall then cease; and (*b*) the Crown shall not be liable for any compensation under the Compensation (Defence) Act, 1939, or otherwise in respect of any damage to the wagon occurring during the period of requisition."

Then Sub-section (1) of Section 30 provides:

> "Where under the last preceding section the property in any wagon vests in the Commission, the Commission shall, subject to the provisions of the three next succeeding subsections, pay as compensation in respect thereof an amount determined, by reference to the type of wagon and the year in which the wagon was first built, in accordance with the Table set out in the Sixth Schedule to this Act."

Before turning to the Schedule, I will read the remainder of the relevant Sections. I think the next one I need read is Sub-section (6):

> "No compensation, other than that payable under this section, shall be payable in respect of the vesting, under the last preceding section, of the property in any wagon in the Commission."

Then Section 31 (1) provides:

> "Subject to the provisions of this section, the compensation payable by the Commission in respect of a privately-owned wagon vesting in them on the date of transfer shall be paid to the person who, immediately before the date of transfer, was the owner of the wagon."

Then Section 32 (1) deals with the payment of compensation:

> "The amount payable by way of compensation in respect of a wagon the property in which vests in the Commission on the date of transfer shall be satisfied in the manner provided by Part VI of this Act by the issue to the person entitled thereto of British transport stock"

I think those are the only relevant statutory provisions to which I need refer at this stage.

The Sixth Schedule makes provision for compensation for the acquisition of privately-owned wagons, and it makes the following provision which is undoubtedly a very sensible provision when you are acquiring many thousands of railway wagons. The compensation depends entirely on this

principle; there is a sliding scale governed entirely by the year in which the wagon was built and in accordance with its specification, that is to say, its weight and its tare. Thus, if the wagon was built in the year 1946 and is a 10-ton wagon, the amount to be paid by way of compensation was £248. It matters not one iota whether the wagon was in an excellent state of repair or in a very bad state of repair.

It is contended by the Company that that acquisition of railway wagons by the Transport Commission cannot properly be described as "a sale" for the purposes of Section 17. A sale at common law has been well defined by the late Mr. Benjamin in his treatise on "Sale of Personal Property" in these terms. I am reading from the second edition, which was prepared by the author himself, page 1:

> "By the common law a sale of personal property is usually termed a 'bargain and sale of goods.' It may be defined to be a transfer of the *absolute or general* property in a thing for a price in *money*. Hence it follows that, to constitute a valid sale, there must be concurrence of the following elements, viz.: (1st) Parties competent to contract; (2nd) Mutual assent; (3rd) A thing, the absolute or general property in which is transferred from the seller to the buyer; and (4th) A price in money paid or promised. That it requires (1st) parties competent to contract, and (2nd) mutual assent, in order to effect a sale, is manifest from the general principles which govern all contracts."

It has been submitted by the Crown that it is sufficient in order to constitute a sale that there should be a transfer of property and payment of a price, and that mutual assent or *consensus ad idem* is not necessary. It is pointed out that a sale may be wider and have more far-reaching effects than a contract of sale. A sale itself, it is said, need not have mutual assent. It is conceded by the Crown in this case that, by the transfer in 1947 or 1948, there could not properly be said to be any mutual assent about the matter at all, and the Crown did not attempt to support a finding by the Commissioners that everyone must be presumed to have assented to the Act of Parliament. I cannot accept this contention on behalf of the Crown. A sale is really a shorthand way of referring to a bargain and sale, and at common law there cannot be a sale without a bargain. It follows that mutual assent is necessary. Therefore, at common law, it seems to me quite plain that what happened here cannot possibly be described as "a sale".

However, that does not necessarily end the matter in favour of the Company, because it is said by the Crown: "In any event here is a compulsory purchase", and that connotes a compulsory sale, and that is a sale, and, therefore, it is within Section 17 of the Income Tax Act, 1945. The Company does not concede that a compulsory sale would necessarily be within the Act, but it submits that when the Transport Act is properly construed the transaction cannot be even described as a compulsory purchase or a compulsory sale. Now it is a very familiar part of our law to have compulsory purchase powers vested in various people. I refer to one or two Acts merely by way of illustration. An early one was the Lands Clauses (Consolidation) Act of 1845, where there are elaborate provisions for the ascertainment of price, for the matter to be referred to a jury where it was impossible to agree, for payment in proper cases of the purchase money into Court, for execution of conveyances, and, if necessary, for the execution of a deed poll by the purchasing company where the vendor refuses or is unable to execute a deed. That is a typical compulsory purchase provision.

(Upjohn, J.)

I was also referred to a later example, the Acquisition of Land (Authorisation Procedure) Act, 1946, where again there are elaborate provisions for the vesting of property and for the ascertainment of the price by a panel of arbitrators.

I need only refer to one other example, which is an important one, because it is to be found in the Transport Act itself. It is in Section 8. It is in these terms:

> "The Minister may authorise the Commission to purchase compulsorily any land which they require for any purpose connected with the discharge of their functions, and the Acquisition of Land (Authorisation Procedure) Act, 1946 (except section two thereof) shall apply as if the Commission were a local authority within the meaning of that Act and as if this Act had been in force immediately before the commencement of that Act."

In my judgment, the question is really one of construction of the Transport Act, that is, whether the provision to which I have already referred can properly be described as a compulsory purchase and a compulsory sale.

Mr. King, for the Crown, has referred me to two authorities. The first was *Great Western Railway Co.* v. *Commissioners of Inland Revenue*, [1894] 1 Q.B. 507. That was a Stamp Duty case. The second case was *Commissioners of Inland Revenue* v. *Newcastle Breweries, Ltd.*, 12 T.C. 927. But I do not find in either of those cases any principles laid down as to the proper canons of construction which I should apply in this case, and, therefore, I forbear to mention them in greater detail.

As I have said, the question is really one of construction of the Transport Act. In Section 29 there is a vesting. By Section 30 compensation, not a price, is to be paid, and that compensation is to be a fixed sum according to the age and type of wagon and has no relation to the actual worth of the wagon. In my judgment, it is not a proper use of legal language to describe such a transaction as a compulsory purchase. No doubt Parliament could have dealt with the matter by way of compulsory purchase; but, in my opinion, it has not done so. It has dealt with the matter by way of compulsory acquisition and compulsory transfer of the property in the wagons to the Commission and the payment of compensation. That cannot, in my judgment at all events, properly be described as a compulsory purchase and a compulsory sale; it is a compulsory acquisition.

I ought to mention one further point that was taken by the Crown depending on Sections 34 and 35 of the Finance Act, 1948. It is suggested that those two Sections show that Parliament thought that the Transport Act provisions to which I have referred constituted a sale for the purposes of Section 17 of the Income Tax Act, 1945. So far as Section 34 is concerned, all I will say about it is that, in so far as it is relevant at all, it appears to me to support the case of the Company rather than the case of the Crown. With regard to Section 35, it is perfectly true that that Section does seem to proceed upon the basis that a balancing charge under Section 17 would arise upon a transfer of property to the British Transport Commission; but, in my judgment, that is not really an element which I can properly take into account. The fact that Parliament may have proceeded upon an erroneous assumption as to the effect of a taxing Act is no ground for construing that Act in a manner adverse to the taxpayer.

That is well shown by the recent case of *Commissioners of Inland Revenue* v. *Dowdall, O'Mahoney & Co., Ltd.*(1), [1952] A.C. 401. Lord Radcliffe, at page 426(2), said this :

> "What it comes to is this. Parliament has not made any enactment that requires or authorizes the making of the allowances now claimed. It has not declared the law to be that such allowances are proper deductions. The most that can be said is that it is fairly certain that those who framed Section 30 of the Finance Act, 1940, believed that such allowances ought to be given or were in fact being given (which is not always quite the same thing in this field). But if that is all that can be said, it is, with all respect to the Court of Appeal, a misuse of words to say that the Law Courts ought to give effect to the 'intention' of Parliament that overseas Excess Profits Tax should be allowed. The beliefs or assumptions of those who frame Acts of Parliament cannot make the law. Section 30 will be just as much effective in those cases when it does operate as it would be if overseas Excess Profits Tax were not, in general, an allowable deduction, for wherever it operates it operates under the authority given by Parliament in that Act and not otherwise. This is not the first occasion on which a somewhat similar problem has been presented to your Lordships' House, and in face of the abiding complexity of Income Tax legislation I do not suppose that it will be the last. But if the House felt no difficulty in *Ayrshire Employers' Mutual Insurance Association Ltd.* v. *Inland Revenue Commissioners*(3) in disregarding the plain, though mistaken, assumption of the legislature as to the prevailing law, I do not think that your Lordships need feel even as much embarrassment in the present case."

That seems to me abundantly to cover the argument that was addressed to me upon Section 35 of the Finance Act, 1948.

In my judgment, for the reasons I have given, there has been no sale in this case for the purposes of Section 17 (1) (*a*) of the Income Tax Act, 1945. Accordingly, this appeal must be allowed.

Mr. F. Grant.—With costs?

Upjohn, J.—Yes. The Crown must pay the costs of the Company.

The Crown having appealed against the above decision, the case came before the Court of Appeal (Singleton, Birkett and Hodson, L.JJ.) on 30th November, and 1st and 2nd December, 1953, when judgment was given unanimously against the Crown, with costs.

Mr. Cyril King, Q.C., and Sir Reginald Hills appeared as Counsel for the Crown, and Mr. John Senter, Q.C., and Mr. Anthony Barber for the Company.

Singleton, L.J.—The Transport Act of 1947 by Section 1 set up a public authority to be called the British Transport Commission, referred to in the Act as "the Commission". Part II of the Act provided for the acquisition by the Commission of railway and canal undertakings and of certain railway wagons. The acquisition of railway wagons is dealt with in Sections 29 to 32 of the Act, and as we are directly concerned with those Sections I think it is right that I should read them, as far as is material.

(1) 33 T.C. 259. (2) *Ibid.*, at p. 287. (3) 27 T.C. 331.

(Singleton, L.J.)

Section 29 reads:

> "Where, immediately before the date of transfer, any privately owned railway wagon is under requisition by virtue of an exercise of the powers in that behalf conferred by Regulation 53 of the Defence (General) Regulations, 1939—(*a*) the property in that wagon shall vest in the Commission on the date of transfer, free from any mortgage or other like incumbrance, and the requisition shall then cease; and (*b*) the Crown shall not be liable for any compensation under the Compensation (Defence) Act, 1939, or otherwise in respect of any damage to the wagon occurring during the period of requisition."

Section 30 (1):

> "Where under the last preceding section the property in any wagon vests in the Commission, the Commission shall, subject to the provisions of the three next succeeding subsections, pay as compensation in respect thereof an amount determined, by reference to the type of wagon and the year in which the wagon was first built, in accordance with the Table set out in the Sixth Schedule to this Act."

Section 31 (1):

> "Subject to the provisions of this section, the compensation payable by the Commission in respect of a privately-owned wagon vesting in them on the date of transfer shall be paid to the person who, immediately before the date of transfer, was the owner of the wagon."

Section 32 (1):

> "The amount payable by way of compensation in respect of a wagon the property in which vests in the Commission on the date of transfer shall be satisfied in the manner provided by Part VI of this Act by the issue to the person entitled thereto of British transport stock."

The amount which was to be paid for railway wagons which were acquired by the Commission under those Sections was subject to Sub-sections (2), (3) and (4) of Section 30, which I have not thought it necessary to read.

The amount specified in the Sixth Schedule to the Act, which is headed "Compensation for Acquisition of Privately-owned Wagons", which shows the amount payable for the different types of railway wagons, varies according to the year in which the wagon was built without reference to its condition, and the payment was to be made in British Transport stock.

The Company, John Hudson & Co., Ltd., had 663 wagons to which Section 29 of the Transport Act applied, and on 1st January, 1948, the property in those wagons was transferred to and vested in the Commission under that Section. Paragraph 9 of the Case shows that

> "The Company in due course received compensation for its wagons the property in which had vested in the Commission. The amount of the compensation was substantially higher than the written-down value of the wagons for Income Tax purposes as appearing in the Company's books. This written-down value was substantially lower than the original cost of the wagons. The balancing charge of £29,021, given effect to in the assessment to Income Tax for 1948-49 under appeal, represents, with the exception of £963 referable to other matters and not in dispute, the excess of the original cost over the said written-down value. For reasons hereinafter appearing it was said for the Company that it was not subject to any balancing charge in respect of the said excess."

Next I must refer to Section 17 (1) and (3) of the Income Tax Act, 1945. Section 17 (1), as far as material, reads:

> "Subject to the provisions of this section, where, on or after the appointed day, any of the following events occurs in the case of any machinery or plant in respect of which an initial allowance or a deduction under Rule 6 of the Rules applicable to Cases I and II of Schedule D has been made or allowed for any year of assessment to a person carrying on a trade, that is to say, either—(*a*) the machinery or plant is sold, whether while still in use or not;"

(I omit (*b*), (*c*) and (*d*))

> ". . . . and the event in question occurs before the trade is permanently discontinued, an allowance or charge (in this Part of this Act referred to as 'a balancing allowance' or 'a balancing charge') shall, in the circumstances mentioned in this section, be made to, or, as the case may be, on, that person for the year of assessment in his basis period for which that event occurs".

Sub-section (3) is:

> "If the sale . . . . moneys"

(I leave out certain words which are unnecessary for this purpose)

> "exceed the amount, if any, of the said expenditure still unallowed as at the time of the event, a balancing charge shall be made, and the amount on which it is made shall be an amount equal to the excess or, where the said amount still unallowed is nil, to the said moneys".

The object of this Section is this: if plant and machinery have been depreciated in the company's books and Income Tax allowances have been made, and the plant or machinery is subsequently sold at a higher price than its depreciated price, then the excess of the one over the other is subject to a balancing charge upon which Income Tax may be levied. If the price for which the plant or machinery is disposed of is less than its written-down price, there is to be a balancing allowance. Although, so far as I know, no case of a balancing allowance has reached this Court as yet, we have had one or two cases in which a balancing charge has been made.

It is claimed by the Crown that a balancing charge of £29,021 falls to be made upon the Company on the basis that the wagons which were acquired by the Commission under Section 29 of the Transport Act of 1947 were sold to the Commission within the meaning of the words in Section 17 (1) (*a*) of the Income Tax Act of 1945. The real question for decision is as to whether, by reason of Sections 29 to 32 of the Transport Act, 1947, there was a sale to the Transport Commission of the wagons which I have already mentioned.

The Special Commissioners held that the assessment upon the Company was properly made. I read from paragraph 14 (4) of the Case:

> "However this may be, what took place was in our opinion a 'transfer of the ownership of a thing from one person to another for a money price'"

then they refer to Volume 29 of Halsbury's Laws of England, page 5, paragraph 1, and they say:

> "and we hold that it was a sale. We do not doubt that the wrongful confiscation of a chattel, although accompanied by a subsequent payment of a sum called 'compensation', would not constitute a sale. In this case, however, Section 29 of the Transport Act, 1947, vested the property in the Company's wagons, which were already lawfully in the possession of the Minister of Transport under S.R. & O. 1939 No. 1085, in the Commission, and the same enactment, by Section 30, provided compensation, to be computed under the provisions of the Sixth Schedule, which we hold was a money price. We think also that, if assent is necessary to the conclusion of a valid sale, it must be assumed to be present when a Statute, such as the Transport Act, 1947, becomes law, since the Company as a person living within the jurisdiction of the British Crown must assent to all such laws as are duly enacted, including the enactments contained in Sections 29 and 30 aforesaid."

