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CITATION

These reports are cited thus:

[1979] 1 All ER

REFERENCES

These reports contain references, which follow after the headnotes, to the following major works of legal reference described in the manner indicated below.

Halsbury's Laws of England

The reference 35 Halsbury's Laws (3rd Edn) 366, para 524, refers to paragraph 524 on page 366 of volume 35 of the third edition, and the reference 26 Halsbury's Laws (4th Edn) para 577 refers to paragraph 577 on page 296 of volume 26 of the fourth edition of Halsbury's Laws of England.

Halsbury's Statutes of England

The reference 5 Halsbury's Statutes (3rd Edn) 302 refers to page 302 of volume 5 of the third edition of Halsbury's Statutes of England.

English and Empire Digest

References are to the replacement volumes (including reissue volumes) of the Digest, and to the continuation volumes of the replacement volumes.

The reference 44 Digest (Repl) 144, *1240*, refers to case number 1240 on page 144 of Digest Replacement Volume 44.

The reference Digest (Cont Vol D) 571, *678b*, refers to case number 678b on page 571 of Digest Continuation Volume D.

The reference 28(1) Digest (Reissue) 167, *507*, refers to case number 507 on page 167 of Digest Replacement Volume 28(1) Reissue.

Halsbury's Statutory Instruments

The reference 12 Halsbury's Statutory Instruments (Third Reissue) 125 refers to page 125 of the third reissue of volume 12 of Halsbury's Statutory Instruments; references to subsequent reissues are similar.

CORRIGENDUM

[1978] 2 All ER

p 904. **Re H (a minor) (wardship: jurisdiction).** Line *c*2: delete the line commencing 'to have the writ set aside . . .'

Cases reported in volume 1

R v National Insurance Commissioner, ex parte Stratton

QUEEN'S BENCH DIVISION
LORD WIDGERY CJ, MELFORD STEVENSON AND CANTLEY JJ
13th MARCH, 21st APRIL 1978

National insurance – Unemployment benefit – Disqualification for benefit – Payment in lieu of remuneration which would have been received – Royal Air Force officer made redundant – Officer receiving capital sum on redundancy under special government scheme – Capital sum assessed on loss of prospects, loss of higher pension etc and including unspecified element for loss of remuneration – Whether capital sum a 'payment . . . in lieu . . . of the remuneration which he would have received' – Whether officer entitled to unemployment benefit – Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975 (SI 1975 No 564), reg 7(1)(d).

The applicant, an officer with a permanent commission in the Royal Air Force, was made redundant. He was not entitled to compensation under the Redundancy Payments Act 1965 since that Act did not apply to members of the armed services but instead he received a tax-free capital sum under a government scheme for members of the armed services who were made redundant. The capital sum was assessed by taking into account the applicant's period of service, the period he could have expected to serve, his loss of prospects, his loss of a higher rate of pension from longer service and the difficulties he might encounter in starting a civilian career. After leaving the air force the applicant was unemployed and applied for unemployment benefit. The Chief National Insurance Commissioner held that he was not entitled to unemployment benefit because the capital payment he had received was 'a payment . . . in lieu . . . of the remuneration which he would have received', within reg 7(1)(*d*)[a] of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975, which therefore disqualified him from entitlement to unemployment benefit for a period of up to one year after the termination of his employment. The applicant applied for an order of certiorari to quash the commissioner's decision.

Held – Although compensation for curtailment of a service career contained an element of payment in lieu of possible loss of remuneration, the extent to which it did so was speculative and unascertainable, and on the true construction of reg 7(1)(*d*) of the 1975 regulations the inclusion of an unspecified element of lost remuneration was irrelevant in deciding whether a capital payment received by a redundant employee was a payment in lieu of remuneration. The officer was therefore entitled to unemployment benefit and an order of certiorari would issue to quash the commissioner's decision (see p 4 *b c e f* and *h* to p 5 *b*, post).

