HIGH COURT OF JUSTICE (CHANCERY DIVISION)—20TH, 21ST AND 22ND MARCH 1973

COURT OF APPEAL—23RD, 24TH AND 25TH OCTOBER AND 12TH DECEMBER 1974

HOUSE OF LORDS—9TH, 13TH, 14TH AND 15TH OCTOBER AND 26TH NOVEMBER 1975

Commissioners of Inland Revenue *v.* Joiner[1]

Surtax—Tax advantage—Transaction in securities—Company reconstruction—Surplus assets of old company distributed in voluntary liquidation—Agreement for liquidation providing for agreed methods of valuation and distribution—Whether (a) *whole scheme of reconstruction,* (b) *liquidation agreement,* (c) *distribution in liquidation a transaction in securities—Whether tax advantage a consequence of any transaction but the liquidation—Income and Corporation Taxes Act* 1970 (*c.* 10), *ss.* 460 *and* 467.

The issued share capital of J Ltd., a trading company, was owned as to three-quarters by the taxpayer and one-quarter by the trustees of a family settlement. On 10th April 1964 the taxpayer, the trustees and C as prospective liquidator entered into an agreement, which was implemented forthwith, for the voluntary winding up of J Ltd., the sale of its business and certain assets to A Ltd., a dormant company controlled by the taxpayer, and the distribution of surplus assets to the shareholders. The liquidation agreement laid down a special method of valuation of the assets of J Ltd. for the purposes of such sale and distribution, and also provided that the taxpayer should take a freehold property and certain specified investments, with consequential adjustments between himself and the trustees. By an agreement of even date J Ltd. sold its business and the assets provided for to A Ltd., which commenced trading on the following day and shortly afterwards took the name of its predecessor. The value of the assets distributed to the taxpayer in the winding-up exceeded three-quarters of the balance of the profit and loss account of J Ltd. at 10th April 1964 (together with a relatively small amount previously capitalised out of the profit and loss account).

The Commissioners of Inland Revenue gave notice to the taxpayer under s. 460(3), Income and Corporation Taxes Act 1970, that the resulting tax advantage had been obtained either (*a*) from the scheme of reconstruction on the footing that the scheme as a whole should be treated as a transaction in securities or (*b*) from the combined effect of the liquidation and the liquidation and sale agreements or either of them, and the requisite adjustment was the computation of his surtax liability for the year 1964–65 on the basis of treating £137,116 (being three-quarters of the sum of the profit and loss account balance and the capitalised profits, less an allowance for the net equivalent of the income of J Ltd. for its final accounting period which had already been apportioned to him) as a net dividend payable under deduction of tax at the date of receipt.

(1) Reported (Ch.D.) [1973] 1 W.L.R. 690; [1973] 2 All E.R. 379; [1973] S.T.C. 224; 117 S.J. 323; (C.A.) [1975] 1 W.L.R. 273; [1975] 1 All E.R. 755; [1975] S.T.C. 200; 119 S.J. 137; (H.L.) [1975] 1 W.L.R. 1701; [1975] 3 All E.R. 1050; [1975] S.T.C. 657; 119 S.J. 827.

On appeal, no contention being raised that the reconstruction was carried out for bona fide commercial reasons, and it being common ground at that stage that the liquidation itself was not a transaction in securities, the Special Commissioners held that none of the transactions comprised in the liquidation agreement or the sale agreement was a transaction in securities and consequently cancelled the notice. A

On appeal to the High Court the further alternative contention was advanced for the Crown that a distribution of assets to a shareholder in a winding-up was itself a transaction in securities, but the Court expressed no conclusion either on that contention or on the contention that the reconstruction scheme as a whole constituted a transaction in securities. The taxpayer contended, *inter alia*, that the tax advantage was a consequence of the liquidation and of nothing else. B C

The Chancery Division decided that the notice should be restored because (1) the tax advantage was obtained in consequence of the liquidation agreement, and (2) since that agreement altered the rights attached to the shares in J Ltd. by substituting agreed valuations and a conventional mode of distribution for the unmodified effect of the memorandum and articles and the statutory provisions governing a voluntary winding-up, it was a transaction in securities. D

On appeal, the Court of Appeal, upholding the decision of the Court below, decided that the distribution of surplus assets to shareholders in the course of the liquidation of a company was, for the purpose of s. 460(1), Income and Corporation Taxes Act 1970, a transaction in securities.

Held, in the House of Lords, that the taxpayer obtained a tax advantage as the result of the combined effect of a transaction in securities, namely the liquidation agreement, and of the liquidation of J Ltd., so that s. 460(2), Income and Corporation Taxes Act 1970, applied for the reasons given by Goulding J. in the Chancery Division; and that it was unnecessary to decide whether the appeal should fail on the wider ground favoured by the Court of Appeal that the liquidation alone was to be regarded as a transaction in securities. E F

Per Lord Wilberforce: That a wide interpretation must be given to ss. 460–8, Income and Corporation Taxes Act 1970; and that the expressions "transactions in securities" and "transactions relating to securities" must continue to be given the widest meaning; *dicta* of Lord Reid in *Greenberg* v. *Commissioners of Inland Revenue* 47 T.C. 240, at pages 271–2; [1972] A.C. 109 followed. G

Per Lord Diplock: When construing a consolidation Act, the language of which is ambiguous and gives no guidance as to its proper interpretation, it is permissible to refer to the previous enactments repealed by the consolidation Act, for guidance; it is never legitimate to have recourse to repealed enactments to make obscure and ambiguous that which is clear in the consolidation Act. H

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CASE

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

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on 29th and 30th July 1971, Albert G. Joiner (junior)
B (hereinafter called "the Respondent") appealed against a notice dated 16th November 1970, issued to the Respondent by the Commissioners of Inland Revenue in accordance with s. 460(3) of the Income and Corporation Taxes Act 1970 in regard to certain transactions in securities relating to A. G. Joiner & Son Ltd. (now dissolved).

2. Shortly stated, the question for our decision was whether the provisions
C of the said s. 460 applied to the Respondent in respect of the transactions described in the said notice, and if so, whether the adjustments described in the said notice were appropriate.

3. The following witnesses gave evidence before us: (*a*) the Respondent; (*b*) Aubrey Frederick Christlieb (hereinafter called "Mr. Christlieb"), chartered accountant and senior partner in the firm of A. F. Christlieb & Co.

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

(1) Copies of letters dated 2nd February 1970, 2nd July 1970, 29th July 1970 and 7th August 1970, all from Messrs. A. F. Christlieb & Co. to the Controller of Surtax.

(2) Copy letter dated 2nd September 1970 from the Inland Revenue Secretaries' Office to the Respondent, enclosing formal notification under
E s. 460(6) of the Income and Corporation Taxes Act 1970.

(3) Copy letter dated 16th November 1970 from the Inland Revenue Secretaries' Office, enclosing the said notice under s. 460(3) of the said Act.

(4) Copy letter dated 11th December 1970 from the Respondent's solicitors/accountants to the Board of Inland Revenue giving formal notice of appeal.

(5) An agreed statement of facts.

F (6) Copy of summarised balance sheets of A. G. Joiner & Co. Ltd., 1964 to 1968 inclusive.

(7) Copy agreement dated 10th April 1964.

(8) Copy agreement also dated 10th April 1964.

(9) Copy Companies Form (W.U.)1 No. 92, being the liquidator's statement of account in respect of A. G. Joiner & Son Ltd.

G (10) Copy minutes of an extraordinary general meeting of Auto-Components and Engineering Co. Ltd. held on 27th March 1964.

(11) Copy loan note dated 22nd March 1967.

Copies of such of the above as are not annexed hereto as exhibits are available for inspection by the Court if required.

5. As a result of the evidence, both oral and documentary, adduced before
H us we find the following facts proved or admitted:

(1) A. G. Joiner & Son Ltd. (hereinafter called "the old company") was incorporated on 12th August 1943 to acquire the engineering business founded by A. G. Joiner, the Respondent's father (hereinafter called "the father"). The old company's business consisted mainly of the production of precision-turned components, principally for the motoring industry but some for general engineer-
I ing firms.

(2) At 25th October 1960 the authorised capital of the old company, consisting of 1,000 ordinary £1 shares, had all been issued for cash. 750 shares were held by the Respondent and 250 by the father.

(3) On 25th October 1960 the old company's authorised capital was increased to 5,000 ordinary £1 shares, and the sum of £4,000 standing to the credit of the profit and loss account was capitalised and applied in paying up 4,000 £1 bonus shares, 3,000 of which were allotted to the Respondent and 1,000 to the father. On 31st October 1960 the father renounced his allotment in favour of Mr. Christlieb and others, who were the trustees of a settlement which the father had made on the same day, and are hereinafter called "the trustees of the father's settlement". At that date the father was about 72 years of age, and the bonus issue and settlement were carried out to save estate duty on his death, and the device of a bonus issue was used to minimise stamp duties. On 29th February 1964 the father also transferred his original 250 shares to the trustees. Thus at 10th April 1964 the shareholding in the old company was:

The Respondent	3,750
The trustees of the father's settlement ..	1,250
Total	5,000

Up to 31st December 1963 the father and the Respondent were the directors of the old company. On that date Mr. L. Luke was co-opted as an additional director of the company, the father resigned as both director and secretary and Mr. Luke was appointed secretary in his place.

(4) Auto-Components and Engineering Co. Ltd. (hereinafter called "the new company") was incorporated on 23rd July 1946 and carried on business under that name as engineers until about the year 1950, when it had negligible reserves, ceased trading and became dormant.

(5) The original authorised capital of the new company was 3,000 ordinary £1 shares, and this was all issued for cash and was held at 31st December 1963 by:

The Respondent	2,500
The father	500

The father was now over 75 years of age and wished to retire completely from business. On 5th March 1964 the Respondent and his nominee bought the father's 500 ordinary shares in the new company, and on 27th March 1964, by special resolution, half of the 3,000 ordinary shares were designated "A" ordinary shares and lost all voting rights (but otherwise continued to rank *pari passu* with the ordinary shares).

(6) Thereupon, on the same day (27th March 1964) the Respondent transferred 750 of the new "A" shares in the new company to Mr. Christlieb and others, who were the trustees of a discretionary settlement which the Respondent made on the same day, and who are hereinafter called "the trustees of the Respondent's settlement". Thus on 27th March 1964 the shareholding in the new company became:

	Ordinary	"A" Ordinary
The Respondent	1,499	750
Mr. Christlieb and others as bare nominees of the Respondent ..	1	Nil
The trustees of the Respondent's settlement	Nil	750

Mr. Christlieb was accountant to both the old and the new companies.

(7) By an agreement (hereinafter called "the liquidation agreement") dated 10th April 1964 and made between (1) the Respondent (thereinafter called "Mr.

Joiner"), (2) Mr. Christlieb of 5–6 Bucklersbury, London, E.C.4, chartered accountant, Arthur Leonard Underwood of 9 Cavendish Square, London, W.1, solicitor, Paul Strang of the same address, solicitor, and the Respondent (thereinafter called "the Trustees" but collectively with the Respondent thereinafter called "the Members") and (3) Mr. Christlieb (thereinafter called "the Liquidator") it was provided as follows:

"Whereas: A. It is intended that A. G. Joiner & Son Ltd. (hereinafter called 'the Company') shall forthwith go into Members' Voluntary Liquidation and that the Liquidator shall be appointed Liquidator of the Company. B. The Company has a paid up issued capital of £5,000 in 5,000 Ordinary shares of £1 each of which Mr. Joiner is the holder of 3,750 shares and the remaining 1,250 shares are held by the Trustees. C. By a Sale Agreement intended to be made immediately following this Agreement between the Liquidator of the one part and The Auto-Components and Engineering Company Limited (hereinafter called 'Auto') certain of the assets of the Company are to be sold to Auto which is to assume and indemnify the Liquidator from certain of the liabilities of the Company leaving the Liquidator in possession of the remaining assets of the Company subject to certain of its liabilities and when the Accounts of the Company have been taken as at the date of the liquidation there will be found a net sum due from Auto to the Liquidator hereinafter called 'the Sale Price'. D. The Members have agreed amongst themselves that the net proceeds of the intended liquidation including the Sale Price shall be dealt with and distributed by the Liquidator in manner following and to direct the Liquidator accordingly and to indemnify him as hereinafter set out.

Now This Agreement Witnesseth as follows:

1. The Members agree amongst themselves that for the purposes of the Sale Agreement referred to in Recital C and of the distribution to be made by the Liquidator in specie the following valuations of certain assets of the Company shall be accepted viz: (*a*) Freehold property and buildings at Victoria Road, Feltham, Middlesex, the valuation of Mr. C. Kingston Neale, A.R.I.C.F. at £165,750; (*b*) Plant and Machinery, the valuation of Mr. Joiner at £90,590; (*c*) Goodwill the valuation of the Liquidator at £50,000; (*d*) Investments mentioned in the 1st Schedule hereto, the valuation of Messrs. Hichens, Harrison & Co., Stock Brokers, at the middle price of the date of liquidation of the Company; (*e*) Furniture, Fixtures & Fittings and Motor Cars, the book values at the date of liquidation of the Company; (*f*) Stock and Work in Progress, and Tools at the valuation of Mr. Joiner at the date of liquidation of the Company made in the same way and on the same basis as for the accounts for the year ending 31st August 1963.

2. Mr. Joiner will procure that after the liquidation Auto shall issue to the Liquidator or as he shall direct in denominations to be required by the Liquidator an Unsecured Loan Note in a form agreed between the parties and initialled for identification purposes for an aggregate amount equal to the Sale Price and to bear interest at 6% per annum from the date of the liquidation payable quarterly and repayable (a) on six months' notice at any time at the option of Auto only or (b) immediately upon Auto going into liquidation or (c) upon six months' notice by the holders at any time after Mr. Joiner shall cease to hold in his own right 51% of the equity voting capital in Auto whichever shall first happen and the Liquidator at the request and direction of the Members shall accept such Unsecured Loan Note in satisfaction of the Sale Price as found to be due

to him and in the distribution in specie of the Assets of the Company by the Liquidator the Members agree to accept the said Unsecured Loan Note at par value.

