

THE SPECIAL COMMISSIONERS

PHILIP JOHN UNDERWOOD

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE AND CUSTOMS**

Respondents

**SPECIAL COMMISSIONERS: THEODORE WALLACE
DR A N BRICE**

Sitting in London on 4 and 5 April 2007

Patrick C Soares and **Hui Ling McCarthy**, Counsel, instructed by **Scrutton Bland**, Chartered Accountants, for the Appellant

Christopher Tidmarsh QC, instructed by **the Solicitor for HM Revenue and Customs**, for the Respondents

DECISION

The appeal

1. Mr Philip John Underwood appeals against two estimated assessments to capital gains tax. The first assessment was for the year ending on 5 April 1993 and assessed tax of £1,680 on chargeable gains of £10,000. The second assessment was for the year ending on 5 April 1995 and assessed tax of £237,680 on chargeable gains of £600,000. The assessments were made because the Revenue were of the view that there had been no disposal of certain land by the Appellant on 2 April 1993 from which it followed that the Appellant had not realised a loss on that date.
2. We were asked to give a decision in principle leaving the amount of the assessments to be settled later.

The legislation

3. The relevant part of section 28 of the Taxation of Chargeable Gains Act 1992 (the 1992 Act) provides:

“28 Time of disposal and acquisition where asset disposed of under contract

(1) ...where an asset is disposed of and acquired under a contract the time at which the disposal and acquisition is made is the time the contract is made (and not, if different, the time at which the asset is conveyed or transferred).”

The issue

4. On 10 July 1990 the Appellant purchased land in Thetford, Norfolk, for £1.4M. On 2 April 1993 the Appellant contracted to sell the property to Paul Rackham Limited (“Rackham Ltd”) for £400,000. On the same day Rackham Ltd gave the Appellant an option to re-purchase the property for the sum of £400,000 together with 10% of the difference between £400,000 and the value of the property at the date of the exercise of the option. On 29 November 1994 Rackham Ltd contracted to sell the property to the Appellant for the sum of £420,000 and this was treated as the exercise by the Appellant of his option to re-purchase. On the same day (29 November 1994) the Appellant contracted to sell the property to Brickfields Estates Limited (“Brickfields”) a company connected with, and under the control of, the Appellant. The only transfer executed by the Appellant was a transfer to Brickfields on 30 November 1994.
5. The Appellant argued that there had been a disposal of the property by the Appellant to Rackham Ltd on 29 November 1994 and that, as a result of section 28(1), the disposal for the purposes of capital gains tax was treated as made on 2 April 1993, being the date of the contract. The Appellant accordingly sought to set off the loss made on the disposal against substantial capital gains made in the tax year ending on 5 April 1993. The Revenue argued that there had been no disposal in the tax year ending on 5 April 1993 because section 28(1) of the 1992 Act only applied if an asset was disposed of and acquired under a contract and that would only occur if the vendor disposed of

the asset and the purchaser became beneficially entitled to it under the contract and neither of those events had occurred. The Revenue argued that the Appellant had disposed of the property to Brickfields on 30 November 1994, under the contract dated 29 November 1994, but, because that transfer was to a company connected with the Appellant, the right of the Appellant to set off the loss made on such disposal was restricted.

6. We had to decide whether the property had been disposed of and acquired under the contract of 2 April 1993 between the Appellant and Rackham Ltd with the result that the date of the disposal was 2 April 1993.

The evidence

7. Two bundles of documents were produced at the hearing. These included an agreed chronology and an agreed statement of facts. Witness statements by the Appellant, by Paul Rackham and by David William Cunningham, containing evidence on behalf of the Appellant, were not objected to by the Revenue and so were read at the hearing as evidence of the facts stated in them.