Notes

For unemployment and sickness benefit, see Supplement to 27 Halsbury's Laws (3rd Edn) 726–733, paras 1320–1326.

For the Social Security Act 1975, s 14, see 45 Halsbury's Statutes (3rd Edn) 1092.

Motion for certiorari

Derrick Ross Stratton ('the applicant') applied for an order of certiorari to remove into the

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a Regulation 7(1), so far as material, is set out at p. 2 *f*, post

High Court and quash a decision of the Chief National Insurance Commissioner made on 3rd November 1977 that the applicant was not entitled to unemployment benefit following his compulsory early retirement from his employment as an officer in the Royal Air Force, because of his receipt of a special capital payment on termination of his service. The facts are set out in the judgment of Cantley J.

Harry Woolf and *Ian Glick* for the applicant.
David Latham for the commissioner.

Cur adv vult

21st April. The following judgments were read.

CANTLEY J (delivering the first judgment at the invitation of Lord Widgery CJ). Counsel moves on behalf of Derek Ross Stratton ('the applicant') for an order of certiorari to quash a decision of the Chief National Insurance Commissioner dated 3rd November 1977. The applicant was a squadron leader with a permanent commission in the Royal Air Force and he received what is called a special capital payment on termination of his employment by reason of compulsory redundancy in 1975. The commissioner held that by reason of the terms of reg 7(1)(*d*) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975[1] ('the Social Security Regulations') this payment disqualified the applicant from entitlement to unemployment benefit for a period of one year from the date when his employment with the Royal Air Force was terminated.

On becoming unemployed the applicant was subject to the provisions of the Social Security Regulations, entitled by virtue of s 14 of the Social Security Act 1975 to receive unemployment benefit for every day of unemployment except the first three.

Regulation 7(1)(*d*) of the Social Security Regulations provides as follows:

> '. . . a day shall not be treated as a day of unemployment if it is a day in respect of which a person receives a payment (whether or not a payment made in pursuance of a legally enforceable obligation) in lieu either of notice or of the remuneration which he would have received for that day had his employment not been terminated, so however that this sub-paragraph shall not apply to any day which does not fall within the period of one year from the date on which the employment of that person terminated.'

As a member of the armed forces the applicant had no legal right to notice or to payment in lieu of notice. As a matter of grace and in accordance with an understandably considerate policy of giving as much help as possible towards establishing displaced officers in civilian life the applicant was given a long advance notice or warning of the date when he would have to leave the service. It is conceded that his special capital payment was not a payment in lieu of notice. The only question which arises in the present proceedings is whether his subsequent period of unemployment was a period in respect of which he received a payment in lieu of the remuneration which he would have received for that period had his employment not been terminated.

On leaving the service the applicant was not entitled to a payment under the Redundancy Payments Act 1965. If he had been the present question would not have arisen because it has been for some time accepted that these statutory redundancy payments are not within reg 7(1)(*d*) of the Social Security Regulations. However, the 1975 Act does not apply to members of the armed services and as redundancy is redundancy in whatever sphere of employment it arises it was necessary as a matter of justice and decency to make special provision for members of the armed services whom it was decided to make redundant in 1975. An appropriate scheme was accordingly prepared.

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1 SI 1975 No 564

The scheme was described as follows in Annex H of the Government Statement on Defence Estimates, a white paper presented to Parliament in March 1975[1]:

> '1. The compensation to be paid to United Kingdom personnel who are made redundant is described below. As in past redundancy programmes, it will take account of the curtailment of their expected Service careers (to which they are committed by binding engagements), their loss of prospects, the higher rates of pension which they might have earned had they served longer and the difficulties they may face in starting new careers in civilian life.
>
> '2. For officers serving on permanent commissions who are prematurely retired ... compensation will take the form of a tax-free lump-sum payment or Special Capital Payment, graduated according to length of service given and the length of time for which, but for redundancy, the individual could have expected still to serve before normal retirement. A Special Capital Payment equivalent to 18 months' military salary will be paid to those who at the time of redundancy would still have had more than five years to go before normal retirement, and who have already given at least 13 years' qualifying service in the case of officers ... The Special Capital Payment will be smaller for those who have less than five years still to go or have already served for more than 12 years but less than 13 ...
>
> '4. Those who have given less than twelve years' qualifying service at the time of redundancy will ... receive a Special Capital Payment graduated according to length of service and rising to 19 months' military salary for those with eleven years' qualifying service, together with any other terminal benefits to which the service they have given would normally entitle them.'

