A HIGH COURT OF JUSTICE (CHANCERY DIVISION)—4TH AND 5TH DECEMBER 1969

COURT OF APPEAL—11TH, 12TH AND 13TH NOVEMBER 1970

HOUSE OF LORDS—13TH, 14TH, 15TH AND 19TH JULY AND 27TH OCTOBER 1971

B **Hinchcliffe (H.M. Inspector of Taxes) *v.* Crabtree** [1]

Capital gains tax—Market value at 6th April 1965—Quoted shares—Takeover negotiations in progress—Negotiations not known to public—Whether in consequence of special circumstances quoted price not proper measure of market value—Finance Act 1965 (c. 25), s. 44.

C *At all material times the Respondent was joint managing director of a public company. During the year 1965–66, as a result of the acceptance of a cash offer made by V Ltd. to acquire the whole issued capital of the company, he disposed of 98,604 ordinary stock units, 3,232 preferred ordinary stock units and 1,800 preference stock units in the company which he had held at 6th April 1965. He was paid 55s., 40s. and 25s. per unit for units of the three classes respectively.* D *On 6th April 1965 the middle market prices of the units on the London Stock Exchange were 42s. 6d., 31s. 3d. and 17s. 6d. respectively. At that date negotiations for the takeover were in progress but no information about them had been publicly disclosed; while they were in progress those concerned abstained from dealing in the stock. Evidence was given by a director of a merchant banking company which frequently advised on takeovers, etc., that had he been consulted* E *he would have advised the directors of the company to make a public statement before 6th April 1965, and if that had been done he thought that the middle market prices of the stock units at that date would have been 51s. or 51s. 6d., 32s. 9d. and 18s. 3d. respectively. Evidence was given by a partner in a large firm of stockbrokers which specialised in new issues, etc., that, had it been known at 6th April 1965 that serious negotiations had taken place and V Ltd. were definitely* F *interested in a takeover, in his opinion the respective prices would have been 51s. 3d., 33s. 3d. to 34s. and 18s. 3d.*

On appeal against an assessment to capital gains tax for the year 1965–66 the Respondent contended that at 6th April 1965 there were special circumstances in consequence of which the quoted prices were not by themselves a proper measure of market value and that the stock should be valued as at that date by reference to the G *evidence set out above. For the Crown it was contended that there were no special circumstances and the valuation should be based on the quoted prices; alternatively, that if there were special circumstances, in ascertaining the prices which the stock units might reasonably be expected to fetch in the open market on 6th April 1965 regard should be had to the quoted prices. The Special Commissioners found that there were special circumstances, and determined the values of the stock units at* H *6th April 1965 as 51s. 3d., 33s. and 18s. 3d. respectively.*

[1] Reported (Ch.D.) [1970] Ch. 626; [1970] 2 W.L.R. 690; 114 S.J. 246; [1970] 1 All E.R. 1239; (C.A.) [1971] 2 W.L.R. 914; 114 S.J. 913; [1971] 2 All E.R. 104; (H.L.) [1971] 3 W.L.R. 821; 115 S.J. 891; [1971] 3 All E.R. 967.

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Held, *that it had not been shown that there was any impropriety in withholding the relevant information, and the mere fact that the directors of a company possessed information which if made public would affect the quoted prices of its shares was not a special circumstance.* A

Per *Lord Reid: In reciting expert (like other) evidence in a Case Stated, the Commissioners must say what facts they hold that it has proved.*

B

CASE

Stated under the Finance Act 1965, s. 45(12) and Sch. 10, para. 1(2), the Income Tax Management Act 1964, s. 12(5), and the Income Tax Act 1952, s. 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 7th and 8th February 1968, Mr. Peter Neville Crabtree (hereinafter called " the Respondent ") appealed against an assessment to capital gains tax in the sum of £65,695 made upon him in respect of chargeable gains for the year 1965–66. C

2. Shortly stated, the question for our decision was what should be taken for the purposes of the said tax to be the market value as at 6th April 1965 of certain holdings of stock units of R. W. Crabtree & Sons Ltd. (hereinafter called " the company ") which were then owned by the Respondent. D

3. Evidence was given before us by Mr. A. Rayner, chartered accountant, and Mr. P. N. Crabtree, the Respondent, who were at all material times joint managing directors of the company; by Mr. J. R. Gillum, a director of Kleinwort, Benson Ltd., merchant bankers; and by Mr. G. J. Chandler, a member of the London Stock Exchange and a partner in the firm of Cazenove & Co., stockbrokers. E

4. The following documents were proved or admitted before us:

(1) Bundle of correspondence, etc.

(2) Copy of press release by Vickers Ltd. (hereinafter called " Vickers ") dated 16th August 1965. F

(3) Copy of offers by Morgan Grenfell & Co. Ltd. on behalf of Vickers to acquire the whole of the issued capital of the company, dated 18th August 1965.

(4) Copy of Stock Exchange quotations for ordinary stock units of the company for the period from 1st October 1964 to 31st August 1965, inclusive.

These documents are not annexed hereto, and except in so far as extracts from them are set out herein do not form part of this Case, but copies of them are available for inspection by the Court if required. G

5. As a result of the evidence, both oral and documentary, adduced before us we find the facts set out in para. 6 below proved or admitted.

Evidence given by Mr. Gillum and Mr. Chandler as to takeover and valuation matters is set out in paras. 7 and 8 below. H

6. (1) The company manufactured both newspaper and offset lithographic machinery, and was the parent company of a group of companies manufacturing printing machinery and allied equipment for the printing industry. It had an issued share capital of £2,600,250, divided into 2,400,000 ordinary stock

A units of £1 each, 100,125 preferred ordinary stock units of £1 each and 100,125 6 per cent. cumulative preference stock units of £1 each. These stock units are hereinafter referred to as " ordinary ", " preferred ordinary ", and " preference " stock units respectively.

(2) During the year 1965–66 the Respondent disposed of the following stock units of the company held by him on 6th April 1965:

B 98,604 ordinary stock units
3,232 preferred ordinary stock units
1,800 preference stock units.

These disposals took place as a result of the acceptance of a cash offer made by Vickers in August 1965 to acquire the whole of the issued capital of the company. The prices which the Respondent received for the said holdings
C pursuant to this offer were:

For each ordinary stock unit.. .. ..55*s.* in cash
For each preferred ordinary stock unit ..40*s.* in cash
For each preference stock unit .. ..25*s.* in cash.

(3) Each of these stocks was quoted on the London Stock Exchange. On 6th April 1965 the middle market quotations for them were:

D Ordinary stock units .. ..42*s.* 6*d.* per unit
Preferred ordinary stock units .. ..31*s.* 3*d.* per unit
Preference stock units .. .. ..17*s.* 6*d.* per unit.

(4) For capital gains tax purposes the market value on 6th April 1965 of securities quoted on the London Stock Exchange falls to be determined under the provisions of s. 44(3) of the Finance Act 1965, as modified by para.
E 22(3) of Sch. 6 to that Act, by reference to Stock Exchange prices as therein specified " except where in consequence of special circumstances prices so quoted are by themselves not a proper measure of market value ". On the basis specified in those provisions for cases not within the exception cited above the market value of the company's stock units on 6th April 1965 would be the figures set out in sub-para. (3) above. On the appeal before us, however,
F it was in issue between the parties whether on the facts of the case it was or was not within the said exception; and secondly, if it was, what should then be taken to be the market value of the company's stock units on 6th April 1965, ascertained in accordance with the provisions of subs. (1) of the said s. 44, that is, be taken at that date to be " the price which those assets might reasonably be expected to fetch on a sale in the open market ".

G (5) As to the first question, the situation as at 6th April 1965 was that negotiations between representatives of Vickers and the company had taken place prior to that date concerning the making by Vickers of a cash offer for the whole of the company's issued capital, but that by that date no information of any kind as to those negotiations had been publicly disclosed. In fact, the public did not get to know of the negotiations until the Vickers' press
H release was published—that is, until 17th August 1965 (see sub-para. (13) below).

(6) These negotiations stemmed from a meeting which took place in the autumn of 1964. On 21st September 1964 the late Mr. Hird, of Vickers, wrote to the late Mr. C. H. Crabtree, the Respondent's father and the then chairman of the company, inviting him to lunch at Vickers House at Millbank
I S.W.1. On the following 4th November Mr. C. H. Crabtree had lunch there, met the chairman of Vickers, Sir Charles Dunphie, and colleagues of Mr. Hird, and had a general talk with them about the printing machinery industry.

In reply to a letter from Mr. C. H. Crabtree acknowledging Vickers' hospitality on this occasion Mr. Hird wrote to him on 12th November, sending him on behalf of Sir Charles a copy of Scott's " History of Vickers ", and, in a paragraph alluding to a reference made by him to the state of the printing machinery industry in the United Kingdom in relation to competition from United States, German and Italian manufacturers, observed that

> " All I had in mind at the time was that it might be worth while our sitting down together to discuss possible ways and means of consolidating our U.K. position, and as your company occupies such an important, indeed the leading position, you might like to exchange ideas with us. Your personal thinking would be of tremendous advantage."

On the following day Mr. C. H. Crabtree replied saying with regard to this matter that he would give it a little further thought and write later.

(7) Thereafter Mr. C. H. Crabtree and Mr. Hird had a number of meetings, and following discussions which took place at them concerning the strengthening of the printing machinery industry in this country the general conclusion reached was that the only satisfactory way of achieving such a strengthening would be by a merger between Vickers and the company. In these circumstances Mr. Rayner was asked to prepare for Mr. C. H. Crabtree detailed statistical statements relating to the Crabtree group of companies.

(8) On 14th January 1965 Mr. C. H. Crabtree had a meeting with Mr. Hird at the company's flat at Whitehall Court, and the statements referred to in sub-para. (7) above were then handed over to Mr. Hird. These statements contained:

(1) A report of profit of the group of companies from 1954 to 1963.

(2) A calculation of the 1963 profit available to the ordinary shareholders before deducting tax.

(3) An analysis of group turnover.

(4) Particulars of outstanding orders at 31st October 1964, totalling some £8 million odd.

(5) Statistics as to foreign trade in printing machinery. (Mr. Rayner had been carrying out some investigations regarding such trade, and thought that the figures might be useful to Vickers in assessing potentialities of the printing machinery industry.)

(6) A summary of balance sheets showing the calculation of current assets less liabilities.

(7) A detailed analysis of sales for 1963.

(8) A list of freehold properties with balance sheet values.

(9) A calculation of the value of the company's ordinary stock.

On the basis of figures set out in the last-mentioned document the company calculated that the value of its ordinary stock units was £3 per unit. The Stock Exchange middle market quotation for ordinary stock units on 14th January 1965 was 47*s.* 6*d.*

(9) On 24th February 1965 a further meeting was held at the company's flat at Whitehall Court, at which there were present on the Crabtree side Mr. C. H. Crabtree, the Respondent and Mr. Rayner, and on the Vickers side Mr. Hird, Mr. Yapp, a director, and Mr. Robbie, the financial controller. A number of matters were then gone into. In the first place, it was considered whether the basis for the taking over by Vickers of the company should be shares, or shares and cash, or cash alone. Having regard, *inter alia*, to the position as regards the rates of return on the shares of the company and Vickers

respectively, the conclusion reached was that the only practicable method of dealing with the transaction would be by a cash offer. The discussion proceeded on this footing, and on the basis that the figure would be about £7,000,000.

The Vickers representatives referred at this meeting to a licensing agreement which they had with an American company relating to newspaper presses, which would need to be terminated before the proposed takeover could be effected. They explained that they had decided to terminate this agreement, and intended to send a director to America at an early date to negotiate the matter with the American company. Shortly afterwards one of the Vickers directors went to America, staying there from 8th to 12th March 1965, and arrangements were then made to terminate the agreement referred to and so clear up this particular difficulty. The company were informed by Vickers in due course of these developments, but the Respondent did not become aware of them until after 5th April 1965.