The last part of that finding was not sought to be supported by learned Counsel, Mr. King and Sir Reginald Hills, who appear for the Crown in this appeal.

The Company appealed, and Upjohn, J., allowed their appeal, holding that there was no sale. The Inspector of Taxes appeals to this Court.

(Singleton, L.J.)

It is desirable that I should say a little more as to the Transport Act of 1947. The first thing to notice is that the word "sale" is not used in relation to the acquisition by the Commission of property of one kind or another. Sections 12 to 16 provide for the acquisition by the Commission of railway and canal undertakings. I read Section 12 (1):

> "Subject to the provisions of this Act, the whole of the undertakings of the bodies of persons specified in the Third Schedule to this Act, being the bodies who fall within the class described in the next succeeding section, shall, on the first day of January, nineteen hundred and forty-eight (hereafter in this Part of this Act, and in the other provisions of this Act so far as they refer to the acquisition by the Commission of the said undertakings, referred to as 'the date of transfer'), vest by virtue of this Act in the Commission."

It is in Section 12 that you get the date of transfer of 1st January, 1948, which is the date for all purposes of the Act.

Section 16 of the Act provides for compensation for the acquisition of the railway and canal undertakings which are acquired

> "by reference to the values of the securities specified in the Fourth Schedule",

which, by Section 16 (2),

> "shall be an amount equal to the aggregate value (computed in accordance with the provisions of the next succeeding section) of all the securities, if any, of that body existing immediately before the date of transfer";

and under Section 16 (3):

> "The compensation so payable shall be satisfied . . . by the issue . . . of British transport stock"

in accordance with the provisions of the Fifth Schedule.

I have referred to the part of the Act with which we are immediately concerned—Sections 29 to 32—and I go on to Part III of the Act, which deals with the acquisition of certain road transport undertakings, namely Section 39 onwards. Section 49 deals with the assessment of compensation in respect of road transport undertakings which are acquired, and the mode of compensation there is on quite a different footing from that contained in Part II as to railway and canal undertakings, and as to wagons. For instance, in compensation under Part III of the Act there has to be a consideration of a number of different circumstances, one of which, in Section 47 (2), involves consideration of the amount which the property would fetch if sold in the open market.

The real contest throughout this case has been as to whether or not there was a sale of the wagons to the Commission; in other words, whether the plant was sold. But the argument has developed a little, and I think the questions for the consideration of the Court may be stated in this way. First, was there a sale in the ordinary understanding of the word? Secondly, is there anything in the provisions of the Transport Act which ought to lead one to say that that which took place must, for the purposes of Section 17 (1) of the Income Tax Act, 1945, be regarded as a sale? And these further points have been raised. Was there a compulsory sale? It is not admitted by the Company that a compulsory sale would have the effect for which the Crown contends; and it is disputed that there was a compulsory sale. The fourth question which has been put for our consideration arises on Sections 34 and 35 of the Finance Act, 1948, from which it is claimed on behalf of the Crown that, by analogy, one ought to say there was a sale, even if that did not appear elsewhere.

Now, first: Was there a sale in the ordinary understanding of the word? The word "sold" assumes a seller and a buyer. Unless there is some reason for giving a special meaning to the word, it must be given its ordinary meaning. Did Hudsons sell their wagons to the Commission? I am quite sure what the answer of Hudsons would be, but that is not much help. What would anyone accustomed to the use of the words "sale" or "sold" answer? It seems to me that everyone must say: "Hudsons did not sell". Did the Commission buy from Hudsons? Equally, on the ordinary meaning of the word, I should find it difficult to say that the Commission bought or purchased the wagons. In other words, there was not in this case a seller or a buyer, and that leads me to think that there was not a sale of the wagons in the sense in which the word is ordinarily understood. The wagons were acquired, as the Act says, and on 1st January, 1948, the property in those wagons vested in the Commission. I refer to a passage at the commencement of Benjamin on Sale, which I think may be regarded as an authority upon this subject, and it is this:

> "By the common law a sale of personal property was usually termed a 'bargain and sale of goods.' It may be defined to be a transfer of the *absolute* or *general* property in a thing for a price in *money*. Hence it follows that, to constitute a valid sale, there must be a concurrence of the following elements, *viz.*:—(1) Parties competent to contract; (2) mutual assent; (3) a thing, the absolute or general property in which is transferred from the seller to the buyer; and (4) a price in money paid or promised."

Mr. Senter, who relies upon that passage, pointed out to the Court that in the circumstances of this case there is no mutual assent, nor, as he submitted, is there a price in money paid or promised; and upon that he based his argument that here there was no sale—no sale according to the ordinary use of that word, or according to the definition of "sale" as accepted in the Courts of this country generation after generation. I think that is right.

The next point for consideration is: Is there anything in the provisions of the Transport Act which ought to lead this Court to say that that which took place ought to be regarded as a sale within Section 17 (1) of the Income Tax Act, 1945? Again, if I may say so with respect to the very full and complete argument which has been addressed to the Court, I cannot see that there is anything in the Transport Act which should lead this Court to take a view of the word "sold" in Section 17 (1) (*a*) of the Income Tax Act, 1945, other than that which it normally holds. An examination of the whole of the Transport Act, and in particular of Sections 29 to 32, shows this. By Section 29,

> "Where, immediately before the date of transfer, any privately owned railway wagon is under requisition",

the property in that wagon shall vest in the Commission on the day of transfer. It is a statutory vesting, a change of ownership brought about by Statute. There is nothing in that Section which has the appearance of bargain and sale, or of sale. Section 30 (1) is:

> "Where under the last preceding section the property in any wagon vests in the Commission, the Commission shall, subject to the provisions of the three next succeeding subsections, pay as compensation in respect thereof an amount determined, by reference to the type of wagon and the year in which the wagon was first built, in accordance with the Table set out in the Sixth Schedule to this Act."

That, Mr. Senter submitted, is not a price. The value, in accordance with the method of arriving at it which is set out in the Sixth Schedule, is something which has to be paid, but, Mr. Senter submitted, it is not a price. I am not sure that that part of Mr. Senter's argument has quite as much force as

(Singleton, L.J.)

his earlier submission that this is not a sale in any sense of the word. Then there is the provision that the mode of satisfaction of the compensation is to be by British Transport stock. I do not find in these provisions anything which leads me to think that one ought to give the word "sold" in Section 17 (1) (*a*) of the Income Tax Act, 1945, any meaning different from that which it normally has. So, upon the second point, it seems to me that the argument of the Crown fails, too.

The next point which is raised by Mr. Cyril King is this. He submitted that if there was not a sale in the ordinary sense there was a compulsory sale; that all the elements of a compulsory sale were present; and that this Court ought to hold that consequently there was a sale for the purposes of Section 17 (1) of the Income Tax Act, 1945. Now, in support of that submission, a number of authorities were cited to the Court dealing with the compulsory acquisition of property, and showing that when you had reached a stage at which value had been fixed in the way provided by the Statute, the position of vendor and purchaser was created, so that the rights of the parties could be determined upon a vendor and purchaser summons.

I do not propose to refer to those authorities. I do not think that they apply to the circumstances of this case. If you have a compulsory acquisition of land, it may be that you reach something in the nature of a compulsory contract. Thereupon, if the parties' rights have to be determined, that may be done upon a vendor and purchaser summons. That is not this case. I draw attention in the first place to Section 8 of the Transport Act of 1947. That is the Section which authorises the Commission compulsorily to purchase land for its own purposes. It appears to me that the Section draws a clear distinction between compulsory purchase and that which is done by the Commission when it acquires railway undertakings or canal undertakings or railway wagons, or road haulage undertakings under later Sections. Section 8 says:

> "The Minister may authorise the Commission to purchase compulsorily any land which they require for any purpose connected with the discharge of their functions, and the Acquisition of Land (Authorisation Procedure) Act, 1946 (except section two thereof) shall apply as if the Commission were a local authority within the meaning of that Act and as if this Act had been in force immediately before the commencement of that Act."

Section 8 thus gives the Commission power to acquire land compulsorily. If they do that, they have to comply with the provisions of the Lands Clauses Acts embraced in the Acquisition of Land (Authorisation Procedure) Act, 1946. They have to give the necessary notices. The owner of the land then may have an opportunity of agreeing what compensation shall be paid, if his land is to be acquired for the purposes of the public; otherwise, the value is fixed by arbitration. That is the procedure under Section 8. It is wholly different from the provisions in Section 29, under which the ownership in the Company's wagons vested in the Commission on 1st January, 1948; and the provisions as to payment of compensation are wholly different. I do not regard the vesting of the wagons in the Commission as a compulsory sale or in the nature of a compulsory sale. It was an acquisition authorised by Statute and paid for by way of compensation in the manner provided by the Statute.

Mr. Cyril King referred us to the case of *Commissioners of Inland Revenue* v. *Newcastle Breweries, Ltd.*, 12 T.C. 927. That was a case in which the Newcastle Breweries, Ltd.,

> "carried on the business of brewers and wine and spirit merchants, and in the course of this business kept large stocks of rum which had to be reduced and

blended before sale. The blended product was sold either wholesale or retail in relatively small quantities. In January, 1918, the Admiralty, acting under the Defence of the Realm Regulations, took over about one-third of the stocks in question then owned by the Respondent Company. Payment of £10,315 was offered by the Admiralty, based on the actual cost of the rum and allowing a profit of about 1*s.* per proof gallon, and this amount was accepted on account by the Respondent Company, without prejudice to its claim for a larger amount".

Thereafter there was much litigation. The company proceeded by petition of right, but in the events which happened that was useless, and ultimately they had to claim before a tribunal which assessed the amount due to the brewery company as £5,309 10*s.* and that amount was paid to the brewery company some years after the rum had been taken. Thereupon, it was claimed by the Inspector of Taxes that the £5,309 10*s.*, the second payment, which was a payment by way of compensation in one sense, ought to be included in the company's accounts for the year 1918–19. But the company contended that the sum was not a receipt of the company's trade or a profit arising from its trade or business, and that the rum taken over by the Admiralty in the foregoing circumstances was not, and could not be said to have been, sold by the respondent company in the course of its trade or business or at all. Rowlatt, J., held, and the Court of Appeal held, and the House of Lords held, that the sum was a sum properly taken into consideration in the company's earnings for the year in which the rum had been taken. Rowlatt, J., at page 934(1), said this:

"The Brewery Company had a large quantity of rum, not yet refined or reduced or prepared for sale, which was requisitioned by the Admiralty".

And later:

"Now the Admiralty took these goods at the beginning of the Company's year which ended in 1918, and towards the end of the year, or in the summer, they paid £10,000, which they said was the cost, and some other allowances, plus one shilling a gallon profit. What was done upon that is perfectly clear to my mind. Neither party gave up anything. The Admiralty said that was what they thought the sum was, and they were not prepared to pay any more, and the Brewery Company said it was not enough, but they took that sum; the Admiralty raised no objection. The Brewery Company said: 'We do not take it in satisfaction; we will reserve our rights to make any further claim which we may be advised to make,' and the Admiralty said, 'Very well; we have no objection. You are at liberty to make any further claim.' That is what took place. Now if they had gone under the Regulation they would have got, to put it shortly, the cost to them plus the pre-war profit, as a price. That would have been a price. However, what they said was that this part of the Regulation is invalid, and they went by Petition of Right to Mr. Justice Salter and obtained a judgment from him which said that the price was not to be so determined or so limited; their right was to have the market value, to be assessed by the County Court Judge. Now, if they had got that, they again would have got a price. But at that period the Indemnity Act came into effect, which avoided the judgment of Mr. Justice Salter, as well as other judgments *in pari materia* or within the ambit of the Act; and instead of that, it gave people in the position of the Brewery Company a right to go before a Commission presided over by Sir Francis Kyffin Taylor."

The learned Judge added that they went before the tribunal, and at page 937, in a passage relied upon by Mr. Cyril King, he said:

"Now what is that except a compulsory sale of the rum? It seems to me, when you really look at the substance of the thing, it is in a very small compass. That is all it is, a compulsory sale of the rum."

As I have said, that judgment was upheld in the other Courts, and at page 953, Lord Cave, L.C., according to the report, said this:

"Two points are made on behalf of the Appellants. First, it is said that the £5,300 is not a profit from the Appellants' business at all, but is a sum

(1) 12 T.C.

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> payable by way of compensation for the compulsory taking by the Crown of a part of the Appellants' capital. I cannot agree with that contention."

So the gist of the decision was that, though the rum was acquired by the Admiralty, it was equivalent to a contract of sale; there was certainly a profit earned by the company in respect of £5,309, and that that must be taken into the company's accounts. From that, Mr. King submits that, where you have, as in this case, a compulsory acquisition, the vesting of the property of the Company in the Commission on 1st January, 1948, and payment made therefor, that likewise ought to be treated as a sale. I think the two things are wholly different, and the difference indeed is made clear by reference to the compulsory powers of purchase of land given in Section 8 of the Act. In my view, that which took place cannot be held, and ought not to be held, to be a compulsory sale.

The next point which is made arises upon Sections 34 and 35 of the Finance Act, 1948. There is this side-note to Section 34:

> "Remission of balancing charges and other provisions, in case of certain undertakings absorbed under nationalisation schemes."

The Section does not apply in this case directly; that is shown by Subsection (1) (*b*). It does, or might, apply to the provisions as to the taking over of an undertaking under Section 12 of the Transport Act; it does not apply to Section 29. It provides:

> "(1) The provisions of this section shall have effect where—(*a*) under any statutory provisions to which this section applies, property is transferred to a Commission, Authority, Board, body or person; and (*b*) under the statutory provisions in question, the liability of the transferor arising from any balancing charge falling to be made on the occasion of the transfer becomes a liability of the transferee.
>
> (2) The transfer shall be treated for income tax purposes as a sale of property to which paragraph (*a*) of subsection (1) of section fifty-nine of the Income Tax Act, 1945, applies and as if the parties to the sale had given notice of election under subsection (4) of that section."

The submission of Mr. King upon that Section is that it shows that in other cases the draftsman of the Finance Act, 1948, had probably assumed that there would be or might be balancing charges, and if that was his view it provided some guidance or some help towards a true interpretation of the Transport Act of 1947; and he submitted that the position was carried further by Section 35 which, like Section 34, ends in this way:

> "This section shall be deemed always to have had effect."

So that both Sections have retrospective effect. Section 35 (1) is:

> "The question whether any and if so what balancing allowance or balancing charge falls to be made to or on the National Coal Board on the occasion of the transfer to the British Transport Commission under section twenty-nine of the Transport Act, 1947, of any railway wagons which the said Board acquired under the Coal Industry Nationalisation Act, 1946, shall be determined as if section twenty-nine of the Finance Act, 1947, and the Seventh Schedule to that Act, had not been passed."