3. (1) There shall be allocated to Mr. Joiner in respect of his shareholding in the Company the said freehold property in Victoria Road, Feltham and the Investments mentioned in the First Schedule hereto at the valuations as in Clause 1 (a) and (d) and to the extent that Mr. Joiner's entitlement as holder of 75% of the Capital of the Company shall exceed the aggregate figure of these two valuations such excess shall be made up by cash and so far as cash shall be insufficient then an allocation of part of the said Unsecured Loan Note so as to complete his entitlement. (2) In the event of Mr. Joiner's entitlement not amounting to the aggregate of the said two valuations Mr. Joiner shall either at his option (a) nevertheless receive the said assets but shall mortgage the freehold property belonging to him and described in the Second Schedule hereto by way of second legal charge subject to the first charge mentioned in the Second Schedule hereto in usual form to the Trustees for an amount so that with such second charge taken at par and the remaining assets to be allocated by the Liquidator to the Trustees they shall receive assets of a value equal to 25% of the net assets of the Company in its liquidation. The said second charge shall carry interest at the rate of 6% per annum payable quarterly and shall not be repayable at the instance of the Trustees earlier than on six months' notice to expire seven years from the date thereof but Mr. Joiner may repay the same at any time on six months' notice in writing or (b) any shortfall shall be made up to the Trustees by an allocation of part of the said investments as may be directed by Mr. Joiner. (3) The Liquidator agrees that he will at the request of Mr. Joiner at any time and from time to time after the date of liquidation sell all or any of the Investments mentioned in the First Schedule hereto and re-invest the proceeds as directed by Mr. Joiner for ultimate distribution in terms of this Agreement.

4. It is agreed that in consideration of the Liquidator accepting appointment as Liquidator of the Company upon the appropriate resolution being passed the Members hereby indemnify the Liquidator from and against all or any liability for which he may be or become responsible in connection with the liquidation of the Company and the carrying out of this Agreement.

5. The remuneration and expenses of the Liquidator together with the professional costs, charges and expenses of all parties in respect of the Sale Agreement the Liquidation and in relation to the carrying out of this Agreement (including the valuation fees) and to the negotiations leading to this agreement and the Sale Agreement shall be paid out of the net assets of the Company.

As Witness the hands and seals of the parties hereto the day and year first above written.

The First Schedule above referred to

£23,345	Barclays Bank Ltd. Ordinary Stock
£2,000	Cunard Steamship Ltd. Ordinary Stock
18,750	Spillers Ltd. 5/- Ordinary Shares
£360	British Petroleum Ltd. Ordinary Stock
7,087	House of Fraser Ltd. 5/- Ordinary Stock Units
28,125	Allied Breweries Ltd. 5/- Ordinary Shares

The Second Schedule above referred to

Freehold Property	*Letting*	*First Charge*
Factory premises at Hanworth, Middlesex (Land Registry Title Nos. MX 275859 and MX 266552)	To the Merchant Adventurers of London Ltd. for a term of 21 years from the 25th December, 1959 at £6,500 p.a. (with provision for rent review)	For £16,000 @ 6½% p.a. to Northern Assurance Company Ltd."

(8) The goodwill referred to in clause 1(c) of the liquidation agreement was not shown as an asset in the accounts of the old company. The investments referred to in clause 1(d) of the said agreement were eventually valued at £106,140.

(9) On 10th April 1964, immediately after the agreement referred to in sub-para. (7) above, the old company went into liquidation and a further agreement (hereinafter called "the sale agreement"), also dated 10th April 1964, was made between (1) the old company, acting through its liquidator, Mr. Christlieb, and (2) the new company, which provided as follows:

"Whereas: by a Resolution of even date herewith the members of the Old Company resolved that the same be wound-up voluntarily and that the said Aubrey Frederick Christlieb be appointed the Liquidator thereof. Now It Is Hereby Agreed as follows:

1. The Old Company shall sell and the New Company shall buy the following Assets hitherto used by the Old Company in connection with its business of Manufacturers of Component parts for machinery: (1) The fixed Plant and Machinery now situate at the Old Company's factory and premises at Victoria Road, Feltham in the County of Middlesex. (2) The furniture fixtures and fittings used by the Old Company at such premises. (3) The Old Company's motor vehicles. (4) The goodwill of the Old Company. (5) The Stock and Work in Progress of the Old Company. (6) The Tools of the Old Company.

2. The New Company shall assume and indemnify the Old Company from and against the following liabilities of the Old Company: (i) Trade Creditors. (ii) Hire Purchase Liabilities. (iii) The Old Company's Overdraft with Barclays Bank Ltd. (iv) Such Income Tax if any as may be payable in respect of any accounting periods of the Old Company.

3. The consideration due from the New Company to the Old Company in respect of the assets referred to in Clause 1 hereof shall be computed as follows: (1) The value of items (1), (3) and (4) in the said Clause 1 are respectively agreed at the following figures, that is to say: (1) £90,590, (3) £2,000, (4) £50,000. (2) The value of the items (2), (5) and (6) referred to in Clause 1 above and the value of the liabilities referred to in Clause 2 hereof shall be such sums as shall be found due upon the taking of the Old Company's Accounts as at the date thereof and as shall be certified by the Liquidator acting as an expert and not as an arbitrator.

4. The amount of the consideration shall be the difference between the total value of the Assets referred to in Clause 1 hereof ascertained as above and the aggregate of the liabilities referred to in Clause 2 hereof ascertained as above.

5. The consideration shall be satisfied by the issue to the Old Company of an Unsecured Loan Note bearing interest at 6% per annum and in a form agreed and initialled by the parties such Note to be issued within 21 days of the ascertainment of the purchase consideration in accordance with the above provisions.

6. The New Company shall indemnify the Old Company and the Liquidator from and against all claims demands actions or other liabilities which may arise in any manner whatsoever under a Deed of Covenant dated the 21st day of January 1964 and Albert George Joiner Senior.

In Witness whereof the parties hereto have hereunto caused their respective hands to be affixed the day and year first before written."

(10) In pursuance of the sale agreement the new company took over the assets transferred by the old company and recommenced trading on 11th April 1964. On 15th April 1964 it changed its name to A. G. Joiner & Co. Ltd. Its directors were the Respondent and Mr. L. Luke. It occupied the freehold premises at Victoria Road, Feltham, which had been transferred to the Respondent pursuant to the liquidation agreement, and, without any written agreement to this effect, paid rent of £7,000 a year to the Respondent for them until it bought them from the Respondent for £184,780 some time between 24th August 1967 and 31st August 1969.

(11) On the final valuation, and after minor adjustments in respect of plant and motor vehicles, £78,610 proved to be the purchase price payable by the new company for the net assets received from the old company, which was to be satisfied by the issue of an unsecured loan note for the same amount. Interest on this amount was paid by the new company to the liquidator from 10th April 1964, as required by the sale agreement, and £15,000 was paid to the liquidator on 31st August 1966 in part redemption of the loan. By arrangement with the liquidator, a loan note for the balance of £63,610 was issued by the new company on 22nd March 1967 to the trustees of the father's settlement in the following form:

"A. G. Joiner & Co. Limited.

Capital £3,000 divided into 1,500 Ordinary Shares of £1 each and 1,500 'A' Ordinary Shares of £1 each

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Issue pursuant to Clause 14 of the Articles of Association of the Company and to a Resolution of the Directors passed on the Tenth day of April 1964 constituting Unsecured Loan Notes for £63,610 carrying interest thereon at the rate hereinafter mentioned payable quarterly on the usual Quarter Days in each year the first payment to be made on the date hereof and to be calculated as from the Tenth day of April 1964.

1. A. G. Joiner & Co. Ltd. (hereinafter called 'the Company') will, on the date referred to in Clause 2 below, pay Aubrey Frederick Christlieb and Paul Strang, both of 9 Cavendish Square, London, W.1, the sum of £63,610.

2. The date referred to in Clause 1 above shall be such date as the principal monies hereby covenanted to be paid shall become due in accordance with the conditions endorsed hereon or such earlier date as may be specified by notice in writing from the Company to the registered holder of this Note being not less than six months after giving of the said Notice.

3. The Company will until payment of the principal sum hereby secured pay to the registered holder hereof interest on the principal sum hereby secured or so much thereof as shall remain unpaid at the rate of Six per centum per annum by equal quarterly payments on the usual Quarter Days in each year the first payment to be made on the date hereof and to be calculated from the Tenth day of April 1964.

4. This Note is issued subject to the conditions endorsed hereon.

Given under the Seal of the Company this 22nd day of March 1967.

(signed) A. G. Joiner, Director

..... Secretary

The Conditions within referred to:

(1) In the Winding-up of the Company this Note shall rank for payment *pari passu* with the Unsecured Creditors of the Company.

(2) The Company will keep a register in respect of this Note and enter therein particulars of all transfers and changes of ownership of this Note or any part thereof.

(3) The Company may in its absolute discretion refuse to register a transfer of this Note whether by way of absolute assignment or charge without assigning any reason for such refusal, except in respect of (i) Transfers by way of appointment of new trustees. (ii) Transfers by a noteholder or his legal personal representatives in favour of his or her spouse or any one or more lineal descendants of either of his or her grandparents or the husband or wife or any such descendant. (iii) Transfers by the trustee in bankruptcy of any noteholder in favour of any such persons as are mentioned at 2 above or in favour of the noteholder. (iv) Transfers in favour of any person who is at the date thereof a registered holder of Ordinary Shares in the Company. (v) Transfers by trustees (other than legal personal representatives) to beneficiaries.

(4) A transfer of this Note or any part thereof shall be in writing under the hand of the noteholder and of the transferee and shall be delivered to and retained by the Company.

(5) On the death of the sole noteholder his personal representative and, on the death of a joint noteholder, the surviving noteholder shall be the only persons recognised by the Company as having any title to this note.

(6) Any person entitled to this Note by reason of the death of the noteholder or otherwise by operation of law may be registered as the holder thereof upon such evidence being produced as the Company may reasonably require.

(7) The Company may demand a fee of 2*s.* 6*d.* for the registration of any transfer or other change in the ownership thereof.

(8) The Company shall recognise and treat the registered noteholder as the sole absolute owner hereof and as alone entitled to receive and give effectual discharges for the moneys hereby secured. No notice of any trust shall be entered in the Books of the Company against the title or the noteholder and the Company shall not be affected by notice of any right title or claim of any person to this Note other than the noteholder save that in the event of its receiving a transfer of this Note for registration it shall be entitled to such information as it shall require to satisfy itself as to whether or not such transfer falls within paragraphs (i) to (v) of Condition (3) above.

(9) The moneys hereby secured shall be paid without regard to any equities between the Company and the original or any intermediate holder hereof and the receipt of the registered noteholder shall be a good discharge to the Company.

(10) The principal under this Note when due will be paid at the registered office of the Company against surrender of the Note. Payment of interest will be made by the Company by cheque posted to the noteholder or to the first named of joint noteholders at his address as registered with the Company.

(11) The principal monies hereby secured shall become immediately payable in any of the events following: (a) If the Company gives three months' notice in writing to the noteholder of its intention to pay off this Note. (b) If the Company makes default for Twenty-eight days in the payment of any interest hereby secured and the noteholder before such interest is paid by notice in writing to the Company calls in the said principal monies. (c) If a distress or execution is levied or issued against any of the property of the Company. (d) If an order is made or an effective resolution is passed for Winding-up the Company. (e) If the Company makes default in the performance or observance of any covenant on the part of the Company to be performed or observed hereunder. (f) If Mr. Albert George Joiner Junior shall at any time cease to be the registered holder of at least 51% of the Ordinary Shares (other than 'A' Ordinary Shares) of the Company from time to time in issue.

(12) Any notice may be served by the holder of this Note or by the Company by post and shall be deemed if addressed by the holder of this Note to the registered office of the Company or if addressed by the Company to the registered address of the holder or any joint holder of this Note in a prepaid letter to have been duly served within twenty-four hours of the time of posting thereof.

(13) Any of the rights hereby conferred on the holder of this Note or any part thereof may at any time be varied with the consent in writing of the holder or all the holders of this Note."

(12) The reason for the loan note was that the trustees wanted something better than a book entry—they wanted some sort of document or security.

(13) The following is a summary of the old company's balance sheets at 31st August 1963 and at 10th April 1964:

	31st August 1963	10th April 1964
	£	£
Freehold land and buildings (see note (*a*) below)	115,386	120,512
Other fixed assets	83,181	74,845
Investments at cost (M.V. £106,414)	48,409	48,409 (M.V. 106,849)
Cash	11,838	17,053
Other current assets	52,324	52,961
	311,138	313,780

		31st August 1963	10th April 1964
	1963	1964	
Less	£	£	
Income tax	26,000	13,036	
Bank overdraft	28,135	Nil (see note (*b*) below)	
Other current liabilities including profits tax	77,908	83,954 (see note (*c*) below)	
			132,043	96,999
		Net assets	179,095	216,790
Represented by			£	£
Issued share capital			5,000	5,000
Future tax reserve			8,000	8,000
Profit and loss account (see note (*d*) below) ..			166,095	203,790
			179,095	216,790

Notes:

(*a*) Victoria Road, Feltham: purchased and developed by the old company from 1960 onwards

	£
31.8.63 Cost £116,746 less depreciation	1,360*
10.4.64 Cost £123,297 less depreciation	2,785*

*Provided out of profit and loss account

(*b*) Overdraft at 10.4.64	23,648
Less advanced by A. G. Joiner & Co. Ltd. (the new company) immediately after appointment of liquidator	25,074
Credit balance (part of "cash")	1,426
(*c*) Includes trade creditors	67,524
(*d*) Includes capital profits—on exchange of investments	58
On sale of foreign currency	791
	849

(14) Action under s. 245, Income Tax Act 1952, was taken against the old company in respect of the final accounting period 1st September 1963 to 10th April 1964, and gross actual income was apportioned for surtax purposes to:

	£
The Respondent	29,533
The trustees of the father's settlement	9,845
	39,378

(15) The following items were received by the Respondent in the liquidation of the old company: on or about 10th April 1964, *in specie* freehold property at Victoria Road, Feltham (as provided in the liquidation agreement); on or about 10th April 1964, *in specie* investments (as provided in the liquidation

agreement); on or about 8th October 1965, cash £10,000; on or about 24th January 1967, cash £1,088 4*s.* 4*d.*; on or about 16th August 1967, cash £1,500; on or about 1st August 1969, cash £167 15*s.* 10*d.*

(16) On 2nd July 1970, in reply to a request made on behalf of the Commissioners of Inland Revenue for information as to (*inter alia*) the reasons, including the commercial reasons, for the liquidation of the old company and the transfer of certain assets to the new company, Messrs. A. F. Christlieb & Co. wrote on behalf of the Respondent as follows:

> ". . . The answers to the questions which you ask would appear to be as follows: 1. The reason for liquidating the old Company was to extract from it assets which were surplus to its trading requirements. The remaining assets transferred to the new Company were those which were necessary to enable the new Company to resume the trade of the old Company."