The Vickers representatives also mentioned at the meeting on 24th February that in view of their other current commitments they would have to look into ways and means of raising the amount of cash required. They indicated, however, that they did not anticipate that there would be much delay before they would be in a position to complete the transaction.

(10) As matters turned out, however, arrangements for the takeover offer were for various reasons not finalised until the following August. Mr. C. H. Crabtree, the Company's chairman, became ill and had to go into a nursing home. Another factor in the situation was that the company became involved in negotiations for the acquisition of a company at Otley, manufacturing printing machinery, which was an old family concern, and that another company at Otley, which was a next-door neighbour of that concern and engaged in the same line of business, approached Vickers to see if they were interested in acquiring it. The company and Vickers kept each other informed as to the position. On 18th June 1965 Mr. Hird indicated in the course of a visit to the company that matters were progressing satisfactorily and that he did not expect that it would be long before Vickers could proceed. On the following 30th July Sir Charles Dunphie wrote to Mr. C. H. Crabtree referring to the unofficial discussions that had been held and saying that Vickers now saw their way clear to start talks and that he hoped that "we may conclude them satisfactorily".

(11) On 6th August 1965 a further meeting was held at the Majestic Hotel, Harrogate, at which there were present on the Crabtree side Mr. C. H. Crabtree, the Respondent and Mr. Rayner, and on the Vickers side Mr. Hird, Mr. Robbie and Mr. Collins, of Morgan Grenfell & Co. Ltd. At this meeting the Vickers representatives brought with them a printer's draft (dated 2nd August 1965) of the offer to acquire the whole of the company's issued capital. In relation to the question of the price to be paid for the company's ordinary stock units the Vickers representatives pointed out that the Stock Exchange price had fallen back from 47*s.* 6*d.* to 42*s.* They suggested that in these circumstances it would be appropriate to reduce somewhat the previous figure of £3, and it was finally agreed that 55*s.* would be an appropriate figure. As regards the preferred ordinary and preference stock units, Vickers accepted the company's suggestion that, having regard *inter alia* to the rights of holders of these units to a premium of 5*s.* on repayment, prices of 40*s.* and 25*s.* respectively for these stocks would be appropriate figures.

(12) On 11th August 1965 a further meeting was held at Morgan Grenfell & Co.'s offices in London. At this meeting, at which Mr. Gillum was present, the documents for publication and a draft of an agreement to be signed at

a directors' meeting in Leeds on the following Monday were gone through. Apart from the insertion of the name of the company and the prices to be paid, the draft documents as finally settled did not differ materially from those brought to the meeting held on 6th August 1965 at Harrogate.

(13) On the following Monday, 16th August 1965, a board meeting of the company was held at Leeds to approve the merger, and thereafter a meeting was held with the Vickers representatives at which the documents relating to it were signed. A press release was issued by Vickers for publication on the following day, and the offer was issued on Wednesday 18th August 1965, that is, one day later.

(14) Some seven months thus elapsed between the meeting at Whitehall Court on 14th January 1965, referred to in sub-para. (8) above, and the finalising of the offer. During this period the middle market quotations on the London Stock Exchange of the company's ordinary stock units fluctuated as follows:

January 14th	..47*s.* 6*d.*	April 23rd	..42*s.* 6*d.*
January 18th	..50*s.*	May 3rd	..43*s.* 9*d.*
January 28th	..51*s.* 3*d.*	May 6th	..45*s.*
March 2nd	..48*s.* 9*d.*	June 30th	..43*s.* 9*d.*
March 31st	..45*s.*	July 13th	..42*s.* 6*d.*
April 6th	..42*s.* 6*d.*	July 30th	..41*s.*
April 7th	..41*s.* 3*d.*	August 4th	..42*s.*
April 13th	..41*s.* 10½*d.*	August 11th	..43*s.*

(15) Those concerned in the negotiations at no time sought to engage in any dealing in the company's stock units while the negotiations were in progress. Neither the Respondent nor Mr. Rayner would have been willing sellers of their own holdings of the company's ordinary stock units on 6th April 1965 at 42*s.* 6*d.* per unit. Had Mr. C. H. Crabtree, the Respondent or Mr. Rayner envisaged selling any of their personal holdings of the company's stock units during the period while the negotiations were in progress, it would not have been commerically sensible for them to have done so at prices in line with those quoted at the time for the company's stock units on the London Stock Exchange.

7. Mr. Gillum gave evidence before us (which we accepted) to the following effect.

Kleinwort, Benson Ltd. are frequently retained to advise in relation to takeovers, mergers and amalgamations, and as a director of that company he had considerable experience of such matters. He was not called in to advise the directors of R. W. Crabtree & Sons Ltd. until August 1965. By that time the arrangements for the takeover were completed apart from some minor technicalities.

As to the position as at 6th April 1965, he thought that there had been what might be called a state of suspended animation in the negotiations from the time of the meeting in February at Whitehall Court until Vickers were in a position to proceed with their offer in August. The only matters that appeared to have been left unsettled were the final determination of the prices to be paid for the stock, minor technicalities such as are always left over in such cases until the last moment, and, finally, Vickers' ability to finance the purchase. A company of the standing of Vickers would not, he thought, have entered into the serious negotiations which had taken place unless they had every expectation of being able to implement them.

A He considered that it would have been appropriate for the shareholders of R. W. Crabtree & Sons Ltd. to have been advised by or before the beginning of April 1965 of the position generally as regards the approach made by Vickers. If he had then been advising the directors of the company, he would have favoured a statement being made to the effect that they announced that discussions were in progress which might lead to a cash offer being made for B the whole of the issued capital, but that the discussions were expected to be of some duration and that no further announcement should therefore be expected at an early date.

Had such an announcement been made he had no doubt that the Stock Exchange quotation for the ordinary stock units would then have gone up. As to how much the price would have risen, he thought that the middle market C quotation of 47*s.* 6*d.* on 14th January might reasonably have been expected on such an announcement to go up by, say, 5*s.* to 52*s.* 6*d.* Thereafter he would have expected the price to have remained relatively stable, but perhaps owing to interest waning somewhat in the period up to 6th April 1965, to have fallen back by then by a shilling or so. So approaching the matter, he thought that if an appropriate announcement had been made the middle market quotation D on 6th April 1965 would probably have been, say 51*s.* 6*d.* or 51*s.* instead of 42*s.* 6*d.*

The movement in the quotations for the preferred ordinary and preference stock units would, he thought, have been much smaller. The values of such stock tended to move only within much closer limits. The middle market quotations of these stocks as at 6th April 1965 might, he thought, have been E increased by perhaps 1*s.* 6*d.* and 9*d.* respectively, that is to say, have been 32*s.* 9*d.* for the preferred ordinary and 18*s.* 3*d.* for the preference stock units.

The Stock Exchange had not in his view been given at that time information as to the negotiations which should have been supplied to it, and he thought that because of this current quotations did not afford any true measure of the value of the stock units in question.

F Mr. Gillum would not have expected either side to have engaged in dealings in the company's stock units while negotiations were proceeding. He knew of no sanction to prevent them doing so other than that they would have forfeited respect in the parlours of the City. He did not feel competent to say what the effect on the quotation for the company's ordinary stock units would have been if the Respondent had endeavoured to realise his holding G of them on the London Stock Exchange on 6th April 1965. His own valuation figures were based on an announcement having been made.

8. Mr. G. J. Chandler gave evidence before us (which we accepted) to the following effect.

Cazenove & Co. were among the oldest firms of brokers on the London Stock Exchange. They tended to specialise in new issue work, and as a partner H in the firm he was actively engaged in such work. He also acted as investment adviser to a number of companies, and was the chairman of a quoted investment trust company. He had made many share valuations for estate duty purposes.

He considered that the position in the present case between 24th February 1965 and 6th April 1965 was that serious negotiations had taken place and that Vickers were definitely interested and would hope to make an offer to I acquire the company's issued capital. With this knowledge he would have advised a client not to sell at the then quoted price.

As to the value of the company's ordinary stock units at 6th April 1965 in such circumstances, he considered that the probability was then in the

region of seven-tenths that a bid would be made. If a bid had been made then, he thought it likely that it would still have been of the order of 55*s.* rather than £3 a unit, that is to say about 12*s.* 6*d.* in excess of the middle market quotation of 42*s.* 6*d.* Allowing for the element of uncertainty in the situation, he thought that, with knowledge of the takeover negotiations, it would be reasonable to take as a fair figure for the value of the stock at 5th April 1965 the quotation of 42*s.* 6*d.* plus 70 per cent. of 12*s.* 6*d.*, that is 51*s.* 3*d.* In his opinion that was the price that anybody who knew of the takeover negotiations would have been prepared to pay on 6th April 1965. Although the absence of an announcement by the directors would have had a marked effect on the prices quoted on that day, that fact did not affect his valuation.

As regards the preferred ordinary and preference stocks, he thought that these stocks were dealt with on a generous basis, and that an announcement of the takeover negotiations would have affected prices for them as at 5th April 1965 only to a relatively small extent. He considered that the values of these stocks at that date would have been perhaps 2*s.* to 2*s.* 9*d.* more than the middle market quotations for the preferred ordinary stock and, say, 9*d.* more than the middle market quotation for the preference stock, that is to say, in the region of 33*s.* 3*d.* to 34*s.* for the preferred ordinary stock and 18*s.* 3*d.* for the preference stock.

He thought the Stock Exchange the best market for quoted securities if one wished to effect an immediate sale. In the circumstances, however, the Respondent would have been foolish to put his holding on the market on 6th April 1965 at the then quoted price. An alternative way of selling a substantial holding was by private negotiation.

In his view Stock Exchange prices depended on buyers and sellers, and often on what information was available to them, though he considered the buying and selling aspect was more important. If the Respondent had wished to sell his ordinary stock units on 6th April 1965, the holding would, he considered, have been too big to put on the market at once. The sale price for a large block could be very different from that for a small block—it might be much higher or much lower, depending on the circumstances.

9. The following cases were referred to: *Commissioners of Inland Revenue* v. *Crossman* [1937] A.C. 26; *Findlay's Trustees* v. *Commissioners of Inland Revenue* (1938) 22 A.T.C. 437; *Glass* v. *Commissioners of Inland Revenue* 1915 S.C. 449; *Commissioners of Inland Revenue* v. *Clay* [1914] 3 K.B. 466; *British Motor Trade Association* v. *Gilbert* [1951] 2 All E.R. 641.

10. It was contended on behalf of the Respondent:

(1) that on the facts set out herein there were, as at 6th April 1965, special circumstances in consequence of which the prices then quoted on the London Stock Exchange for the company's ordinary, preferred ordinary and preference stock units were not by themselves a proper measure of market value;

(2) that the market values for capital gains tax purposes of the said stock units as at that date should therefore be ascertained, not on the basis specified in s. 44 (3) of the Finance Act 1965, but in accordance with the provisions contained in subs. (1) of that section;

(3) that on a proper construction of the said subs. (1) the said market values were on the facts set out herein greater than the middle market quotation prices for the said stock units on 6th April 1965 on the London Stock Exchange;

(4) that in arriving at the said market values account should be taken of the evidence hereinbefore set out as to the true value of the stock units in question as at that date;

(5) that the appeal should accordingly succeed.