On 19th March 1975 a standing instruction was issued by command of the Ministry of Defence to give effect to the scheme and it dealt in detail with the calculation of the special capital payments for officers of the Royal Air Force. They were in three categories set out in para 4 of this instruction as follows. (i) Officers with at least 13 years' qualifying service are to receive a number of months pay graduated according to the number of uncompleted years of service to normal retiring age. The applicant was in this category and had four years and three months of uncompleted service. At the bottom of the category is the officer with one uncompleted year. He is to receive three months pay. At the top is the officer with five or more years of uncompleted service. He is to receive 18 months' pay. (ii) Officers with 12 but less than 13 years' service are to receive 15 months' pay. (iii) Officers with less than 12 years' completed service. Their payment is graduated according to the number of years of completed service. At the top is the officer with 11 years. He gets 19 months' pay. At the bottom is the officer with one year. He gets one month's pay.

What is the nature of this payment? It is not to be ascertained from the method of calculation. The amount is calculated on uncompleted years of service in the case of officers with 13 or more years of completed service. It is calculated on years of completed service in cases of officers with 12 or less years of completed service. After each calculation the result is the special capital payment intended to satisfy the purposes set out in the white paper to which I have referred. It is a composite payment to take account of four factors: (i) curtailment of an expected service career; (ii) loss of prospects; (iii) loss of higher rates of pension from longer service; and (iv) the difficulties facing a man whose career is cut short and who has to find some other employment as a late starter.

As is said in the Command Paper, Compensation for Premature Retirement from the Armed Forces[2], 'These factors are, in many cases, not susceptible of precise evaluation and the relative weighting to be given to each is a matter of judgment.'

Curtailment of a career involves far more than loss of the money which would be earned. A man does not usually join the armed services in order to become rich. If he is fortunate enough to get alternative employment his earnings in civilian life may replace or exceed his service pay but the alternative employment may not offer the features which

1 Cmnd 5976
2 Cmnd 231 (1957)

appeal to him in the service. He has lost a way of life. Moreover, curtailment of a career may involve frustration of a natural and otherwise attainable ambition or deprive a man of achievement or status which he values. If his career is cut short midway after he has established himself in his chosen profession he will be lucky indeed if time and opportunity allow him to take up some new employment which can be called a career and which will give him the same satisfaction even though it provides him with an equivalent income for the remainder of his working life.

In none of the government or service documents which have been referred to in this case is there any express reference to this payment as being made in lieu of remuneration which would have been received in the service had the employment not been terminated. I accept that, at least by implication, loss or possible loss of such remuneration is an element taken into account, but it is quite impossible to quantify it. The loss may not even occur. An officer who was going to be made redundant was given long notice of the date and was also offered advice and training to help him in resettlement in civilian life. It was at least within the contemplation of the parties that the officer might secure alternative employment and suffer no loss of remuneration and no unemployment. In such a case it is quite clear from what is stated in the documents that he would still be entitled to retain the whole of his special capital payment unless he was re-engaged in the armed services or employed in the civil or foreign service.

In the case of the man who receives 12 months' pay and is unemployed for a year after redundancy it cannot be right to treat each month's pay which is included in the computation of the payment as a payment in lieu of the remuneration he would have received during that month had his employment not been terminated. That would result in his receiving nothing at all for the other factors in respect of which he has been promised he will be compensated. The payment is a composite payment and in so far as it contains an element of payment in lieu of remuneration the extent of that element is speculative and unascertainable.