(17) On 2nd September 1970 a formal notification under s. 460(6) of the Income and Corporation Taxes Act 1970 was issued to the Respondent, followed by the said notice (hereinafter called "the notice") dated 16th November 1970 under s. 460(3) of the said Act. The notice was in the following terms:

> "Section 460, Income and Corporation Taxes Act 1970
>
> A. G. Joiner & Son Ltd. (now dissolved)
>
> Whereas on 2 September 1970 the Board of Inland Revenue issued a notification to you, in accordance with subsection (6) of Section 460 of the Income and Corporation Taxes Act 1970, that they had reason to believe that the said Section 460 (which relates to the cancellation of tax advantages from certain transactions in securities) might apply to you in respect of the transactions described in the accompanying schedule: And whereas you have not exercised the right under the said subsection (6) to make a statutory declaration to the effect that the said Section 460 does not apply to you in respect of the said transactions: Now therefore the Board, being of opinion that Section 460 of the Income and Corporation Taxes Act 1970 applies to you in respect of the aforesaid transactions hereby give notice, in accordance with subsection (3) of that Section, that the adjustments described overleaf are requisite for counteracting the tax advantage thereby obtained or obtainable.
>
> Dated this 16th day of November 1970.
>
> By order of the Board of Inland Revenue.
>
> *The adjustments referred to:*
>
> The computation or recomputation of your liability to surtax for the year of assessment 1964–65 on the basis that the sum of £137,116, computed as shown below (being part of the total distributions referred to at transaction B.5 in the accompanying schedule), should be taken into account as if it were the net amount received in respect of a dividend payable at the date of receipt thereof from which deduction of tax was authorised by subsection (1) of Section 184 of the Income Tax Act 1952 and any assessment or further assessment to surtax which may be requisite to give effect to such computation or recomputation.
>
> *Computation*

	£
The profit and loss account balance of the transferor company at 10 April 1964	203,790
Less capital profits included therein	849
	202,941

		£
A	*Add* capitalised profits referred to at transaction A in the accompanying schedule	4,000
		206,941

Your share of the sum of £206,941 distributed as a dividend by the transferor company,

		£
B	$\frac{3,750}{5,000} \times$ £206,941 =	155,205
	Less the net equivalent of the actual income of the transferor company for the period 1 September 1963 to 10 April 1964 charged to surtax upon you under Chapter III, Part IX, Income Tax Act 1952 (gross £29,533)	18,089
C		137,116

The transactions referred to:

A. the capitalisation on or about 25 November 1960 by A. G. Joiner & Son Ltd. (now dissolved) (hereinafter called 'the transferor company') of the sum of £4,000 standing to the credit of the profit and
D loss account; the application of that sum in paying up in full 4,000 ordinary shares of £1 each; and the consequential allotment to you of 3,000 such shares;

B. the scheme of reconstruction of the transferor company, including *inter alia* the following transactions:

1. the purchase by you on 5 March 1964 of 500 £1 ordinary shares in
E Auto-Components and Engineering Co. Ltd., in which you already held 2,500 of the 3,000 issued ordinary shares, and which: (a) changed its name to 'A. G. Joiner & Co. Ltd.' on 15 April 1964; and (b) is hereinafter called 'the successor company';

2. the agreement on 10 April 1964 between yourself and others reciting, *inter alia*: (i) the intention to put the transferor company into
F members' voluntary liquidation, and (ii) the impending sale by the liquidator to the successor company of certain of the assets of the transferor company; and providing, *inter alia*: (iii) that you would procure the successor company to issue an unsecured loan note (hereinafter called 'the security'), upon the terms set out in the said agreement; and (iv) that there should be allocated to you, in respect of your shareholding in
G the transferor company, certain assets including freehold property and investments;

3. the special resolution of 10 April 1964 for the voluntary winding up of the transferor company and for the appointment of Mr. A. F. Christlieb as liquidator;

4. the sale to the successor company by the transferor company of
H certain assets, including goodwill, in accordance with the provisions of a further agreement made on 10 April 1964 between the transferor company (acting through the liquidator) and the successor company; and in consideration thereof, the consequential issue by the successor company of the security on terms, *inter alia*, that the successor company would pay Messrs. A. F. Christlieb and Paul Strang the sum of £63,610, being the
I principal sum secured; and

5. the receipt by you in the liquidation of the transferor company of money's worth and money as follows: (i) on or about 10 April 1964, money's worth (the value for this purpose being taken at cost): freehold property at Victoria Road, Feltham £123,297 0*s.* 0*d.*; sundry marketable investments £48,409 0*s.* 0*d.*; (ii) On or about 8 October 1965, cash £10,000 0*s.* 0*d.*; (iii) On or about 24 January 1967, cash £1,088 4*s.* 4*d.*; (iv) On or about 16 August 1967, cash £1,500 0*s.* 0*d.*; (v) On or about 1 August 1969, cash £167 15*s.* 10*d.*"

6. It was conceded by the Crown that the tax advantage obtained by the Respondent was not obtained in consequence of transaction B1. The Crown did not contend that the transfers of the marketable investments referred to as part of transaction B5(i) were relevant transactions in securities.

7. It was contended on behalf of the Respondent:

(*a*) that transaction A in the schedule to the notice was not a relevant transaction for the purposes of s. 460 of the Income and Corporation Taxes Act 1970, since any tax advantage obtained by the Respondent was not consequent upon it, either alone or in combination with the liquidation of the old company;

(*b*) that none of the transactions B in the said schedule (except B2(iii), which was part of the liquidation arrangements) was a "transaction in securities" for the purposes of the said s. 460;

(*c*) alternatively, that if transaction B4 in the said schedule was to be regarded as a "transaction in securities", it was only to be so regarded in so far as it included the transfer of investments to the value of £48,409 (see para. 5(13) above);

(*d*) that the notice should be cancelled; alternatively, that the adjustments therein specified were inappropriate.

8. It was contended on behalf of the Commissioners of Inland Revenue:

(*a*) that the circumstances required by s. 461D(1) of the Income and Corporation Taxes Act 1970 were satisfied in the present case;

(*b*) that the Respondent had obtained a tax advantage within the meaning of s. 460(1) of the said Act;

(*c*) that the said tax advantage was obtained:

(i) in part, in consequence of the combined effect of the capitalisation in 1960 (transaction A in the schedule in the notice) and the liquidation of the old company in the scheme of reconstruction in 1964 (transactions B2 to 5 in the said schedule);

(ii) in part, in consequence of *either* the scheme of reconstruction in 1964 (transactions B2 to 5 in the said schedule), which scheme of reconstruction should be treated as a whole as a transaction in securities, *or* the combined effect of the liquidation of the old company and either or both of transactions B2 and B4 in the said schedule, each of which transactions was a transaction in securities;

(*d*) that the notice and adjustments therein specified should be upheld.

9. The following cases were cited by the parties: *Commissioners of Inland Revenue* v. *Parker* 43 T.C. 396; [1966] A.C. 141; *Commissioners of Inland Revenue* v. *Brebner* 43 T.C. 705; [1967] 2 A.C. 18; *Commissioners of Inland Revenue* v. *Horrocks* 44 T.C. 645; [1968] 1 W.L.R. 1809; *Greenberg* v. *Commissioners of Inland Revenue* 47 T.C. 240; [1972] A.C. 109.

10. We, the Commissioners who heard the appeal, gave our decision in the following terms:

After hearing the evidence adduced and the arguments addressed to us, we considered whether any of the transactions in the schedule to the notice was a "transaction in securities" for the purpose of s. 460 of the Income and Corporation Taxes Act 1970. If one or more of those transactions was caught, it was common ground that such transaction or transactions, combined with the liquidation of the old company, produced a liability for the Respondent. It was also common ground that the liquidation itself was not a "transaction in securities" and that on its own it could not be relied on by the Crown.

Applying the test of the statutory definition, we held that transaction A was a transaction in securities but that none of transactions B was such. Transaction A in our view clearly satisfied the statutory definition, and we rejected the argument of the Respondent's Counsel that it was a transaction in securities too remote from or relevant to the causation of the liquidation. Transactions B1, B3 and B5 were clearly not within the statutory definition—they were in the nature of narrative or explanatory events. Transaction B2(i) was, as stated, merely an intention and not a transaction. B2(ii) was somewhat similar, an "impending event". B2(iv) referred to transfers of assets, which might at first sight fall within the statutory definition, but in the present case they seemed to us part of the liquidation and not transactions in their own right. Transactions B2(iii) and B4 seemed to us also part of the liquidation. The notice suggested that there was some agreement apart from the liquidation around which the whole scheme revolved. In our view, however, the issue of the loan note was made under an agreement with the liquidator, forming part of the liquidation.

We accordingly held that the appeal failed in principle as to transaction A but succeeded in respect of the remaining transactions B, and we adjourned the matter for agreement of figures between the parties.

11. The parties having agreed that no adjustment of the Respondent's liability was necessary to counteract any tax advantage resulting from transaction A, we determined the appeal on 4th January 1972 by cancelling the notice.

12. The Commissioners of Inland Revenue immediately after the determination of the appeal declared to us their dissatisfaction therewith as being erroneous in point of law, and on 5th January 1972, required us to state a Case for the opinion of the High Court pursuant to the Taxes Management Act 1970, s. 56, which Case we have stated and do sign accordingly.

13. The question of law for the opinion of the Court is whether our decision was erroneous in point of law.

B. James
N. F. Rowe
} Commissioners for the Special Purposes of the Income Tax Acts

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

15th August 1972

The case came before Goulding J. in the Chancery Division on 20th, 21st and 22nd March 1973, when judgment was given in favour of the Crown, with costs.

N. C. Browne-Wilkinson Q.C. and *Patrick Medd* for the Crown. A

F. Heyworth Talbot Q.C. and *Barry Pinson* for the taxpayer.

The following cases were cited in argument in addition to those referred to in the judgment:—In re *Samuel* [1913] A.C. 514; *John Hudson & Co. Ltd.* v. *Kirkness* 36 T.C. 28; [1955] A.C. 696; *St. Aubyn* v. *Attorney-General* [1952] A.C. 15.

B

Goulding J.—This is an appeal by the Crown from a decision of the Special Commissioners cancelling a notice served on the Respondent, Albert George Joiner junior, under s. 460 of the Income and Corporation Taxes Act 1970. That section enacts that, in certain circumstances and subject to certain provisos, any tax advantage obtained or obtainable by a person in consequence of a transaction in securities or of the combined effect of two or more such transactions shall be counteracted by an appropriate adjustment of his tax liabilities. C

It is not in dispute that Mr. Joiner has obtained a tax advantage within the scope of the section. The disputed question is whether he obtained it in consequence of a transaction or transactions in securities. Thus the definition of the expression "transaction in securities" is all-important. It is contained in s. 467 of the Act, and is as follows: D

> "In this Chapter . . . 'transaction in securities' includes transactions, of whatever description, relating to securities, and in particular (i) the purchase, sale or exchange of securities, (ii) the issuing or securing the issue of, or applying or subscribing for, new securities, (iii) the altering, or securing the alteration of, the rights attached to securities."

The same s. 467 also provides that the term "securities" includes shares and E stock. Another material provision of the Act is s. 460(2). It says that:

> "a tax advantage obtained or obtainable by a person shall be deemed to be obtained or obtainable by him in consequence of a transaction in securities or of the combined effect of two or more such transactions, if it is obtained or obtainable in consequence of the combined effect of the transaction or transactions and of the liquidation of a company." F

At all material times Mr. Joiner owned three-quarters of the authorised and issued share capital of a company called A. G. Joiner & Son Ltd. It carried on the family engineering business. The minority shareholding of 25 per cent. belonged formerly to Mr. Joiner's father and later to the trustees of a settlement made by him. In 1960, while Mr. Joiner senior still retained his holding, the company capitalised £4,000 standing to the credit of its profit G and loss account and issued bonus shares in respect thereof. That operation was evidently a transaction in securities, but it is agreed that it does not of itself sustain the notice under appeal and I need not mention it further. On 10th April 1964 an agreement was made between Mr. Joiner, the trustees of his father's settlement (who had by then acquired the minority shareholding) and a Mr. Christlieb, who was a chartered accountant and one of the trustees. In the H agreement Mr. Christlieb is referred to as "the Liquidator". The agreement contains certain recitals which I shall read in full.

> "A. It is intended that A. G. Joiner & Son Ltd. (hereinafter called 'the Company') shall forthwith go into Members' Voluntary Liquidation and that the Liquidator shall be appointed Liquidator of the Company. B. The Company has a paid up issued capital of £5,000 in 5,000 Ordinary I shares of £1 each of which Mr. Joiner is the holder of 3,750 shares and the remaining 1,250 shares are held by the Trustees. C. By a Sale Agreement

A intended to be made immediately following this Agreement between the Liquidator of the one part and The Auto-Components and Engineering Company Limited (hereinafter called 'Auto') certain of the assets of the Company are to be sold to Auto which is to assume and indemnify the Liquidator from certain of the liabilities of the Company leaving the Liquidator in possession of the remaining assets of the Company subject B to certain of its liabilities and when the Accounts of the Company have been taken as at the date of the liquidation there will be found a net sum due from Auto to the Liquidator hereinafter called 'the Sale Price'. D. The Members have agreed amongst themselves that the net proceeds of the intended liquidation including the Sale Price shall be dealt with and distributed by the Liquidator in manner following and to direct the C Liquidator accordingly and to indemnify him as hereinafter set out."

The company referred to in those recitals as "Auto" was an inactive or dormant company in which Mr. Joiner held or controlled all the shares with voting rights. The agreement first of all provided how the principal assets of the Joiner company (as I will call it) were to be valued for the purposes of the intended sale to the Auto company and for the purposes of distribution of assets D to the members of the Joiner company. Then Mr. Joiner undertook to procure the Auto company to issue an unsecured loan note in an agreed form to the liquidator in payment of the sale price mentioned in the recitals. Thirdly, it was agreed that in the distribution of the Joiner company's assets certain freehold property and certain marketable stocks and shares should be allocated to Mr. Joiner, with consequential provisions for adjusting the division of assets E between him and the trustees in the correct proportion of three to one. The agreement also made provision for an indemnity to Mr. Christlieb and for his remuneration and expenses.

Following the Special Commissioners, I shall call the foregoing agreement "the liquidation agreement". It was quickly carried into effect: the Joiner company went into voluntary liquidation the same day. The Auto company F immediately took over its business, and a few days later its name. Mr. Joiner, in due course, received the freehold property and investments and a substantial sum of cash as his share of the Joiner company's assets. The trustees received a loan note of the Auto company and it may be other assets as well. At the date of the liquidation agreement more than £200,000 was standing to the credit of the Joiner company's profit and loss account. In effect Mr. Joiner G received his three-quarters share of that accumulation of profits as a capital sum in the winding-up of the company. The notice under appeal is designed to impose surtax on Mr. Joiner as though the accumulated profits had come to him in the form of income. The Crown seeks to support the notice by three alternative arguments. I deal with them in the order most convenient for my judgment and identify them by the letters A, B and C.