A 11. It was contended on behalf of the Inspector of Taxes:

(1) that on the facts set out herein there were not, as at 6th April 1965, any special circumstances in consequence of which prices then quoted on the London Stock Exchange for the company's ordinary, preferred ordinary or preference stock units were not by themselves a proper measure of market value;

B (2) that the market values of the said stock units as at that date should accordingly be ascertained on the basis specified in s. 44(3) of the Finance Act 1965;

(3) alternatively to (1) and (2), that, if the said market values fell to be determined not under subs. (3) but under subs. (1) of the said section, and thus to be taken to be the prices which the stock units might reasonably be C expected to fetch in the open market on 6th April 1965, those prices should be ascertained on the basis of regard being had to the prices then quoted for the stock units on the London Stock Exchange;

(4) in the further alternative, that, on the evidence before the Commissioners, the market value of the company's ordinary stock units on 6th April 1965 should not be taken to be more than the then middle market quotation of D 42*s.* 6*d.* increased by (say) 4*s.* 6*d.*, that is to say, to be more than 47*s.*

12. We, the Commissioners who heard the appeal, observed that it was common ground that we had in this case to assume that the stocks in question had been sold by the Respondent, and immediately reacquired by him, at their market value on 6th April 1965, that being laid down by para. 22(2) of Sch. 6 to the Finance Act 1965, and that the statutory provisions governing E their valuation were those contained in s. 44 of that Act. The stocks in question had been quoted on the London Stock Exchange, and the basis of valuation for them was therefore that set out in s. 44(3) " except where in consequence of special circumstances prices so quoted are by themselves not a proper measure of market value ". By s. 44(1) it was enacted that: " Subject to the following subsections, in this Part of this Act ' market value ' in relation to F any assets means the price which those assets might reasonably be expected to fetch on a sale in the open market."

We thought it unnecessary to seek to summarise the evidence we had heard as to how matters stood as regards the takeover negotiations at 6th April 1965. It was, we thought, clear on the evidence that prior to that date Vickers had entered into serious negotiations and had envisaged making a G takeover bid by a cash offer. The meetings of 14th January and 24th February 1965 had taken place. They had not carried matters to the point of finality, but they had carried them to a stage at which, in Mr. Gillum's view, it would have been appropriate for the directors of R. W. Crabtree & Sons Ltd. to have made a public announcement to the effect that discussions were in progress which might lead to a cash offer being made for the whole of the issued capital— H with some caveat to the effect that some matters were not yet settled and no further announcement should be expected at an early date. On the evidence before us the consequences of any such announcement would in our view undoubtedly have been that the London Stock Exchange prices at 6th April 1965 would have been substantially greater than the prices that were then in fact quoted.

I Were there in those circumstances special circumstances in consequence of which the quoted prices were not a proper measure of market value as defined in s. 44(1)? On the facts we were of opinion that there were here special circumstances within the meaning of those words in s. 44(3), and on the evidence before us we were satisfied that the London Stock Exchange

prices on 6th April 1965 were substantially less than they would have been if an announcement of the kind which Mr. Gillum considered should have been made had been made before that date. A

In such circumstances what should be taken to be the market value within s. 44(1), i.e. the price which the stocks in question might reasonably be expected to fetch on a sale in the open market? In this connection we had had our attention invited to a number of cases and had given them careful consideration. We noted in particular the observations set out hereunder: B

> " The words ' if sold in the open market ' do not of course mean if sold in any particular market, or include any ' market ' at all in the legal sense of the term. They merely mean ' if offered for sale to the world at large—no one being excluded from making an offer if he thinks fit so to do ' ": In re *Paulin* and In re *Crossman* [1935] 1 K.B. 26, *per* Romer L.J., at page 54. C
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> " In estimating the price which might be fetched in the open market for the goodwill of the business it must be assumed that the transaction takes place between a willing seller and a willing purchaser; and that the purchaser is a person of reasonable prudence, who has informed himself with regard to all the relevant facts such as the history of the business, its present position, its future prospects and the general condition of the industry; and also that he has access to the accounts of the business for a number of years ": *Findlay's Trustees* v. *Commissioners of Inland Revenue* 22 A.T.C. 437, *per* Lord Fleming, at page 440. D
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> " The phrase ' willing seller ' is not to receive a restrictive meaning. He is only hypothetically willing if he gets the advantage of all surrounding circumstances, and this is implied in the further expression ' in its then condition ' ": *Glass* v. *Commissioners of Inland Revenue* 1915 S.C. 449, *per* Lord Johnston, at page 456. E
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> " A vendor desiring to realise any land would ordinarily give full publicity to all facts within his knowledge likely to enhance the price ": *Commissioners of Inland Revenue* v. *Clay* [1914] 3 K.B. 466, *per* Swinfen Eady L.J., at page 475. F

The cases in which those observations were made were not, however, cases concerned with undisclosed negotiations for a takeover, and we thought that in relation to the present case we should consider the actual facts in the case before us and the application to them of the statutory provisions as to valuation set out in s. 44 of the Finance Act 1965. G

So approaching the matter, we thought that, as it had been put in argument, the Stock Exchange was, in relation to the stocks at 6th April 1965, " working in blinkers ". A horse in blinkers was shut off from seeing a good deal. When a market was shut off, as we thought the London Stock Exchange here had been, from information vital to a realistic assessment of the true value of the assets in question, was it right to refer to that market as " the open market " envisaged in s. 44(1)? Having weighed the matter, we thought that it was not. Accordingly we held that the appeal succeeded in principle. H

On the further question of how much, we had had the advantage of hearing the evidence given by Mr. Gillum and Mr. Chandler. In the course of it they indicated figures which they considered appropriate, and the reasoning which led them to arrive at those figures. As to the ordinary stock, Mr. Gillum thought that there would have been a rise of (say) 5*s.* from the 47*s.* 6*d.* figure to 52*s.* 6*d.* followed by a waning of (say) 1*s.* or so to (say) 51*s.* 6*d.* or 51*s.* at 6th April 1965. Mr. Chandler, by an entirely different process of reasoning, arrived I

at a figure of 51*s.* 3*d.* On the evidence we saw no good ground for adopting a substantially lower figure, such as that of 47*s.* put forward by the Crown. Having carefully considered what had been said in evidence on the matter of figures, we determined that the market value of the ordinary stock at 6th April 1965, computed in accordance with the provisions of s. 44(1), was 51*s.* 3*d.*

As to the preference stock, Mr. Gillum and Mr. Chandler both arrived at a figure of 18*s.* 3*d.*, and we adopted that figure. As regards the preferred ordinary stock, Mr. Gillum arrived at a figure of 32*s.* 9*d.* and Mr. Chandler at figures ranging from 33*s.* 3*d.* to 34*s.* Having carefully reviewed what had been said, we determined that the market value of the preferred ordinary stock at 6th April 1965 was 33*s.*

We left the amount assessable on the basis of those prices to be agreed.

13. Figures were subsequently agreed between the parties on the basis of our decision, and on 3rd May 1968 we determined the appeal accordingly by reducing the assessment to the sum of £20,819.

14. The Inspector of Taxes immediately after the determination of the appeal declared to us 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 Finance Act 1965, s. 45(12) and Sch. 10, para. 1(2), the Income Tax Management Act 1964, s. 12(5), and the Income Tax Act 1952, s. 64, which Case we have stated and do sign accordingly.

15. The question of law for the opinion of the Court is whether on the facts found herein we were entitled to arrive at our decision set out in para. 12 above.

G. R. East
R. A. Furtado
} Commissioners for the Special Purposes of the Income Tax Acts.

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

13th May 1969

The case came before Pennycuick J. in the Chancery Division on 4th and 5th December 1969, when judgment was given against the Crown, with costs.

Michael Wheeler Q.C., *Patrick Medd* and *J. P. Warner* for the Crown.

G. B. Graham Q.C. and *P. E. Whitworth* for the taxpayer.

Commissioners of Inland Revenue v. *Crossman* [1937] A.C. 26 was cited in argument in addition to the case referred to in the judgment.

Pennycuick J.—This is an appeal by the Crown from a decision of the Special Commissioners whereby they reduced an assessment to capital gains tax upon the Respondent, Mr. Peter Neville Crabtree. The appeal raises a question in regard to the valuation of quoted shares in a company as at the first basis date for the purpose of the tax, namely 6th April 1965. Summarily, the Respondent had a considerable holding of stock—ordinary stock, preferred ordinary stock and preference stock—in a public company, R. W. Crabtree & Sons Ltd., of which he was a joint managing director. These stocks were quoted on the Stock Exchange. In 1964 negotiations began for a takeover of the entire capital

(Pennycuick J.)

of the company by Vickers Ltd. By 6th April 1965 these negotiations were well advanced and likely to come to fruition but had not yet been completed. Only a few individuals, including the Respondent himself, were aware of the negotiations. According to evidence accepted by the Special Commissioners, information as to the negotiations should have been supplied to the Stock Exchange at some time before 6th April 1965. It was not in fact so supplied. On 6th April 1965 the middle market quotation of the ordinary stock was 42*s.* 6*d.* per unit. The negotiations were completed on 16th August 1965, and a press release was issued the next day. Under the takeover agreement the Respondent received 55*s.* for each ordinary stock unit. Capital gains tax was assessed upon him on the footing that the market value of the ordinary stock at 6th April 1965 was 42*s.* 6*d.* per unit. The Respondent contends that this value must be increased by reference to the negotiations which were current at 6th April 1965. The Special Commissioners, after hearing expert evidence, upheld the Respondent's contention and decided that the market value of the ordinary stock on 6th April 1965 should be taken at 51*s.* 3*d.* per unit. A corresponding result took place in regard to the preferred ordinary stock and the preference stock, which are not of much practical importance having regard to the figures.

Only one statutory provision is of importance in this case, namely s. 44 of the Finance Act 1965. That is contained in the Part of the Finance Act dealing with capital gains tax. The relevant terms of s. 44 are as follows:

> " (1) Subject to the following subsections, in this Part of this Act, ' market value ' in relation to any assets means the price which those assets might reasonably be expected to fetch on a sale in the open market. (2) In estimating the market value of any assets no reduction shall be made in the estimate on account of the estimate being made on the assumption that the whole of the assets is to be placed on the market at one and the same time ". I need not read the proviso. " (3) Subject to paragraph 22(3) of Schedule 6 to this Act the market value of shares or securities quoted on the London Stock Exchange shall, except where in consequence of special circumstances prices so quoted are by themselves not a proper measure of market value, be as follows . . . "

Then comes a certain rather complicated formula which in the circumstances of the present case results in middle market value. The reference to para. 22(3) of Sch. 6 is not significant for the present purpose.

I turn now to the Case Stated. The Case Stated is rather lengthy, but a good deal of it consists of findings as to the steps in the takeover negotiations which it will be unnecessary to read. [His Lordship read or summarised paras. 1–6 of the Case, at pages 420–4 *ante*, and continued:]

Paragraph 7, the next paragraph, is that which contains their findings as to the expert evidence of Mr. Gillum, a director of Kleinwort, Benson Ltd., merchant bankers, and it is of critical importance in this case. [His Lordship then read or summarised paras. 7–12 of the Case, at pages 424–9 *ante*, and continued:]

It will be seen that the Special Commissioners decided (1) that the existence of the takeover negotiations and their non-communication to the Stock Exchange constituted special circumstances within the meaning of s. 44(3), that is to say, special circumstances in consequence of which the prices quoted on the London Stock Exchange were by themselves not a proper measure of market value; and (2) being then thrown back on subs. (1) unaided by subs. (3), that the market value of the ordinary stock units could be taken at 51*s.* 3*d.*, the market value of the preferred ordinary stock at 33*s.* and the market value of the preference stock units at 18*s.* 3*d.*

A Upon the present appeal it was contended on behalf of the Crown that the takeover negotiations and their non-communication did not constitute special circumstances within the meaning of subs. (3). It was said that in considering the market value of quoted shares—that is to say, the price which those shares might reasonably be expected to fetch on sale in the open market—one must treat the field of prospective purchasers on the Stock Exchange as possessing B only such information as they did in fact possess, and that the non-communication of information concerning the takeover negotiations accordingly did not represent special circumstances resulting in the Stock Exchange quotation not being a proper measure of market value.