That shows, said Mr. King, that at the time of the passing of the 1948 Act the question had arisen as to whether there should be made, or whether there fell to be made, a balancing charge or allowance as between the National Coal Board and the British Transport Commission. Of course, balancing charges and balancing allowances had been first mentioned in the Income Tax Act of 1945, and I have no doubt that by the time the 1948 Finance Act was passed someone had seen that Section 17 of the Act of 1945 might lead to a harvest one way or the other. I have no doubt that

someone in the National Coal Board and someone in the British Transport Commission had discussed it; but that by no means shows that a balancing charge falls to be made.

Mr. Senter submitted that nothing in those two Sections of the Finance Act, 1948, helped towards a true interpretation of the provisions of the Transport Act of 1947, and it seems to me that that submission is right.

I would humbly repeat that which Lord Radcliffe said in *Commissioners of Inland Revenue* v. *Dowdall, O'Mahoney & Co., Ltd.*(1), [1952] A.C. 401, at page 426, in one line:

> "The beliefs or assumptions of those who frame Acts of Parliament cannot make the law."

I believe it to be the duty of this Court to determine the effect of the Transport Act from the wording of that Act itself. I do not find myself greatly helped by references to Sections 34 or 35 of the Finance Act, 1948, nor from references to the change which was made by the Income Tax Act of 1952, Section 292, or by the Finance Act of 1952, Sixth Schedule.

Upon the view which I take of the provisions of the Transport Act, 1947, namely, that there was in the circumstances of this case no sale, it seems to me that the judgment of Upjohn, J., is right and that this appeal should be dismissed.

Birkett, L.J.—I am of the same opinion, and I cannot pretend that in a complicated matter of this kind I can add very much of value to what my Lord has already said, by way of supplement. He has cited in his judgment the relevant Sections of the various Acts of Parliament which have been debated and discussed in this Court, and he has stated clearly the conclusions to which he has come. And it would really have been enough for me to say that I agree with the judgment of my Lord. But, having formed a fairly clear view of the critical points in issue, perhaps I may be forgiven for just adding a word or two about them from my own point of view.

The only question in this case, as it was discussed in this Court,—though it was otherwise elsewhere—related, as I understand it, to the meaning of the words in Section 17 (1) (*a*) of the Income Tax Act of 1945, and the construction of certain Sections in the Transport Act of 1947. The Income Tax Act of 1945, in Section 17, laid down the events upon which a balancing allowance or a balancing charge should fall to be made, and those events were stated in this form:

> "Subject to the provisions of this section, where, on or after the appointed day, any of the following events occurs in the case of any machinery or plant in respect of which an initial allowance or a deduction under Rule 6 of the Rules applicable to Cases I and II of Schedule D has been made or allowed for any year of assessment to a person carrying on a trade, that is to say, either—(*a*) the machinery or plant is sold, whether while still in use or not; or (*b*) the machinery or plant, whether still in use or not, ceases to belong to the person carrying on the trade by reason of the coming to an end of a foreign concession; or (*c*) the machinery or plant is destroyed; or (*d*) the machinery or plant is put out of use as being worn out or obsolete or otherwise useless or no longer required. . . ."

Now, they were four clear, distinct events, and upon the happening of any one of those particular events certain consequences respecting a balancing charge or a balancing allowance followed. In the case which we have been considering in this Court, the Company, Messrs. Hudson, had been assessed

(1) 33 T.C. 259, at p. 287. D

(Birkett, L.J.)

to a balancing charge of £29,021 in respect of certain wagons which belonged to them, the history of which is set out in the Case stated by the Special Commissioners: that they had been hired by the Minister for a period and then, by the provisions of the Transport Act of 1947, had been in fact vested in the Minister.

The only other part of Section 17 that I want to read, because I think it has a bearing, is this: after setting out clearly the events, they go on in Sub-section (2) of Section 17 to say this:

> "Where there are no sale, insurance, salvage or compensation moneys"

—which clearly has reference to the events set out in Sub-section 1 (*a*), (*b*), (*c*) and (*d*)—and then it goes on to deal with the balancing allowance, and the words are similarly used in Sub-section (3):

> "If the sale, insurance, salvage or compensation moneys exceed the amount, if any, of the said expenditure still unallowed as at the time of the event,"

then the balancing charge comes into being. And the last quotation I want to make is from Section 68 of that Act, which is the definition section, because there it is said that

> "'sale, insurance, salvage or compensation moneys' mean, in relation to an event which gives rise or might give rise to a balancing allowance or a balancing charge to or on any person, or is material in determining whether any, and, if so, what, annual allowance is to be made to a person under Part III of this Act, (*a*) where the event is a sale of any property, the net proceeds to that person of the sale; (*b*) where the event is the coming to an end of an interest in property on or by reason of the coming to an end of a foreign concession, any compensation payable to that person in respect of that property; (*c*) where the event is the demolition or destruction of any property, the net amount received by him for the remains of the property, together with any insurance moneys received by him in respect of the demolition or destruction and any other compensation of any description received by him in respect thereof, in so far as that compensation consists of capital sums; and (*d*) where the event is that a building or structure ceases altogether to be used or that machinery or plant is put out of use, any compensation of any description received by him in respect of that event, in so far as that compensation consists of capital sums."

Now, that is the machinery of Section 17, and I think it is important because all that we are really concerned with here is to say whether the event which took place, as described by my Lord under the provisions of the Transport Act of 1947, was a sale as distinct from any of the other events in Sub-section (1). Of course, it is easy enough to say: "Well, it is a simple question: were the wagons sold or were they not? Was this a sale or not?" We have listened to a most interesting and most learned argument dealing with that simple matter, and of course it would be idle to pretend that the solution of the problem is a simple matter at all; it is not. I think it is a complicated and difficult matter.

Now, originally the Company took various objections to the assessment made upon them, and they appealed to the Special Commissioners, and the Special Commissioners listened to all the various objections and decided against the Company. Many of the matters decided by the Special Commissioners are no longer relevant to this appeal; they are not pursued; and the only matter left is the matter to which my Lord referred: were the wagons sold? The Special Commissioners upon that issue found against the Company and in favour of the Crown. Though the reasons which they gave for their decision are not accepted wholly by the Crown in this Court, their decision is sought to be affirmed by the Crown here, that it was a sale. The Company thereupon appealed to Upjohn, J., and we have had the advantage of reading his very clear exposition of the matter, and

he decided the other way: he reversed the findings of the Special Commissioners and said that this was not a sale. As I understand it, in this appeal no question of figures arises at all. If this was a sale, why then the assessment stands; if it is not held to be a sale, why then the assessment does not stand.

Now, the history of the matter has been dealt with by my Lord, and I am not going to weary anybody by repeating the history of these wagons which were owned by the Company and used by the Company in their business; but by Section 29 of the Transport Act of 1947 they were vested in the Transport Commission as from 1st January, 1948. And Section 30, which my Lord read, uses the word "compensation"—

> "Where under the last preceding section the property in any wagon vests in the Commission, the Commission shall, subject to the provisions of the three next succeeding subsections, pay as compensation in respect thereof an amount determined, by reference to the type of wagon and the year in which the wagon was first built, in accordance with the Table set out in the Sixth Schedule to this Act."

And then by Section 31, which my Lord read, it

> "shall be paid to the person who, immediately before the date of transfer, was the owner of the wagon";

and, by Section 32,

> "by the issue to the person entitled thereto of British transport stock".

The Sixth Schedule is not unimportant, because of the argument which has been addressed to us upon both sides, but the Sixth Schedule is headed:

> "Compensation for Acquisition of Privately-owned Wagons";

then the

> "Year in which wagon was first built"

is set out in one column; then the weight, whether 8-ton or 10-ton, whether made of wood, and so on; and then the prices are set out in that Schedule. So that was what the scheme was in the Act of 1947. "These wagons which admittedly are your property, though they have been requisitioned by us for use, shall now vest in the Transport Commission, and you shall receive", says the Act, "by way of compensation those sums which we have arbitrarily fixed" (I use the word "arbitrarily" in no sinister sense at all) "and you shall be paid that sum and no other".

If the test be, as I think it is, and as my Lord stated: Is that a sale within the ordinary connotation of the word "sale"? the first answer would appear to be clearly "No". The vendor had no choice as to whether he would sell or not; that is admitted. He had no choice about the price or sum or compensation that he was to receive; that was fixed by the Schedule. He had no choice whatever as to the form in which he would get his payment. He was to have it by way of British Transport stock whether he liked it or not; and from that point of view it would have seemed, using the language in its ordinary sense, that a compulsory acquisition, a compulsory transfer, or some such phrase as that, was more appropriate to that particular transaction or event than the word "sale". But Mr. Cyril King and Sir Reginald Hills addressed, I must say, a very forcible argument upon this matter, by saying: "Although the outward form of it may not appear to be a sale in the ordinary sense of that term, as it is customarily used, nevertheless, for the purposes of the Income Tax Act of 1945, it is a sale", and they relied upon the words which are quoted in Halsbury's

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Laws of England, 2nd edition, Volume 29, at page 5; and we were told that the author of that article in question was the late Scott, L.J.; and the words are:

> "Sale is the transfer of the ownership of a thing from one person to another for a money price."

And the sidenote to that paragraph reads:

> "Sale and exchange or barter distinguished."

Both Mr. Cyril King and Sir Reginald Hills relied upon that, and said: "If that is right, why then we come fairly and squarely within it, because there is a transfer of the ownership of a wagon from one person to another for the money price set out in the Sixth Schedule to the Transport Act of 1947". It is quite true that the article in Halsbury's Laws of England proceeds to deal in very much more detail with what a contract of sale may be, but, as I say, great insistence was laid upon that as being conclusive that, within that definition, that was the position. As I say, both Mr. Cyril King and Sir Reginald Hills pressed this matter very forcibly indeed, if I may say so, particularly Sir Reginald Hills in the argument by which he followed his learned leader in this case, and said in terms: "Of course, the definition stated by the late Mr. Benjamin is there too, but, in a word, you should not really follow that; you should follow this plain, simple declaration." Of course, one must not be overawed by great names, but the late Mr. Benjamin admittedly was a very great man and he was a very great lawyer, and on the question of the sale of goods he was a very great authority; and the definition which has been cited first of all by Upjohn, J., and then by my Lord here today, which I will not trouble to repeat, is, of course, Mr. Benjamin's own; it comes from the edition which he himself prepared for publication; and I think that very great respect ought to be paid to the definition that Mr. Benjamin laid down at that time and which has been incorporated in every subsequent edition of the great work of Benjamin on Sale. Now, in that definition Mr. Benjamin lays great stress on the question of mutual assent, and the argument which was addressed to us on this point, particularly by Mr. Cyril King, was that mutual assent really does not matter; and he cited the case which my Lord referred to this morning of *Commissioners of Inland Revenue* v. *Newcastle Breweries, Ltd.*(1). It is perfectly plain that in the judgments in the *Newcastle Breweries, Ltd.* case time and time again the Lords Justices in the Court of Appeal delivering judgments and the Lords of Appeal making their speeches in the House of Lords referred to this matter in this kind of term: Lord Phillimore in the House of Lords said(2):

> "The rum was purchased for trade purposes, and the particular sale was none the less a trade sale because the trade was forced upon the Appellant Company".

Lord Cave, L.C., said(3):

> "If the raw rum had been voluntarily sold to other traders, the price must clearly have come into the computation of the Appellants' profits, and the circumstance that the sale was compulsory and was to the Crown makes no difference in principle."

And there are other observations to the like effect. What that case was really seeking to establish was that a compulsory sale—as that was held to be—made no difference to the point which was then in issue, which was: Were there profits which had been made? Had profits been made? If so, into what year of assessment do they fall? and the House decided that

(1) 12 T.C. 927. (2) *Ibid.*, at p. 954. (3) *Ibid.*, at p. 953.

profits had been made and they said that the fact that it was a compulsory sale made no difference.

That case was pressed upon us very strongly, as were the cases under the Lands Clauses Act of 1845, particularly the case of *The Regent's Canal Co.* v. *Ware,* 26 L.J. (Ch.) 566, and the case of the *Great Western Railway Co.* v. *Commissioners of Inland Revenue,* [1894] 1 Q.B. 507.

With great respect to Mr. Cyril King's argument, I do not propose to discuss the matter at length, but I cannot think that those cases and the analogy sought to be drawn have really got any true application to the facts with which we have to deal. Under the Lands Clauses (Consolidation) Act, 1845, most elaborate machinery is set up for the taking of land, machinery dealing with the question of arbitration as to the price, machinery dealing with agreement as to the price, machinery dealing with the verdict of a jury in default of agreement, and so on, and I can very well understand that in the machinery of that Act you do quite clearly reach a point where you can say: "The position of vendor and purchaser is here created", and if it be a matter of specific performance, then it can be done. But I cannot think that those cases and those principles applicable to those cases are really of very much assistance on the question of the taking of these wagons. Therefore, as I say, with great respect to Mr. Cyril King, I do not propose to discuss them in any detail or at all. The question to be determined keeps coming back to the one simple matter: Was this a sale?

There is just one further matter I should like to mention, and that is that in the case of *Wolfson* v. *Commissioners of Inland Revenue,* 31 T.C. 141, at page 169, Lord Simonds said, on the question of construction in that case:

> "It was urged that the construction that I favour leaves an easy loop-hole through which the evasive taxpayer may find escape. That may be so; but I will repeat what has been said before. It is not the function of a court of law to give to words a strained and unnatural meaning because only thus will a taxing section apply to a transaction which, had the Legislature thought of it, would have been covered by appropriate words. It is the duty of the Court to give to the words of this Sub-section their reasonable meaning".

Now, it is argued here, of course, by Mr. Senter that when you are taking the event in this case, the taking of the wagons, and the awarding of compensation under the Sixth Schedule, it is giving a strained and unnatural meaning to the word "sold" in Section 17 (1) (*a*) to call that event a "sale"; and he referred us to two Statutes, and I will cite one of them, the Income Tax Act, 1952, Section 292(1):

> "Subject to the provisions of this section, where any of the following events occurs in the case of any machinery or plant in respect of which an initial allowance or an annual allowance has been made for any year of assessment to a person carrying on a trade, that is to say, either . . . [where] the machinery or plant ceases to belong to the person carrying on the trade (whether on a sale of the machinery or plant or in any other circumstances of any description)";

and I gathered that Mr. Senter's whole purpose in citing that Section was to reinforce the words of Lord Simonds in the case which I have just cited, to say: "The Legislature could, in Section 17, have devised and inserted words which would have covered this transaction completely, as in Section 292 they do, but you must not, in construing Section 17 (1) (*a*) of the Act of 1945, construe it by putting in words which the Legislature themselves did not do." On the first point in this case—was there here a sale of the wagons?—I am of the same opinion that my Lord has expressed, and that Upjohn, J., expressed,

(1) As amended by the Finance Act, 1952, Sixth Schedule, Part I, Para. 1 (1).