H A. It is submitted that the whole arrangement, beginning with the liquidation agreement, was one transaction with several elements, each element being a step necessarily interconnected with the others. The transaction, regarded as a whole, was the reconstruction of the Joiner company so as to transfer its business assets to another company and distribute surplus assets to the shareholders. Its constituent elements were the liquidation agreement, the voluntary I winding-up of the Joiner company, the sale of assets to the Auto company in consideration of a loan note and the receipt by the shareholders of surplus assets. The composite transaction related to securities, for it first altered and finally extinguished the rights attached to the Joiner company's shares and also

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comprised the issue of a security by the Auto company. It has not been disputed before me that the loan note was a security within the definition. It was in consequence of the composite transaction that Mr. Joiner obtained a tax advantage. Hence, it is submitted, the requirements of s. 460 are satisfied. Mr. Browne-Wilkinson, for the Crown, supports the foregoing approach to the problem by reference to the observations of Lord Pearce in *Commissioners of Inland Revenue* v. *Brebner*[1] [1967] 2 A.C. 18 and of Plowman J. in *Commissioners of Inland Revenue* v. *Horrocks*[2] [1968] 1 W.L.R. 1809. I do not find it necessary to express a final conclusion on this argument A. On the whole, when there is a question of applying s. 460 so as to fix the taxpayer with liability, I am not persuaded that the word "transaction" should be interpreted as widely as Mr. Browne-Wilkinson desires. The examples of transactions given in the statutory definition are all specific and individual steps taken in relation to securities.

B. Mr. Browne-Wilkinson relies in the alternative on the liquidation agreement and the sale agreement between the two companies as being respectively transactions in securities. He says that Mr. Joiner obtained his tax advantage in consequence of those agreements or one of them, or in consequence of the combined effect of such agreements and the liquidation of the Joiner company. I can test the argument by considering the liquidation agreement, since the other agreement occupies a less central position in the sequence of events. Mr. Heyworth Talbot says, on behalf of Mr. Joiner, that he did not obtain his tax advantage in consequence of the liquidation agreement but only in consequence of the liquidation. Given the fact of a winding-up, Mr. Joiner would have received property representing his three-quarters of the accumulated profits whether or not the shareholders had agreed on a particular way of dealing with the Joiner company's assets and liabilities. The tax advantage, in Mr. Heyworth Talbot's contention, owes nothing to any antecedent except the liquidation itself. In my judgment, such reasoning is fallacious. I have, I think, to look at the facts of the particular case itself, as found by the Commissioners, and to consider their relationship as antecedents and consequences. The liquidation did not spring up in isolation: it immediately supervened on the liquidation agreement as a step for effectuating the shareholders' intentions expressed therein. Under those circumstances, it seems to me that in the ordinary use of language Mr. Joiner obtained the tax advantage in consequence of the liquidation agreement. I think it is also true that he obtained it in consequence of the liquidation. The latter does not exclude the former. A child is commonly thought of as a consequence of its conception notwithstanding the intervening event of its birth. Mr. Heyworth Talbot also argued that the liquidation agreement was not a transaction in securities. It was a transaction, he suggested, for the liquidation or reconstruction of a company. It only indirectly related to securities, in that they would be affected by the carrying out of the shareholders' scheme. I am not persuaded by this argument. It is enough to say that the liquidation agreement to my mind undeniably altered the rights attached to the shares of the Joiner company by substituting agreed valuations and a conventional mode of distribution for the unmodified effect of the company's memorandum and articles of association and the statutory provisions governing a voluntary winding-up. Thus the liquidation agreement is in my judgment specifically caught by the definition of transactions in securities.

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(1) 43 T.C. 705. (2) 44 T.C. 645.

C. Mr. Browne-Wilkinson's third alternative submission was that a distribution of assets to a shareholder in a winding-up is itself a transaction in securities. He drew powerful support for this point from the wide interpretation of the term in *Commissioners of Inland Revenue* v. *Parker*(1) [1966] A.C. 141, where the redemption of a debenture was held to be within the definition. He also prayed in aid some observations in *Greenberg* v. *Commissioners of Inland Revenue*(2) [1972] A.C. 109. Mr. Heyworth Talbot answered his opponent by another forceful argument. The present s. 460(2) is derived by way of consolidation from s. 25(5) of the Finance Act 1962, itself passed by way of amendment of s. 28 of the Finance Act 1960. Could Parliament possibly have made such an amendment, asks Mr. Heyworth Talbot, if liquidations were already within the net to the extent suggested by Mr. Browne-Wilkinson? It is evident that the question is one of difficulty and one of importance, as likely to affect other cases. It was not raised in the present case before the Special Commissioners, and its resolution is not necessary to my judgment since the Crown gets home on argument B. I therefore think it better to express no opinion upon argument C. In coming to that decision, I have not overlooked the point made by Mr. Pinson, when following Mr. Heyworth Talbot. He remarked that the distinction is a thin one, from a practical point of view, between a case like the present and one where the shareholders obtain an exactly similar tax advantage by resolving upon voluntary winding-up without a preliminary agreement for the instruction of the liquidator. Yet if the Crown were right on argument B and wrong on argument C liability to tax would be imposed in the one case and not in the other. On that, it is enough to say that legislation on this kind of subject, expressed in wide and general terms, and strictly interpreted as fiscal laws must be, often produces fine distinctions and unexpected results. Thus, having formed a clear view on argument B, I am prepared to adhere to it independently of the validity of argument C.

In the result, the appeal succeeds. Mr. Browne-Wilkinson, is there any question of figures?

Browne-Wilkinson Q.C.—My Lord, I think not.

Goulding J.—I simply reinstate the notice?

Browne-Wilkinson Q.C.—I think the formal Order should be for the case to be remitted to the Special Commissioners to restore the notice, and for your Lordship to allow the appeal with costs.

Goulding J.—You cannot resist costs, can you, Mr. Heyworth Talbot?

Talbot Q.C.—No, I cannot resist costs, my Lord, and I think the formal Order suggested by my learned friend is the right one in the circumstances of this case.

Goulding J.—I allow the appeal with costs and remit the Case Stated to the Special Commissioners to affirm the notice.

Browne-Wilkinson Q.C.—My instructions are "to restore the notice", my Lord.

Talbot Q.C.—To restore the notice, as they discharged it, I suppose.

Goulding J.—Yes. I am very much obliged to you both.

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(1) 43 T.C. 396. (2) 47 T.C. 240.

The taxpayer having appealed against the above decision, the case came before the Court of Appeal (Stamp and Scarman L.JJ. and Brightman J.) on 23rd, 24th and 25th October 1974, when judgment was reserved. On 12th December 1974 judgment was given unanimously in favour of the Crown, with costs.

F. Heyworth Talbot Q.C. and *Andrew Potez* for the taxpayer.

N. C. Browne-Wilkinson Q.C., Patrick Medd Q.C. and *Brian Davenport* for the Crown.

The following cases were cited in argument in addition to those referred to in the judgment:—*Commissioners of Inland Revenue* v. *Brebner* 43 T.C. 705; [1967] 2 A.C. 18; *Commissioners of Inland Revenue* v. *Burrell* 9 T.C. 27; [1924] 2 K.B. 52; *Commissioners of Inland Revenue* v. *Horrocks* 44 T.C. 645; [1968] 1 W.L.R. 1809; *Evans Medical Supplies Ltd.* v. *Moriarty* 37 T.C. 540; [1958] 1 W.L.R. 66.

Stamp L.J.—I will ask Scarman L.J. to read the judgment of the Court.

Scarman L.J.—Section 460 of the Income and Corporation Taxes Act 1970 strikes at tax avoidance: it reproduces s. 28 of the Finance Act 1960, as amended. Anyone who, in the circumstances specified in the section, obtains, or puts himself into a position to obtain, a tax advantage in consequence of a "transaction in securities" may find himself subjected to action by the Commissioners of Inland Revenue designed to counteract the advantage.

This appeal raises a point of importance upon the interpretation of the section. Does the term which is fundamental for the operation of the section, "transaction in securities", include a distribution of surplus assets made to a shareholder in the course of a company's liquidation? ("Surplus" means, in this context, after payment of debts and repayment of capital.) If it does, the Appellant taxpayer's case collapses, as his Counsel, Mr. Heyworth Talbot, recognised at the very outset of his argument; if it does not, it becomes necessary to consider in detail the facts and the parties' opposing analyses of the facts, as indeed Goulding J. did when he allowed the Crown's appeal against the decision of the Special Commissioners in favour of the taxpayer.

There is no need to state all the facts: they are succinctly set out in the judgment of Goulding J. Suffice it for us to mention that Mr. Joiner, the Appellant, owned 75 per cent. of the share capital of a family company which was engaged in the manufacture of component parts for the motor industry: trustees of a family trust owned the remaining 25 per cent. of the share capital. The company had prospered; and it possessed substantial assets representing accumulated and undistributed profits not needed as working capital for the conduct of the company's business. With the object of extracting these assets from the company Mr. Joiner, with the consent of the minority shareholders, put the company into liquidation. It was a members' voluntary winding-up: a liquidator was appointed and promptly sold the company's business to another company also controlled by Mr. Joiner. The liquidator then paid off such debts as the company had to meet and distributed the assets to the shareholders. The distribution was in fact pursuant to an agreement previously reached between Mr. Joiner and the family trustees: but this agreement did not vary the proportions of their respective entitlements which corresponded exactly to their shareholding. It was admitted that Mr. Joiner had obtained a tax advantage—the avoidance of the tax that would have been suffered had the accumulated

A profits been distributed by the company as dividends. It was also common ground that the immediate cause of the tax advantage was the distribution of assets in the course of the liquidation.

Was this distribution a transaction in securities? Mr. Heyworth Talbot submitted that it was not. He argued that the distribution, being a step taken in the course of the liquidation of a company, was outside s. 460: it was not B a transaction in securities but an integral part of the process of liquidation, and he relied on s. 460(2) as showing, by implication, that an act done in the course of liquidation is not such a transaction.

Section 460 confers upon the Commissioners of Inland Revenue the duty to counteract a tax advantage obtained or obtainable in consequence of a transaction in securities: the sections that follow it (ss. 461 to 468) amplify and C explain its terms and also set up machinery to safeguard the taxpayer. The language of these sections is of great width, and the House of Lords has consistently refused to limit their scope by judicial interpretation: see *Commissioners of Inland Revenue* v. *Parker*(1) [1966] A.C. 141 and *Greenberg* v. *Commissioners of Inland Revenue* (2) [1972] A.C. 109. Section 467(1) contains an indication, but not a definition, of the meaning of the term "transaction in D securities": it says that " 'transaction in securities' includes transactions, of whatever description, relating to securities", and then particularises a number of transactions which are included. It contains no reference to the liquidation of a company. If it does anything, this indication extends the meaning of the term, for it shows that the term does include transactions "relating to" securities. Mr. Heyworth Talbot, however, comments that, had it been the intention of E Parliament to include within the meaning of the term the liquidation of a company, nothing could have been easier than to have said so: instead, the subsection goes no further than to specify a number of transactions which, even if they had not been mentioned, would obviously have been transactions in securities. He relies strongly, therefore, on the absence of any reference to the liquidation of a company in this statutory indication of the meaning F of "a transaction in securities".

In our judgment, a distribution of surplus assets to shareholders in the course of a liquidation is a transaction relating to securities, unless it can be shown that Parliament has expressly or by necessary implication excluded it. The steps in our reasoning can be stated very shortly: first, shares are "securities" (s. 467(1)); secondly, the word "transaction" includes a unilateral act (for G example, in *Parker's* case the redemption of a debenture, and in *Greenberg's* case the part payment of a price); thirdly, a distribution by a liquidator to shareholders gives effect to the rights attaching to their shares (or an agreed variation of these rights), and therefore relates to the shares. Does the fact that the distribution is a step in the liquidation of a company make all the difference? The Statute does not say so in terms: its language is wide enough H to include such a distribution, and the House of Lords has made it plain that the Courts are not to cut down the width of the language used. We are in the realm of tax avoidance, and a main object of the present transaction was the avoidance of tax. When these provisions (originally s. 28 of the Finance Act 1960) were introduced the intention of Parliament was to give them a wide range so that they might be proof against the ingenuity of the tax avoider and I his advisers. Safeguards were provided, but they do not depend upon tight drafting or limiting definitions. The taxpayer can escape, even though he has

(1) 43 T.C. 396. (2) 47 T.C. 240.

(Scarman L.J.)

obtained a tax advantage, if he can show that the transaction or transactions were carried out for *bona fide* commercial reasons or in the ordinary course of making or managing investments. A taxpayer who has in mind a transaction or transactions which will confer on him a tax advantage may seek from the Revenue a prior clearance; and, if he gets it, that is the end of the matter (s. 464). A taxpayer who certifies by statutory declaration that a transaction is outside the scope of these provisions is safe from counteraction by the Revenue, unless the Commissioners of Inland Revenue refer the case to a tribunal and the tribunal declares that there is a *prima facie* case against him (s. 460(6) and (7)). Even thereafter he still has the opportunity of satisfying the Special Commissioners that his main object was not tax avoidance but a bona fide commercial one. There is, therefore, nothing so unjust or oppressive in the operation of the section as to lead one to doubt whether Parliament really intended its language to have the width that on a literal interpretation it clearly has. Parliament has made clear the means it has chosen to obviate injustice and oppression—means which do not require limitations to be put upon the language of the sections.

Mr. Heyworth Talbot seeks to meet this reasoning by a historical argument. When s. 28 of the Finance Act 1960 was enacted it contained no reference to company liquidation. We were told that the tribunal, to whom reference could be made to determine whether or not there was a *prima facie* case of tax avoidance, never did find such a case when a liquidation had intervened. Mr. Medd told the House of Lords in argument in *Greenberg's* case (1)([1972] A.C., at page 132) that the tribunal had held that a tax advantage obtained in consequence of the combined effect of a transaction in securities and the liquidation of a company did not fall within s. 28(1). However, it may be significant that this view of the tribunal, and indeed the amendment to meet the difficulty of the view, preceded the decisions in the *Parker*(2) and *Greenberg* cases.