I am unable to accept this contention. It seems to me that the market value of any asset, i.e. the price which that asset might reasonably be expected C to fetch on a sale in the open market, must be the price in a market where the prospective purchasers have all such information as to any relevant factors as is normally available to purchasers in that market, having regard to the nature of the market. I mention in parenthesis that that statement is in accordance with the reasoning of the Court of Appeal in In re *Lynall*[1], which I will mention in a moment, and which was decided after the case came before D the Special Commissioners.

Obviously, the extent and character of the information which prospective purchasers must be treated as having differs from market to market and subject matter to subject matter, and it could not be maintained that a prospective purchaser of quoted shares on the Stock Exchange is entitled to the same sort of information as, for example, the purchaser of unquoted shares by private E treaty. On the other hand, having regard to the evidence of Mr. Gillum, which the Commissioners accepted, the Commissioners were, it seems to me, clearly justified in finding that prospective purchasers on the Stock Exchange were entitled to have information as to the takeover negotiations. Once they reached this conclusion, it necessarily follows that the absence of this information represents a special circumstance which renders the quoted value something F other than a proper measure of market value. Having reached the conclusion—and, as I have said, justifiably reached the conclusion—that subs. (3) was inapplicable, the Commissioners were then thrown back on subs. (1) unaided by subs. (3). Under subs. (1) alone the Commissioners were bound to select whatever method of ascertaining the market price in a hypothetical open market they thought appropriate. They were further bound, it seems to me, G in applying whatever method they selected, to treat the prospective purchasers in that hypothetical open market as having information as to the takeover negotiations. In fact they were presented with two alternative methods of valuation, namely that of Mr. Gillum and that of Mr. Chandler. These methods were different, but each proceeded on the footing that the prospective purchasers had information as to the takeover negotiations. Either would have been an H appropriate method. As they reached the same result within a matter of shillings, the Commissioners were not concerned to choose between them. Again I think the Commissioners were fully justified in accepting one or other of these methods of valuation, including the assumption of information as to the negotiations.

As regards this second point, Mr. Wheeler, who appeared for the Crown, I once driven away from subs. (3), was constrained to say that when you went to subs. (1) you were in fact taken back to the Stock Exchange quotations under subs. (3), notwithstanding that *ex hypothesi* those quotations were not of themselves a proper measure of market value. That is a counsel of despair, and I do

(1) Page 375 *ante;* [1970] Ch. 138.

(Pennycuick J.)

not think there is any reason why the Court should adopt it. Once one is driven away from subs. (3) I do not think there is any difficulty in applying subs. (1) in isolation from subs. (3). Counsel for the Respondent pointed out that the Stock Exchange is not the only possible market even for quoted shares. That is true. It seems to me, however, that I am not concerned in this case to travel outside the methods of valuation which were accepted by the Special Commissioners.

I must now refer, although I will do so quite shortly, to In re *Lynall*(1) [1969] 3 W.L.R. 771, in the Court of Appeal. That case was concerned with a different question, namely, the amount of information to which prospective purchasers must be treated as entitled on the sale by private treaty of unquoted shares. The judgments do, however, bear on the present point in this respect, that they lay down that the Court must adopt what they call an objective test as to the information which would normally be available to prospective purchasers, in contradistinction to what they call the subjective test of what information the particular directors would have made available. I will quote two short passages. At page 780(2), Widgery L.J. defined what I have called the objective test in these terms:

> ". . . that in addition to the published information the vendor and purchaser should be deemed to have all information which would normally be made available to a genuine intending purchaser of property of the kind in question, this being information which a purchaser would expect to have and without which he would be unwilling to buy."

At page 783(3), Cross L.J. defined the objective test in these words:

> ". . . the knowledge to be imputed to the parties to the hypothetical sale was merely possession of the information which a willing vendor would normally require before he was prepared to sell and a willing purchaser would normally require before he was willing to purchase."

The objective test was the one which they accepted. I have quoted those passages because they do have some bearing on the knowledge which prospective purchasers of quoted shares on the Stock Exchange should be treated as possessing, but in the end the position of quoted shares is quite different from that of unquoted shares, and one should not, I think, press too far an analogy from that case.

I ought to mention in conclusion that the Respondent was himself, of course, one of those who possessed the information which on Mr. Gillum's evidence should properly have been made available to the Stock Exchange. It is not suggested that that is a relevant circumstance for the present purpose. For the reasons which I have given I propose to dismiss the appeal.

Whitworth—Would your Lordship say, with costs?

Pennycuick J.—Mr. Wheeler?

Wheeler Q.C.—Indeed, my Lord.

The Crown having appealed against the above decision, the case came before the Court of Appeal (Russell, Sachs and Buckley L.JJ.) on 11th, 12th and 13th November 1970, when judgment was given unanimously in favour of the Crown, with costs.

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(1) Page 375 *ante*. (2) *See* page 398 *ante*. (3) *See* pages 400–1 *ante*.

A *Michael Wheeler Q.C.*, *Jeremiah Harman Q.C.* and *J. P. Warner* for the Crown.

G. B. Graham Q.C. and *P. E. Whitworth* for the taxpayer.

Duke of Buccleuch v. *Commissioners of Inland Revenue* [1967] 1 A.C. 506 was cited in argument in addition to the case referred to in the judgments.

B **Russell L.J.**—This is an appeal concerning the valuation for capital gains tax on 6th April 1965 of 98,604 ordinary stock units in R. W. Crabtree & Sons Ltd. owned by the Respondent taxpayer, Mr. Peter Neville Crabtree. Mr. Crabtree also owned some preference and preferred ordinary stock in the company; but having mentioned that, I need not further consider it. The facts of this case are fully set out in the Stated Case and the judgment of C Pennycuick J. reported at [1970] 2 W.L.R. 690, and in those circumstances I do not propose to burden this judgment with repetition of them.

The method of valuation with which we are concerned is set out in s. 44 of the Finance Act 1965, and the *prima facie* valuation is by subs. (1) and is stated thus:

> " Subject to the following subsections, in this Part of this Act D ' market value ' in relation to any assets means the price which those assets might reasonably be expected to fetch on a sale in the open market."

But when we come to securities that are quoted on the London Stock Exchange, subs. (3) supplies a measuring rod, and, so far as now material, the terms of subs. (3)—and I read in the extended definition of " market value " which is found in subs. (1)—are these. In effect, it says that, in the case of shares or E securities quoted on the London Stock Exchange, the price which they might reasonably be expected to fetch on a sale in the open market shall, except where in consequence of special circumstances prices so quoted are by themselves not a proper measure of the price which the shares or securities might reasonably be expected to fetch on a sale in the open market, be as follows—and then it sets out references, with which I need not concern myself, to quota- F tions in the London Stock Exchange Official Daily List and bargains recorded therein.

The first question in this case is: Is it correct as a matter of law to say that there existed on 6th April 1965 in this case special circumstances in consequence of which the Stock Exchange prices were not by themselves a proper measure of the price that I have just mentioned? The circumstances G relied upon by the taxpayer were that, first of all, the board of Crabtree had not prior to 6th April 1965 made public the fact that there had been discussions with Vickers of a possible cash takeover bid by Vickers, discussions which in fact had for the time being been halted in February 1965; secondly, that the evidence showed that such an announcement would have resulted in the Stock Exchange price on 6th April 1965 being of the order of 51*s.* rather than 42*s.*6*d.*; H and thirdly, that the evidence of Mr. Gillum, of Kleinwort, Benson Ltd., was that in his considered opinion the Stock Exchange, and therefore the public, should have been informed of the existence of these discussions or negotiations before 6th April.

The Special Commissioners formed the view that there were relevant special circumstances, and then turned to examine the situation under s.44(1). I I would observe that a finding that there were relevant special circumstances requires an implicit finding that subs. (1) must throw up an answer other than

(Russell L.J.)

one based on the Stock Exchange prices, because the special circumstances are only such as have the consequence that the latter—the Stock Exchange prices—are not a proper measuring rod for that to which subs. (1) will lead. On arriving, then, at subs. (1), the Special Commissioners considered that the Stock Exchange was " working in blinkers " (to use their phrase) and was (to use their phrase again) " shut off from information vital to a realistic assessment of the true value of the assets ", and the Stock Exchange was not therefore to be considered the open market for the purposes of subs. (1). They then decided on a valuation, which was based on that evidence to which I have already referred, of what the Stock Exchange price would probably have been had the negotiations been announced before 6th April. Here I would stress that we are concerned, as the Special Commissioners and Pennycuick J. were concerned, not with a conception of the intrinsic value of these shares, but with what price they might reasonably be expected to fetch on a sale in the open market.

Pennycuick J. agreed with the view of the Special Commissioners that a failure to announce the negotiations was a relevant special circumstance, and he held that, in considering the open market under subs. (1), the Special Commissioners were right to treat the possible purchasers as people having information as to the takeover negotiations. In this connection he referred to In re *Lynall*(1) [1970] Ch. 138, while at the same time he had, and expressed, reservations as to how far the analogy should be taken. He did, however, rely on it to some extent as indicating that the price to be reasonably expected on a sale in the open market was in a market in which all prospective purchasers had all such information as is normally available to purchasers in that market. In re *Lynall* was a case of an unquoted private company. It was a case of valuation for estate duty purposes—though it is not suggested that the principles of estate duty valuation are any different from the principles and the law applicable to capital gains tax valuation. The evidence was that in such cases a proposing purchaser of a substantial block of shares in such a company as that was would approach the board of the company before buying the shares and ask all reasonable questions of the board, and that the board as an invariable practice would answer those questions, one of the questions—and the relevant one in that particular case—being whether a public issue was in mind or contemplated.

In this Court the Crown submitted that there was not any justification for the view that the failure to publicise the negotiations before 6th April 1965 was a special circumstance. For my part, I would accept that the failure to publicise the negotiations was not a special circumstance. It is perfectly true that Mr. Gillum expressed the expert view that the board of Crabtree ought to have publicised the negotiations, and it is true that this view was accepted by the Special Commissioners, there being no evidence to the contrary. But subs. (3) in providing a measuring rod is an extremely useful subsection. It is, I think, designed to reflect the accepted practice in estate duty cases: and, of course, cases may occur of a control holding where mere multiplication of the quoted price for a single stock unit will not represent the price obtainable on a sale of the holding; or there may be cases where the Stock Exchange quotations, due to the lack of bargains, are out of date or stale. But there are many factors—ignorance, optimism, pessimism, false rumour, inside information—that contribute to a Stock Exchange quotation, and it would obviously be wholly disruptive of the value of subs. (3) if those matters were to be the subject of analysis on valuation, whether for capital gains tax or for estate duty. It is

(1) Page 375 *ante*.

A right to say that that approach is disclaimed by Mr. Graham, who appears for the taxpayer. He relies exclusively on the evidence of Mr. Gillum that the public should have been told by the Crabtree board, presumably with the assent of the Vickers board, of the tentative negotiations that had taken place. But the one thing that Mr. Gillum did not say was that either universally or even normally boards would in the given circumstances publicise the fact of
B discussions or negotiations. In my judgment, the evidence was insufficient to justify the conclusion that there were here special circumstances, as that phrase is used in subs. (3), so as to enable the taxpayer to escape from the measuring rod of subs. (3).

But the question is, in my view, also to be answered in another manner and in the same sense. What grounds are there for saying that the consequence
C of the non-event of non-publication of the negotiations was that the Stock Exchange quotation would produce less than the price on a sale in the open market? It was argued that a block of stock of this importance in this sort of company would more likely be offered on expert advice to financial institutions and not through the Stock Exchange. Well, there was no evidence of this, but I am prepared to accept for the purposes of this judgment that the open
D market would thus be wider than those who buy only through the London Stock Exchange. Mr. Graham said that the owner of such a block would go for advice to somebody like Mr. Gillum, and that the institutions approached by Mr. Gillum, or the proposed vendor, would ask questions. It was then suggested that those questions would lead, not to a private disclosure to a few of the negotiations, but to publication. But of course we must forget
E that this block of shares happened to be owned by Mr. Crabtree, who was a director and knew all about the negotiations. We must assume a shareholder with the same block who knew nothing about them. I cannot for myself see how it can be realistically said that the open market must be assumed to know of the negotiations when it is quite plain that the open market would not have known. Nowhere in the evidence was it suggested for a moment, in the event
F of a holder of such a block of quoted shares in this company offering them to institutions, either that the latter would approach the board of the company with an enquiry as to whether any takeover approaches had been made, or that the board in answer to such enquiry would have said other than, " We always say ' No comment ' when we are asked that kind of question ", or that the board would have felt obliged because of the questions to publish the
G fact that there had been negotiations. It seems to me that there is no possible analogy here with a case such as In re *Lynall*(1).