The commissioner has held that compensation for curtailment of the expected service career contains an element of payment in lieu of remuneration. I would not dissent from that although as I have said its extent is speculative and unascertainable. He goes on to say, citing a previous decision of the commissioners, that the presence of such an element in a payment which is composite and made for a variety of considerations suffices to bring the regulations into play. I would respectfully dissent from that, at least as a principle of general application covering the present case. He goes on logically to hold that this element in the special capital payment is intended to compensate for and to be referable to remuneration which would have been earned for all the days in the period following termination or curtailment up to the date when the career would have ended in normal retirement.

If this construction of the effect of reg 7(1)(*d*) is correct the effect in the case of the man who gets three months, or one month's pay and is then unemployed for 12 months would not only be grotesque, it would be shameful. It is quite impossible to suppose that the authorities who devised this scheme could have stooped to such a trick. I am not at all surprised that the view I have formed on the construction of the regulation leaves their honour unsullied even by suspicion.

In my view the conception of an unspecified element of remuneration is irrelevant to the proper construction of reg 7(1)(*d*). The regulation speaks not of elements but of 'a payment in lieu of [which I translate as "in the place of"] the remuneration he would have received'. It is common enough in life and was well known before the Redundancy Payments Act 1965 for an employee whose employment is prematurely determined to receive from his employer a payment in lieu of the remuneration he would have received for some specified period, whether measured in days or weeks and whether paid under legal or moral obligation or out of compassion. There is in my view no need and certainly no legal compulsion to construe the phrase in reg 7(1)(*d*) as if it said 'receives an element of payment in lieu of the remuneration he would have received', particularly when the element is indefinite and unascertainable and will in some cases be insignificant.

I would grant the order which is asked for.

MELFORD STEVENSON J. I agree.

LORD WIDGERY CJ. I agree also.

Order of certiorari granted.

Solicitors: *Treasury Solicitor*; *Solicitor, Department of Health and Social Security.*

Lea Josse Barrister.

Cheryl Investments Ltd v Saldanha
Royal Life Saving Society v Page

COURT OF APPEAL, CIVIL DIVISION

LORD DENNING MR, GEOFFREY LANE AND EVELEIGH LJJ

2nd, 3rd, 4th, 24th MAY 1978

Landlord and tenant – Business premises – Occupation of residential tenancy for business purposes – Test of occupation for business purposes – Business activity on premises required to be a significant purpose of the occupation – Occupation where business activity is merely incidental to the residential occupation contrasted with occupation where substantial volume of tenant's business carried on from residential flat – Landlord and Tenant Act 1954, s 23(1).

In the first case, the landlords, in December 1975, let to the tenant a residential flat consisting of a bed-sittingroom, bathroom and toilet and an entrance hall with a cooker in it. The tenant was a partner in a business which did not have trade premises and which the partners carried on from their respective homes. The tenant installed a telephone in the flat, and placed office equipment consisting of a table, a typewriter, files and a lot of paper in the entrance hall. Notepaper headed with the name of the business gave as the telephone number of the business that of the flat. The tenant issued business statements on the notepaper from the flat and had frequent visitors to the flat carrying brief cases. There was evidence that a considerable volume of trade was carried on from the flat. In February 1977 the landlords gave the tenant notice to quit but the tenant claimed the protection of the Rent Acts. The landlords brought proceedings for possession in the county court claiming, inter alia, that the tenancy was not a regulated tenancy under the Rent Acts but was a business tenancy since the tenant occupied the flat 'for the purposes of a business carried on by him', within s 23(1)[a] of the Landlord and Tenant Act 1954. The judge declined to make a declaration to that effect and the landlords appealed.