The facts

8. From the material before us we find the following facts.

1990 – the Appellant acquires the property

9. The property consists of land fronting Howlett Way and Brickfields Way, Thetford, Norfolk upon which was built a warehouse and office accommodation. The land extends to about one and a half acres. In 1993 the title to the property was unregistered but by 29 November 1994 the title had been registered at HM Land Registry.
10. On 24 May 1990 Mr Rackham acquired the property for £0.95M. On 16 July 1990 Mr Rackham sold the property to Anti-Waste Ltd, a company under his control, for £1.4M and on the same day Anti-Waste Ltd sold the property to the Appellant for £1.4M. In order to finance his purchase the Appellant borrowed the sum of £1M from The Royal Trust Bank of Canada (the “Bank”) on an interest-only loan on full commercial terms. The loan was secured on the property. On the sale of the property to the Appellant, Mr Cunningham acted as the solicitor for Anti-Waste Ltd, the Appellant and the Bank.
11. When he purchased the property in 1990 the Appellant expected that he would be able to enter into a twenty-five year lease with a reputable lessee who would pay rents of an amount equal to, or greater than, the interest payments on the loan. However, in October 1990 the proposed lessee declined to proceed and the Appellant was unable to find an alternative lessee.

1991 - 1993 – the Appellant has financial difficulties

12. From early 1991 the market for commercial property was depressed. By September 1991 the Appellant had still not found a lessee. Initially he had been able to maintain the payments of interest on the loan but in September 1991 he experienced financial problems and was no longer able to meet the

interest payments. In that month the Bank told the Appellant that it was considering whether to make a formal demand and appoint a receiver or whether another course of action was available to it. Thereafter during 1992 and the beginning of 1993 there were negotiations between the Bank and the Appellant in an effort to re-structure the loan.

13. On 26 March 1993 the Appellant formally instructed a firm of valuers (Messrs Grimley J R Eve) to prepare a valuation of the property. On 31 March 1993 the Bank sent the Appellant a written demand for the immediate payment of the sum of £1,080,069.93 being all the capital and interest then owing under the loan. The Bank threatened to exercise its right to sell the property immediately if the debt was not repaid. In a written valuation dated 28 April 1993 the valuers reported that the forced sale value of the property was £290,000. Thus, if there had been a forced sale of the property the Appellant would have been left without the property and with a liability in excess of £790,000. Some time prior to the date of their written report the valuers told the Appellant informally that they estimated the open market value of the property as £400,000 and the forced sale value as £290,000.

1993 – the contract to sell to Rackham Ltd

14. Meanwhile, the Appellant had been conducting negotiations with Mr Rackham and on 2 April 1993 he entered into a contract (the 1993 contract) with Rackham Ltd for the sale of the property with vacant possession at the price of £400,000 and with a completion date of 31 December 1993. Special condition 9(2) provided:

“The property is sold ... subject to all adverse interests and other matters contained or referred to in the title deduced except all charges securing money on the property”

The Appellant accepted that he had instructed Mr Cunningham, his solicitor, to make sure that the contracts were signed and exchanged before 5 April 1993 because of advice he had received from his accountants. The Appellant’s written evidence, which was not challenged, was that although the accountants’ advice “might have affected the timing of the sale, that is most definitely all. The sale itself took place irrespective of my tax affairs.”

15. On the same day (2 April 1993) Rackham Ltd entered into an agreement (the option agreement) with the Appellant. The option agreement was prepared by Mr Cunningham. The option agreement provided that, in consideration of the sum of £1, Rackham Ltd granted to the Appellant the right, by notice in writing served at any time before 31 December 1995, to re-purchase the property. The sale from Rackham Ltd to the Appellant was to be with vacant possession on completion and the price to be paid for the property was to be the sum of £400,000 plus the cost of any capital improvements made by Rackham Ltd plus a sum equal to 10% of the difference between the value of the property at the date of the option agreement and the value at the date of the exercise of the option. Completion was to take place twenty-eight days after the date of the exercise of the option.

1993 – The Appellant’s claim for capital losses and the first assessment

16. On 6 December 1993 the Appellant completed his tax return for the year ending on 5 April 1993. The return stated that a gain of £659,095 had been made on the disposal of certain shares in that year. In the same return the Appellant claimed a capital loss on the disposal of the property on 2 April 1993. The property had been purchased for £1.4M and sold for £400,000 and, together with deductions and indexation relief, the amount of the loss claimed was £1,174,677. The return therefore stated that the total chargeable gains accruing to the Appellant in the year was zero.
17. On 28 February 1994 the Revenue issued an assessment of tax of £1,680 relating to an estimate of £10,000 of chargeable gains accruing to the Appellant in respect of the tax year 1992/93. That is the first assessment against which the Appellant appeals.