I have already adverted to the facts in In re *Lynall*. This Court in that case had clear evidence as to what would go on in the market as a matter of course, and indeed as an invariable practice, and were concerned only to say: " We will look objectively at what goes on in the market with this type of
H share, and we do not look subjectively at the evidence of the particular board that it would not answer this question." That was what that case was concerned about. But the Court there had full information as to invariable practice. I only wish to draw attention to that, in particular, because of the complete lack of evidence in the present case suggesting that any steps would be taken by virtue of which on a hypothetical sale it could be thought that purchasers
I in the open market would in fact have become aware of the negotiations. This, in my view, is an additional ground for holding that there was no relevant special circumstance.

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(1) Page 375 *ante*.

(Russell L.J.)

It is, I think, wrong in law, besides being wholly unrealistic, to suppose, to infer or assume that in the open market under subs. (1) the possible purchasers would in making their offers be aware of the negotiations. I, for my part, would accordingly allow the appeal.

Sachs L.J.—The manifest intent of the Legislature when enacting s. 44(3) of the Finance Act 1965 was to provide for shares quoted on the London Stock Exchange a simple and easily accessible basis upon which to found the many thousands of calculations which have to be made every month for computing liability to capital gains tax. To that end subs. (3) provided that as regards securities thus quoted the price which they " might reasonably be expected to fetch on a sale in the open market " (to recite the words of subs. (1)) must in general be assessed by reference to the quotations to be found in the Stock Exchange Official Daily List of the relevant date or to the recorded prices for bargains done on that date. It is to be observed that the quotations on no other exchange were given a parallel ranking by the Statute. The provisions of subs. (3) plainly stem from the experience gained over many years of the practice that has matured in regard to calculations made for the purposes of assessing estate duties. Thus this obligatory method of measurement imposed by this subsection must be taken to have been selected in full knowledge of both the advantages and disadvantages inherent in the bargaining processes that prevail on the London Stock Exchange. In essence the Legislature took that market as it found it.

Apart from certain specific provisos, the only exception to this obligatory method is " where in consequence of special circumstances prices so quoted are by themselves not a proper measure of the market value "—that is to say, of the price referred to in subs. (1). The onus of establishing such special circumstances lies, of course, upon whoever alleges their existence. It must not be overlooked that such circumstances must be special in relation to the nature or conditions of the Stock Exchange market or its Lists or to the particular holding under consideration, as opposed to special in relation to the personal position of the owner of that holding. It has thus been properly conceded for the taxpayer that his special knowledge of Crabtree's affairs, derived from his being a director, cannot be taken into account. That is nonetheless something that needs to be emphasised, so that there may be avoided any inadvertent tendency to bring in that special knowledge as a factor by some back door or to apply tests other than those applicable to shareholders who have no such knowledge.

The sole point on which reliance was placed by the taxpayer in this Court was a special circumstance affecting all shareholders in the company that was alleged to exist on 6th April 1965, viz. that the then " unofficial negotiations " (to use the descriptive words of Sir Charles Dunphie in his letter of 30th July) between Vickers and the company ought to have been the subject of some public announcement which would have become known to the members of the London Stock Exchange, and thus to those who deal there. I am by no means convinced that there was any evidence before the Special Commissioners on which they were entitled to hold that in 1965 such an announcement would by 6th April have been normal in the circumstances—far less that it was something that was invariably (to use the phraseology adopted in In re *Lynall*[1] [1970] Ch. 138) to be expected. Nor does it seem to me that the Special Commissioners so held. Mr. Gillum, of Kleinwort, Benson Ltd., said that in his view (and I stress those words) a public announcement would have been appropriate, and that in his opinion it should have been made. But even that evidence taken at

(1) Page 375 *ante*.

A its highest needs to be read in the light of the fact that months later, in the first days of August, when official negotiations had substantially been concluded, neither Messrs. Morgan Grenfell nor Kleinwort, Benson Ltd., the eminent merchant bankers then concerned respectively for Vickers and Crabtree, caused an announcement to be made in advance of the former's offer of 17th August. To my mind, there was no material before the Special Commis-
B sioners on which it could be held that on or before 6th April either the Stock Exchange or those dealing there were entitled as of right to be told of the negotiations, such as they then were.

Be that as it may, the fact remains that day in and day out there occur on the London Stock Exchange situations in which it may well be said that an announcement should have been made by some company which if made would
C affect the prices of the quoted shares. This can and does happen in relation to many and various events. For instance, it happens in relation to news of the success or failure of boreholes affecting the prospects of mining companies; to the publication of a company's accounts being deferred beyond the proper time; to the effects of important matters which may only later become public when published accounts appear; or to the imminence of the successful comple-
D tion of some negotiations relating to a highly valuable contract. Sometimes the absence of that information may result in the quoted prices on the Stock Exchange being higher than if it had been available, and sometimes lower. That all forms part of the pattern of the general circumstances in which the market operates and under which prices are fixed having regard to supply and demand. The Stock Exchange, like other bodies concerned with the good name
E and best interests of the City, may be taken to do its best to see that as much information as practicable is available to those who deal in the market. It does not, and cannot, guarantee the availability of that information, and having regard to the general circumstances in which it operates, it cannot be said to be a special circumstance merely that in some particular instance information has not become available. It would make a most serious inroad
F on and to an extent nullify the manifest intention of s. 44(3) if a company's failure to provide information of the type under consideration were to open the way to an inquiry as to what was the correct price under subs. (1). To take only one instance, it could in future produce most untoward complications as regards the holding of any shareholder in a company when that shareholder died between the date when an announcement should have been made and the
G date on which the news broke. Thus I respectfully take a different view from that of Pennycuick J. as to whether the matters found to exist in the Stated Case form a special circumstance. Moreover, I agree with what Russell L.J. has said as to the results of any inquiry into what, on the particular facts of the present case, would have been the result of an investigation to ascertain the open market price under subs. (1).

H I need only add that in the instant case it is obvious that all concerned in the negotiations acted with patent honesty. Indeed, one glance at the course of the quoted prices between February 1965 and 17th August 1965 shows that there was no leak of any kind, and that everybody preserved a well-intended discretion that many might regard as commendable. Accordingly, nothing in this judgment is intended to relate to some occasions when a false market
I is created through being fraudulently rigged by the aid of false information or by dishonest concealment of facts. On that type of circumstance, at the instance of learned counsel for the Crown, I make no observation.

I agree that the appeal in the present case should be allowed, and that the Order proposed by Russell L.J. should be made.

Buckley L.J.—I also agree, and but for the fact that we are differing from the learned Judge I should not think it necessary to add anything. However, what I am going to say can be stated quite briefly. Pennycuick J. in the course of his judgment(1), [1970] 2 W.L.R., at page 700G, said this:

> "It seems to me that the market value of any asset, i.e. the price which that asset might reasonably be expected to fetch on a sale in the open market, must be the price in a market where the prospective purchasers have all such information as to any relevant factors as is normally available to purchasers in that market, having regard to the nature of the market." At page 701A, he said this: "having regard to the evidence of Mr. Gillum, which the Commissioners accepted, the Commissioners were, it seems to me, clearly justified in finding that prospective purchasers on the Stock Exchange were entitled to have information as to the takeover negotiations. Once they reached this conclusion, it necessarily follows that the absence of this information represents a special circumstance which renders the quoted value something other than a proper measure of market value."

It is necessary, in the light of those observations of the learned Judge, to look with great care at precisely what was the evidence before the Special Commissioners and what their findings on that evidence were. Mr. Gillum's evidence is set out in para. 7 of the Stated Case, where it is noted that at 6th April 1965 the negotiations for a takeover had been in a state of suspended animation since the previous February. It appears from para. 6(9) of the Stated Case that in February the course that the negotiations had taken was that it was the second time that the parties had met to discuss a possible takeover. They came to the conclusion on that occasion that the takeover should take the form of a cash offer, and the discussions proceeded on this footing and on the basis that the figure would be about £7,000,000. The negotiations at that stage were in a quite inchoate state. Mr. Gillum's evidence goes on, as reported in the Case, to state that:

> "He considered that it would have been appropriate for the shareholders of R. W. Crabtree & Sons Ltd. to have been advised by or before the beginning of April 1965 of the position generally as regards the approach made by Vickers" and that: "If he had then been advising the directors of the company, he would have favoured a statement being made to the effect that they announced that discussions were in progress which might lead to a cash offer being made for the whole of the issued capital, but that the discussions were expected to be of some duration and that no further announcement should therefore be expected at an early date."

It is true that later on in his evidence, as recorded by the Special Commissioners in the Case Stated, Mr. Gillum expressed the view that the Stock Exchange had not in his view been given at that time—that is, at 6th April 1965—information as to the negotiations which should have been supplied to them; and he thought that because of this current quotations did not bear any true measure of the value of the stock units in question.

In the light of that evidence the Special Commissioners found that at 6th April 1965, the meetings of 14th January and 24th February 1965 between the two boards having taken place—and I quote from the Case Stated:

> "They had not carried matters to the point of finality, but they had carried them to a stage at which, in Mr. Gillum's view, it would have been appropriate for the directors of R. W. Crabtree & Sons Ltd. to have made a public announcement to the effect that discussions were in

(1) *See* page 431 *ante*.

A progress which might lead to a cash offer being made for the whole of the issued capital "—with a caveat attached to such a statement. The Commissioners go on to say: " Were there in those circumstances special circumstances in consequence of which the quoted prices were not a proper measure of market value as defined in s. 44(1)? "

Analysing their findings precisely, the only fact relevant to the present considera-
B tion that they seem to take into consideration at that stage is Mr. Gillum's view that it would have been appropriate that the directors should have made an announcement, and in the light of that they come to the conclusion that there were special circumstances. They go on to say:

> " . . . on the evidence before us we were satisfied that the London Stock Exchange prices on 6th April 1965 were substantially less than they would
C have been if an announcement of the kind which Mr. Gillum considered should have been made had been made before that date."

When one comes to look closely at the findings of the Special Commissioners, it seems to me, as Russell L.J. has said, impossible to reach the conclusion that they found that a public announcement of the state of the negotiations as they existed at 6th April 1965 was a matter which would have
D normally, much less invariably, been made available to persons dealing on the Stock Exchange. The point at which, for myself, I part company with Pennycuick J. is that passage in the judgment where he says that the evidence as accepted by the Commissioners established that prospective purchasers on the Stock Exchange were entitled to that information as to the negotiations[1]. I do not think that the evidence establishes any such entitlement; and I do
E not think, with respect to the learned Judge, that the Special Commissioners so held. They were very careful, as I read their Case Stated, in limiting their findings. I, for myself, entirely accept the reasoning which has persuaded Russell L.J. to his conclusion, and I agree with it. On those grounds I agree that the appeal should be allowed.

Russell L.J.—The appeal will be allowed, and I suppose—

F **Wheeler Q.C.**—I am told that the most appropriate course would be for your Lordships to order the case to be remitted to the Commissioners to adjust the assessment in accordance with the judgment of the Court.

Russell L.J.—Does the assessment need any adjustment?

Wheeler Q.C.—That formally just covers the possibility that the figures might not be right. So would your Lordships allow the appeal, and remit the
G case to the Commissioners for adjustment in accordance with the judgment of the Court? And I would ask your Lordships to allow the appeal with costs here and below.