The amendment to meet the difficulty was s. 25(5) of the Finance Act 1962, which is now reproduced in s. 460(2) of the Income and Corporation Taxes Act 1970. It reads as follows:

> "Subject to section 468(3) below, for the purposes of this Chapter a tax advantage obtained or obtainable by a person shall be deemed to be obtained or obtainable by him in consequence of a transaction in securities or of the combined effect of two or more such transactions, if it is obtained or obtainable in consequence of the combined effect of the transaction or transactions and of the liquidation of a company."

How, Mr. Heyworth Talbot asks, could Parliament have so enacted unless its intention in 1960 had been to exclude the liquidation of a company, and steps taken in the course of liquidation, from the ambit of s. 28? He submits, quite simply, that, using the subsection as a guide to the interpretation of the earlier legislation, one must infer that Parliament did not intend to include a distribution of surplus assets to shareholders in the course of a liquidation as itself a transaction in securities: by providing that a liquidation should not break the chain of causation, Parliament showed clearly that a liquidation was not itself a transaction in securities.

We think the submission is unsound. First, a later enactment may be used as an aid to the interpretation of an earlier only if the Court thinks the earlier provision is ambiguous: *Kirkness* v. *John Hudson & Co. Ltd*(3) [1955] A.C. 696.

(1) 47 T.C. 240. (2) 43 T.C. 396. (3) 36 T.C. 28.

A In our opinion the earlier provision was wide, but not ambiguous. And we are precluded by authority, as well as by our own view of the section read as a whole, from imposing a limitation on the words of Parliament which does not necessarily arise from the words themselves. Secondly, the subsection is a "deeming" provision. Parliament uses this device from time to time, and not always for the same reason. As Lord Radcliffe said in *St. Aubyn* v. *Attorney-*
B *General* [1952] A.C. 15, at page 53:

> "The word 'deemed' is used a great deal in modern legislation. Sometimes it is used to impose for the purposes of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a compre-
C hensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible."

There being more than one possible explanation for the addition in 1962 of this "deeming" provision, it would be wrong to draw any inference from it as to the meaning of the earlier provision. Thirdly, the draftsman was careful to warn Judges against using the subsection as a clue to the meaning of the earlier
D enactment. In s. 25(7) of the Finance Act 1962 (now s. 468(3) of the Income and Corporation Taxes Act 1970) we are warned that nothing in s. 25(5) should be taken to prejudice the operation of s. 28 of the Finance Act 1960 in respect of any transaction carried out before 10th April 1962. For these reasons, we do not accede to Mr. Heyworth Talbot's invitation to look to s. 460(2) as a guide to the meaning of the term "transaction in securities" when used in
E subs. (1).

In our judgment, therefore, a distribution of surplus assets to shareholders in the course of the liquidation of a company is, for the purpose of s. 460(1) of the Act of 1970, a transaction in securities. Accordingly, we dismiss the appeal. Had it been necessary to rule on the grounds on which Goulding J. decided the case against the taxpayer, we should have agreed with him: but, in our view, it
F is unnecessary to go so far. The appeal fails on the point which Mr. Heyworth Talbot consistently recognised was fatal to his case, if decided against him, and it is therefore dismissed.

Davenport—My Lord, I ask for the appeal to be dismissed with costs.

Stamp L.J.—You cannot resist that, can you, Mr. Talbot?

Talbot Q.C.—No; indeed I cannot resist that. I have an application that
G may perhaps not surprise your Lordships. I have to make the application to your Lordships for leave to appeal to the House of Lords. I venture to do so upon the ground that I am informed—I have learnt from other sources and this is confirmed from my learned friend—that a very large number of cases are recognised as turning upon the point which your Lordships have decided. In those circumstances, I venture to think that your Lordships might see fit to
H grant leave to appeal.

Stamp L.J.—Mr. Talbot and Mr. Davenport, will you agree to two of us deciding this question?

Davenport—Certainly, my Lord.

Talbot Q.C.—Undoubtedly.

Davenport—It is not the practice of the Revenue to offer any comment on these occasions. As a matter of fact, if I might just confirm what I told my learned friend earlier, if your Lordships would be assisted by the purely factual observation, there is one case which is waiting in the present Revenue Paper which will turn largely on your Lordships' decision, but it is apprehended there will be many others which will in one way or another be affected by your Lordships' decision. That is only a comment on fact. I do not wish to comment upon the application for leave.

(*The Court conferred.*)

Stamp L.J.—You may take your leave, Mr. Talbot.

Talbot Q.C.—If your Lordship pleases.

The taxpayer having appealed against the above decision, the case came before the House of Lords (Lord Wilberforce, Viscount Dilhorne and Lords Diplock, Kilbrandon and Edmund-Davies) on 9th, 13th, 14th and 15th October 1975, when judgment was reserved. On 26th November 1975 judgment was given unanimously in favour of the Crown, with costs.

([1])*F. Heyworth Talbot Q.C.* and *Andrew Potez* for the taxpayer. Two questions arise: (1) is the liquidation of the company (or the passing of the resolution to wind it up) a "transaction in securities"? (2) Alternatively, did the Appellant obtain a tax advantage in consequence of the combined effect of some transaction in securities and of the liquidation of the company? Or, again alternatively, did he obtain it in consequence of the effect of some other procedure describable as a transaction or transactions in securities? Section 460 of the 1970 Act was first enacted as s. 28 of the Finance Act 1960. Under the law as it then stood surtax was not chargeable upon assets representing undistributed profits distributed to contributories in the liquidation of a company: *Commissioners of Inland Revenue* v. *Burrell* 9 T.C. 27; [1924] 2 K.B. 52. That decision has stood unchallenged for 50 years.

On (1): Of course a winding-up has an effect on the shares. They cease to have existence. But the fact that the winding-up has an *effect* on the issued share capital of the company does not make it a transaction relating to the shares of the company. If it has the effect of altering the rights attached to the shares, that is specifically included in the definition. The purpose of a liquidation is to bring the company to an end; the destruction of the securities is a side-effect. A transaction relating to securities denotes a transaction of which it can be said that it is directed specifically to the securities themselves as items of property. A transaction cannot rightly be said to relate to securities merely because the attainment of its objective has an effect on the securities. A reduction in capital would be a transaction in securities within the Appellant's definition. The company is not desirous of terminating its business. It reduces its share capital—there is a direct relationship between the transaction and the securities. There is not such a direct relationship where the desire is to terminate the company. The phrase "transaction in securities" may be wide, but, as it has no precisely defined meaning, the House should look at the enactment to find the meaning which Parliament attributed to it. It is extremely odd, if Parliament had intended to include liquidation, that when it thought it necessary to specify purchase, sale, exchange, etc. it made no reference to liquidation. A winding-up does not

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([1]) Argument reported by Michael Gardner Esq., Barrister-at-law.

alter the rights attached to shares. It brings about a position in which the rights become enforceable. The rights remain the same before and after. In the case of redeemed debentures, the transaction deals specifically with the debentures themselves. The situation is quite different. One is definitely and specifically getting rid of the debentures themselves; it is not a mere incident of a winding-up.

One should look for indications in the Act of the meaning of "transaction in securities". It is inconceivable that Parliament could have used the language at the end of that subsection in s. 25(5) of the Act of 1962 if it had taken the view that a liquidation alone was a "transaction in securities". It may be that the Act of 1962 was enacted by reason of a misapprehension of the scope of the Act of 1960, but now both Acts are brought together. Either s. 460(2) is otiose and the liquidation of a company alone apart from the combined effect of the liquidation and some transaction in securities was always sufficient to bring the section into operation, or the effect of the 1962 and 1970 provisions was to reduce the scope of the 1960 provision. It may be sufficient for the Appellant's purposes to show that it is not clear that "relating to" [s. 467(1)] would embrace a liquidation. It is now challenged—it is not common ground—it was challenged for the first time before Goulding J.—that a liquidation in itself is not a transaction in securities.

[*Browne-Wilkinson Q.C.* (for the Crown). Before the Special Commissioners the Board of Inland Revenue conceded that a liquidation was not a transaction in securities. During the hearing before them, the House of Lords gave judgment in *Greenberg* v. *Commissioners of Inland Revenue* 47 T.C. 240; [1972] A.C. 109 and, in the light of what their Lordships then said, the Board thought it should take the point.]

On (2): Alternatively, *in this case* the tax advantage—which is what the Legislature is aiming at—was not obtained by anything other than the liquidation. Nothing else contributed at all. So, if a pure liquidation is not within the section, the present case does not fall within the section. That was how the Court of Appeal approached the matter. The Appellant does not say that the Commissioners wrongly calculated the tax advantage if his argument is wrong. As to the Crown's alternative argument (which found favour with Goulding J.), Goulding J. took the view that the Appellant obtained his tax advantage in consequence of the agreement entered into by the members of the company, and it was also true, he said, that the Appellant obtained his advantage in consequence of the liquidation, but the latter did not exclude the former. There is a fallacy in this reasoning. There are no grounds for the inference that the Appellant received one penny more by way of tax advantage than he would have done if there had been no agreement prior to the liquidation.

The Court of Appeal, pages 468–9 *ante*; [1975] 1 W.L.R. 273, 275–6, said that it was common ground that the immediate cause of the tax advantage was the distribution of assets in the course of the liquidation, but the Appellant had submitted that the effective cause was the winding up resolution. Neither the decision nor the *dicta* of the majority in the House of Lords in *Greenberg* v. *Commissioners of Inland Revenue* 47 T.C. 240; [1972] A.C. 109 justify the conclusion that payment of a dividend would be a transaction in securities. The distribution in a liquidation is not a distribution of a dividend—far from it—but if it could be said that the definition "relating to securities" was wide enough to include a dividend, why not a distribution in the liquidation? The Crown did not argue that payment of a dividend was a transaction in securities.

[Lord Diplock. The taxpayers conceded that the payment of a dividend to a finance company might be a transaction in securities: see [1972] A.C. 109, 134; 47 T.C. 240]. A

There are two authorities regarding the importance of clarity in legislation imposing a tax burden on Her Majesty's subjects. It must not just be clear as a matter of lexicography, but must be precise in its effect. The transaction must be directed specifically at the securities. See *St. Aubyn* v. *Attorney-General* [1952] A.C. 15, 32, *per* Lord Simonds, and *Ross & Coulter* v. *Commissioners of Inland Revenue* 1948 S.L.T. 303. B

On the new point, on s. 461D, what the Appellant received was not a consideration representing assets available by way of distribution. The Appellant has, however, to deal with "or apart from anything done by the company would have been . . ." Has the company done something which precluded the distribution of the assets by way of dividend? This raises the question: By whom? The answer is: What is done when a company goes into liquidation is done not by the company as a persona but by the shareholders acting severally in pursuance of what they see as their own interests. It would not be right for the Appellant to press this point: he just indicates it. He recognises the difficulty, but it all comes back to the meaning of "company" in parentheses. C D

Potez following. This case was brought by the Crown under the Act of 1970 notwithstanding that the Acts in question had taken place before its enactment. The Act of 1970 has to be construed, not the earlier Acts.

If it were an original Act that was in question, there could be no argument but that in view of the juxtaposition of subss. (1) and (2) of s. 460 the liquidation of a company was intended by Parliament to be excluded from the definition of "transaction in securities". It is only because the Act of 1970 is a consolidating Act that one does not stop there; there is a presumption that the law has not been altered and one has to go back to the legislation which preceded it. But a consolidating Act can clear up an ambiguity in one of the Statutes it consolidates, just as any subsequent Act can be prayed in aid to resolve an ambiguity in an earlier one. E F

One should approach the matter in three chronological stages.

First, if the Act of 1960 stood alone, (1) it is already sufficiently clear that it excludes a resolution to wind up, alternatively (2) at least the matter is ambiguous, and (3) even if this provision is not ambiguous it must at least be treated as unclear because any provision must in a sense be unclear where for 15 years one meaning has been accepted and now it is said that it has the opposite meaning: there is, therefore, at least not that clarity which is required before the subject can be taxed. G

Second, the Act of 1962 was not a consolidating Act. On any other than the Appellant's construction s. 25(5) would be otiose. If there was an ambiguity before 1962, the 1962 Act resolves it. If there is any unclearness in the Act of 1960, the Act of 1962 aggravates it. If there was no ambiguity in the 1960 Act, the Act of 1962 actually produces an ambiguity. It is impossible after 1962 to say that it has been unambiguously provided by the Legislature that a liquidation is within the net. H

As to the "deeming provision", s. 25(5), it is not the case that a liquidation is thereafter deemed to be a transaction in securities. All that was deemed to occur was (s. 460(2)) that a tax advantage should be treated as having been obtained or become capable of being obtained. I

A Thirdly, in the Appellant's chronological approach, is what the position was from 1970 on. If there was any ambiguity, it was resolved at the latest by 1970. [Reference was made to *Ormond Investment Co. Ltd.* v. *Betts* 13 T.C. 400, 427–8; [1928] A.C. 143, *per* Lord Buckmaster.] A consolidation Act cannot alter the law, but where it is impossible to say which of two or more meanings is right then any subsequent Act, including a consolidating Act, can guide one. B If it repeats the same language in a context which makes its meaning clear, one may assume that that was the meaning which the earlier provision had. The view which was expressed by Lord Simonds in *Kirkness* v. *John Hudson & Co. Ltd.* 36 T.C. 28, 61–4; [1955] A.C. 696 was conditional on the Judge being able to form a clear opinion one way or another. If he cannot, there is ambiguity; see also *per* Jenkins L.J. in *John Walsh Ltd.* v. *Sheffield Corporation* [1957] C 1 W.L.R. 1074, 1079. It is clear beyond doubt, at least in the Act of 1970, that no reasonable meaning can be given to s. 460(2) except on the footing that a liquidation is excluded.

As regards the "escape clause" (s. 460(1)), if the Crown is right here and "transaction in securities" does include a liquidation then it must include every liquidation. There can be no exceptions. It would appear to follow, therefore, D that in every case the Crown will be under an obligation to assess the proceeds of a liquidation unless the subject proves *two* things.

No taxpayer who winds up a company does it other than in such a way as to obtain such tax advantage as he can; he could not, therefore, say that he did it other than with the object of obtaining a tax advantage. So, in practice, many liquidations of the most innocent kind will be caught.

E The liquidation agreement here was not well named. It is not an agreement by which the parties agree to put the company into liquidation. It is an agreement as to how the assets to be distributed *in the event of* a liquidation are to go to the shareholders. So, the tax advantage was not secured to the Appellant by the agreement to put the company into liquidation.