1993 – 1994 – negotiations with the Bank

18. After April 1993 the Appellant continued to negotiate with the Bank to try to reach an agreement on the amount to be repaid under the loan. On 2 December 1993 the Appellant wrote to Mr Rackham saying that he would be unable to complete the sale of the property under the 1993 contract on the completion date of 31 December 1993. The reason for this was because the Appellant was unable to pay off the loan and the Bank would not release the deeds of the property until the loan was repaid. On 6 December 1993 Mr Rackham agreed to extend the completion date under the 1993 contract to 31 December 1994. Both parties to the appeal agreed that, after 31 December 1993, the 1993 contract remained in force with an extended completion date.
19. Meanwhile, the Bank instructed a firm of estate agents to find a tenant for the property and on 4 March 1994 the Appellant entered into a three-year lease with a reputable tenant. The lease was prepared by the Bank’s solicitors and the rent payable was £55,000 per annum. The rent was paid by the tenant direct to the Bank. Although the existence of this lease meant that the Appellant could not have given Rackham Ltd vacant possession under the 1993 contract, and Rackham Ltd could not have given the Appellant vacant possession if the Appellant had exercised the option to re-purchase, the Appellant’s unchallenged written evidence was that he discussed the matter orally with Mr Rackham who agreed that the lease should proceed as it could only enhance the property. The Revenue agreed that the lease of 4 March 1994

did not prevent a disposal under the 1993 contract and that the letting of the property on 4 March 1994 did not invalidate either the 1993 contract or the option agreement.

20. The amount outstanding under the loan continued to increase and at one stage in 1994 it stood at £1,160,057. In August 1994 the Appellant entered into a written agreement with the Bank that he would pay the sum of £750,000 on or before 30 September 1995 and that, until that date, he would pay no less than £4,000 each month on account of the £750,000. It was also agreed between the Appellant and the Bank that the sale of the property should be completed on or before 31 December 1994 for a sum of not less than £400,000 but that the Bank would be under no obligation to release its charge over the property if it were not satisfied that the proposed sale price reflected the full market value.
21. In September 1994 a building society agreed to grant a commercial loan of £1.25M to a company called Mac Estates Ltd which was a company under the control of the Appellant. This loan was to be secured by a first charge over property owned by Mac Estates Ltd. The Appellant intended to use the loan to repay an existing loan of £1M charged on the same property and to use the remaining £250,000 towards repaying the loan on the property. Also in September 1994 a second building society agreed to grant a loan of £353,000 to Brickfields to be secured by a first charge over the property. The combination of the two loans meant that the Appellant would have available funds of £603,000 to pay to the Bank if he transferred the property to Brickfields and if both building society loans proceeded. It was a requirement of both building societies that they would only release the loans when the property was sold to Brickfields.
22. By 28 September 1994 the value of the property had increased. The second building society obtained a formal valuation which gave an open market value of £750,000 and a forced sale value of £600,000.
23. It will be recalled that in August 1994 the Appellant had agreed with the Bank that he would pay the sum of £750,000 on or before 30 September 1995 and that until that date he would pay £4,000 each month on account of the £750,000. On 23 November 1994 the Bank formally agreed to accept the sum of £640,000 from the Appellant in full discharge of the debt on the property.

29 November 1994 – the exercise of the option

24. Also in November 1994 negotiations between the Appellant and Mr Rackam continued. At that time the 1993 contract, under which the Appellant agreed to sell the property to Rackham Ltd, had not been completed and the Appellant's option to re-purchase the property was still in force. At about this time the Appellant instructed Mr Cunningham that he (the Appellant) wished to exercise the option to re-purchase the property from Rackham Ltd and then to sell it to Brickfields.
25. On 29 November 1994 Rackham Ltd entered into a contract, prepared by Mr Cunningham, to sell the property to the Appellant as beneficial owner for the

sum of £420,000. Contracts were exchanged on that day. The completion date was left blank. The Standard Conditions of Sale applied to the contract and they provided that completion was to be twenty working days after the date of the contract. The contract of 29 November 1994 between Rackham Ltd and the Appellant was treated by them both as the exercise by the Appellant of the option granted to him on 2 April 1993 to re-purchase the property and we refer to that contract as the exercise of the option. It was accepted by both parties to the appeal that the contract was in effect the exercise of the option.