Russell L.J.—What we are really doing is remitting to the Special Commissioners not to adjust the assessment.

Wheeler Q.C.—Yes, my Lord: not to adjust the assessment unless
H something has gone wrong.

Russell L.J.—Well, if that is the right Order, so be it. What about costs, Mr. Graham?

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[1] *See* page 431E *ante*.

Graham Q.C.—I cannot object to that in any way, my Lord. A

Russell L.J.—Well, you can object, but you cannot argue against it.

Graham Q.C.—If your Lordship pleases. May I ask your Lordships for leave, if it should be thought right after a consideration of your Lordships' judgments, to appeal to the House of Lords? There has been a difference of opinion. The learned Judge supported the Special Commissioners. It is the first time that this question has been considered under the 1965 Act; and not B only that, but never has the estate duty practice been questioned. This is a matter of importance both for capital gains tax and estate duty. On those grounds I would ask for leave to appeal.

Russell L.J.—What do you say, Mr. Wheeler?

Wheeler Q.C.—I have nothing to say, my Lord.

(*After a pause.*) C

Russell L.J.—We do not give leave, Mr. Graham. You must obtain it elsewhere.

Graham Q.C.—If your Lordship pleases.

The taxpayer having been granted leave by the Appeal Committee of the House of Lords to appeal against the above decision, the case came before D the House of Lords (Lords Reid and Morris of Borth-y-Gest, Viscount Dilhorne and Lords Donovan and Pearson) on 13th, 14th, 15th and 19th July 1971, when judgment was reserved. On 27th October 1971 judgment was given unanimously in favour of the Crown, with costs.

H. H. Monroe Q.C., *G. B. Graham Q.C.* and *P. E. Whitworth* for the E taxpayer.

Michael Wheeler Q.C., *Jeremiah Harman Q.C.*, *J. P. Warner* and *L. Hoffman* for the Crown.

B.S.C. Footwear Ltd. v. *Ridgway*[1] [1971] Ch.427; T.C. Leaflet No. 2403 was cited in argument in addition to the case referred to in Lord Reid's speech. F

Lord Reid—My Lords, the Appellant was assessed to capital gains tax in the sum of £65,695 for the year 1965–66. The Special Commissioners reduced this assessment to £20,819. Pennycuick J. dismissed an appeal from their decision, but on appeal the Court of Appeal reversed his decision. The Appellant now seeks to have the decision of the Special Commissioners restored. G

Section 22 (10) of the Finance Act 1965 provides that gains accruing after 6th April 1965 shall be chargeable gains. So when any property is sold after that date it is necessary to find its value at that date in order to find what part of the price realised was a gain which accrued after that date. Paragraph 22 (2) of Sch. 6 requires us to assume that the property was sold on that date and immediately reacquired by its owner at its then market value. At that date the H Appellant owned 98,604 ordinary stock units of R. W. Crabtree & Sons Ltd., together with a small number of preferred ordinary and preference stock units. These latter I shall not consider separately. Later in that year Vickers acquired the whole issued capital of the company: they paid 55*s.* for each ordinary stock unit. The question in this case is what was the market value of these units on I

(1) To be printed later in this volume.

A 6th April. They were quoted on the London Stock Exchange at 42*s.* 6*d.* on that date and the assessment which the Crown defends is based on the chargeable gains being the difference between those two figures, i.e. 12*s.* 6*d.* per stock unit.

The Appellant relies on s. 44 (3) of the Act. Section 44 provides:

> " (1) Subject to the following subsections, in this Part of this Act ' market value ' in relation to any assets means the price which those
> B assets might reasonably be expected to fetch on a sale in the open market. (2) In estimating the market value of any assets no reduction shall be made in the estimate on account of the estimate being made on the assumption that the whole of the assets is to be placed on the market at one and the same time: Provided that where capital gains tax is chargeable, or an allowable loss accrues, in consequence of death and the market
> C value of any property on the date of death taken into account for the purposes of that tax or loss has been depreciated by reason of the death the estimate of the market value shall take that depreciation into account. (3) Subject to paragraph 22 (3) of Schedule 6 to this Act the market value of shares or securities quoted on the London Stock Exchange shall, except where in consequence of special circumstances prices so
> D quoted are by themselves not a proper measure of market value, be as follows—(*a*) the lower of the two prices shown in the quotations for the shares or securities in the Stock Exchange Official Daily List on the relevant date plus one-quarter of the difference between those two figures, or (*b*) halfway between the highest and lowest prices at which bargains, other than bargains done at special prices, were recorded in the shares or
> E securities for the relevant date, choosing the amount under paragraph (*a*) if less than that under paragraph (*b*), or if no such bargains were recorded for the relevant date, and choosing the amount under paragraph (*b*) if less than that under paragraph (*a*): Provided that—(i) this subsection shall not apply to shares or securities for which some other stock exchange in the United Kingdom affords a more active market; and (ii) if the London
> F Stock Exchange is closed on the relevant date the market value shall be ascertained by reference to the latest previous date or earliest subsequent date on which it is open, whichever affords the lower market value."

Subsection (3) makes it clear that the Appellant can only escape from the Stock Exchange quotation if on the relevant date there were " special circumstances ". Whatever that expression may mean, it must refer to facts which existed at the
G relevant time. We must take the facts from the Case Stated by the Special Commissioners.

The Case has been stated in a form which makes it difficult to determine just what were the facts which the Commissioners found. Paragraph 5 of the Case is as follows:

> " 5. As a result of the evidence, both oral and documentary, adduced
> H before us we find the facts set out in para. 6 below proved or admitted. Evidence given by Mr. Gillum and Mr. Chandler as to takeover and valuation matters is set out in paras. 7 and 8 below."

Paragraphs 6, 7 and 8 are set out in full in [1970] Ch., at pages 628–33. For present purposes it is sufficient to summarise para. 6 very briefly. As early as September 1964 there were discussions between representatives of Vickers and
I Crabtrees. Opinions were expressed that there should be a merger. In January 1965 statements regarding Crabtrees' affairs were handed to Vickers. They included a calculation that the value of Crabtrees' ordinary stock units was then £3 per unit. In February the view was expressed that the only practicable

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course was for Vickers to make a cash offer. Thereafter for various reasons negotiations proceeded slowly until the end of July. On 11th August agreement was reached. Crabtrees' board approved and on 18th August a public statement was made. An appendix to the Case shows that as a result there was an immediate increase of about 10*s*. in the price at which business was done on the London Stock Exchange. The first argument submitted by the Appellant was that these facts constituted special circumstances because if the public had been aware of the true position at or before the beginning of April the Stock Exchange quotation on 6th April would have been considerably higher. For reasons which I shall give later I reject that argument. It then becomes necessary for the Appellant to rely on statements made in paras. 7 and 8. I have quoted from para. 5, where these paragraphs are said to set out evidence as to takeover and valuation matters. Paragraph 7 begins: " Mr. Gillum gave evidence before us (which we accepted) to the following effect." Mr. Gillum was a financial expert, being connected with Kleinwort, Benson Ltd. He only came into the negotiations in August. The crucial passage in para. 7 is:

> " The Stock Exchange had not in his view been given at that time information as to the negotiations which should have been supplied to it, and he thought that because of this current quotations did not afford any true measure of the value of the stock units in question."

If the Appellant could say that the Commissioners found as a fact that information had been withheld when it ought to have been made public, he might well be able to say that that was a special circumstance.

It is most regrettable that the Commissioners framed the Case in this way. It is their function to find the facts, i.e. all the facts which emerge from the evidence led and which are relevant to the contentions of the parties. Expert evidence is no different from any other. They must say what facts they hold that it has proved. They have to narrate evidence if there is a contention that there was no evidence to prove a particular fact which they have found. And it may sometimes be useful to narrate some evidence in other cases, provided that the Commissioners make clear what is narration and what is a finding of fact. But here it is not at all clear what parts if any of paras. 7 and 8 are intended to be findings of fact. I would infer from para. 5 that no part is so intended. The words in brackets at the beginning of para. 7 seems to indicate that the whole of that paragraph is finding of fact, but when in para. 12 the Commissioners are summing up, they pointedly refrain from saying that matters had reached a stage when a public announcement would have been appropriate; they only say that a stage had been reached at which in Mr. Gillum's view a public announcement would have been appropriate. And in giving their reasons for their decision they do not appear to found on this. It cannot be said that the question whether information ought to have been disclosed is a question of law. It must depend on the custom of the City and the Stock Exchange and the practice observed by other companies in like circumstances. So in my judgment there is no finding of fact that information which ought to have been disclosed to the public before 6th April was withheld.

I would have been surprised if there had been such a finding. Counsel very properly agreed to our seeing " Revised notes on company amalgamations and mergers " of date 31st October 1963. It is therein stated that the original edition was drawn up by the Executive Committee of the Issuing Houses Association in co-operation with a number of important financial bodies including the Stock Exchange. These notes contain the following passage:

> " When talks are proceeding which may lead to an offer being made, it is important to do everything possible to maintain secrecy in order to

A avoid disturbance in the normal price level of shares until the relevant information can simultaneously be made available to all shareholders. In particular, Directors, or others who have close associations with them, should avoid any dealings in the shares likely to be affected and should exercise great care in connection with any transactions which may have been initiated but not completed when the talks begin. It is not easy
B for a Board to decide when to make a public announcement. It is usually unwise to make any announcement until it is reasonably certain that an offer will in fact be forthcoming, but once this stage in negotiations has been reached an announcement should be made with the minimum of delay. Whilst the ideal must be that the first announcement should include the terms of the offer, it may nevertheless be necessary, if there
C are signs that the normal relationship of the price of the shares in the offeree company to the market in general is being disturbed, for a preliminary announcement to be made."

Plainly, if that is right the conduct of the boards of Vickers and Crabtrees was proper and normal. So it would seem that if Mr. Gillum gave the evidence attributed to him that must have been only his personal opinion differing from
D the views generally held.

Senior counsel for the Appellant moved in his final speech that there should be a remit to the Special Commissioners directing them to state whether or not they found the statements of Mr. Gillum to be proved as facts. I would not oppose such a remit if some points arose in argument which could not reasonably have been foreseen, but it must have been apparent to counsel that
E this matter was likely to arise, and no doubt they exercised a wise discretion in keeping silent about it in their printed Case. I would refuse this motion.

Now I must turn to the interpretation of s. 44 (3). As might be expected, it takes the Stock Exchange quotation as reflecting market value in all normal cases. Stock Exchange prices are more liable than most open market prices to large and rapid fluctuations. But the taxpayer must take the risk of that unless there are
F " special circumstances ". " Special " must mean unusual or uncommon—perhaps the nearest word to it in this context is " abnormal ". I see no reason to exclude any kind of abnormality. " Rigging the market " was discussed in argument. This exception of cases where there are special circumstances must be intended to provide that a fair value is to be taken where they exist: generally a fair value could only be reached by enquiring what the market value would
G have been if the special circumstances had not existed. I think that that is what the section is contemplating when it says that in consequence of special circumstances the Stock Exchange quotation is not by itself a proper measure of market value. If it is not then some other measure must be found.

The Crown argue that this provision has a very limited application. Indeed, they say that it can only apply in two cases: first, in the very few cases where
H on the day in question the Stock Exchange quotation was " stale ", and secondly when in practice a particular parcel of shares would not be sold on the Stock Exchange at all. With regard to the latter I would refer to the very recent decision in this House of In re *Lynall*[1]. It would then be necessary to imagine some other form of open market sale of that parcel on that day if the Crown's submission on this point is correct. It is unnecessary to reach any decision on
I that matter in this case. I can see nothing in the phraseology or in the apparent object of this provision to justify so narrow a reading of it.

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[1] Page 375 *ante;* [1971] 3 W.L.R. 821.