N.C.H. Browne-Wilkinson Q.C. and *Brian Davenport* for the Crown. This F is not an ordinary liquidation. It is correct to say that, although the Revenue had never accepted that a liquidation was not a transaction in securities it was not contended by them, from 1962 until the present case, that a liquidation was itself a transaction in securities. [Reference was made to *Greenberg* v. *Commissioners of Inland Revenue* 47 T.C. 240.] Note that s. 460(2) is a deeming provision, and a deeming provision may reflect the truth. As to the facts, and G the machinery of s. 460, the whole transaction, so far as it affected an on-going business, was achieved by the liquidation agreement. The liquidation agreement itself does not contain in the operative part an agreement to go into liquidation; that is not needed anyway. But it does recite the intention of going into liquidation, and it does refer to the proposed sale to Auto. It is an agreement not to take out the full value of the shares but to take a valuation, and in the case of H clause 1(e) (furniture, fixtures and fittings and motor cars) not even a valuation but the book values. The liquidation agreement varies the rights of the shareholders in a liquidation, and does so so as to enable the scheme to be carried out. Otherwise, it would be impossible to get the working assets into the new company, and so on, and get out something in the form of cash. No one has suggested that the loan note was not a security, or that the agreement to receive I the loan note was not a transaction in securities, and the loan note was an integral part of the whole reconstruction. The agreement to receive the loan notes, the liquidation agreement and the liquidation itself were all essential to the scheme here. If one has a scheme, an operation, a transaction, which has in it certain steps, one flowing from the other, all linked together as parts of one transaction, and the transaction in securities is part of the operation,

then, if an advantage is received at the end, it is within s. 460. What the Crown cannot say is that the loan note in itself produced a tax advantage. A sale of shares is plainly a transaction in securities, but it contains a number of other steps, each a transaction, and the question is what one can call "a transaction". There is something in the liquidation agreement itself which is a transaction relating to securities. It varies the rights of the shareholders. Similarly with the sale agreement. If a liquidation in itself is a transaction in securities, it may be that many liquidations will be caught which are not intended to obtain a tax advantage, but to concentrate on whether a liquidation is a transaction in securities is to lose sight of the facts of this case.

What is the relevant tax advantage, and when is it obtained? The Appellant's argument assumes that the tax advantage is obtained at the moment when the resolution to wind up the company is passed. At that moment what was undistributed profit becomes simply part of the assets of the company. That is right, but it does not mean to say that for the purposes of s. 28 of the Act of 1960 a tax advantage is obtained—or the taxpayer is in a position to obtain it—at the moment when what was previously income turns into capital.

As to s. 460(1) it is clear from *Commissioners of Inland Revenue* v. *Parker* 43 T.C. 396; [1966] A.C. 141 that where one is dealing with the reduction or avoidance of an assessment it is on the receipt of the money that one obtains a tax advantage. The words "in a position to obtain" are more appropriate to a sort of case which is not before the House—where someone claims relief on tax back from the Revenue, not where the advantage is the receipt of the money. It is irrelevant, where there has been an actual receipt, that there was an earlier stage at which the taxpayer was in a position to obtain it. As to *Commissioners of Inland Revenue* v. *Parker*, it does not follow that because at all times after the resolution to wind up it is a question not of profits but of surplus assets, it is not the resolution that produces the tax advantage.

As to the liquidation argument, s. 28 is not ambiguous, but imprecise. It lays down a wide net covering transactions which may be made for good reasons other than tax reasons, and then brings in the element of object. Since 1960 the Revenue has sought to say that a liquidation with the object of tax avoidance is within s. 28. Since *Greenberg* v. *Commissioners of Inland Revenue* 47 T.C. 240 it has thought that it could apply s. 28 to a straightforward liquidation if it wanted to. [Reference was made to the Act of 1970, s. 464.] Bearing in mind the scheme of the taxing provisions, it is not surprising to find them expressed in very general words embracing a wide range of matters. Section 460 is directed to stopping tax avoidance.

Logically, it is unavoidable that if payment of a redeemable preference share or debenture is a transaction in securities—*Commissioners of Inland Revenue* v. *Parker* shows that it is—the distribution of the assets of a company on winding up to the shareholders in satisfaction of their rights is also a transaction in securities. The distribution in a winding-up relates to the shareholder's rights at least as much as the redemption of debenture does to a debenture.

It is accepted that had there been no history it would be obvious that the draftsman of s. 460(2) thought that the liquidation of a company in itself was not a transaction in securities. Look, however, at s. 28 of the Act of 1960. Section 460 cannot have changed the law. Quite apart from general considerations regarding construing an earlier Act by reference to a later, in the Act of 1962, in s. 25(7), we have express provision that one is not to construe this earlier provision by reference to the latter. Paragraph (*b*) prevents it from having restrospective effect, but see the proviso. The effect is that, had there

been a transaction between 1960 and 1962 with regard to, for example, the liquidation of a company, it would not have been open to the Revenue to rely on the 1962 amendment. But it would not have been open to the Appellant to say that the 1962 provision threw light on the 1960 provision. It would be very odd if the 1962 amendment not only did what it set out directly to do but also altered the effect of the Act of 1960 after 1962.

If the Act of 1960 applies to a liquidation, one cannot look at the Act of 1962 to say that it does not. If, as the Crown submits, the Court of Appeal are right in saying that the 1960 provision, though imprecise, is not ambiguous, on ordinary principles of construction one cannot have regard to the 1962 provisions to cast light on what Parliament might have thought it was meaning, even though the two provisions are to be read as one. [Reference was made to the Act of 1962, s. 25(7)(*b*), and to *Kirkness* v. *John Hudson & Co. Ltd.* 36 T.C. 28.] The fact that words are very general does not mean that they are ambiguous. The words here are not ambiguous, but imprecise.

The mere payment of a dividend, though a transaction in securities (*Greenberg* v. *Commissioners of Inland Revenue* 47 T.C. 240), does not come within s. 461D. But it can form part of a larger series of transactions which does. There is an indication from at least Lord Guest and Lord Simon of Glaisdale in *Greenberg* that the payment of a dividend is a transaction in securities.

Section 539 of the Act of 1970 appears to be directed towards ensuring that the law applicable to something done before its enactment is the law which was applicable when it was done.

On the Appellant's new point—that though he generally accepts that the circumstances in s. 461D apply to this case, the consideration received here was not a consideration representing assets available for distribution by way of dividend: see Companies Act 1948, ss. 279(1) and 229(1).

As to the agreement argument (see paras. 19 et seq. of the Crown's case), it is accepted that the liquidation agreement does not in terms contain an agreement to liquidate. It recites the intention to liquidate and agrees as to what is to be done when liquidation occurs. Its object, however, was to extract the surplus assets from the company—that was done the same day, and the liquidation took place five days later. The agreement was part and parcel of the liquidation. So, there was a casual connection between the agreement, the liquidation and the distribution in the liquidation which produced the tax advantage. This transaction is thus squarely caught by s. 460(2) and Goulding J.'s reasons are unimpeachable.

The third argument. Finally, this minute dissection of one operation—the reconstruction of the company—into its constituent elements and saying that one has to look at each of the elements is unnecessary and a rather misleading way of looking at what happened. What was resolved on was the reconstruction of A. G. Joiner & Sons Ltd. It is perfectly proper to call the reconstruction of A. G. Joiner & Sons Ltd. "a" transaction, containing within itself many other transactions: see In re *South African Supply and Cold Storage Co.* [1904] 2 Ch. 268. There, a careful user of language (Buckley J.) thought it proper to refer to the reconstruction of a company as "a" transaction: see pages 282 and 288. If that is so, then the causal connection between that and the tax advantage stares one in the face. Otherwise, however, the Revenue has a causal problem—if, for instance, one says that it is the payment of the dividend which is the transaction. That one should not dissect is borne out by *Commissioners of Inland Revenue* v. *Brebner* 43 T.C. 705, 713; [1967] 2 A.C. 18 and *Commissioners of Inland Revenue* v. *Horrocks* 44 T.C. 645; [1968] 1 W.L.R. 1809. The

Crown accepts that it might not be right to regard the reconstruction as a transaction in securities if there were only one marginal reference to securities.

Heyworth Talbot Q.C. in reply. The Crown says that if the liquidation were the sole cause of the tax advantage here, one could never have a case to which s. 460(2) of the Act of 1970 could apply. That is not so; there are, and have been, plenty of such cases: for example, a sale of shares to a purchaser who then puts the company into liquidation. It is speculation, but probably there have been cases of this very kind which have come before the Tribunal in which it has been decided that they must be covered by s. 25(5) of the Act of 1962.

As to the primary question in this case, the cardinal issue is whether a distribution of surplus assets to contributories is a "transaction relating to securities" within the meaning of s. 460 of the Act of 1970 as amplified by s. 467. There is no doubt, from s. 460(2), that a liquidation *per se* was not regarded by the draftsman as a transaction in securities. Although an agreement is not a necessary ingredient of a winding-up, it is difficult to conceive of a winding-up which is not preceded by some form of agreement.

On the Crown's alternative points, it is not permissible to look at the totality if it is clear that the whole of the tax advantage derives from and is attributable to the liquidation. All the operations are covered by the statutory word "liquidation" and that gives the tax advantage.

Lord Wilberforce—My Lords, this appeal arises under ss. 460–8 of the Income and Corporation Taxes Act 1970 (to which Act references relate unless otherwise stated). This Act replaced and consolidated certain provisions against tax avoidance originally contained in the well-known s. 28 of the Finance Act 1960.

Mr A. G. Joiner junior, the Appellant, controlled a private company called A. G. Joiner & Son Ltd. through the ownership of three-quarters of the ordinary shares in its capital: the other quarter had belonged to his father. In 1960 the capital consisted of 1,000 £1 shares, but in that year it was increased to 5,000 £1 shares and a bonus issue of 4:1 was made from capitalised profits. Mr. Joiner senior renounced his entitlement in favour of the trustees of a family settlement (the "father's settlement") and in 1964 transferred to them his original holding. So thereafter the share capital was held as to 3,750 shares by the Appellant and 1,250 by the trustees. The company was successful and made good profits. In its profit and loss account as at 10th April 1964 it showed a credit of £203,790 representing undistributed profits. In that year action was taken with the admitted purpose of extracting these profits from the company in a manner which would not attract a charge for surtax nor interfere with the company's business. The steps taken, fully described and documented in the Case Stated, were as follows:

(i) In March 1964 the shareholding in another family company, then called the Auto-Components and Engineering Co. Ltd. ("Auto") was reorganised so that the Appellant owned 1,499 out of 1,500 voting shares. The company's accountant and others held the remaining one voting share as nominees for the Appellant. There were 1,500 non-voting shares of which 750 were held by the Appellant and 750 by trustees of a discretionary family settlement made by the Appellant.

(ii) On 10th April 1964 an agreement was entered into between the Appellant, the trustees of the father's settlement and the company accountant of

A. G. Joiner & Son Ltd. This recited that it was intended forthwith to put A. G. Joiner & Son Ltd. into voluntary liquidation with the accountant as liquidator and that the liquidator should sell to Auto the tangible assets and goodwill of A. G. Joiner & Son Ltd. It was then agreed that, for the purpose of the sale agreement and of the distribution of assets, certain valuations of the company's freehold property, plant and machinery, goodwill and investments should be accepted; that the sale price should be satisfied by the issue to A. G. Joiner & Son Ltd. by Auto of an unsecured loan note bearing interest at six per cent. per annum, the value of which should be taken at par; that in the liquidation certain assets including freehold property and investments should be allocated to the Appellant in partial satisfaction of his rights as a shareholder in the surplus assets, and, by implication, that the loan note, or such part as was not needed to satisfy Mr. Joiner's interest, should be allocated to the father's settlement.

(iii) Immediately after entering into the agreement the Appellant and the trustees of the father's settlement passed a special resolution to wind up A. G. Joiner & Son Ltd. and appointing the accountant as liquidator.

(iv) The liquidator at once entered into the sale agreement to Auto in consideration of a loan note. Auto continued the trade of A. G. Joiner & Son Ltd. and shortly after the sale changed its name to A. G. Joiner & Co. Ltd.

(v) In pursuance of the agreement, there were transferred to the Appellant the freehold of the company's factory, investments and cash. An unsecured loan note for £63,610 was issued to the trustees of the father's settlement in satisfaction of their rights as shareholders in the surplus assets of A. G. Joiner & Son Ltd.

The purpose and the result of these transactions were, put simply, to extract from A. G. Joiner & Son Ltd. assets surplus to its trading requirements, and to transfer to Auto the assets necessary to enable that company to continue the trade. This was, in fact, a perfectly normal and well-known type of arrangement, no doubt frequently effected, and before 1960 effective, to produce a saving in tax.

The Commissioners of Inland Revenue formed the opinion that the Appellant had thereby gained a tax advantage and on 2nd September 1970 they issued a notification under s. 460(6) of the Act of 1970—this was correctly served under that Act and not the earlier legislation by virtue of s. 468—followed by a notice under s. 460(3). For this legislation to apply, it is necessary for there to be a transaction or transactions in securities: these were specified, in the notice, as the issue of bonus shares to the Appellant in 1960; the scheme of reconstruction of A. G. Joiner & Son Ltd. including the liquidation agreement; the special resolution to wind up A. G. Joiner & Son Ltd.; the sale of assets to Auto and the issue of the loan note; the receipt by the Appellant in the liquidation of money or money's worth totalling £184,462. In order to counteract the tax advantage which the Appellant was said to have gained, the Commissioners proposed the recomputation of his liability to surtax for 1964–65 on the basis that £137,116 should be taken into account as if it were a net dividend, after deduction of income tax, received at the date of receipt. This sum was arrived at after taking the Appellant's three-quarters share of undistributed profits in A. G. Joiner & Son Ltd. and deducting therefrom a sum charged to surtax under Chapter III, Part IX of the Income Tax Act 1952 for the period 1st September 1963 to 10th April 1964. The arithmetical correctness of this computation is not an issue in this appeal.

(Lord Wilberforce)

The Appellant appealed to the Special Commissioners who, after hearing evidence and argument, cancelled the notice, but on a Case Stated to the High Court it was restored by Goulding J. whose decision was affirmed by the Court of Appeal. The Appellant has appealed to this House. In order for the Crown to succeed, two things must be shown:

(1) that the Appellant obtained a tax advantage in any such circumstances as are mentioned in s. 461;

(2) that he so obtained it "in consequence of a transaction in securities or of the combined effect of two or more such transactions" (s. 460(1)) or "in consequence of the combined effect of the transaction or transactions and of the liquidation of a company" (s. 460(2)).

It will be borne in mind that s. 467 extends the expression "transactions in securities" so as to include "transactions, of whatever description, relating to securities". Before I enter upon these questions, I must briefly explain the background, as I understand it, against which this and similar questions arising under this legislation must be decided.