(Birkett, L.J.)

that there was no sale within the meaning of Section 17 (1) (*a*). I do not propose, therefore, to go into a great many of the matters which were submitted as supporting arguments to that main point. For example, Mr. Senter said, and with a great deal of force, that you must have a price, and there was no price here in any true sense of the word at all, because the term " price " must connote some agreement or some assessment according to the value.

Now, I am bound to say that at one stage in the argument I thought that the assessment of value, crude though it might be, was still an assessment of value in the Sixth Schedule, because there you are taking wagons according to their year, according to their tonnage, and according to their structure, and you are placing a fixed value or sum upon them. But it is plain that, so far as the wagons were concerned, it did not matter one iota what their condition was ; they might have been in the last stages of decay, but if they could say that was the year of the building and that was the tonnage, why then automatically the sum laid down in the columns of the Sixth Schedule was to be applied. And many arguments on both sides dealing with assent, dealing with the construction of the word " price ", and dealing with the construction of the word " compensation " were used before us. It is enough for me to say that I agree with what my Lord said about them, and I content myself by saying that I do not think that the event of the taking over of these wagons, in the circumstances that we know, was within the words " the machinery or plant is sold ".

Now, just one final word regarding the Sections of the Finance Act, 1948, Sections 34 and 35. I understood the argument to be, particularly from Sir Reginald Hills, that if you looked through the Acts you would find there a consistent scheme, and that this transaction or event quite properly could be comprehended under the term " sale ", and that it was only if you adopted the standard set out by Benjamin that you fell into error: " Follow the Acts, follow the consistent scheme, and all will be well ". Under Section 34 of the Finance Act, 1948, which, of course, by Sub-section (6) was to be deemed always to have had effect,

> " (1) The provisions of this section shall have effect where—(*a*) under any statutory provisions to which this section applies, property is transferred to a Commission "—

to cover this case—

> " (*b*) under the statutory provisions in question, the liability of the transferor arising from any balancing charge falling to be made on the occasion of the transfer becomes a liability of the transferee. (2) The transfer shall be treated for income tax purposes as a sale of property to which paragraph (*a*) of subsection (1) of section fifty-nine of the Income Tax Act, 1945, applies and as if the parties to the sale had given notice of election under subsection (4) of that section."

I will not trouble now to read the relevant parts of Section 59, but it is perfectly plain that the purpose which is in Sub-section (2) of Section 34 could perfectly well have been achieved without any mention of the word " sale " at all. And to say that, because in the Act of 1948 you find the words

> " treated for income tax purposes as a sale "

within the meaning of Section 59, that ought to lead you to say that therefore under the Income Tax Act of 1945 this was a sale, is a step which I myself find it extremely difficult to take. And similarly with regard to Section 35: it may very well be that that Section impliedly says that there is to be a balancing charge upon an occasion of this sort, but I do not think that that

of itself lends very much assistance to the determination of the simple question in this case: were the events as we now know them, which took place by virtue of Sections 29, 30, 31 and 32, and the Sixth Schedule, a sale for the purposes of Section 17? With great respect to the arguments which have been addressed to us by the Crown, I am of opinion that they were not, and that the judgment of Upjohn, J., ought to be affirmed.

Hodson, L.J.—I agree, and I have nothing to add.

Mr. John Senter.—I ask your Lordships to say that the appeal is dismissed with costs.

Singleton, L.J.—Yes.

Mr. Senter.—If your Lordship pleases.

Mr. Cyril King.—Might I make an application, my Lord, in this sense: after consideration of your Lordships' judgments in this case, which is of great importance to the Crown, I ask your Lordships to give the Crown leave to appeal, if they are so advised.

(*The Court conferred.*)

Singleton, L.J.—We think that if you desire to appeal to the House of Lords you had better ask the House of Lords.

Mr. King.—If your Lordship pleases.

On the petition of the Crown, leave to appeal against the decision of the Court of Appeal was granted by the Appeal Committee of the House of Lords.

The case came before the House of Lords (Viscount Simonds and Lords Morton of Henryton, Reid, Tucker and Somervell of Harrow) on 28th, 29th, 30th and 31st March, 1955, when judgment was reserved. On 5th May, 1955, judgment was given against the Crown, with costs (Lord Morton of Henryton dissenting).

The Attorney-General (Sir Reginald Manningham-Buller, Q.C.), Mr. Cyril King, Q.C., and Sir Reginald Hills appeared as Counsel for the Crown, and Mr. John Senter, Q.C., and Mr. Anthony Barber for the Company.

Viscount Simonds.—My Lords, this appeal raises questions of some difficulty in regard to the meaning and effect of Section 17 of the Income Tax Act, 1945. The material parts of that Section are as follows:

> "17.—(1) Subject to the provisions of this section, where, on or after the appointed day, any of the following events occurs in the case of any machinery or plant in respect of which an initial allowance or a deduction under Rule 6 of the Rules applicable to Cases I and II of Schedule D has been made or allowed for any year of assessment to a person carrying on a trade, that is to say, either—
>
> (*a*) the machinery or plant is sold, whether while still in use or not; or
>
> (*b*) the machinery or plant, whether still in use or not, ceases to belong to the person carrying on the trade by reason of the coming to an end of a foreign concession; or
>
> (*c*) the machinery or plant is destroyed; or
>
> (*d*) the machinery or plant is put out of use as being worn out or obsolete or otherwise useless or no longer required,

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> and the event in question occurs before the trade is permanently discontinued, an allowance or charge (in this Part of this Act referred to as 'a balancing allowance' or 'a balancing charge') shall, in the circumstances mentioned in this section, be made to, or, as the case may be, on, that person for the year of assessment in his basis period for which that event occurs. . . .
>
> (2) Where there are no sale, insurance, salvage or compensation moneys or where the amount of the capital expenditure of the person in question on the provision of the plant or machinery still unallowed as at the time of the event exceeds those moneys, a balancing allowance shall be made, and the amount thereof shall be the amount of the expenditure still unallowed as aforesaid, or, as the case may be, of the excess thereof over the said moneys.
>
> (3) If the sale, insurance, salvage or compensation moneys exceed the amount, if any, of the said expenditure still unallowed as at the time of the event, a balancing charge shall be made, and the amount on which it is made shall be an amount equal to the excess or, where the said amount still unallowed is nil, to the said moneys . . ."

It will be observed that in Sub-section (1) (*a*) occur the words " is sold ", and it is around these two plain English words that a controversy arose between the Crown and the Respondents which occupied your Lordships for several days.

The relevant facts are simple and few. At all material times the business of the Respondents was that of coal merchants and they owned a large number of wagons which they used for the transport of coal. These wagons were on 1st January, 1948, under requisition by the Minister of Transport under the powers contained in Regulation 53 of the Defence (General) Regulations, 1939[1].

On 1st January, 1948, the property in these wagons was vested in the British Transport Commission by virtue of Section 29 of the Transport Act, 1947, which is in the following terms:

> " Where, immediately before the date of transfer, any privately owned railway wagon is under requisition by virtue of an exercise of the powers in that behalf conferred by Regulation 53 of the Defence (General) Regulations, 1939—
>
> (*a*) the property in that wagon shall vest in the Commission on the date of transfer, free from any mortgage or other like incumbrance, and the requisition shall then cease . . ."

Compensation to the owner of wagons who has been thus deprived of them is provided by Section 30, which enacts by Sub-section (1) that subject to the provisions of the three next succeeding Sub-sections the Commission shall pay to him as compensation in respect thereof an amount determined by reference to the type of wagon and the year in which it was first built in accordance with the table set out in the Sixth Schedule to the Act. The three succeeding Sub-sections provide for certain variants of the amount of compensation, but, broadly speaking, it is a sum determined by age and type without reference to the condition of repair. The amount so determined, if it exceeded the sum of £2,000, was not to be paid in currency but was to be satisfied by the issue of British Transport stock.

It is perhaps worth noting that the expression " the date of transfer " refers back to Section 12 of the Act, which provides for the vesting in the Commission of the undertakings specified in the Third Schedule on 1st January, 1948, and refers to that date as the date of transfer. " Transfer " is apparently adopted as a convenient word for describing a statutory operation by which the property of A is vested in B.

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[1] S.R. & O. 1939 No. 927.

(Viscount Simonds.)

Pursuant to Section 29 of the Act the Respondent Company's wagons were duly vested in the Commission, and in due course the Company received an amount of compensation determined in accordance with the provisions of Section 30 and the Sixth Schedule which was satisfied by the issue of an equivalent amount of British Transport stock. This amount was substantially higher than the written-down value of the wagons for the purposes of the Income Tax allowances in respect of wear and tear as appearing in the Company's books. On these facts a balancing charge of £29,021 was made on the Company in pursuance of Section 17 of the Income Tax Act, 1945, which I have already set out, by an assessment for the year 1948-49 made under Case I of Schedule D of the Income Tax Act, 1918. This amount (except for a part about which no dispute arises) represents the excess of the original cost over the written-down value.

The Respondent Company appealed against the balancing charge to the Commissioners for the Special Purposes of the Income Tax Acts, who determined the question in favour of the Crown and at the request of the Company stated a Case for the opinion of the High Court. The case was duly heard by Upjohn, J., who reversed the determination of the Commissioners, holding that no balancing charge was payable, and his decision was upheld by the unanimous opinion of the Court of Appeal. Your Lordships are now invited to reverse their judgment.

My Lords, I must at a later stage call your Lordships' attention to an argument which is founded on the provisions of certain later Acts, but our primary task is to consider whether the statutory transaction which I have described was an event to which Section 17 (1) (*a*) of the Income Tax Act, 1945, applied, or in other words whether the Respondent Company's wagons were "sold" within the meaning of that Section. Let me say at once that there is nothing in the Act itself to give any special meaning or colour to that word: it may be that the policy of the Act might equally well be applied to other transactions which are in some respects analogous to sales, but that is guesswork and we are here concerned with sales, not with analogous transactions.

My Lords, in my opinion the Company's wagons were not sold, and it would be a grave misuse of language to say that they were sold. To say of a man who has had his property taken from him against his will and been awarded compensation in the settlement of which he has had no voice, to say of such a man that he has sold his property appears to me to be as far from the truth as to say of a man who has been deprived of his property without compensation that he has given it away. Alike in the ordinary use of language and in its legal concept a sale connotes the mutual assent of two parties. So far as the ordinary use of language is concerned it is difficult to avoid being dogmatic, but for my part I can only echo what Singleton, L.J., said in his admirably clear judgment[1]:

> "What would anyone accustomed to the use of the words 'sale' or 'sold' answer? It seems to me that everyone must say: 'Hudsons did not sell'."

I am content to march in step with everyone and say: Hudsons did not sell. Nor is a different result reached by an attempt to analyse the legal concept. When Benjamin said in the passage quoted by Singleton and Birkett, L.JJ., from his well-known book on Sale that

> "By the common law a sale of personal property was usually termed a 'bargain and sale of goods'",

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(1) *See* page 47 *ante*.

(Viscount Simonds.)

he was by the use of the word " bargain " perhaps unconsciously emphasising that the consensual relation which the word " bargain " imports is a necessary element in the concept. In this there is nothing new: the same principle is exhibited in the Roman law, for the opening words of Title 23 of the third book of the Institutes of Justinian, De Emptione et Venditione, are

> " Emptio et venditio *contrahitur*, simulatque de pretio convenerit ".

I underline the word " contrahitur " and point out that it may have more than academic interest since the Income Tax Act of 1945 is a United Kingdom Act and " sale " must be construed by reference to the law of Scotland as well as the law of England. Sometimes the contract for sale is itself the sale, as so often in the sale of goods: sometimes, and particularly in the sale of land, it is regarded as a part of the sale as, for example, when it is said by a modern writer that

> " The first step in the sale of land is the contract for sale "

(see Cheshire, Modern Real Property, 3rd edition, page 642). But it is immaterial whether the contract is regarded as the sale itself or as a part of, or a step in, the sale or as a prelude to the sale. There is for the present purpose no substance in any such distinction. The core of it is that the consensual relation is connoted by the simple word " sale ".

It was urged upon your Lordships that after all the result in law of a sale is to transfer the ownership of property from A to B for a consideration in money or money's worth and that this is just what the Transport Act does to the Respondent Company's wagons. But, my Lords, if I may say so without disrespect to the very able and helpful argument of the learned Attorney-General, I find it in this aspect dangerously near a logical fallacy. A dog is an animal that has four legs and a tail, but not every animal that has four legs and a tail is a dog. Nor is a statutory vesting of A's property in B and the award of compensation to A a sale though its result may be the same as if A had sold that property to B.

Reference was next made to procedure under the Lands Clauses Act and to general or special Acts which give to undertakers or to central or local authorities powers of compulsory acquisition and it is true enough that these powers are commonly referred to as powers of compulsory purchase and the transaction is sometimes referred to as a compulsory sale. Faced with this nomenclature, which has been used for 100 years or more, the Respondent Company did not admit that, even if the transfer of their property had been effected by the usual procedure of compulsory purchase, which is now generally standardised by the Acquisition of Land (Authorisation Procedure) Act, 1946, the transaction would be a sale within Section 17 (1) (*a*) of the Income Tax Act, 1945. I do not think that it is necessary to determine this question. There are aspects of a so-called compulsory sale which clearly distinguish it from a sale *stricto sensu* and I am not satisfied that without some context to aid it the word " sale " in an Act of Parliament should be held to include a transaction which is more accurately, and, I think, now more commonly, described as a compulsory acquisition. But, however this may be, the operation of the Transport Act is widely different from that of the Acts to which I have referred. It has not those elements which in some degree assimilate a compulsory sale to a sale simpliciter and make the name, if a misnomer, at least a convenient misnomer. It was easy to describe as a purchase or sale with the qualifying adjective " compulsory ", a transaction in which the parties were placed in a position to negotiate and, apart from the power of compulsion in the

background, were not unlike an ordinary vendor and purchaser. These elements, as I say, are wholly lacking in the transaction under review and it is, in my opinion, an illegitimate use of language to say that, because an acquisition under the procedure of the Lands Clauses Act is spoken of as a compulsory sale, therefore this transaction is a sale.

Reliance was placed by learned Counsel for the Crown upon the case of *Commissioners of Inland Revenue* v. *Newcastle Breweries, Ltd.*, 12 T.C. 927. The facts of that case are sufficiently set out in the judgment of Singleton, L.J., and I do not think it necessary to repeat them. Nor do I differ in any respect from the view which he and Birkett, L.J., formed upon its relevance. The question there was whether a sum awarded to the company by way of compensation for a quantity of rum requisitioned by the Admiralty was a profit arising from its trade or business. The company contended that it was not. It was held by Rowlatt, J., and the Court of Appeal and this House that it was. Rowlatt, J., in the course of his judgment referring to the transaction said(1)

> " Now what is that except a compulsory sale of the rum? "

and somewhat similar expressions were used in this House. But they were used *alio intuitu* and are no authority for saying that every compulsory acquisition however effected is a sale.