26. Because the original date of completion under the 1993 contract was 31 December 1993, and because the option agreement could be exercised at any time after 2 April 1993, it would have been possible for the Appellant to exercise the option either before the sale to Rackham Ltd was completed or after the completion of such sale. In the event the option was exercised before the sale was completed and, at the time of the exercise, Rackham Ltd had not made any capital improvements. Rackham Ltd accepted that, at the date of the exercise of the option, the value of the property was £600,000. Thus the difference between the value of the property at the date of the option agreement (£400,000) and the value at the date of the exercise of the option (£600,000) was £200,000 and 10% of that amount was £20,000. That meant that the price to be paid by the Appellant for the property under the option agreement was £420,000.

The Brickfields contract

27. Also on 29 November 1994 the Appellant entered into another contract (the Brickfields contract) prepared by Mr Cunningham under which he agreed to sell the property to Brickfields for the sum of £600,000. The date of completion was left blank. The Standard Conditions of Sale applied to the contract and they provided that completion was to be twenty working days after the date of the contract.
28. Mr Cunningham, who was the solicitor acting for the Appellant, Rackham Ltd, Brickfields, and the two building societies, formed the view that there was no need to execute three transfers of the property, one from the Appellant to Rackham Ltd to complete the 1993 contract, one from Rackham Ltd to the Appellant under the exercise of the option, and one from the Appellant to Brickfields to complete the Brickfields contract. The stamp duty on three separate transfers would have amounted to £14,200. Mr Cunningham concluded that, as the legal title to the property had remained with the Appellant throughout, the Appellant was able to execute just one transfer of the property direct to Brickfields. The position as between the Appellant and Rackham Ltd could be settled by the payment of the sum of £20,000 by the Appellant to Rackham Ltd, being the difference between the sale price for the property of £400,000 mentioned in the contract of 2 April 1993 and the amount due to Rackham Ltd from the Appellant for the property under the option agreement (£420,000). Mr Cunningham therefore prepared a transfer of the property from the Appellant to Brickfields and two mortgages, one to each of the two building societies. Mr Cunningham had the funds to be advanced by the two building societies in his client account. Immediately before the completion of the sale to Brickfields there were three contracts in existence:

the April 1993 contract as varied for a sale to Rackham Ltd; the contract for resale by Rackham Ltd implementing the option agreement; and the contract by the Appellant to sell to Brickfields.

29. On 30 November 1994, therefore, the Appellant executed a transfer of the property to Brickfields in consideration of the sum of £600,000. On the same day Brickfields mortgaged the property to the second building society and received the loan of £353,000 from them. At about the same time Mac Estates Ltd mortgaged its property to the first building society and received the £1.25M of which £250,000 was available to redeem the loan on the property. In the event, the sum of £640,000 was paid to the Bank, the Appellant finding the balance of £37,000 from his own resources. The Bank released its charge on the property and the transfer to Brickfields took effect.
30. The Appellant did not then pay Rackham Ltd the sum of £20,000 under the option agreement but the Appellant was recorded in Rackham Ltd's books of account for the year ending on 31 December 1994 as a debtor in that amount. The Appellant paid the sum of £20,000 to Rackham Ltd on 4 December 1996.

The returns for the tax years ending on 5 April 1994 and 1995

31. The Appellant's return for the tax year ending on 5 April 1994 stated that, as the Appellant had made no chargeable gains in that tax year, he sought to carry forward losses made in that year and the remainder of the loss made in the year ending on 5 April 1993.
32. On 5 October 1995 the Appellant filed his tax return for the year ending on 5 April 1995. This stated that the Appellant had purchased the property for £420,000 and sold it for £600,000. There were gains of £176,962 realised on the sale of the property and gains of £327,428 realised on the sale of another asset. The return offset these gains against the losses carried forward from the tax years ending on 5 April 1993 and 1994 which meant that the total chargeable gains accruing to the Appellant for the tax year ending on 5 April 1995 was zero.
33. On 20 March 1996 the Revenue issued an assessment of £237,680 tax, relating to an estimate of chargeable gains accruing to the Appellant in respect of the tax year ending on 5 April 1995. That is the second assessment against which the Appellant appeals.