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The question then is whether there were in this case any special circumstances on 6th April 1965. The Special Commissioners stated their ground of decision in these terms:

> " we thought that, as it had been put in argument, the Stock Exchange was, in relation to the stocks at 6th April 1965, ' working in blinkers '. A horse in blinkers was shut off from seeing a good deal. When a market was shut off, as we thought the London Stock Exchange here had been, from information vital to a realistic assessment of the true value of the assets in question, was it right to refer to that market as ' the open market ' envisaged in s. 44 (1)? Having weighed the matter, we thought that it was not. Accordingly we held that the appeal succeeded in principle."

They do not appear to rely on any impropriety in withholding the vital information: they seem to have regarded it as sufficient that in fact the Stock Exchange was " working in blinkers " without considering whether this was unusual. Their apparent view that the Stock Exchange was not an open market because it lacked vital information was not supported in argument. It must happen every day that directors of many companies have in their possession confidential information which very properly they do not make public but which if made public would lead to a substantial alteration of the quoted prices of their companies' shares. That could not possibly be a " special circumstance " and in my opinion that is all that happened here.

I would dismiss this appeal.

Lord Morris of Borth-y-Gest—My Lords, the Appellant disposed of his stock units in R. W. Crabtree & Sons Ltd. He did so in August 1965 as a result of his acceptance of an offer then made by Vickers Ltd. to acquire for cash the whole of the issued capital of Crabtrees. He made a capital gain which was chargeable to tax. His stock units had quoted market values on 6th April 1965 on the London Stock Exchange (see para. 22 (1) (*a*) of Part II of Sch. 6 to the Finance Act 1965). In computing the amount of his gain it is first to be assumed that his shares were sold by him and immediately re-acquired by him at their market value on 6th April 1965 (see para. 22(2)). The provisions of s. 44 (3) of the Act (which is subject to the provisions of para. 22 (3) of Part II of the above Schedule) show how the " market value " of shares or securities is to be arrived at if such shares or securities were quoted on the London Stock Exchange on the relevant date. There was no difficulty, as a matter of calculation on ascertained figures, in arriving at the market value (see s. 44 (1) of the Act) of the Appellant's stock units provided that s. 44 (3) applied. The subsection contains an exception from its applicability " where in consequence of special circumstances " the prices quoted on the London Stock Exchange were " by themselves not a proper measure of market value ".

The Appellant contended that the words of exception applied, and so he appealed against the assessment to capital gains tax made upon him in respect of chargeable gains for the year 1965–66. There were two questions raised before the Special Commissioners, viz. (*a*) were there " special circumstances " and (*b*) if there were, what was the " market value " on 6th April 1965. As the Special Commissioners held that there were special circumstances, with the result that the London Stock Exchange quotations did not govern, they proceeded to fix the " market value " of the Appellant's stock units. The point of law which they stated in the Case Stated was " whether on the facts found herein we were entitled to arrive at our decision set out in para. 12 above."

It becomes necessary, therefore, to see what was their decision (para. 12) and what were the facts found. As to the latter the Case records that the facts

found are in one paragraph (para. 6) and that they are found as a result of the evidence both oral and documentary that was adduced. Then in somewhat puzzling segregation it is recorded that " evidence given by Mr. Gillum and Mr. Chandler as to takeover and valuation matters " is set out in two other paragraphs. Included in para. 6 is a history of the discussions and events which, after various intervals and interludes, culminated in an announcement in the press on 17th August 1965 that Vickers would offer to acquire the whole of the issued capital of Crabtrees. The formal offer was made on 18th August 1965 by Morgan Grenfell & Co. Ltd. on behalf of Vickers. The discussions had begun informally in November 1964, after the then chairman of Crabtrees, the late Mr. C. H. Crabtree (the father of the Appellant), had received a letter from Mr. Hird of Vickers inviting him to lunch at Vickers House. Following that lunch (when Mr. Crabtree met the chairman of Vickers and others) there were various meetings and discussions between Mr. Crabtree and Mr. Hird. Discussion proceeded on the basis that there might be a merger between Vickers and Crabtrees. On 14th January 1965 detailed facts and figures concerning Crabtrees were handed over. Crabtrees calculated that the value of its stock units was £3—the market quotation then being 47*s.* 6*d.* In February 1965 at a further meeting, when it was thought that an offer by Vickers would have to be a cash offer involving about £7,000,000, Vickers explained that an agreement they had with an American company would have to be terminated before there could be a takeover. A director of Vickers went to America in March to negotiate matters. Later on both companies were concerned with some matters of mutual interest, but on 18th June 1965 Vickers indicated that matters were progressing satisfactorily and that they did not expect that it would be long before they could proceed. Then on 30th July 1965 the chairman of Vickers (in a letter which was before the Special Commissioners and which they stated was available for inspection by the Court) wrote to the late Mr. Crabtree in these terms:

> " I am afraid that the unofficial discussions which we have had have taken an undue time to reach the stage at which we can begin serious talks. I am most grateful to you for being so patient during this period." In this letter he also added: " I would, therefore, just like to tell you how glad I am that we now see our way sufficiently clear to be able to start talks with you and I hope that we may conclude them satisfactorily."

A meeting followed on 6th August 1965, and on the Vickers side someone was present from Messrs. Morgan Grenfell & Co. who were advising Vickers. At that meeting it was agreed that 55*s.* should be the appropriate figure (rather than the figure of £3 mentioned in January) for the ordinary stock units. At a meeting on 11th August Mr. Gillum, of Messrs. Kleinwort Benson—who in August and not before was called in to advise Crabtree—was present. At a further meeting, after 16th August, with the Vickers representatives, documents relating to the merger were signed. I have referred to these matters so that the state of affairs on 6th April may be appreciated in perspective. At that date there had been " unofficial discussions ", but over three months were to elapse before the chairman of Vickers announced that he could see the way sufficiently clear to be able to " start talks ".

On those facts as found, and before referring to Mr. Gillum's evidence, I do not consider that it could be held that there were special circumstances which would result in the Stock Exchange prices not being a proper measure of the price which the stock units might reasonably be expected to fetch on a sale in the open market on 6th April 1965. It is to be remembered that what is denoted by the provisions of s. 44 is not the intrinsic value of shares

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but the price that they will fetch in the open market, and that as a matter of practical and administrative convenience the London Stock Exchange quotations (i.e. the quotations in the Stock Exchange Official Daily List) are accepted as the basis to be used in following the directions given by s. 44 (3). But in the very nature of things Stock Exchange prices have to be arrived at without full and complete and up to the minute knowledge of all the circumstances which, if they were known, might affect prices. The Legislature has nevertheless decided that Stock Exchange prices are to be used.

Numerous examples could be given. Directors of a company might have improved trading figures presented to them as a result of which they decide to increase a dividend: the announcement of this might cause a rise in the price of the shares. I do not think that it could be said that in the days before the directors met the circumstance that good trading figures were coming in was a special circumstance within the contemplation of s. 44 (3). Similarly, a company might be in confidential negotiations for a very valuable contract. If there were knowledge that there was the possibility or prospect of securing the contract prices might rise. The circumstance that such knowledge could not be broadcast would not be a " special " circumstance. There are very many matters in the day-to-day running of a big business which might if publicised affect prices. The Stock Exchange may be very sensitive to the merest breeze of change. Yet many such matters ought not, and many by accepted standards need not, be made public. Their mere existence does not constitute a " special " circumstance.

Mr. Gillum gave evidence. As he was only called in to advise Crabtrees in August 1965, when what the chairman of Vickers called the " talks " began, his assessment of the position as at 6th April 1965 was naturally based upon what he learned as to what had taken place and as to how far matters had gone. The Commissioners accepted the evidence of Mr. Gillum, which was to this effect: (*a*) that had he been advising before April 1965 he would have " favoured " an announcement being made that discussions were in progress which might lead to a cash offer for the shares but that discussions were expected to be of some duration and that no early further announcement was to be expected; (*b*) that had there been such an announcement on 14th January 1965 the Stock Exchange prices would have risen; (*c*) that as at 6th April 1965 the position was that since the February meeting the negotiations were in a state of suspended animation, but that they were serious negotiations into which Vickers would not have entered if they had not had every expectation of being able to implement them and that the only unsettled matters were the final determination of the prices to be paid and Vickers' ability to finance the purchase; and (*d*) that in his view the Stock Exchange should have been informed of the negotiations, and because they were not the quotations did not give a true measure of the " value " of the shares.

Though the Commissioners accepted that Mr. Gillum held the views that he expressed, it by no means followed, had the question of making an announcement been raised sometime before April 1965, and possibly on or about 14th January, that the others concerned would have agreed that the time had come when it would be either proper or advisable to make some announcement in regard to the discussions. It is to be noted that no other evidence—such as that of some witness who could express an opinion on behalf of the Stock Exchange—was called. No one from the Stock Exchange suggested that they " should " have been given information at any time before April 1965.

A It is to be remembered also that a premature announcement in regard to discussions which, however promising, do not in fact materialise may bring about injustice: estate duty might in some cases become payable on the basis of prices needlessly inflated.

The conclusion of the Special Commissioners as expressed in para. 12 of the Case Stated may fairly be summarised as follows: (i) the negotiations
B before 6th April 1965 were serious negotiations; (ii) though not by then carried to a point of finality, they had reached " a stage at which, in Mr. Gillum's view, it would have been appropriate for the directors of R. W. Crabtree & Sons Ltd. to have made a public announcement . . ."; (iii) the consequences of an announcement would have been that the London Stock Exchange prices at 6th April would have been substantially greater than the prices that were
C then in fact quoted; (iv) those were " special circumstances " within the meaning of s. 44 (3). Here may I say that I see no reason for acceding to a somewhat belated application that was made that the case should be remitted to the Special Commissioners. If the first three of these are accepted as findings of fact I am quite unable as a matter of law to accept that they constitute special circumstances. In regard to the findings of fact it is to be noted that there is no
D finding that there was any impropriety or that anyone was at fault or that there was some duty or obligation to make an announcement. There is merely an acceptance of the fact that, had Mr. Gillum been advising Crabtrees in January and February 1965 (which of course he was not), he would have " favoured " an announcement being made by Crabtrees that discussions were in progress. If Kleinwort Benson Ltd. had at that stage been advising Crabtrees, then
E presumably at that date Morgan Grenfell & Co. Ltd. would have been advising Vickers. It must be a matter for speculation as to what their view at that date would have been or what Vickers' view would have been or as to how Vickers would have reacted if the directors of Crabtrees had made an announcement. I would have thought that either a joint announcement or an announcement by agreement would, when the time came, have been appropriate. I need not,
F however, pursue these reflections, because in the absence of a finding that there ought to have been and should have been some public announcement the basis of the finding of the Special Commissioners is that because a circumstance which in fact existed (i.e., that discussions were taking place) was unknown to the public it was a " special " circumstance within s. 44 (3) if public knowledge of it would have affected prices. But unless there was some impropriety or
G irregularity or wrongful withholding of information that the public (including members of the Stock Exchange) ought to have had, the situation was no different from that which must constantly exist, i.e., that directors of a company are in possession of information (either gratifying or disappointing) in advance of the time when it can become generally known.

The Special Commissioners considered that on 6th April 1965 the Stock
H Exchange was " working in blinkers " in relation to the stocks. This must mean that possible buyers or sellers of the shares did not have up-to-date information of all matters that, if known, would have affected purchases or sales. But this is no more than one of the commonly existing facts of business life. It is a feature or circumstance of everyday commercial activity in the buying or selling of shares that full and complete information of every matter that might affect prices cannot
I in the nature of things be known. That is an ordinary circumstance. It is not a special one. I cannot accept that there is a special circumstance whenever directors have more information (that might affect prices) than stockbrokers have. It may well be that if some information is not made available to the public, and therefore to potential buyers or sellers, which would affect the

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price of the shares in a company and if it is clearly proved that such information ought to have been made available then a special circumstance under s. 44 (3) might be shown. Each case must depend upon its particular facts, but a finding that information ought to have been given which was wrongly withheld would have to be based upon definite evidence given by those well qualified to speak with authority as to accepted standards and well established practices. Beyond saying this I do not consider that it would be helpful in the present case to seek to identify or to categorise the situations or circumstances which might be held to be " special " within the meaning and contemplation of s. 44 (3).