Nor, my Lords, do I get any assistance in the construction of this Act from the numerous cases decided under the Stamp Acts to which we were referred. In one of them, *John Foster & Sons, Ltd.* v. *Commissioners of Inland Revenue*, [1894] 1 Q.B. 516, upon which the Appellant chiefly relied, Lindley, L.J., used language which taken out of its context would support the view that any transfer of A's property to B for a consideration in money or money's worth could be regarded as a sale. And in *Great Western Railway Co.* v. *Commissioners of Inland Revenue*, [1894] 1 Q.B. 507, similar language was used by Lord Esher, M.R. But, assuming, as I do, that these cases were rightly decided for the purpose of determining what sort of instrument is a " conveyance on sale " within the meaning of the Stamp Act, I must repeat that in them no more than in the *Newcastle Breweries* case do I find authority to support the Appellant's wide proposition in the present case.

At an early stage in this opinion I indicated that I would have to refer to an argument founded on the provisions of later Acts. Two questions here arise: (1) whether it is legitimate to seek guidance from the later Acts in construing the earlier one and (2) if it is, what light the later Acts throw upon the earlier one.

I must preface my consideration of these questions by a reference to the case of *Ormond Investment Co., Ltd.* v. *Betts*(2), [1928] A.C. 143, for at more than one point it is a direct authority upon the questions we have to decide. In the first place, I will quote a passage from Lord Buckmaster's speech at page 156(3). He cites the following words from the judgment of Lord Sterndale, M.R., in *Cape Brandy Syndicate* v. *Commissioners of Inland Revenue*(4), [1921] 2 K.B. 403, at page 414:

> " ' I think it is clearly established in *Attorney-General* v. *Clarkson*(5) that subsequent legislation on the same subject may be looked to in order to see the proper construction to be put upon an earlier Act where that earlier Act

(1) At p. 937. (2) 13 T.C. 400. (3) *Ibid.*, at p. 429.
(4) 12 T.C. 358, at p. 373 (5) [1900] 1 Q.B. 156.

(Viscount Simonds.)

> is ambiguous. I quite agree that subsequent legislation, if it proceed upon an erroneous construction of previous legislation, cannot alter that previous legislation; but if there be any ambiguity in the earlier legislation then the subsequent legislation may fix the proper interpretation which is to be put upon the earlier.' This ",

says Lord Buckmaster,

> " is, in my opinion, an accurate expression of the law, if by 'any ambiguity' is meant a phrase fairly and equally open to divers meanings, but in this case the difficulty is not due to ambiguity but to the applications of rules suitable for one purpose to another for which they are wholly unfit."

Other noble and learned Lords expressed the same opinion. Here, then, is the first proposition, that it is only where there is an ambiguity in the earlier Act that recourse may be had to a later Act for its construction. What, then, is an ambiguity for this purpose? The *Ormond* case(1) here too gives valuable help not only in the exposition given by Lord Buckmaster but also by its own example. The facts which I extract from the headnote to the report were these. By Rule 1 of Case V of Schedule D of the Income Tax Act, 1918, the tax in respect of income arising from foreign stocks and shares fell to be computed on the full amount thereof on the average of three preceding years as directed in Case I. The Rule applicable to Case I, which dealt with trades, prescribed how the tax should be computed. But in addition to the Rule under Case I there were Rules applicable to Cases I and II of which Rule 1 (2) prescribed the method of computation in certain cases. The Ormond company was assessed to tax on the basis that the words in Rule 1 of Case V " as directed in Case I " referred to Rule 1 (2) of the Rules applicable to Cases I and II as well as to the Rule applicable to Case I. This assessment was supported by the Crown both on the ground that this was what the relevant words in the Act of 1918 by themselves meant and on the further ground that a consideration of the provisions of a later Act, viz. Section 26 of the Finance Act, 1924, showed that this was the meaning attributed by the Legislature to the words of the earlier Act. In this House Lord Buckmaster was of opinion, as had been at least one of the members of the Court of Appeal, that the first contention of the Crown was right and that the words of the earlier Act had the meaning they sought to put upon them. The other noble and learned Lords thought otherwise. It would have been easy then to say that, since judicial opinion differed as to the meaning of these words, there was such an ambiguity as to justify recourse to a later Act to resolve it. But the decision of this House was unanimously to the contrary. That means that each one of us has the task of deciding what the relevant words mean. In coming to that decision he will necessarily give great weight to the opinion of others, but if at the end of the day he forms his own clear judgment and does not think that the words are " fairly and equally open to divers meanings " he is not entitled to say that there is an ambiguity. For him at least there is no ambiguity and on that basis he must decide the case. So here for me the meaning of Section 17 of the Income Tax Act, 1945, is clear beyond a peradventure, and I cannot look to later Acts for its meaning and effect.

My Lords, upon another point the *Ormond* case is an important authority. For in the present case much stress was laid on the fact that the later Acts to which it is sought to refer are by their terms to be construed as one with the earlier Act. This is indeed a common feature of revenue legislation, and it was present and by no means forgotten in the *Ormond* case. For

(1) 13 T.C. 400.

I find in the argument of the then Attorney-General, reported at page 147(1), the following passage:

> "The Act of 1924 is to be read with the Act of 1918, and the new Rule provided by s. 26 of the later Act is to be regarded as another provision of the principal Act."

And in the speech of Lord Buckmaster, at page 154, from a passage the whole of which is a valuable exposition of the law of this subject, I cite these words(2):

> "It is also possible that where Acts are to be read together, as they are in this case, a provision in an earlier Act that was so ambiguous that it was open to two perfectly clear and plain constructions could, by a subsequent incorporated statute, be interpreted so as to make the second statute effectual".

"As they are in this case" are for my present purpose the material words in this passage, for they show, as the argument for the Crown has shown, that in the *Ormond* case(3) as in the present case the House was dealing with two or more Statutes which were to be read together or construed as one and it was to those conditions that it directed its decision.

My Lords, numerous authorities besides the *Ormond* case were referred to: and though I do not think that they carry the matter any further, I will comment on some of them. But before doing so, I would make a more general observation. When an Act of Parliament becomes law and its meaning is plain and unambiguous a citizen is entitled to order his affairs accordingly and to act upon the footing that the law is what it unambiguously is. He must be assumed to know that the law may be altered but, if so, he may be assumed to know also that it is contrary to the general principles of legislation in this country to alter the law retrospectively. He should know, too, that, if Parliament alters the existing law retrospectively, it does so by an amendment which is an express enactment and above all he is surely entitled to be confident that it will not do so by force merely of an assumption or an allusion in a later Act. When the *Ormond* case was heard at first instance by Rowlatt, J., he described an argument to the contrary as

> "a sinister and menacing proposition".(4)

So it is, and I hope that your Lordships will have none of it.

My Lords, it follows from what I have said that, even where two Acts are to be read together, it is not permissible to make what is clear in the earlier Act obscure and ambiguous by reference to something in the later Act. The contrary view would be in direct conflict with the decision of this House in the *Ormond* case. What then is meant, it may be asked, when it is said that the earlier and later Acts are to be read as one, and how is the decision in the *Ormond* case to be reconciled with what Lord Selborne, L.C., said in *Canada Southern Railway Co.* v. *International Bridge Co.*, 8 App. Cas. 723? My Lords, I think that the question is easily answered. In the first place, if the earlier Act contains such an ambiguity as I have described, then the proposition can be accepted in its widest sense and recourse can be had to the later to explain the earlier Act. But, secondly, if there is no ambiguity in the earlier Act, then the proposition must have a more limited meaning and it will be the earlier Act to which recourse may be had to explain a provision of the later Act. It is upon the same principle that, where there has been a judicial interpretation of words in a Statute, those words will be deemed to have the same meaning in a subsequent Statute dealing with the same subject matter. I am aware that Lord Selborne used language capable of a wider interpretation, but what he said must be read

(1) [1928] A.C. (2) 13 T.C., at p. 428. (3) 13 T.C. 400. (4) *Ibid.*, at p. 407.

(Viscount Simonds.)

in the context of that case, in which the difficulty arose not upon the earlier but upon the later Act and it was to the former that recourse was had to explain the latter. It was not necessary to his decision to hold that an unambiguous provision of an earlier Act can be interpreted by reference to a later one, and I cannot suppose that he meant to decide anything of the kind.

My Lords, I have looked at the later Acts to which the learned Attorney-General referred in order to satisfy myself that they do not contain a retrospective declaration as to the meaning of the earlier Act. They clearly do not, and I do not think that it has been contended that they do. At the highest it can be said that they may proceed upon an erroneous assumption that the word " sold " in Section 17 (1) (*a*) of the Income Tax Act, 1945, has a meaning which I hold it has not. This may be so and, if so, it is an excellent example of the proposition to which reference was made in the report of the Committee of the Privy Council in In re *MacManaway*, [1951] A.C. 161, and again by my noble and learned friend Lord Radcliffe in *Commissioners of Inland Revenue* v. *Dowdall, O'Mahoney & Co., Ltd.*(1), [1952] A.C. 401, that the beliefs or assumptions of those who frame Acts of Parliament cannot make the law.

My Lords, having, as I say, looked at these Acts and so far satisfied myself, I shall consistently with what I hold to be the true principle of the interpretation of Statutes deny myself the pleasure of further examining them. I return to the Act of 1945 and reaffirm that, according to the plain and unambiguous meaning of Section 17 (1) (*a*), the Respondent Company did not sell its wagons to the British Transport Commission.

The appeal should, in my opinion, be dismissed with costs.

Lord Morton of Henryton.—My Lords, the only question which arises on this appeal is whether 663 railway wagons belonging to the Respondent Company were " sold " within the meaning of Section 17 (1) (*a*) of the Income Tax Act, 1945, when the property in these wagons was vested in the British Transport Commission on 1st January, 1948, under Section 29 of the Transport Act, 1947, and on the terms as to compensation set out in the immediately following Sections of that Act.

Section 17 of the Income Tax Act, 1945, so far as material, is in the following terms:—

> " 17.—(1) Subject to the provisions of this section, where, on or after the appointed day, any of the following events occurs in the case of any machinery or plant in respect of which an initial allowance or a deduction under Rule 6 of the Rules applicable to Cases I and II of Schedule D has been made or allowed for any year of assessment to a person carrying on a trade, that is to say, either—
>
> (*a*) the machinery or plant is sold, whether while still in use or not; or
>
> (*b*) the machinery or plant, whether still in use or not, ceases to belong to the person carrying on the trade by reason of the coming to an end of a foreign concession; or
>
> (*c*) the machinery or plant is destroyed; or
>
> (*d*) the machinery or plant is put out of use as being worn out or obsolete or otherwise useless or no longer required,
>
> and the event in question occurs before the trade is permanently discontinued, an allowance or charge (in this Part of this Act referred to as 'a balancing allowance' or 'a balancing charge') shall, in the circumstances mentioned in this section, be made to, or, as the case may be, on, that person for the year of assessment in his basis period for which that event occurs. . . .

(1) 33 T.C. 259, at p. 287.

(2) Where there are no sale, insurance, salvage or compensation moneys or where the amount of the capital expenditure of the person in question on the provision of the plant or machinery still unallowed as at the time of the event exceeds those moneys, a balancing allowance shall be made, and the amount thereof shall be the amount of the expenditure still unallowed as aforesaid, or, as the case may be, of the excess thereof over the said moneys.

(3) If the sale, insurance, salvage or compensation moneys exceed the amount, if any, of the said expenditure still unallowed as at the time of the event, a balancing charge shall be made, and the amount on which it is made shall be an amount equal to the excess or, where the said amount still unallowed is nil, to the said moneys ".

By Section 58 (3) of the Act any references in the Act to the sale of any property are to be read as including a reference to the exchange of any property, but the Attorney-General, for the Appellant, did not seek to contend that the transaction now under consideration amounted to an exchange.

Section 68 (1) defines

" sale, insurance, salvage or compensation moneys "

as

" (*a*) where the event is a sale of any property, the net proceeds to that person of the sale ".

Section 70 provides that the Act

" shall be construed as one with the Income Tax Acts."

The Act of 1945 greatly extended the scheme of capital allowances for depreciation of capital assets, for the purpose of the taxation of the profits of business undertakings ; a special feature of such allowances was the making of an initial allowance upon the acquisition of the asset, in addition to subsequent annual allowances. The object of the provisions contained in Section 17 (1) (*a*) is, I think, plain. The Legislature realised that machinery or plant might be sold before the trader had obtained the full amount of the depreciation allowances which might have accrued in respect thereof, and the moneys received on the sale might be less than the written-down value of the asset. This would indicate that the depreciation allowances had not been sufficiently generous in this particular instance, and by way of putting the matter right a " balancing allowance " became claimable by the trader. Conversely, if the moneys received on the sale were in excess of the written-down value of the asset, a " balancing charge " was imposed, in order to restore to the public revenue the amount by which the past allowances were shown to have been excessive.

It is convenient to turn at once to certain provisions of the Finance Act, 1947, and the Finance Act, 1948, as the Attorney-General submitted, as I think rightly, that these provisions throw much light upon the interpretation of Section 17 of the Act of 1945. Section 29 of the Finance Act, 1947, provides, so far as material, as follows:—

" 29.—(1) Where, whether before or after the passing of this Act, any assets consisting of or of an interest in any property vest in the National Coal Board by virtue of section five or section six of the Coal Industry Nationalisation Act, 1946, or by virtue of section forty-four of, and the Third Schedule to, that Act, and, immediately before the date of the vesting thereof, the assets were assets of a colliery concern . . . the provisions of the Seventh Schedule to this Act shall have effect in computing the liability to income tax of the person who was, immediately before the said date, the owner of the said assets, and of the said Board respectively."

The Seventh Schedule to the Act, after defining " relevant property " and defining " vest " as vesting in the National Coal Board under certain

(Lord Morton of Henryton.)

Sections of the Coal Industry Nationalisation Act, 1946, sets out certain provisions which are to have effect for the purposes of computing the liability of the Board to Income Tax for any year of assessment. The only relevant provision for the present purpose is Paragraph 3 of Part III, which reads as follows:—

> "3. The vesting of, or of an interest in, any relevant property shall not be treated as a sale, or as a purchase, for any of the purposes of",

inter alia, Part II of the Income Tax Act, 1945. Part II of the latter Act is the Part which contains Section 17, already quoted.

By Section 74 (4) of the Finance Act, 1947, it is provided that Part III of the Act (which contains Section 29)

> "shall be construed as one with the Income Tax Acts."

Section 35 of the Finance Act, 1948, is in the following terms:—

> "35.—(1) The question whether any and if so what balancing allowance or balancing charge falls to be made to or on the National Coal Board on the occasion of the transfer to the British Transport Commission under section twenty-nine of the Transport Act, 1947, of any railway wagons which the said Board acquired under the Coal Industry Nationalisation Act, 1946, shall be determined as if section twenty-nine of the Finance Act, 1947, and the Seventh Schedule to that Act, had not been passed.
>
> (2) This section shall be deemed always to have had effect."

Section 82 (4) of the same Act provides that Part III thereof (which contains Section 35)

> "shall be construed as one with the Income Tax Acts."

The Attorney-General submits that the Income Tax Act, 1945, the Finance Act, 1947, and the Finance Act, 1948, all of which are to be construed as one with the Income Tax Acts, form a statutory code, and that the provisions quoted from the Acts of 1947 and 1948 show that the word "sold" in Section 17 of the Income Tax Act, 1945, is not restricted to a sale by mutual assent. I shall return to this argument later, but for the moment I shall summarise the facts of the present case and refer to the provisions of the Transport Act, 1947, under which the Respondent Company's railway wagons were transferred to the British Transport Commission.