Upon the enactment of the original s. 28 of the Finance Act 1960 it was possible to contend, and it was contended, that this section (and its associated sections) was directed against a particular type of tax avoidance known generally under such descriptions as dividend-stripping, asset-stripping and bond washing and that the sections and particular expressions used in them, amongst others "transactions in securities", should be interpreted in the light of this supposed purpose. But this line of argument became unmaintainable after the decisions of this House in *Commissioners of Inland Revenue* v. *Parker*(1) [1966] A.C. 141 and *Greenberg* v. *Commissioners of Inland Revenue*(2) [1972] A.C. 109. It is clear that all the members of this House who decided those cases were of opinion that a wide interpretation must be given to the sections and to the expressions used in them. More than this, it appeared from the opinion of Lord Reid in *Greenberg's* case that the sections called for a different method of interpretation from that traditionally used in taxing Acts. For whereas it is generally the rule that clear words are required to impose a tax, so that the taxpayer has the benefit of doubts or ambiguities, Lord Reid made it clear that the scheme of the sections, introducing as they did a wide and general attack on tax avoidance, required that expressions which might otherwise have been cut down in the interest of precision were to be given the wide meaning evidently intended, even though they led to a conclusion short of which Judges would normally desire to stop (page 137(3)). If we are to follow this path, and I see no other open to us, we must continue to give to "transactions in securities" and "transactions relating to securities" the widest meaning: we can neither confine these expressions to the instances given in s. 467(1), nor can we deduce from that enumeration any limitation upon their scope.

Turning now to the two points mentioned above, there is no doubt in my mind that the first requirement is met, and I shall not set out the detailed enactments which establish this. The relevant "circumstance" is that stated in para. D of s. 461 which incorporates some portions of para. C. What has to be shown is that the Appellant received in non-taxable form a consideration which is or represents the value of assets which were, or apart from anything done by the company in question would have been, available for distribution by way of dividend. This exactly fits the present case. The Appellant's argument that the liquidation—resulting in the tax free distribution—was not something

(1) 43 T.C. 396. (2) 47 T.C. 240. (3) *Ibid.*, at p. 272.

A "done by the company" but only something "done by the shareholders" does not accord with the conception in the Companies Act that liquidation is decided by a resolution of the company or with the fact of distribution by the company. I pass then, to the second point: whether the tax advantage was obtained "in consequence of a transaction in securities or of the combined effect of two or more such transactions" (s. 460(1)(*b*)). This provision may be B applicable either by itself or as expanded by s. 460(2), which provides that a tax advantage shall be deemed to be obtained in consequence of a transaction in securities or of the combined effect of two or more such transactions "if it is obtained . . . in consequence of the combined effect of the transaction or transactions and of the liquidation of a company". The case was decided, against the taxpayer, by Goulding J. on the expanded section, and by the Court of C Appeal on the subsection without the expansion, but the latter indicated that they also would have agreed with the view of Goulding J. I take first the subsection with the deeming expansion. My Lords, it seems to me to be clear that the taxpayer is caught by these provisions. I omit from consideration the undoubted "transactions in securities" constituted by the reconstitution of the capital of A. G. Joiner & Son Ltd. in 1960 involving the issue of new shares D to the Appellant, since it may be said that the tax advantage was not obtained, or obtainable, in consequence of these matters. I take simply the agreement of 10th April 1964. Immediately before this agreement, the Appellant was the holder of 3,750 £1 ordinary shares in A. G. Joiner & Son Ltd. giving him the rights conferred by the articles of association—i.e., rights to receive dividends, if declared, rights to vote, rights in a liquidation to receive a share of surplus E assets after discharge of liabilities. The agreement brought about clear and important variations of these rights. In the liquidation of A. G. Joiner & Son Ltd. which was contemplated, it was agreed that the Appellant should receive in respect of his shares (which are "securities"), certain specified assets at stated valuations—possibly, indeed I would say probably, perfectly reasonable and bona fide valuations, but valuations none the less agreed with the minority F shareholders. It was an essential feature of the agreement, essential in order to enable the Appellant to receive the specified assets, that the company's business, and its liabilities, should be sold in consideration of a loan note (itself a security), and that the loan note should be issued to the minority shareholders on account of their entitlement (there was a provision that part of it might be allocated to the Appellant if this was necessary to make up his full share). There was a G provision in the agreement that the loan note should not be repayable except at the option of Auto, or unless Auto went into liquidation, or unless the Appellant ceased to hold 51 per cent. of the equity of Auto. There were also—but perhaps this is Pelion on Ossa—provisions regarding the possible sale and reinvestment of the company's investments (also securities). All of these provisions were necessary steps in order to accomplish the ultimate objective H of enabling the Appellant, consistently with keeping the business effectively in existence, to receive assets of A. G. Joiner & Son Ltd., representing undistributed profits, as surplus assets in the liquidation of A. G. Joiner & Son Ltd. and as such in a tax-free (i.e., surtax-free) form. They were all in fact carried out, and but for s. 460 they would have produced a tax advantage. The case therefore is clearly one of the combined effect of a transaction or transactions I in securities and of the liquidation of A. G. Joiner & Son Ltd.

On these grounds, which were those assigned by Goulding J., I see no alternative to dismissing the appeal.

This being so it is not necessary to decide whether the appeal should fail also on the wider ground favoured by the Court of Appeal, i.e., that the liquida-

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tion alone was a transaction in securities. This seems to me to raise some difficult and possibly far-reaching questions. I would only make two observations. First, the question whether a liquidation alone is, or can be, a transaction in securities, cannot be decided without a careful examination of the deeming provision in s. 460(2), a subsection added to the original section in 1962 (Finance Act 1962, s. 25(5)) and since 1970 appearing in the consolidated version. It appears to me clear that we are entitled, in interpreting this consolidated enactment, to have regard to this fact, and also, importantly to decisions of the courts or of the tribunal set up under this sub-code which may indicate the "mischief". I certainly could not accept that a sound interpretation could be reached upon an examination of the words of the Act of 1970 alone. Second, the word "liquidation" appears to me of uncertain connotation—it may mean the decision to wind up, the distribution of surplus assets, or the whole process involving both. I would suppose that most "liquidations", at least of the kind of company with which para. D of this sub-code is concerned, are accompanied by some "transaction", so that a "pure liquidation" may only be one of many possible types of liquidation. If this is so, a decision that the sub-code applies to some types of liquidation might not necessarily involve the more radical decision that it applies to all liquidations including "pure" liquidations, and I do not think that we should decide this question here. As I ventured to point out in *Commissioners of Inland Revenue* v. *Parker*[1] the possibility of a tax advantage arising from liquidations had been known for many years and this, to some minds at least, might suggest a doubt whether Parliament in 1960 had liquidations in mind at all.

I would dismiss the appeal.

Viscount Dilhorne—My Lords, the facts have been fully stated by my noble and learned friend Lord Wilberforce, and there is no need for me to repeat them.

I agree with him in thinking that the Appellant received a tax advantage in circumstances mentioned in s. 461 of the Income and Corporation Taxes Act 1970 and did so in consequence of the combined effect of a transaction or transactions relating to securities and of the liquidation of a company, so that s. 460(2) of that Act applies with the result that this appeal must be dismissed.

The agreement of 10th April 1964, which has been labelled the "liquidation agreement", not only was an agreement to vary the rights attaching to the shares of the Appellant but also one which varied those of the minority shareholders in A. G. Joiner & Son Ltd. They were the trustees of the father's settlement and instead of receiving their share of the surplus assets on the liquidation, it was agreed that they should receive a loan note signifying the indebtedness to them of a company called Auto Components and Engineering Co. Ltd. (hereafter referred to as "Auto") for the price of what was sold by the liquidator of A. G. Joiner & Son Ltd. to Auto, bearing interest at six per cent. and an indebtedness which the trustees could only require to be discharged if Auto went into liquidation, or after six months' notice at any time after the Appellant ceased to hold in his own right 51 per cent. of the equity voting capital in Auto. This was a substantial variation of the trustees' rights. In my opinion the liquidation agreement was clearly a transaction relating to securities and one closely linked with the liquidation itself which followed immediately on the making of that agreement.

(1) 43 T.C. 396.

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A In my opinion Goulding J. came to the right conclusion for the right reasons. The Court of Appeal came to the same conclusion but for different reasons, the basis of their decision being that the liquidation of A. G. Joiner & Son Ltd. was itself a transaction relating to securities. If this is right, then s. 460(2) of the Income and Corporation Taxes Act 1970 serves no purpose and s. 460(1)(*b*) is satisfied if there is a liquidation, whether or not accompanied by another B transaction in securities.

Construing s. 460 of the Income and Corporation Taxes Act 1970, a consolidation Act, without reference to the Acts which were consolidated, I would without any hesitation have been of the opinion that a liquidation was not of itself to be regarded as a transaction in or relating to securities, for as I have said, if it were, s. 460(2) would have been pointless. Nor, although a C liquidation of a company involves the distribution of surplus assets to shareholders, would one, I think, normally describe the liquidation of a company as constituting of itself a transaction relating to securities. The process of consolidation would lose much of its point if, whenever a question as to its construction arose, reference had to be made to the individual Acts consolidated. Only when the consolidation Act itself gives no guidance as to its proper D interpretation, should it be permissible in my opinion to refer to the earlier Acts. Here, in my view, the consolidation Act did give such guidance, but we were referred to and we did consider the Acts consolidated and in my view their provisions indicate that the opinion I have formed on consideration of the 1970 Act alone is correct.

Section 460(1) re-enacts s. 28(1) of the Finance Act 1960. Section 460(2) E replaces s. 25(5) of the Finance Act 1962. If Parliament in 1962 had thought that the liquidation was itself a transaction relating to securities, it is inconceivable that that section would then have been enacted. Parliament may of course have been wrong and it is not permissible for us to see what Parliament was led to suppose to be the effect and scope of s. 28 of the Act of 1960 by referring to reports of proceedings in Parliament. The device of obtaining the F accumulated profits of a company without payment of tax by means of the liquidation of the company and distribution of the assets and, at the same time, securing that the business of the company liquidated continued to be carried on, was well known in 1960: see *Commissioners of Inland Revenue* v. *Pollock & Peel Ltd.*(1) [1957] 1 W.L.R. 822. If it had been the intention of Parliament when s. 28 was enacted that the liquidation should itself be treated as a transaction G relating to securities I would have expected that to have been made clear by express words in that section. It certainly was not.

It is for these reasons that I do not find it possible to agree with the reasons given by the Court of Appeal for their conclusion. In my opinion this appeal should be dismissed.

Lord Diplock—My Lords, the case against the taxpayer that was upheld H by the judgment of Goulding J. is, to my mind, a simple one. The application of the relevant words of the Statute to the particular facts is clear: I should be lapsing from the standards of self-restraint which I myself so recently have recommended (see *Bradbeer* v. *Carter* [1975] 1 W.L.R. 1204, at pages 1205–7) were I to add anything to what your Lordships have already said in upholding the construction placed upon those words by Goulding J.

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(1) 37 T.C. 240.

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The alternative construction adopted by the Court of Appeal, however, has consequences which extend far beyond the instant case; and the process of reasoning which led them to it raises important questions of principle as to (1) the rules of construction applicable to consolidation Acts and (2) the extent to which a later Act of Parliament may be used as an aid to the construction of an earlier one. It is to these questions that I propose to restrict my own observations.

The notification by the Revenue in the instant case was issued under s. 460 of the Income and Corporation Taxes Act 1970. By its long title this was stated to be a consolidation Act and s. 460 is one of a fasciculus of sections which constitute Chapter I of Part XVII. It came into force on April 5th of that year. Although the circumstances relied on as entitling the Revenue to issue the notification occurred in 1964, the effect of s. 468(1) is that those circumstances are to be treated as if they were governed by the provisions of the consolidation Act to the exclusion of the previous legislation which was repealed and re-enacted by that Act. So your Lordships must approach this case as if all relevant events had occurred after 4th April 1970.

My Lords, the function of a court of justice is to decide disputes between parties to litigation as to their legally enforceable rights and obligations towards one another and to direct the enforcement by the executive branch of government of remedies as between the parties to that litigation for the contravention of any such right or the failure to fulfil any such obligation. In the exercise of that function a court of law is concerned with statutes as the source of the particular rights and obligations which are the subject matter of the dispute between the parties to the case for decision. The typical statutory provision which a court of justice is called upon to construe consists of a general description of some factual situation which is to give rise to legal consequences together with a statement as to what those legal consequences are to be. Where, as in the instant case, there is no dispute as to the legal consequences, the question as to the meaning of the statute with which the court is confronted is a restricted one. It is to determine, Aye or No, does the particular factual situation which has been proved to have existed in the case for decision fall within the general description contained in the statute? Whether that general description is wide or narrow, it must have some limits. The only question of construction for the court is whether those limits are wide enough to include within their ambit the particular factual situation which it has found to have existed. Since there are only two possible answers to this, any difficulty in determining which is the right answer may be referred to, not inappropriately, as arising from an "ambiguity" in the statute. It is in this sense that "ambiguity" and its corresponding adjective "ambiguous" are widely used in judgments dealing with the construction of statutes. It is in this sense that I too shall use these terms.

The complexity of modern society, the rapidity of social change and the variety of ways in which individual citizens react to it are all reflected in the complexity of modern legislation and the frequency with which it is added to or altered. The purpose of most modern legislation is to effect some change in the existing law; and it is to be presumed that Parliament intended that the whole law relating to the subject-matter of the new legislation, after incorporation of the change, should serve to promote a rational and self-consistent social policy in the field of human activity with which that law deals. The language of any general description in a statute of some factual situation from which new legal consequences are to flow thus needs to be construed in the context of the whole corpus of the law by which the legal consequences of that factual situation will be governed when the newly enacted statute comes into force.