I would dismiss the appeal.

Viscount Dilhorne—My Lords, the Finance Act 1965, by s. 44 (1), provides that for the purposes of capital gains tax " market value " in relation to any assets means the price which those assets might reasonably be expected to fetch on a sale in the open market. That is the general rule, but special provision is made for shares and securities quoted on the London Stock Exchange. They have ordinarily to be valued in accordance with the formula prescribed by s. 44 (3), amended, if their value on 6th April 1965 has to be ascertained, by para. 22 (3) of Sch. 6 to the Act. This formula is to be applied in relation to such shares and securities " except where in consequence of special circumstances prices so quoted are by themselves not a proper measure of market value " or when some other stock exchange in the United Kingdom affords a more active market in the shares or securities: s. 44 (3).

In this appeal the Appellant, Mr. Crabtree, contends that the prices quoted on 6th April 1965 on the London Stock Exchange for the ordinary stock units in R. W. Crabtree & Sons Ltd. (hereafter called " the company ") in consequence of special circumstances were by themselves not a proper measure of market value. He alleges that their market value was higher than the quoted price, and if he is right his liability to capital gains tax will be materially reduced.

Paragraph 5 of the Case Stated is in the following terms:

> " As a result of the evidence, both oral and documentary, adduced before us we find the facts set out in para. 6 below proved or admitted. Evidence given by Mr. Gillum " [a director of Kleinwort, Benson, merchant bankers] " and Mr. Chandler " [a partner in Cazenove & Co., stockbrokers] " as to takeover and valuation matters is set out in paras. 7 and 8 below."

The facts found and set out in para. 6 may be summarised as follows. The company manufactured printing machinery. In the autumn of 1964 meetings took place between the late Mr. Crabtree, the Appellant's father, and Mr. Hird of Vickers, as a result of which the general conclusion was reached that the only satisfactory way of achieving the strengthening of the printing machinery industry in this country would be by a merger between Vickers and the company. Mr. Rayner, a chartered accountant, was asked to prepare some statistical information for Mr. Crabtree relating to the Crabtree group of companies. He produced a number of documents, including a report of the profits of the group from 1954 to 1963, an analysis of turnover, a summary of balance sheets showing the calculation of current assets less liabilities, a list of freehold properties and a calculation of the value of the company's ordinary stock. On the basis of this calculation the company assessed the value of its ordinary stock units at £3 per unit. The Stock Exchange middle market quotation for

A such a unit was on 14th January 1965 47*s.* 6*d.* These documents were handed over to Mr. Hird at a meeting on 14th January 1965. At a meeting on 24th February the conclusion was reached that the only practicable way of effecting the merger would be by a cash offer. Discussion proceeded on this footing and on the basis that the figure would be about £7,000,000. Vickers then said that they would have to terminate a licensing agreement with an American
B company before the takeover could be effected, and that, in view of other commitments, they would have to look into ways and means of raising the amount of cash required. On 30th July Sir Charles Dunphie, the chairman of Vickers, wrote to Mr. C. H. Crabtree saying that:

> " the unofficial discussions which we have had have taken an undue time to reach the stage at which we can begin serious talks ", and that: " we now
C see our way sufficiently clear to be able to start talks with you and I hope that we may conclude them satisfactorily."

The Case Stated refers to this letter, but its full contents were not quoted. The letter was available for inspection at the hearing of the appeal. Its contents show that Vickers at least did not regard the discussions that had taken place before that date as other than unofficial, and this is relevant in relation to the
D question whether prior to 6th April 1965 there should have been an announcement that talks about a merger were in progress. At a meeting on 6th August it was agreed that the price to be paid for an ordinary stock unit of the company should be 55*s.*, and a printer's draft of the offer to acquire the whole of the company's issued share capital was considered. A further meeting was held on 11th August, at which Mr. Gillum was present. The documents were again
E considered, and on 16th August a board meeting of the company was held to approve the merger. A press release was issued by Vickers for publication on the following day and the offer was issued on 18th August. So the first public intimation of the proposed merger was on 17th August. It was open to the Commissioners, in the light of the evidence given by Mr. Gillum which is summarised in para. 7 of the Case, to have found as a fact that the public should
F have been informed of the discussions long before 17th August and prior to 6th April 1965. No such finding of fact is recorded in para. 6.

At the beginning of para. 7 the Commissioners state that they accepted Mr. Gillum's evidence, the material parts of which are as follows:

> " He considered that it would have been appropriate for the shareholders of R. W. Crabtree & Sons Ltd. to have been advised by or before
G the beginning of April 1965 of the position generally as regards the approach made by Vickers. If he had then been advising the directors of the company, he would have favoured a statement being made to the effect that they announced that discussions were in progress which might lead to a cash offer being made for the whole of the issued capital, but that the discussions were expected to be of some duration and that no
H further announcement should therefore be expected at an early date. Had such an announcement been made he had no doubt that the Stock Exchange quotation for the ordinary stock units would then have gone up. As to how much the price would have risen, he thought that the middle market quotation of 47*s.* 6*d.* on 14th January might reasonably have been expected on such an announcement to go up by, say, 5*s.* to
I 52*s.* 6*d.* Thereafter he would have expected the price to have remained relatively stable, but perhaps owing to interest waning somewhat in the period up to 6th April 1965, to have fallen back by then by a shilling or so. So approaching the matter, he thought that if an appropriate announcement had been made the middle market quotation on 6th April 1965

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> would probably have been, say, 51*s.* 6*d.* or 51*s.* instead of 42*s.* 6*d.* . . . The Stock Exchange had not in his view been given at that time information as to the negotiations which should have been supplied to it, and he thought that because of this current quotations did not afford any true measure of the value of the stock units in question."

It would seem from this that it was Mr. Gillum's view that such an announcement should have been made on or before 14th January 1965, the day on which the statistical information had been given to Vickers for their consideration and before it had been considered by them, when the discussions were unofficial and when Vickers had made no offer to purchase the units. Mr. Chandler did not give any evidence supporting Mr. Gillum's view that such an announcement should have been made before 6th April 1965.

The Commissioners stated their conclusions at some length. They thought that it was clear on the evidence that prior to 6th April 1965 Vickers had entered into serious negotiations and had envisaged making a takeover bid by a cash offer. That the matter had not gone very far is shown by the terms of Sir Charles Dunphie's letter of 30th July. The Commissioners said that matters had not been carried to a point of finality, but that they had been carried " to a stage at which in Mr. Gillum's view " it would have been appropriate for a public announcement to have been made. They then posed the question: " Were there in those circumstances special circumstances in consequence of which the quoted prices were not a proper measure of market value as defined in s. 44 (1)? " On the facts they were of opinion that there were " special circumstances " within the meaning of those words in s. 44 (3), and they were " satisfied that the London Stock Exchange prices on 6th April 1965 were substantially less than they would have been if an announcement of the kind which Mr. Gillum considered should have been made had been made before that date." They thought that

> " the Stock Exchange was, in relation to the stocks at 6th April 1965, ' working in blinkers '. A horse in blinkers was shut off from seeing a good deal. When a market was shut off, as we thought the London Stock Exchange here had been, from information vital to a realistic assessment of the true value of the assets in question, was it right to refer to that market as ' the open market ' envisaged in s. 44 (1)? Having weighed the matter, we thought that it was not."

The question they had to consider was, not whether the market on the London Stock Exchange was on 6th April 1965 an open market within the meaning of s. 44 (1), but whether in consequence of special circumstances the prices quoted were by themselves not a proper measure of market value. There must be many occasions on which the directors of a company are in possession of information which if made public would affect the prices quoted on the London Stock Exchange and where it could be said that in the absence of such information the London Stock Exchange is " working in blinkers ", but the fact that directors have such information and the Stock Exchange has not cannot ordinarily by itself amount, in my opinion, to " special circumstances " within the meaning to be given to those words in s. 44 (3). For circumstances to be special must be exceptional, abnormal or unusual and the mere fact that directors have knowledge which would affect the prices quoted if made public cannot, in my view, be regarded as an unusual circumstance. If, however, it clearly was the duty of the directors to make public such information, and there was failure to do so, with the result that the prices quoted were less or higher than they

A would have been if the duty had been discharged, it might well be that that would amount to special circumstances.

Having heard the evidence it was for the Commissioners to state what facts they found proved or admitted. They made no finding in para. 6 of the Case that the directors were under a duty to inform the shareholders and the public before 6th April 1965 of the talks with Vickers. They accepted the evidence B given by Mr. Gillum, but he did not suggest that there had been any breach of duty by the directors. He merely said that he would have been in favour of an announcement being made. No attempt appears to have been made to ascertain the views of Vickers on this question. It is not likely that they would have agreed with Mr. Gillum when they had not by 6th April commenced serious discussions, nor is it likely that they would have agreed that an announce- C ment should have been made on or before 14th January, the date on which they received statistical information about the company. If such an announcement had been made, Vickers might have felt to some extent committed to make an offer for the shares. They made no offer for them until after 6th April. It is to be noted that the Commissioners did not base their conclusion on the fact that the company estimated that the intrinsic value of the ordinary stock units D was £3 on 14th January 1965, when the middle market quotation was 47*s.* 6*d.* I do not consider that the facts found by the Commissioners and the evidence given by Mr. Gillum suffice to justify the conclusion that there were in this case special circumstances. At a late stage in the hearing of the appeal, an application was made that the case should be sent back so that the Commissioners could make a finding on the question of fact whether there should have been an E announcement before 6th April by the directors. On the evidence given before the Commissioners such a finding would not be justified. Far more evidence would be wanted to justify the conclusion that the directors had failed in their duty, and it was said that if the case was sent back no further evidence would be called.

During the hearing of the appeal, with the consent of counsel, reference F was made to a document entitled " Revised notes on company amalgamations and mergers " dated 31st October 1963, for which the Executive Committee of the Issuing Houses Association, the Accepting Houses Committee, the Association of Investment Trusts, the British Insurance Association, the Committee of London Clearing Bankers and the London Stock Exchange were responsible. The notes " set out certain general principles which the organisations believe G to be fundamental to the proper conduct of these transactions " (takeovers and mergers), and contain the following passages:

> " When talks are proceeding which may lead to an offer being made, it is important to do everything possible to maintain secrecy in order to avoid disturbance in the normal price level of shares until the relevant information can simultaneously be made available to all shareholders . . . H It is not easy for a Board to decide when to make a public announcement. It is usually unwise to make any announcement until it is reasonably certain that an offer will in fact be forthcoming, but once this stage in negotiations has been reached an announcement should be made with the minimum of delay."

On the facts stated in para. 6 of the Case it could not, in my view, be asserted I that by 6th April 1965 it was reasonably certain that an offer would be made. On those facts I see no ground for concluding that the quoted prices of the ordinary stock units were not a proper measure of their market value on 6th

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April 1965. The prices quoted might have been higher if an announcement such as Mr. Gillum favoured had been made, but that does not show that the prices quoted were not a proper measure of their market value. That no such announcement was made does not, as I have said, amount to special circumstances within s. 44 (3). A

For these reasons I would dismiss the appeal.

Lord Donovan—My Lords, I have had the advantage of reading the opinion of my noble and learned friend, Lord Morris of Borth-y-Gest. I agree with it and for the like reasons would dismiss the appeal. B

Lord Pearson—My Lords, I concur.

Questions put:

That the Order appealed from be reversed.

The Not Contents have it. C

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

The Contents have it.

[Solicitors:—Solicitor of Inland Revenue; Lovell, White & King, for Simpson, Curtis & Co., Leeds.]

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