At all material times the Respondent Company's business was that of a coal merchant. It had a number of subsidiary companies which also carried on business as coal merchants. The Company owned railway wagons which were used for the transport of the coal in which the Company and its subsidiary companies were dealing, and the Company was the owner of 663 such wagons at the time of the transfer to the British Transport Commission. The wagons had all been requisitioned by the Minister of Transport under the powers contained under Regulation 53 of the Defence (General) Regulations, 1939[1]. On 1st January, 1948, being the date of transfer as defined in the Transport Act, 1947, the property in the wagons so requisitioned was transferred to and vested in the British Transport Commission under Section 29 of that Act, which is as follows:—

> "29. Where, immediately before the date of transfer, any privately owned railway wagon is under requisition by virtue of an exercise of the powers in that behalf conferred by Regulation 53 of the Defence (General) Regulations, 1939—
>
> (*a*) the property in that wagon shall vest in the Commission on the date of transfer, free from any mortgage or other like incumbrance, and the requisition shall then cease; and

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[1] S.R. & O. 1939 No. 927.

> (*b*) the Crown shall not be liable for any compensation under the Compensation (Defence) Act, 1939, or otherwise in respect of any damage to the wagon occurring during the period of requisition."

Section 30 of the Transport Act, 1947, provides :—

> " 30.—(1) Where under the last preceding section the property in any wagon vests in the Commission, the Commission shall, subject to the provisions of the three next succeeding subsections, pay as compensation in respect thereof an amount determined, by reference to the type of wagon and the year in which the wagon was first built, in accordance with the Table set out in the Sixth Schedule to this Act."

The table in the Sixth Schedule sets out a sliding scale of payments adjusted according to the type of wagon and the year in which the wagon was first built. To give one instance, for an eight-ton wagon first built in 1946 the owner would receive £248, but for a similar wagon first built in 1902 he would only receive £16 10*s*. Sub-sections (2), (3) and (4) contain provisions under which, in certain circumstances, the sums set out in the Sixth Schedule are varied. Section 32 (1) provides that the amount payable by way of compensation in respect of a wagon should be satisfied by the issue to the person entitled thereto of British Transport stock, but it is not suggested by either party that this provision has any bearing upon the question arising for decision.

These then were the statutory provisions under which the Respondent Company's wagons passed from its ownership into the ownership of the British Transport Commission. It is only necessary to add that there is no dispute in regard to figures in this case ; the sole question is, as I have said, whether the wagons were " sold " to the Commission within the meaning of Section 17 (1) (*a*) of the Income Tax Act, 1945.

My Lords, before I return to a consideration of the words of that Section I shall try to clear the ground by dealing with certain preliminary questions much debated in your Lordships' House. The first preliminary question is whether it is a correct use of the English language to describe as a " sale " a transaction in which the ownership of property is transferred from A to B on the terms that B shall pay a sum of money to A, but the element of mutual assent is absent.

Mr. Senter, for the Respondent Company, contends that the answer to this question should be: No. His sheet-anchor is the following passage from Benjamin on Sale, 2nd edition (1873), page 1 :—

> " By the common law a sale of personal property is usually termed as a ' bargain and sale of goods '. It may be defined to be a transfer of the *absolute or general* property in a thing for a price in *money*. Hence it follows, that to constitute a valid sale, there must be a concurrence of the following elements, *viz.*:—(1st) Parties competent to contract ; (2nd) Mutual assent ; (3rd) A thing, the absolute or general property in which is transferred from the seller to the buyer ; and (4th) A price in money paid or promised."

The Attorney-General points out, however, that Benjamin's definition of a sale is contained in the words " a transfer of the absolute or general property in a thing for a price in money." The marginal note to the four " elements " just set out is

> " The elements of the contract ",

indicating that at this stage the author is dealing only with a sale which is of a contractual nature. The Attorney-General relies on definitions by other writers which omit the element of mutual assent. To give two instances, in

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Blackstone's Commentaries, 19th edition (1836), volume II, page 446, the following definition appears:—

> "Sale or *exchange* is a transmutation of property from one man to another, in consideration of some price or recompense in value",

while in Chalmers' Sale of Goods, 12th edition, page 172, it is said that

> "the essence of sale is the transfer of the ownership or general property in goods from seller to buyer for a price".

The Attorney-General points out that in neither of these definitions is the element of mutual assent mentioned.

My Lords, the question whether it is a correct use of the English language to describe as a sale a transaction from which the element of mutual assent is missing is no doubt an interesting one. I think, however, that this question loses its importance for the purpose of the decision of this appeal when it is realised that for the last hundred years transactions by which the property of A has been transferred to B, on payment of compensation to the owner but without the consent of the owner, have been referred to many times, in Acts of Parliament, in opinions delivered in this House, in judgments of the Court of Appeal and the High Court of Justice, and in textbooks, as a "sale"—generally as a "compulsory sale". Many instances might be given but I shall confine myself to a few.

In the Lands Clauses Consolidation Act, 1845, between Section 15 and Section 16 there is a general heading

> "And with respect to the *purchase* and taking of lands otherwise than by agreement",

while in Section 82 under the heading

> "And with respect to the conveyances of land"

the owner whose land is being acquired is called "the seller" and the acquiring body is called "the purchaser".

Again in Section 92 one finds the words

> "*sell* or convey"

in regard to compulsory taking of land. See also the Local Government Act, 1894, Section 9 (1) and (10).

In *Commissioners of Inland Revenue* v. *Glasgow and South Western Railway Co.*, 12 App. Cas. 315, one finds at page 321 the words—

> "compelled to sell";

at page 325 compensation is referred to as the "price" and at page 326 *init.* there is a reference to

> "consideration for the sale".

In In re *Lord Gerard and London and North Western Railway Co.*, [1895] 1 Q.B. 459, Rigby, L.J., said in reference to the Railway Clauses Consolidation Act, 1845(1):

> "The object of the statute evidently was to get rid of all the ordinary law on the subject, and to compel the owner to sell the surface, and, if any mines were so near the surface that they must be taken for the purposes of the railway, to compel him to sell them, but not to compel him to sell anything more."

The case of *Commissioners of Inland Revenue* v. *Newcastle Breweries, Ltd.*, 12 T.C. 927, referred to later, affords a striking modern instance of

(1) At p. 469.

the use of the word "sale" as applied to a compulsory taking of goods. Finally the heading of the article dealing with the subject in Halsbury's Laws of England (Hailsham edition, 1932) is

"Compulsory purchase of land and compensation".

In these circumstances, whether this use of the word "sale" was originally correct or incorrect, I find it impossible to say that the only construction which can fairly be given to the word "sold" in Section 17 (1) (*a*) of the Income Tax Act, 1945, is to limit it to a transaction in which the element of mutual assent is present. I incline to think that in a modern Statute the word should be construed as including a compulsory acquisition on payment of compensation, in the absence of a context limiting its meaning to sales by mutual assent; but at least the word is fairly capable of the wider meaning, and it is necessary to look at the context in which it is used in order to ascertain the intention of the Legislature.

The second preliminary question arises by reason of an argument put forward by Mr. Senter. He contended that even if the word "sold" can be construed as including a compulsory acquisition of property by the machinery prescribed in the Lands Clauses Consolidation Act, 1845, it is a further step, and a step which is not justified, to apply the word to the transaction now under consideration. He suggests that the machinery for the taking of land under the Lands Clauses Consolidation Act, 1845, to some extent resembles a sale by mutual assent. For instance, it gives the owner a chance of being heard as to the amount of the compensation money, and there is ultimately a conveyance of the land to the body which acquires it, whereas in the transaction now under consideration (1) there is no conveyance, the property in the wagons being simply vested in the Commission by Section 29 of the Transport Act, 1947; (2) the owner is given no opportunity of making representations as to the amount of compensation, which is regulated solely by the provisions of Section 30 and the Sixth Schedule to the Act.

My Lords, if once it is accepted that the words "sale" and "sold" are capable of applying to a compulsory sale of the kind described, e.g., in the Lands Clauses Consolidation Act, 1845, I find it impossible to hold that they are not equally capable of applying to a transaction such as the one which your Lordships are now considering. The differences relied upon by Mr. Senter are merely differences in the machinery for carrying out two transactions which are essentially of the same type, namely, compulsory transfers of property with payment of compensation to the transferor. The differences in machinery are due to the nature of the property and to the surrounding circumstances. The vesting provisions in the Transport Act, 1947, were applied to a large number of clearly identifiable wagons which were all already under requisition by the Minister of Transport; there was no need for any formal document of transfer, and a vesting declaration was the obvious way of transferring the property. Nor was there any need for elaborate provisions for valuing the property. A separate valuation by experts of each one of many thousands of wagons taken over under the Act of 1947, according to the actual condition of each wagon, would have been prolonged and expensive, and the comprehensive scheme of valuation set out in the Sixth Schedule was obviously intended to give the dispossessed owner an overall price fixed according to the type of wagon and its number of years of service. Moreover, the provisions in Section 30 of the same Act show that questions of detail as to the value could be considered in special cases. I would add that in the case of *Commissioners of Inland Revenue* v. *Newcastle*

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Breweries, Ltd., 12 T.C. 927, the Admiralty, acting under the Defence of the Realm Regulations, had taken over a large stock of rum from the respondent company, and in the judgments of Rowlatt, J., of the Court of Appeal, and in your Lordships' House, the transaction is constantly described as a "compulsory sale". For instance, at page 937, Rowlatt, J., said:

> ". . . what is that except a compulsory sale of the rum? . . . That is all it is, a compulsory sale of the rum."

At page 943 Lord Hanworth, M.R., said that the requisitioning of the rum

> "caused it to be dealt with rather sooner than later; but along the same channel down which it was always intended that it should pass from the Appellants' possession, namely, by sale."

In your Lordships' House Viscount Cave, L.C., said(1):

> "If the raw rum had been voluntarily sold to other traders, the price must clearly have come into the computation of the Appellants' profits, and the circumstance that the sale was compulsory and was to the Crown makes no difference in principle. . . . The transaction was a sale in the business, and although no doubt it affected the circulating capital of the Appellants it was none the less proper to be brought into their profit and loss account."

I can see no relevant distinction, for the present purpose, between a requisitioning of rum and a compulsory transfer of wagons.

Singleton, L.J., asked the question(2):

> "Did Hudsons sell their wagons to the Commission?",

and continued:

> "I am quite sure what the answer of Hudsons would be, but that is not much help. What would anyone accustomed to the use of the words 'sale' or 'sold' answer? It seems to me that everyone must say: 'Hudsons did not sell'."

My Lords, I would agree that not much help can be obtained by considering what would have been the answer of a director of the Respondent Company; but if the question were to be put to ten persons unconnected with the company, I should think it quite likely that five of them might say, "No, the wagons were taken over under the Transport Act" and the other five might say "Yes", adding, possibly, "but it was a compulsory sale" or "because they had to do it".

For these reasons I would dispose of the second preliminary question by rejecting Mr. Senter's argument and concluding that if a transfer of land under the Lands Clauses Consolidation Act, 1845, is capable of being included within the words "sale" and "sold", so also is the transaction now under consideration.

My Lords, I trust that in dealing with the two preliminary questions I have made good the proposition that the phrase "is sold" in Section 17 of the Income Tax Act, 1945, is fairly open to either one of two interpretations, namely, (*a*) that it refers only to sales made in pursuance of a contract; or (*b*) that it includes any transfer of ownership of plant or machinery from one to another "in consideration of some price or recompense in value", to quote again from Blackstone. If the wider interpretation is accepted, the transaction now in question clearly comes within it.

Thus a question of construction exists, and the materials for determining it are the terms of the Act of 1945, read in conjunction with the provisions already quoted from the Finance Act, 1947, and the Finance Act, 1948.

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(1) At p. 953. (2) *See* page 47 *ante*.

(Lord Morton of Henryton.)

Turning first to Section 17 of the Act of 1945, I note that it is designed for the practical purpose of producing a fair and reasonable result in two contrasted cases, one of which results in a balancing allowance and the other in a balancing charge. It would indeed be strange if the trader could get a balancing allowance if he voluntarily sold his plant at a price below the written-down value, but could get no balancing allowance if the plant were taken from him against his will and the price or compensation paid to him were below the written-down value. The material point under the Section is not the method by which the plant was transferred and the price fixed, but the *fact* of the transfer and of the deficiency in price. Similar observations apply with equal force to the converse case in which a balancing charge becomes payable. Mr. Senter suggested that Section 17 was a "charging Section" and should be construed strictly. It is true that in one event the Section imposes a charge upon the subject, but it is equally true that in another event it confers a benefit upon him, and the words "is sold" must bear the same meaning in each event. In these circumstances, I do not think that the principle of strict construction of a charging Section can be applied in this case.

So far it appears to me that the construction for which the Crown contends is the one which best fits the spirit and intent of the Section. I now turn to the provisions in the Finance Act, 1947, and the Finance Act, 1948, upon which the Attorney-General relied so strongly. As I have already pointed out, these two Finance Acts contain an operative direction that, *inter alia*, the provisions therein which I have already quoted "shall be construed as one with the Income Tax Acts", and the Attorney-General submitted that the relevant provisions of the three Acts formed one statutory code in regard to balancing charges or allowances, and should be looked at as a whole, as if they were all in one comprehensive Act, for the purpose of interpreting the words "is sold" in Section 17 of the Act of 1945.

My Lords, in the absence of authority I should have thought that when Parliament says that two or more Statutes are to be construed as one, it means that questions of construction *must* be approached in the manner just described; and this view is by no means unsupported by authority. In *Canada Southern Railway Co.* v. *International Bridge Co.*, 8 App. Cas. 723, at page 727, the Earl of Selborne, L.C., said in regard to two Acts of the Canadian Legislature,

> "It is to be observed that those two Acts are to be read together by the express provision of the 7th and concluding section of the amending Act; and therefore we must construe every part of each of them as if it had been contained in one Act, unless there is some manifest discrepancy, making it necessary to hold that the later Act has to some extent modified something found in the earlier Act."

This principle has been adopted and applied in many cases: see for instance *Hart* v. *Hudson Bros., Ltd.*, [1928] 2 K.B. 629; *Phillips* v. *Parnaby*, [1934] 2 K.B. 299; *Rex* v. *Folkestone and Area Rent Tribunal*, [1952] 1 K.B. 54; and Lord Selborne's words are reproduced in Maxwell on the Interpretation of Statutes, 10th edition (1953), page 34, as stating the present law.