In the second case, the residue of a lease of a maisonette constructed as a separate dwelling was assigned to the tenant in 1963. The tenant was a medical practitioner who had his consulting rooms nearby and who took the lease in order to live in the maisonette as his home. However, he wished to see patients at the maisonette occasionally and obtained the landlords' consent to do so. He occupied the maisonette as his home, but entered the address of both his consulting rooms and the maisonette in the Medical Directory and printed the telephone numbers for both addresses on the separate notepaper

a Section 23(1) provides: 'Subject to the provisions of this Act, this Part of this Act applies to any tenancy where the property comprised in the tenancy is or includes premises which are occupied by the tenant and are so occupied for the purposes of a business carried on by him or for those and other purposes.'

he had for each address. In fact the only professional use he made of the maisonette was to see a patient there once or twice a year in an emergency. In 1976 the landlords gave him notice to quit the maisonette under Part II of the 1954 Act. The tenant did not comply with the notice, and the landlords brought proceedings in the county court for possession. The tenant contended that the maisonette was his residence and that he was entitled to the protection of the Rent Acts. The landlords contended that the tenancy was a business tenancy. The judge dismissed the claim for possession holding that the tenancy was not a business tenancy, within s 23(1) of the 1954 Act. The landlords appealed.

Held – (i) Premises were occupied by a tenant 'for the purposes of a business carried on by him', within s 23(1) of the 1954 Act, only where the business activity on the premises was a significant purpose of the occupation of the premises or part of the reason for the occupation. Where, therefore, the business activity was merely incidental to residential occupation of the premises, and did not amount to a significant use of them, the premises were not occupied 'for the purposes of a business' (see p 9 *f g*, p 11 *h*, p 13 *g* to *j* and p 15 *j* to p 16 *a*, post); dictum of Lord Morris of Borth-y-Gest in *Sweet v Parsley* [1969] 1 All ER at 355 applied.

(ii) In the first case, therefore, although the tenant was occupying the flat as his dwelling as well as for the purposes of his business, the occupation for the purposes of his business was, in all the circumstances, a significant purpose of the occupation and could not be dismissed as de minimis. It followed that at the expiry of the notice to quit the tenant was occupying the flat 'for the purposes of a business carried on by him', within s 23(1). The landlords were therefore entitled to the declaration claimed and the appeal would be allowed (see p 11 *f* to *h*, p 12 *d* to *f* and p 15 *b* to *d* and *h j*).

(iii) In the second case, however, there was only one significant purpose for which the tenant occupied the maisonette, namely for residential purposes, because his mere intention at the commencement of the tenancy to use the maisonette occasionally for professional purposes, and the obtaining of consent to do so, did not alter the residential character of the occupation, and his subsequent user of the maisonette for professional purposes was not, in the circumstances, a significant user but was merely incidental to his residential occupation. Accordingly, his tenancy was not a business tenancy, within s 23(1) of the 1954 Act, but was a regulated tenancy protected by the Rent Acts. It followed that the appeal in the second case would be dismissed (see p 10 *f g*, p 15 *f* to *h* and p 16 *a*, post).

Per Geoffrey Lane LJ. To come within s 23(1) the business occupation must exist both at the time the contractual tenancy comes to an end and at the date of service of the notice of termination under s 25 of the 1954 Act (see p 13 *c d*, post).

Notes

For tenancies to which the Landlord and Tenant Act 1954, Part II, applies, see 23 Halsbury's Laws (3rd Edn) 885, para 1707, and for cases on the subject, see 31(2) Digest (Reissue) 940–943, *7708–7716*.

For the Landlord and Tenant Act 1954, s 23, see 18 Halsbury's Statutes (3rd Edn) 555.

Cases referred to in judgments

Appah v Parncliffe Investments Ltd [1964] 1 All ER 838, [1964] 1 WLR 1064, CA, 31(1) Digest (Reissue) 226, *1841*.

Palser v Grinling, Property Holding Co Ltd v Mischeff [1948] 1 All ER 1, [1948] AC 291, [1948] LJR 600, HL, 31(2) Digest (Reissue) 1017, *8072*.