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A The modern practice of parliamentary draftsmen in preparing for adoption by Parliament legislation to effect a change in the existing law, particularly when the subject-matter of the law is one, such as taxation, in which legislative changes are frequent, is to express the changes to be effected in the form of amendments to the language of particular provisions in earlier statutes dealing with the same subject-matter. This method of drafting becomes progressively B more cryptic as amendments to previous amendments follow one another in successive statutes. The need to refer to and fro and back and forth between ever-increasing numbers of different statutes in order to discover what a particular provision of any of those statutes means reaches a point at which the difficulty of finding out what the law is may have the practical consequence of depriving the citizen of his right to know, in advance of a decision of your C Lordships' House which must needs be *ex post facto*, what the legal consequences will be of a course of conduct which he contemplates adopting. The purpose of a consolidation Act is to remove this difficulty by bringing together in a single statute all the existing statute law dealing with the same subject-matter which forms the general context in which the particular provisions of the Act fall to be construed, so that it will be no longer necessary to seek that context D in a whole series of amended and re-amended provisions appearing piecemeal in earlier statutes. This is the only purpose of a consolidation Act; this is the only "mischief" it is designed to cure. It is true that a consolidation Act is not intended to alter the law as it existed immediately before the Act was passed, but to treat this absence of intention as justifying recourse to the previous legislation repealed by the consolidation Act in order to ascribe to any of the E provisions of that Act a meaning different from that which it would naturally bear when read only in the context of the other provisions of the consolidation Act itself, would be to defeat the whole purpose of this type of legislation—to allow the absence of a tail to wag the dog.

So the primary rule of construction of a consolidation Act is to examine the actual language used in the Act itself without reference to any of the statutes F which it has repealed. If this examination leads to the conclusion that, when read in the context of the other provisions of the Act, the language in which a general description of some factual situation is expressed is more apt to include than to exclude the particular factual situation found to exist in the case for decision or *vice versa*, the duty of the court is to ascribe to that language the more apt meaning and to give effect to it accordingly. It is only where such G an examination of the actual language of the general description has led to the conclusion that it is no more apt to include than to exclude the particular factual situation, that it is permissible for a court of construction to have recourse to the repealed legislation in order to see if its meaning was clearer, and, if it was, to ascribe to the corresponding provision of the consolidation Act a meaning which would not involve an alteration in the previous law. The field H of law with which the instant case is concerned is the liability of individuals and corporations to pay tax upon their income. The sole source of this liability is statute law. The particular subject-matter of the instant case within that field is the right of the Revenue to counteract some although not all tax advantages to which the taxpayer would otherwise be entitled under more general provisions of the Act. As has been pointed out the sole source of this particular liability I at the relevant time is Chapter I of Part XVII of the consolidation Act of 1970.

The rules of construction applicable to consolidation Acts required the Court of Appeal first to direct their attention to the actual words appearing in that Chapter to the exclusion of any previous statutory provision which the Act of 1970 repealed and Chapter I of Part XVII replaced; and in particular

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to focus their attention upon the actual words of s. 460(1) and (2). The relevant words have already been set out in the speech of my noble and learned friend Lord Wilberforce. When read together, they contain the general description of the factual situation which gives rise to a liability on the part of the taxpayer to the kind of counteraction by the Revenue that is described in subss. (3) to (9). The language of subss. (1) and (2) in my view makes it clear beyond a peradventure that the draftsman of the section was using the expression "transaction in securities" in a sense which, whatever else it may have included, did not include "the liquidation of a company"—a term of legal art which connotes the series of operations which, in the absence of any agreement to the contrary by all interested parties, must follow the course prescribed by the Companies Acts 1948 to 1967, commencing, in the case of a voluntary liquidation, with the winding-up resolution and ending with the dissolution of the company after all its assets have been realised and distributed.

It is true that s. 460(2) which draws a distinction between a "transaction in securities" and "the liquidation of a company" is a "deeming" provision; and had it said that the liquidation of a company was to be deemed to be a transaction in securities, this of itself would not necessarily warrant the conclusion that the expression "transaction in securities" was not being used in a sense which would have been wide enough to cover the liquidation of a company even apart from the deeming provision: see *St. Aubyn* v. *Attorney-General* [1952] A.C. 15, *per* Lord Radcliffe, at page 53. What does make the actual language of s. 460(2) conclusive of this as a matter of semantics is the contrast which it draws between the combined effect of "two or more such transactions" (sc. "transactions in securities") on the one hand and the combined effect of a transaction or transactions in securities *and* the liquidation of a company on the other. *Ex hypothesi* the expression "transaction in securities" cannot have been used by the draftsman of the Statute in a sense which included the liquidation of a company, since it would then itself have been one of the two or more "transactions in securities" from which the draftsman has been at pains to distinguish it in the actual words he used.

This conclusion remains unaffected by the presence in Chapter I of Part XVII of the Act of a special interpretation clause, s. 467(1), in which the draftsman has given an explanation of what is to be understood by the expression "transaction in securities" where it appears in that Chapter. An interpretation clause in a statute may serve two different purposes. If it states at greater length what an expression used in other provisions in the statute "means" it is no more than a drafting device to promote economy of language. It is a direction to the reader: "Wherever you see this shorter expression in the statute you must treat it as being shorthand for the longer one." Alternatively an interpretation clause may be used by the draftsman not to define the meaning of an expression appearing in the statute but to extend it beyond the ordinary meaning which it would otherwise bear. An indication that this *may* be its purpose is given if it purports to state what the expression "includes" instead of what it "means"; but the substitution of the one verb for the other is not conclusive of its being a direction to the reader: "Wherever you see this shorter expression in the statute you may treat it as bearing either its ordinary meaning or this other meaning which it would not ordinarily bear." Where the words used in the shorter expression are in themselves too imprecise to give a clear indication of what is included in it, an explanation of their meaning which is introduced by the verb "includes" may be intended to do no more than state at greater length and with more precision what the shorter expression means.

A In the instant case the explanation in s. 467(1) of the expression "transaction in securities", though introduced by the verb "includes", speaks of "transactions, of whatever description, relating to securities" as well as referring to particular examples of such transactions. This is so extensive as to leave no possibility of there being any transaction which could sensibly be described as a "transaction in securities" without also falling within the longer description in B the interpretation clause. So it is no more than a direction to the reader: "Whenever you see the words 'transaction in securities' in this Chapter of the Statute you must treat them as being shorthand for the whole of the words in s. 467(1) that are preceded by the verb 'includes'." To make this substitution can have no effect upon the validity of the reasoning based upon the language of s. 460(1) and (2). That language makes it clear that whatever else "transac- C tions relating to securities" may mean, it does not in the context of that section mean the liquidation of a company.

My Lords, the application of the primary rule of construction appropriate to a consolidation Act ought to have led the Court of Appeal to this conclusion as to the meaning of s. 460(1) and (2). They found themselves able to reach a contrary conclusion by following a chain of reasoning which neither started D with, nor at any subsequent stage proceeded to, an examination of the actual language of s. 460(1) and (2) read in conjunction with one another. They started by examining the language of the interpretation clause, s. 467(1). They rightly held that this was very wide and in support of this they cited two decisions of your Lordships' House, viz. *Commissioners of Inland Revenue* v. *Parker*(1) [1966] A.C. 141 and *Greenberg* v. *Commissioners of Inland Revenue*(2) [1972] E A.C. 109. Neither of these cases was concerned with the liquidation of a company. Both of them related to a period when the law concerning counteracting tax advantages was contained in statutes that have been repealed by the consolidation Act of 1970. At that period what are now ss. 460(1) and 467(1) of the consolidation Act appeared in ss. 28(1) and 43(4) of the Finance Act 1960; while what is now s. 460(2) of the consolidation Act appeared in s. 25(5) F of the Finance Act 1962, a later statute. In neither case was reference made to s. 25(5) of the Finance Act 1962 in any of the speeches in this House. Any light that this subsection of the later Act could throw upon the application of the earlier Act to any operation other than the liquidation of a company would have been too diffuse to be of any assistance in deciding the issues that arose in those two cases.

G Their examination of the interpretation clause in the light of the two decisions of this House led the Court of Appeal to the conclusion that the expression "transaction in securities" was wide enough to include the liquidation of a company. Having reached this conclusion and having found in s. 460(1) ifself nothing to indicate the contrary, they treated any effect that s. 460(2) might have had upon the meaning of "transaction in securities" in s. 460(1) as H depending solely upon what they described as a "historical argument" as to what the effect of the enactment of s. 25(5) of the Finance Act 1962 would have had upon the meaning of s. 28(1) of the Finance Act 1960. This led them to decide that since the Finance Act 1962 was a later Statute it would not have been permissible to have any recourse to it as an aid to the construction of s. 28(1) of the Finance Act 1960 unless the Court thought that before the enactment of I the Finance Act 1962, s. 28(1) had been ambiguous. For this proposition they cited the authority of this House in *Kirkness* v. *John Hudson & Co. Ltd.*(3) [1955]

(1) 43 T.C. 396. (2) 47 T.C. 240. (3) 36 T.C. 28.

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A.C. 696—a case on which I propose to comment later. Since they did not consider that s. 28(1) of the Finance Act 1960 had been ambiguous they treated this as precluding them from even looking at s. 460(2) of the consolidation Act as an aid to the construction of s. 460(1). They thus ignored the primary rule of construction applicable to consolidation Acts by perpetuating the very mischief that a consolidation Act is designed to cure. This was the main ground on which the Court of Appeal justified their conclusion that the liquidation of a company was of itself a "transaction in securities". It was supported by two subsidiary considerations to which only a brief reference is needed. The first was that s. 460(2) is a "deeming" provision. I have already pointed out that the light that the subsection sheds on the meaning of s. 460(1) is not affected by whether it is a deeming provision or not. The second was the inclusion in s. 25(7) of the Finance Act 1962 of an express provision that nothing in s. 25(5) should be taken to prejudice the operation of s. 28 of the Finance Act 1960 in respect of any transaction carried out before 10th April 1962. The only inference to be drawn from the inclusion of this provision is that the draftsman thought that s. 25(5) of the Finance Act 1962 did result in an amendment in the law as declared by s. 28(1) of the Finance Act 1960, and was at pains to ensure that this amendment was not given retrospective effect. This inference was adverse to the conclusion that the Court of Appeal had reached that the expression "transaction in securities" in s. 28(1) already included the liquidation of a company.

My Lords, the very nature and purpose of enacted law give rise to an inference or presumption that unless the language of a statute clearly indicates the contrary any changes that it makes in the law as it existed previously were not intended to have retrospective effect upon transactions that were carried out before the new law came into effect. The growing practice of back-dating the effect of statutes to the date of the first minatory announcement by the executive government of its intention to promote legislation to change the law does not weaken the presumption against retroactivity where there is no express provision in a statute to that effect. Rather it serves to confirm that the reason for the presumption is that, in a civilised society which acknowledges the rule of law, individual members of that society are entitled to know when they embark upon a course of conduct what the legal consequences of their doing so will be so that they may regulate their conduct accordingly. But where the language of a statute that is already in force is ambiguous (in the sense explained above) as to whether or not the contemplated conduct falls within its terms, it fails to provide the means of knowing what the legal consequences of the conduct will be. All that it does provide is material for guessing which way the ambiguity will be resolved at some future date by a court of justice—ultimately by your Lordships' House.

Where there are ambiguities in the existing statute law it is a legitimate purpose of legislative action by Parliament to clarify the law by indicating in which of the two alternative meanings the ambiguous language of the earlier statute is to be understood. Where it does so this will have retrospective effect upon transactions undertaken before the clarifying statute by persons whose guess as to the meaning of the earlier statute differed from the meaning subsequently attributed to it by Parliament; but this is only to forestall the inevitable retrospective effect of a decision of a court of justice resolving the ambiguity one way or the other and to reduce the period of uncertainty during which persons embarking upon a course of conduct have not the means of knowing what the legal consequences of their doing so will be. So the presumption against ascribing to the language of a statute a meaning which would have

A retrospective effect upon transactions undertaken before it came into force does not apply to a statute whose only purpose is to clarify previously existing statute law. Such is the only purpose of a consolidation Act which generally, as in the instant case, contains express transitional provisions applying it retrospectively to transactions undertaken before it came into force. It is only where the language of the consolidation Act itself is ambiguous (i.e., has failed to achieve B its purpose of clarifying the law) that it is legitimate to have recourse to the repealed enactments to see if their meaning is clearer, and, if it is, to resolve the ambiguity in the consolidation Act by ascribing to its language whichever of the alternative meanings would not effect a change in the previously existing law. What cannot ever be legitimate is to have recourse to the repealed enactments to make obscure and ambiguous that which is clear in the con- C solidation Act.

I find nothing in *Kirkness* v. *John Hudson & Co. Ltd.*(1) (*ubi sup.*) which conflicts with this. This House was there concerned with an entirely different question of statutory construction. The Statute which regulated the legal rights and obligations of the parties that were in issue in the case was the Income Tax Act 1945. Four of their Lordships held the language of this Statute to be D clear and unambiguous as to the matter in dispute. It had been argued that from the language used in two provisions contained in subsequent Finance Acts of which the primary purpose was to change the existing statute law upon matters other than that which was the subject of dispute in the *Kirkness* case, it could be inferred that the draftsmen of the subsequent Finance Acts believed that the language of the provision of the Income Tax Act 1945 that was applic- E able to the *Kirkness* case bore a meaning different from that which their Lordships, by a majority, considered to be clear and free from ambiguity. What this House decided was that the existence of such a belief, whether on the part of the draftsman or of the parliament which adopted his wording, did not justify the further inference that either of the subsequent Finance Acts had as its secondary purpose to effect a retrospective change in the particular provision F of the existing statute law with respect to which the belief was held, so as to make it accord with the belief even though the belief should prove to be unfounded. Had the language of the particular provision of the existing Statute been ambiguous the different considerations that I have already indicated would apply and it might have been legitimate to infer that a secondary purpose of the subsequent Finance Acts was to remove doubts as to what the law had G always been. The speech of Viscount Simonds in the *Kirkness* case emphasises the duty of the court to consider first the actual language of the provisions of the statute relied upon as giving rise to those legal rights or obligations that form the subject-matter of dispute; and it contains a vigorous warning against too great a readiness to detect in that language ambiguities which would justify recourse to other statutes to clarify its meaning. I would only venture to H suggest that, while a Judge should not treat a conflict of judicial opinion as to the meaning of a statutory provision as showing that it is ambiguous if, to his way of thinking, it is clear, nevertheless a sense of modesty and respect for the ability of his fellow Judges who think otherwise may make him hesitate before deciding that the words are not equally capable of bearing the meaning which they prefer and he does not.

I For the reasons given by Goulding J., however, I would dismiss this appeal.

Lord Kilbrandon—My Lords, in my opinion the conclusion arrived at by Goulding J. was right. I would therefore dismiss this appeal.

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(1) 36 T.C. 28.

Lord Edmund-Davies—My Lords, having had the advantage of reading in draft the speeches prepared by my noble and learned friends, Lord Wilberforce and Viscount Dilhorne, for the reasons they gave I would uphold the judgment of Goulding J. and would accordingly dismiss this appeal. A

Questions put:

That the Order appealed from be reversed.

The Not Contents have it. B

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

The Contents have it.

[Solicitors:—Solicitor of Inland Revenue; Underwood & Co.]