Mr. Senter, however, submitted that in the first instance your Lordships must look only at the Income Tax Act, 1945, and decide on the wording of that Act alone whether the words "is sold" in Section 17 (1) (*a*) were ambiguous. If these words, so regarded, were ambiguous, then and then only could the Acts of 1947 and 1948 be referred to; if the words were unambiguous, no attention could be paid to the later Acts, notwithstanding the statutory direction that they were to be construed as one with, *inter alia*,

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the Act of 1945. He relied upon certain observations by members of this House in *Ormond Investment Co., Ltd.* v. *Betts*(1), [1928] A.C. 143. I am not satisfied that these observations entirely justify Mr. Senter's submission, but I need not pursue this matter further, as in my view each of the alternative methods of approach leads to the same result. In the last mentioned case Lord Atkinson said, at page 164(2):

> "where the interpretation of a statute is obscure or ambiguous, or readily capable of more than one interpretation, light may be thrown on the true view to be taken of it by the aim and provisions of a subsequent statute."

This he referred to as

> "a well recognised principle dealing with the construction of statutes".

Lord Buckmaster in the same case, at page 154(3), said:—

> "It is also possible that where Acts are to be read together, as they are in this case, a provision in an earlier Act that was so ambiguous that it was open to two perfectly clear and plain constructions could, by a subsequent incorporated statute, be interpreted so as to make the second statute effectual, which is what the courts would desire to do".

My Lords, for some time I found it difficult to understand what Lord Buckmaster had in mind when he referred to "two perfectly clear and plain constructions", for it is not easy to see how each one of two possible constructions of an ambiguous Act could be perfectly clear and plain. I think, however, Lord Buckmaster meant that it must be perfectly clear and plain what are the two possible constructions, and I do not think that he intended to differ in any way from the principle as stated by Lord Atkinson.

In the present case it seems to me clear and plain that the two possible interpretations of Section 17 (1) (*a*) are those which I have already set out, and I have already stated my view that the words "is sold" are (to quote Lord Atkinson) "readily capable of more than one interpretation", having regard to the widespread modern use of the words "sale" and "purchase" in regard to compulsory acquisitions of property. If this is so, your Lordships are admittedly at liberty to call in aid the provisions of the two later Acts, in order to ascertain which interpretation is in accordance with the intention of the Legislature. These provisions make it clear, in my view, that by the words "is sold" in Section 17 (1) (*a*) the Legislature intended to include a compulsory transfer such as the one now in question. Paragraph 3 of Part III of the Seventh Schedule to the Finance Act, 1947, shows that such a vesting of property in the National Coal Board as is there mentioned was regarded by the Legislature as constituting a "sale" within the meaning of, *inter alia*, Section 17 of the Income Tax Act, 1945; otherwise Paragraph 3 would have been unnecessary; and it was not contended that the statutory vesting of property in the National Coal Board differed, in any material particular, from the statutory vesting of property in the British Transport Commission which was effected by Section 29 of the Transport Act, 1947. Section 35 of the Finance Act, 1948, drives the point home even more forcibly, for it shows clearly that a balancing charge could become payable on a vesting of property in the British Transport Commission by Section 29 of the Transport Act, 1947, the same Section which vested the Respondent Company's wagons in that Commission; and a balancing charge could only become payable if such vesting was a sale within the meaning of Section 17 (1) (*a*) of the Income Tax Act, 1945.

For these reasons, my Lords, I am of opinion that the Special Commissioners were right in holding that the Respondent Company became accountable for a balancing charge in the present case.

(1) 13 T.C. 400. (2) *Ibid.*, at p. 435. (3) *Ibid.*, at p. 428.

(Lord Morton of Henryton.)

I should add that Mr. Senter relied strongly upon certain observations of my noble and learned friends, Lord Reid and Lord Radcliffe, in the case of *Commissioners of Inland Revenue* v. *Dowdall, O'Mahoney & Co., Ltd.*(1), [1952] A.C. 401. In my view, these observations have no application to the present case. There has been here no decision that the words " is sold " in Section 17 of the Income Tax Act apply only to sales by mutual assent, and no " unfounded assumption " by Parliament. In effect, Parliament has made clear, in a composite Act, the meaning of words used in one portion of that Act, by words used in another portion thereof. Reference was also made to observations of my noble and learned friend, Lord Radcliffe, in delivering the judgment of the Board in In re *MacManaway,* [1951] A.C. 161, at page 177 ; but the Board was not dealing in that case with Acts which were to be construed as one.

I would allow the appeal and uphold the assessment under review.

Lord Reid.—My Lords, Section 29 of the Transport Act, 1947, provided that privately owned railway wagons under requisition should vest in the Transport Commission, and 663 wagons which belonged to the Respondents vested in the Commission under that Section. Section 30 required the Commission to pay as compensation an amount determined in a Schedule to the Act by reference to the type and age of each wagon and Section 32 made the compensation payable by an issue of British Transport stock.

The Income Tax Act, 1945, provides that a balancing charge shall be payable in certain events. Under Section 17, which applies to machinery and plant, one of those events is where

> " (*a*) the machinery or plant is sold, whether while still in use or not "

The present case turns on the meaning of the word " sold " in this context. If the vesting of the Respondents' wagons in the Commission was a sale within the meaning of this Section then this appeal must succeed: if not, it must fail.

These Acts are United Kingdom Acts, and it is therefore relevant to consider both the law of England and the law of Scotland in interpreting them, for they must be intended to have the same effect in both countries. I do not think that there is any relevant difference between the law in the two countries but I make no apology if I use some terms more appropriate in the law of Scotland. " Sale " is, in my opinion, a *nomen juris,* it is the name of a particular consensual contract. The law with regard to sale of chattels or corporeal moveables is now embodied in the Sale of Goods Act, 1893. By Section 1 (1)

> " A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price "

and by Section 1 (3)

> " Where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale ; but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled the contract is called an agreement to sell."

As a contract of sale, as distinct from an agreement to sell and unlike other contracts, operates by itself and without delivery to transfer the property in the thing sold, the word " sale " connotes both a contract and a conveyance or transfer of property.

(1) 33 T.C. 259.

(Lord Reid.)

But the Appellant maintains not only that the word " sale " is capable of having a wider or different meaning than that, but that its ordinary and correct meaning does not involve any contract but is simply the transfer of the property in or the ownership of a thing from one person to another for a money price, and that any sum of money which accrues to the former owner on the transfer is properly called a price. They say that the word " sale " is equally apposite whether the transfer is voluntary or takes place by operation of law and that the word " price " is equally apposite whatever be the way in which the sum of money payable to the former owner is determined.

It is true that " compulsory purchase " has long been a familiar phrase. The word " purchase " is frequently used in the Lands Clauses Consolidation Acts. The confused drafting of these Acts has often been commented on but I think that it may fairly be said that the method and machinery which they provide to enable undertakers to acquire land compulsorily has been made to look as like an ordinary sale as possible. In Scotland, service of the notice to treat has been held equivalent to the making of a contract to sell the land comprised in the notice, and in England the relation of vendor and purchaser has been held to arise at least when the amount of compensation is ascertained. The Acts contain elaborate provisions enabling the owner to sell even if under disability and for determining the amount of the purchase money or compensation if that is not agreed, and it is only if the owner fails to execute a conveyance after the purchase money has been deposited that the undertakers can themselves take the necessary steps to acquire the property. So it is not surprising that the phrase " compulsory purchase ", or " compulsory sale ", has come to be used to describe the operation of the Acts. But it has certainly not been common to use the words " purchase " or " sale " by themselves to describe compulsory acquisition: indeed I do not think that we were referred to any case in which either word was so used.

Compulsory acquisition of personal or moveable property was at least infrequent before the 1914 war, and the first instance to which we were referred of the use of the phrase " compulsory sale " in this connection was in *Commissioners of Inland Revenue* v. *Newcastle Breweries, Ltd.*, 12 T.C. 927. There the Admiralty had requisitioned a quantity of rum, and the question was whether the whole of the compensation which the company received was a trading receipt. A sum may well be a trading receipt although it does not come to the trader as the price of goods sold. But the company relied on the fact that they did not sell the rum and the expression " compulsory sale of the rum " was used both by Rowlatt, J., and in this House in rejecting that argument for the taxpayer. I do not think that it was intended to mean either that the compulsory acquisition was in fact a sale or that for all purposes it was equivalent to a sale, but only that it had the same effect as a sale in making the sum received a trading receipt.

Then cases were cited on the question whether a particular instrument was a " conveyance or transfer on sale " within the meaning of the Stamp Act, 1891. In one case, where the acquisition was compulsory, the instrument was a disposition granted by the owner, but generally, although the final step may not have been, strictly speaking, a sale, the transaction

originated from an agreement. Lord Esher, M.R., said, in *Great Western Railway Co.* v. *Commissioners of Inland Revenue,* [1894] 1 Q.B. 507(1):

> "Turning to the Stamp Act, the words used are 'a conveyance on sale.' Does that expression mean a conveyance where there is a definite contract of purchase and sale preceding it? Is that the way to construe the Stamp Act, or does it mean a conveyance the same as if it were upon a contract of purchase and sale? The latter seems to me to be the meaning of the phrase as there used."

I cannot get from these cases any guidance as to what is and what is not in fact a sale.

The Appellant relied greatly on descriptions of sale by various writers —for they were hardly definitions. These authors did not mention the contractual element of sale, but they were not dealing with compulsory acquisition and I cannot infer from their words that if they had been dealing with it they would have said that compulsory acquisition was truly a sale. Transfer of ownership or possession may follow on barter or donation or pledge or hiring or loan or deposit or their English equivalents, but if I found a description of any of these which omitted to mention the contractual or mental element I would not infer that the author thought that any of these terms could properly be regarded as applicable to a compulsory transfer of ownership or possession.

I do not think that any of the authorities cited for the Appellant support the Appellant's contention as to the proper and usual meaning of the word "sale", but I would agree that "sale" is a word which has become capable in an appropriate context of having a meaning wider than its ordinary and correct meaning. But it is only permissible to give to a word some meaning other than its ordinary meaning if the context so requires; so I turn to the context.

I find nothing in the Income Tax Act, 1945, to justify giving to the word "sale" a meaning wider than its ordinary meaning. In a taxing Act, and particularly in a charging Section, one assumes that language is used accurately unless the contrary clearly appears, and, in my opinion, Section 17 is a charging Section. It is the only Section which could authorise the assessment in this case. It is true that its provisions may sometimes favour the taxpayer by entitling him to a balancing allowance. But that does not prevent it from being a charging Section as regards those whom it makes liable to pay tax, and

> "No tax can be imposed on the subject without words in an Act of Parliament clearly shewing an intention to lay a burden on him",

per Lord Blackburn in *Coltness Iron Co.* v. *Black,* 6 App. Cas. 315(2). It may be that there is no apparent reason why the taxpayer should be subject to a balancing charge or entitled to a balancing allowance if his plant is sold but not if it is taken compulsorily but

> "if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be",

per Lord Cairns in *Partington* v. *Attorney-General,* L.R. 4 H.L. 100(3).

The context in Section 17 appears to me to be rather against the Appellant: in Sub-section (1) (*b*) the words are

> "the machinery or plant . . . ceases to belong to the person carrying on the trade by reason of the coming to an end of a foreign concession".

(1) At p. 512. (2) At p. 330; 1 T.C. 287, at p. 316. (3) At p. 122.

(Lord Reid.)

There is no apparent reason for the difference between that form of words and the words in Sub-section (1) (*a*)—

> " the machinery or plant is sold ".

but the contrast must have been deliberate. And, even if the Appellant is right, admittedly the Section does not apply if machinery or plant is confiscated, there being nothing which could be called a price receivable by the owner. No doubt it was not contemplated that machinery or plant would be confiscated in this country but a taxpayer trading in this country might have machinery or plant abroad which might be confiscated without there being any termination of a concession and, although the need for a balancing allowance would then be greater than if he received compensation, admittedly the Section would not entitle him to it. So on any view there are cases to which one would expect the Section to apply but which it does not cover. In my judgment, if one does not look beyond the Act of 1945, compulsory acquisition is plainly not within the scope of Section 17.

But the Appellant maintains that we must interpret the Act of 1945 in the light of subsequent legislation. Section 29 of the Finance Act, 1947, provides that where assets vest in the National Coal Board the provisions of the Seventh Schedule to the Act shall have effect in computing the liability to Income Tax of the former owner and of the Board. Part II of the Schedule deals with the liability of the transferor and provides that Parts I, II, III, V and VI of the Income Tax Act, 1945, shall be deemed never to have applied in relation to the relevant property. Part III of the Schedule deals with the liability of the National Coal Board and provides—

> " 3. The vesting of, or of an interest in, any relevant property shall not be treated as a sale, or as a purchase, for any of the purposes of Parts I, II, III, V and VI of the Income Tax Act, 1945, or of Part IV of the Finance Act, 1944."

Parts I and II of the 1945 Act are those which deal with balancing allowances and charges. The vesting provisions of the Coal Industry Nationalisation Act, 1946, are complicated. Some property vested automatically but with regard to other property the owner had a right to object if the Board wished to take it. Compensation, determined by an elaborate process, was payable except as to some interests mentioned in the Third Schedule. So there is considerable similarity between the vesting in the National Coal Board and the vesting of the wagons in the present case.

It is not easy to follow these elaborate provisions but I think that the Appellant can at least say that it was unnecessary to mention Part II of the Act of 1945 in the Paragraph which I have quoted from the Schedule to the Act of 1947 if the vesting of plant and machinery in the National Coal Board was not a " sale " within the meaning of Part II of the Act of 1945. And it may well be that if the Respondents in this case are right the whole of that Paragraph in the 1947 Act was unnecessary. The Appellant's argument is that Parliament must have thought it necessary to enact the Paragraph and could only have thought it necessary on the view that " sale " in the 1945 Act did include compulsory vesting of property in the National Coal Board: Parliament has therefore supplied an authoritative interpretation of the 1945 Act.

The other provisions on which the Appellant relied are Sections 34 and 35 of the Finance Act, 1948. Section 34 deals with certain property transferred under, *inter alia,* the Transport Act, 1947, but it does not apply

to these railway wagons. Sub-section (2) enacts that a transfer to which that Section applies

> "shall be treated for income tax purposes as a sale of property to which"

certain special provisions of the Act of 1945 apply. I cannot see that this Section could throw any light on the question in this case: its provisions are equally apposite and necessary whether the transfers to which it applies are sales within the meaning of the 1945 Act or not.

Section 35 of the 1948 Act is closer to the present case: it applies to some railway wagons although not to those which belonged to the Respondents. It enacts

> "35.—(1) The question whether any and if so what balancing allowance or balancing charge falls to be made to or on the National Coal Board on the occasion of the transfer to the British Transport Commission under section twenty-nine of the Transport Act, 1947, of any railway wagons which the said Board acquired under the Coal Industry Nationalisation Act, 1946, shall be determined as if section twenty-nine of the Finance Act, 1947, and the Seventh Schedule to that Act, had not been passed.
>
> (2) This section shall be deemed always to have had effect."