Sweet v Parsley [1969] 1 All ER 347, [1970] AC 132, [1969] 2 WLR 470, 133 JP 188, 53 Cr App R 221, HL, Digest (Cont Vol C) 671, *243bda*.

Vickery v Martin [1944] 2 All ER 167, [1944] KB 679, 113 LJKB 552, 171 LT 89, CA, 31(2) Digest (Reissue) 1014, *8053*.

Wolfe v Hogan [1949] 1 All ER 570, [1949] 2 KB 194, CA, 31(2) Digest (Reissue) 1002, *7988*.

Cases also cited

Abernethie v AM & J Kleiman Ltd [1969] 2 All ER 790, [1970] 1 QB 10, CA.
Bagettes Ltd v GP Estates Co Ltd [1956] 1 All ER 729, [1956] Ch 290, CA.
Caplan (I & H) Ltd v Caplan (No 2) [1963] 2 All ER 930, [1963] 1 WLR 1247.
Horford Investments Ltd v Lambert [1974] 1 All ER 131, [1973] 3 WLR 872, CA.
Lewis v MTC (Cars) Ltd [1975] 1 All ER 874, [1975] 1 WLR 457, CA.
Lewis v Weldcrest Ltd [1978] 3 All ER 1226, [1978] 1 WLR 1107, CA.
Teasdale v Walker [1958] 3 All ER 307, [1958] 1 WLR 1076, CA.
Town Investments Ltd v Department of the Environment [1977] 1 All ER 813, [1978] AC 359, HL; *rvsg* [1976] 3 All ER 479, [1976] 1 WLR 1126, CA.
Turner & Bell (trading as Avro Luxury Coaches) v Searles (Stanford-le-Hope) Ltd (1977) 33 P & CR 208.

Appeals

Cheryl Investments Ltd v Saldanha

By amended particulars of claim the plaintiffs, Cheryl Investments Ltd, the owners of premises comprising flat 6, Essex House, 47 Beaufort Gardens, London SW3, pleaded, inter alia, that the defendant, Roland Saldanha, at all material times occupied the premises partly for the purposes of a business carried on by him, within Part II of the Landlord and Tenant Act 1954, and that by reason thereof his tenancy of the premises was subject to the 1954 Act, and sought a declaration that the tenancy was so subject. On 10th October 1977 Mr S A Goldstein, sitting as a deputy circuit judge at West London County Court, inter alia, dismissed the claim for the declaration. Cheryl Investments Ltd appealed on the ground that the judge misdirected himself and was wrong in law in holding that the tenancy was not subject to Part II of the 1954 Act in that the defendant occupied the premises partly for the purposes of a business carried on by him, within s 23 of the 1954 Act, and conducted from the premises, on his own admission, not less than 30 per cent of that business. The facts are set out in the judgment of Lord Denning MR.

Royal Life Saving Society v Page

By particulars of claim dated 6th October 1977 the plaintiffs, The Royal Life Saving Society ('the society'), the leasehold owners of premises known as the Maisonette, situated on the third and fourth floors at 14 Devonshire Street, London, pleaded that the defendant, Dr Ernest Donald Page, was the tenant of the premises under an assignment dated 30th July 1963 of the residue of an underlease granted in 1960, that his tenancy had been determined by a notice to quit dated 30th April 1976 served on him by the society, that he was not entitled to the benefit of the Rent Acts because the premises were governed by Part II of the Landlord and Tenant Act 1954, but that he had failed to apply to the court for the grant of a new tenancy. Accordingly the society claimed possession of the premises, £600 arrears of rent and mesne profits. On 5th December 1977, his Honour Judge Clapham, sitting at Bloomsbury and St Marylebone County Court, dismissed the society's claim for possession. The society appealed. The grounds of the appeal were (1) that the judge misdirected himself in assuming that the frequency of occasions when Dr Page saw clients in consultation on the premises decided the purposes for which the premises were occupied, (2) that the judge made an erroneous inference from the fact that the society offered to make a joint application with Dr Page to the rent officer and (3) that the judge misdirected himself in holding that Dr Page had not represented that he practised at the premises. The facts are set out in the judgment of Lord Denning MR.