Appellant's Submissions

34. Mr Soares submitted that the Appellant disposed of the property to Rackham Ltd on 29 November 1994 and that as a result of section 28(1) the date of the disposal was the date of the contract, that is 2 April 1993, and a loss accrued in the year 1992/93. The only dispute was whether there was a disposal and acquisition under the 1993 contract. Although there was no movement in the legal title the payment of £400,000 by offset against the £420,000 due on exercise of the option was performance of the 1993 contract and resulted in a disposal within section 28. An actual transfer was not necessary. There was usually no actual transfer with bed and breakfast transactions; these were effective if there was a real loss, see per Lord Templeman in *Ensign Tankers*

(Leasing) Ltd v Stokes (1992) 64 TC 617 at 741G and Peter Gibson LJ in *MacNiven v Westmoreland Investments Ltd* [1998] STC 1131 at 1143-4.

35. He said that disposal is a concept of wide meaning as shown by section 60. In *Berry v Warnett* (1982) STC 92 Lord Wilberforce said at page 127E that there is no limitation on the generality of the word which must be given its normal meaning. In *Kirby v Thorn EMI plc* [1987] STC 621 Nicholls LJ said at page 625g that the expression envisaged the transfer of ownership of an asset widely defined by one person to another. The transfer of the bare legal title is not enough, there must be something more but not always the beneficial interest. He submitted that in November 1994 Rackham Ltd acquired full rights to the land albeit for only a scintilla temporis.
36. He referred to Lord Walker at [32]-[35] in *Jerome v Kelly* (2004) 76 TC 201 submitting that there is a disposal when the vendor has done what is necessary to make title and the consideration has been paid. Here there was nothing more to be done because Rackham Ltd did not require the legal title and could not do so since the option had been exercised. No contractual obligation remained outstanding on either side. The offsets of £400,000 constituted payment, see *Coren v Keighley* (1972) 48 TC 370. He said that there is no requirement under section 28 for a formal transfer: the section covers any form of property situated anywhere. There was no discharge or rescission of the contract; it was performed as varied to provide for an extension of time and to allow the letting.
37. Mr Soares said that when the Appellant completed his contractual obligations under the 1993 Contract this resulted in an acquisition by Rackham Ltd which related back to 1993. Rackham Ltd was then in a position to sell the property back under the contract implementing the option. It was irrelevant that Rackham Ltd did not enjoy the use of the land or any rents before disposing of it. The 1993 contract must be read together with the option agreement and when read together there was a disposal in November 1994 under the contract. He said that the Tribunal should take a common sense rather than a technical legal approach based on completion. Rackham Ltd had gained £20,000 from its rights under the contracts.

Revenue Submissions

38. Mr Tidmarsh accepted that if there was a disposal to Rackham Ltd and an acquisition by Rackham Ltd it was under the 1993 contract. However he said that there never was a disposal by the Appellant to Rackham Ltd or an acquisition by it. He said that the facts were unusual and it was no surprise if the result was unusual.
39. He accepted that payment under a contract could be by netting of against some other liability. Here the payment by Rackham Ltd also constituted the payment by the Appellant. There was no moment in time at which the rights in the property vested in Rackham Ltd pursuant to the payment because the act of offsetting which would have entitled Rackham Ltd to beneficial enjoyment was the event which negated that right. There was no sequence of payments. There was therefore no disposal of the property to Rackham Ltd either under the contract or at all: it never moved. There was no purchase and repurchase.