This is a retrospective amendment of the provisions of the 1947 Act to which I have already referred. The second Sub-section cannot mean more than that the Section shall be deemed to have had effect from the moment when the 1947 Act was passed. It could not possibly have had any effect before that: it would not make sense to interpret "always" as meaning that the Section must be deemed to have had effect before balancing charges were first imposed, or for that matter before Income Tax was first imposed. To my mind, the question whether this Section can be used to interpret the 1945 Act is precisely the same as the question whether the 1947 Act which it amends can be used for that purpose. The Appellant can say with regard to this Section as with regard to parts of the 1947 Act that it is unnecessary if the Respondents' argument in this case is right, and the argument following on that can be repeated, but I do not think that this Section carries it any farther. This Section does not declare that the provisions of Section 17 of the Act of 1945 apply to the transferred railway wagons: it merely states that the question whether any and if so what balancing allowance or balancing charge falls to be made shall be determined under the 1945 Act as if the 1947 Act had not been passed. If these wagons were not sold then the question whether any balancing allowance or balancing charge falls to be made will be determined in the negative. There will be no conflict with the provisions of this Section.

I must now consider the question whether these provisions of the 1947 and 1948 Acts can be used to interpret the word "sold" in the 1945 Act. The later Acts both contain the provision that those parts of them which relate to Income Tax "shall be construed as one with the Income Tax Acts". At first sight that might seem to mean that you must regard the relevant provisions of all the Acts as if they were all contained in the same Act, so that before you begin to construe any one of them you read the whole of them, and then construe in the light of all of them. That was the view expressed by Lord Selborne, L.C., in delivering the judgment of the Privy Council in *Canada Southern Railway Co.* v. *International Bridge Co.*, 8 App. Cas. 723. He said[1]:

> "It is to be observed that those two Acts are to be read together by the express provision of the 7th and concluding section of the amending Act;

[1] At p. 727.

(Lord Reid.)

> and therefore we must construe every part of each of them as if it had been contained in one Act, unless there is some manifest discrepancy, making it necessary to hold that the later Act has to some extent modified something found in the earlier Act."

But that passage must be read in light of the facts of that case and the question which had to be determined. In that case the earlier Act contained a general power to fix charges and the question was whether the later Act cut down that power; the meaning of the later Act was the difficulty. It was not necessary to use the provisions of the later Act to attach to a provision in the earlier Act some meaning which it would not otherwise have borne.

The question how far a later Act could be used to interpret an earlier Act was considered in this House in *Ormond Investment Co., Ltd.* v. *Betts*(1), [1928] A.C. 143. Schedule D, Case V, Rule 1 of the Income Tax Act, 1918, provided that tax on income from foreign stocks and shares should be computed "as directed in Case I". It was held that that was not ambiguous, the only relevant Rule was the Rule applicable to Case I; Rule 1 (2) of the Rules applicable to Cases I and II had no application, and the result was that the assessment for the year in question should be nil. The Crown founded on Section 26 of the Finance Act, 1924, in which Act there was the usual provision that it should be construed as one with the Income Tax Acts. That Section added a new Rule to the Rules applicable to Case V which provided that, if

> "the total amount of tax, computed in accordance with Rule 1 of the Rules applicable to Cases I and II"

exceeded another sum the taxpayer should be entitled to repayment of the excess. The argument was that this new Rule amounted to a declaration by Parliament that "as directed by Case I" meant in accordance with the Rules applicable to Cases I and II, for unless that was the meaning the new Rule had no application. Rowlatt, J., said, with regard to this argument(2) ([1927] 2 K.B., at page 333):

> "Am I to give effect to that argument? It formulates what I may almost call a sinister and menacing proposition, because it means nothing less than this, that, on the assumption that I am right in my view of the sections, apart from the effect of s. 26 of the Act of 1924, Parliament has retrospectively by allusion taxed something which was not taxed at the time by previous legislation."

The judgment of Rowlatt, J., was reversed by the Court of Appeal but restored in this House. On this question the House was unanimous. Lord Buckmaster had dissented on an earlier question but thought it desirable to express his opinion on this question. He said, at page 154(3):

> "I do not think that, in the circumstances of this case, the subsequent statute can properly be referred to for the purpose of interpreting the earlier. It is, of course, certain that Parliament can by statute declare the meaning of previous Acts. It would be competent for them to do so, even though their declaration offended the plain language of the earlier Act. . . . It is also possible that where Acts are to be read together, as they are in this case, a provision in an earlier Act that was so ambiguous that it was open to two perfectly clear and plain constructions could, by a subsequent incorporated statute, be interpreted so as to make the second statute effectual, which is what the Courts would desire to do . . ."

A little later he said(4):

> "The first Act will operate from its fixed date, so that its interpretation becomes at once a matter of necessity, and great unfairness may ensue if an interpretation which an Act of Parliament would fairly bear unaided by subsequent statutes was inferentially changed by other words in a subsequent Act."

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(1) 13 T.C. 400.
(2) *Ibid.*, at p. 407.
(3) [1928] A.C.; 13 T.C., at p. 428.
(4) *Ibid.*, at pp. 155 and 428 respectively.

Lord Sumner, at page 159(1), refers to the need for the earlier legislation being

> "ambiguous, so that while the words are reasonably capable of two different meanings, there is no reason on the face of the Act why one should be more right than the other",

and says that

> "the new rule cannot be regarded as imposing a non-natural construction on r. 1."

Lord Atkinson referred, at page 164(2), to

> "a well recognised principle dealing with the construction of statutes—namely, that where the interpretation of a statute is obscure or ambiguous, or readily capable of more than one interpretation, light may be thrown on the true view to be taken of it by the aim and provisions of a subsequent statute."

Lord Wrenbury, at page 167(3), said:

> ". . . in my opinion an Act of 1924 passed on August 1, 1924, which is not expressed to be retrospective and does not directly or inferentially purport to put a construction upon a previous Act can have no bearing upon a question arising upon events which happened in 1922 and as to which the last relevant date is April 5, 1924."

Finally, Lord Warrington of Clyffe said this with regard to Section 26 of the 1924 Act(4):

> "It was said that the effect of this section is to declare that the construction of the Income Tax Act for which the Crown now contends is and always has been the true construction. Much reliance was placed on this point by Sargant, L.J., but with all respect to that learned judge I cannot concur in his view. The section does not contain any such declaration express or implied. It merely assumes that persons may have paid tax computed in accordance with r. 1 of the Rules applicable to Cases I and II of Schedule D, and gives those persons the relief mentioned in the section. It says nothing about the legality or otherwise of such computation. To read the section as amounting to a retrospective declaration as to the true construction of the previous Act seems to me to give it an effect which it will not bear."

My Lords, this decision of this House appears to me to afford conclusive and binding authority for the proposition that, in construing a provision of an earlier Act, the provisions of a later Act cannot be taken into account except in a limited class of case, and that that rule applies although the later Act contains a provision that it is to be read as one with the earlier Act. Of course, that does not apply where the later Act amends the earlier Act or purports to declare its meaning: in such cases the later Act operates directly by its own force. But where the provisions of the later Act could only operate indirectly as an aid to the construction of words in the earlier Act those provisions can only be used for that purpose if certain conditions apply to the earlier Act when it is considered by itself.

The Acts of 1947 and 1948 do not purport to amend the Act of 1945 nor do they, in my opinion, even inferentially purport retrospectively to declare its meaning. So the question is whether Section 17 (1) (*a*) of the Act of 1945 taken in its context in that Act is, as Lord Buckmaster put it, so ambiguous that it is open to two perfectly clear and plain constructions, or whether, as Lord Sumner put it, there is no reason on the face of the Act why one construction should be more right than the other, or whether,

(1) [1928] A.C.; 13 T.C., at pp. 431 and 432. (2) [1928] A.C.; 13 T.C., at p. 435.
(3) [1928] A.C.; 13 T.C., at p. 438. (4) [1928] A.C., at p. 172; 13 T.C., at p. 441.

(Lord Reid.)

as Lord Atkinson put it, the 1945 Act is readily capable of more than one interpretation. A provision is not ambiguous merely because it contains a word which in different contexts is capable of different meanings. It would be hard to find anywhere a sentence of any length which does not contain such a word. A provision is, in my judgment, ambiguous only if it contains a word or phrase which in that particular context is capable of having more than one meaning. So the *Ormond* case(1) requires one to consider whether the word " sold " in its context in the 1945 Act is readily capable of more than one interpretation. I have already expressed my opinion that it is not. Moreover, I think that, taking the whole trend of the speeches in that case, Lord Sumner must be right in his view that the later Act cannot be used to impose a non-natural construction on the words of the earlier Act, and to hold that sale includes compulsory acquisition would, in my view, be to impose on that word a non-natural though in some contexts an appropriate construction.

I would only add that the canon of construction established by the *Ormond* case may not be entirely logical but on a broader view I think that there are very good grounds for it and I would not be prepared to whittle it away by fine distinctions.

Two later cases were cited on this matter. In In re *MacManaway*, [1951] A.C. 161, I do not find anything in the judgment of the Privy Council delivered by Lord Radcliffe which conflicts in any way with my reading of the speeches in the *Ormond* case and I do not think it necessary to examine this case in detail. The other case, *Commissioners of Inland Revenue* v. *Dowdall, O'Mahoney & Co., Ltd.*(2), [1952] A.C. 401, was dealing with rather a different question. There, the earlier statutory provisions could not be said to be ambiguous because their meaning had formed the subject of decisions in this House, and so the later Act could only have effect if it could be held to enact an amendment. But it was held that it could not be so interpreted. The *Ormond* problem did not arise.

In my judgment this appeal should be dismissed.

Lord Tucker.—My Lords, the question for decision in this appeal is the meaning of the word " sold " in Section 17 (1) of the Income Tax Act, 1945, which describes certain events upon the happening of which a " balancing charge " or " balancing allowance ", as the case may be, shall be made upon or allowed to a person carrying on a trade for the purpose of computing the tax payable by him in a particular year of assessment. The relevant event is that referred to in paragraph (*a*), namely, " the machinery or plant is sold . . .". What is meant by " sold " in this context? Is there any ambiguity in the word? I think it is desirable to approach these questions in the first instance without reference to the particular happening which is relied upon in the present case as constituting a sale.

My Lords, I feel that the answers must be that the word is unambiguous and denotes a transfer of property in the chattel in question by one person to another for a price in money as the result of a contract express or implied. This is in substance the definition of " sale " given in the second edition of Benjamin on Sale, but for present purposes it is sufficient to emphasise that mutual assent is an essential element in the transaction. It is no doubt true that the contract or agreement to sell may precede the

(1) 13 T.C. 400. (2) 33 T.C. 259.

formal instrument or act of delivery under which the property passes, but to describe a transfer of property in a chattel which takes place without the consent of transferor and transferee as a sale would seem to me a misuse of language. By express enactment or by necessary implication from the context any word may be given a meaning different from or wider than that which it ordinarily bears, and this may apply to the word "sale" where it appears in a context relating to the processes of compulsory acquisition of land under the Lands Clauses Consolidation Act of 1845 and other similar enactments. In this context it may well be that, the phrase "compulsory purchase" having become part of the legal vocabulary, such a transaction would be included in the word "sale", but this would not seem to me to justify giving such an interpretation to the word in the context of Section 17.

In this connection the Crown relied upon the decision in *Commissioners of Inland Revenue* v. *Newcastle Breweries, Ltd.*, 12 T.C. 927, where the question for decision was whether a sum of £5,309 odd awarded to the company by the War Losses Commission in respect of a quantity of rum taken by the Admiralty under the Defence of the Realm Regulations was a receipt of the company's trade or a profit arising from its trade or business. Although the transaction is sometimes conveniently referred to as a sale, the decision did not involve a consideration of the meaning of this word, and I do not think the case compels me to give to the word a meaning wider than it ordinarily bears so as to include a transaction lacking in one of the essential elements of a sale.

My Lords, if this be correct it follows that the word "sold" is quite inappropriate to describe the transfer of ownership of the wagons in question from the Respondent Company to the Transport Commission which occurred automatically by process of law when they vested in the Commission under Section 29 of the Transport Act, 1947, without any act of assent by either party. The payment of compensation on the scale provided by the Act cannot be regarded as a sufficient substitute for the contractual element which is lacking.

On this view of the case the provisions of Sections 34 and 35 of the Finance Act, 1948, cannot assist the Crown. Both of these Sections occur in a part of the Act which is to be construed as one with the Income Tax Acts, and both are to be "deemed always to have had effect". Section 35 (1) reads as follows:—

> "The question whether any and if so what balancing allowance or balancing charge falls to be made to or on the National Coal Board on the occasion of the transfer to the British Transport Commission under section twenty-nine of the Transport Act, 1947, of any railway wagons which the said Board acquired under the Coal Industry Nationalisation Act, 1946, shall be determined as if section twenty-nine of the Finance Act, 1947, and the Seventh Schedule to that Act, had not been passed."

This Section, of course, does not apply to the privately owned wagons with which alone the present appeal is concerned, but it does indicate that the Legislature in 1948 envisaged a balancing charge or allowance as arising on a transfer from the Coal Board to the Transport Commission under the Transport Act, 1947. It does not, however, purport to amend the Act of 1945, and the effect of its being deemed always to have had effect is merely to make the Section operate retrospectively to the date of the transfer from the Board to the Commission. The circumstances in which a later Act which is to be construed as one with an earlier Act can be used to interpret

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the language of an earlier Statute have been authoritatively dealt with in this House in *Ormond Investment Co., Ltd.* v. *Betts*[1], [1928] A.C. 143. At page 154 of the report Lord Buckmaster said[2]:

> "It is, of course, certain that Parliament can by statute declare the meaning of previous Acts. It would be competent for them to do so, even though their declaration offended the plain language of the earlier Act. It would be an unnecessary step to take, unless it were intended, contrary to the general principles of legislation, to make the explanatory Act retrospective, seeing that the subsequent statute could by independent enactment do what was desired. It is also possible that where Acts are to be read together, as they are in this case, a provision in an earlier Act that was so ambiguous that it was open to two perfectly clear and plain constructions could, by a subsequent incorporated statute, be interpreted so as to make the second statute effectual, which is what the Courts would desire to do, and it is also possible that, where a statute has created a crime or imposed a penalty, a subsequent Act showing that that crime was intended to have a limited interpretation or the circumstances regarded as narrow in which the penalty attached, would be used for the purpose of giving effect to the well known principle of construction to which I referred at an earlier stage."

My Lords, holding as I do that it is impossible to say of the word "sold" in its present context that it is open to two perfectly clear and plain constructions, it seems to me that Section 35 of the Finance Act, 1948, cannot be used to give to the word a wider meaning than it bore when the Act of 1945 was passed.

Section 34 of the Act of 1948 was also relied upon for the same purpose and the same reasoning applies in that case, but I share the view of Upjohn, J., that in any event the language of this Section would appear to assist the Respondent Company rather than the Crown.

For these reasons I agree with the conclusions reached by Upjohn, J., and the Court of Appeal and would dismiss the appeal.

Lord Reid.—My Lords, I am asked by my noble and learned friend, **Lord Somervell of Harrow,** who is unable to be here this morning, to say that he has read the opinion which I have delivered, and that he agrees with it.

Questions put:

That the Order appealed from be reversed.

The Not Contents have it.

That the Order appealed from be affirmed, and the appeal dismissed with costs.

The Contents have it.

[Solicitors:—Willis & Willis, for Taynton & Son, Gloucester; Solicitor of Inland Revenue.]

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(1) 13 T.C. 400. (2) *Ibid.*, at p. 428.

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