John Stuart Colyer QC and *P de la Piquerie* for Cheryl Investments Ltd
Andrew Walker for Mr Saldanha
John Stuart Colyer QC and *David Parry* for the society
Charles Falconer for Dr Page

Cur adv vult

24th May. The following judgments were read.

LORD DENNING MR. Here we have a topsy-turvy situation. Two landlords contend that their tenants are 'business tenants' and entitled to have their tenancies continued under the statute in that behalf, whereas the tenants contend that they are not so entitled at all. The reason for this oddity is because, if the tenants are not 'business tenants', their tenancies are 'regulated tenancies' and they are protected by the Rent Acts. The protection under the Rent Acts is much better for the tenants than the protection under the business statute. So the landlords seek to chase them out of the Rent Acts and put them into the 'Business Acts'.

The statutes on this subject cannot properly be understood except in the light of their history. I will, therefore, sketch it in broad outline, taking by way of illustration a situation which used to be very common. It is where a shopkeeper lives over the shop, or a doctor has his consulting room in his house. For over 35 years from 1920 onwards such a person was protected by the Rent Acts, not only in respect of the amount of rent, but also from eviction. The Acts distinctly declared that the application of them 'to any house or part of a house shall not be excluded by reason only that part of the premises is used as a shop or office or for business, trade or professional purposes': see s 12(2) proviso (ii) of the 1920 Act[1]. This protection was carried so far that when a lady ran a guest house as a business and had her own bedroom and sitting-room there, entirely ancillary to the business, she was protected by the Rent Acts: see *Vickery v Martin*[2].

This protection was continued until 1957. There was no break in 1954; for, although the Landlord and Tenant Act 1954, Part II (which I will call 'the Business Tenancy Act') gave rights to tenants of business premises, it did not apply to tenancies which were protected by the Rent Acts: see s 43(1)(*c*) of the 1954 Act.

But in 1957 there was a fundamental change. By the Rent Act 1957 most houses were decontrolled. Thenceforward the shopkeeper who lived over the shop, and the doctor who had his consulting room in his house, were no longer protected by the Rent Acts. They were only protected by the Business Tenancy Act: see the Rent Act 1957, s 11(7), Sch 4, para 11.

In 1965 there was another fundamental change. By the Rent Act 1965 Parliament restored protection for the tenants of dwelling-houses who lived at home away from the business. But this time Parliament did not give this protection to the shopkeeper or the doctor who lived over the shop or the consulting room. Parliament left them to the protection of the Business Tenancy Act. From 1965 onwards Parliament divided tenancies into two separate and distinct categories: 'regulated tenancies' and 'business tenancies'. Every tenancy had to be placed into one category or the other. 'Regulated tenancies' were dwelling-houses protected by the Rent Acts. 'Business tenancies' were premises protected by the Business Tenancy Act. This dichotomy was made by s 1(3) and (6) and Sch 1, paras 1(1) and 3, of the Rent Act 1965, and has been continued by the Rent Acts 1968 and 1977: see s 9(5) of the 1968 Act and s 24(3) of the 1977 Act.

The result is this. If a house is let as a separate dwelling (without being occupied in whole or in part for business purposes) it is a 'regulated tenancy'. But, if it is occupied by the tenant 'for the purposes of a business carried on by him or for those and other purposes' it is a 'business tenancy': see s 23(1) of the Business Tenancy Act. It cannot be both.

It is of the first importance now to be able to place a tenancy into the correct category, because the two categories are very different animals.

Regulated tenancy

When a tenancy is a 'regulated tenancy' the tenant is protected by the Rent Acts. So long

1 Increase of Rent and Mortgage Interest (Restrictions) Act 1920

2 [1944] 2 All ER 167, [1944] KB 679