40. He said that the 1993 contract was not a disposal. *Jerome v Kelly* established that a contract for the sale of land is not a disposal or a part disposal. There must be an actual disposal, see Lord Hoffman at [11] otherwise the words “under a contract” would be otiose. The disposal must be under the contract. In *Kirby v Thorn EMI plc* [1987] STC 621, Nicholls LJ said at 625g that disposal envisaged transfer of ownership of an asset by one person to another.
41. Mr Tidmarsh accepted that the fact that the legal title remained with the Appellant until transferred to Brickfields was not determinative. He accepted that on a contract for the sale of land if the price is paid in full and title is accepted the purchaser becomes absolute beneficial owner. He accepted that the 1993 contract was performed but said that this did not result in a disposal to Rackham Ltd because in spite of payment there was no change in beneficial ownership or proprietary rights. Here at a stroke the Appellant’s interest went from being subject to the 1993 and 1994 contracts to being free of those contracts. As in *Sargison v Roberts* [1969] 1 WLR 951 where there was a settlement and lease-back, there was no transfer of the whole interest in the land which had merely been reduced uno actu. It is irrelevant that the contract was performed by setting-off payment since it was self-cancelling so that there was no disposal He referred also to *Stokes v Costain Property Investments Ltd* [1983] STC 405.
42. He said that before performing the contract to sell to Rackham Ltd the Appellant had to arrange to discharge the Bank loan by means of new loans to be advanced on the purchase by Brickfields. The same solicitor acted for the Appellant, Rackham Ltd and Brickfields. Three transfers could have been executed but they were not; it would not have made any difference unless there were three separate transactions.
43. He said that the existence of a charge did not necessarily prevent a disposal, however that would have involved difficult conveyancing and could not be done by a single set-off. It did not follow from performance of the 1993 contract that there was a disposal to Rackham Ltd: there was no change in beneficial ownership or proprietary rights. In deciding whether there was a disposal by the Appellant to Rackham Ltd it is necessary to look at the substance of what happened rather than the conveyancing formality.
44. Mr Tidmarsh said that, just as in *Abbey National Building Society v Cann* [1991] IAC 56 there was no scintilla temporis during which the legal estate vested in the purchaser free of the charge the events being indissolubly bound together, here there was the single event constituting performance of the contracts namely the set-off.
45. He said that for a bed and breakfast disposal to be effective there must be a disposal. Without a disposal it did not work.

Conclusions

46. Although the submissions ranged over a wide area, ultimately the appeal turns on whether the property was disposed of and acquired in November 1994 under the contract in April 1993. Mr Tidmarsh accepted that if there was an acquisition and disposal it was under the contract and that the contract of April

1993 was performed, the set-off constituting payment. He accepted that on a contract for the sale of land there can be a disposal without a conveyance provided the purchaser becomes absolute beneficial owner.

47. The issue is whether at any point of time there was a disposal to Rackham Ltd so that Rackham Ltd became beneficial owner. In *Kirby v Thorn EMI plc* [1981] STC 621 Nicholls LJ said at 625g,

“There is no statutory definition of disposal, but having regard to the context, what is envisaged by that expression is a transfer of an asset (i.e. of ownership of an asset), as widely defined, by one person to another.”

48. Although disposal is an expression with a wide meaning, encompassing a sale, a gift or even throwing away property, section 28 is only concerned with disposal under a contract and involves acquisition under a contract. The question here is whether Rackham Ltd ever acquired the property as beneficial owner. The fact that Rackham Ltd acquired an equitable interest under the contract prior to performance did not constitute a disposal or a part disposal, see *Jerome v Kelly* (2004) 76 TC 147 at [32] and [45]. The sale by the Appellant was as absolute owner subject to Special Condition 9(2).
49. In our judgment there is no answer to the submission of Mr Tidmarsh that there was no moment in time when the rights in the property vested in Rackham Ltd because the very event which constituted payment by Rackham Ltd of the consideration under the contract also constituted payment by the Appellant under the contract of 29 November 1994 made in exercise of the option. The payment being by set-off there was not and could not be a moment in time when Rackham Ltd had paid the Appellant but the Appellant had not paid Rackham Ltd.
50. It was not suggested by Mr Soares that there was a period, however short, during which the Appellant had only paid £400,000 but Rackham Ltd had not agreed to leave the balance of £20,000 outstanding. The Appellant had to be in a position to convey the property to Brickfields in order to obtain the discharge of the Bank’s charge on the property.
51. As Mr Tidmarsh pointed out, it might have been possible to achieve what the parties wished to achieve without netting off the payment due from Rackham Ltd, however this would have involved considerable difficulties in conveyancing.
52. Although *Sargaison v Roberts* [1969] 1 WLR and *Abbey National Building Society v Cann* [1991] 1 AC 56 are helpful by analogy neither concerned a disposal for capital gains tax purposes and the settlement in *Sargaison v Roberts* clearly was a disposal for capital gains tax. Bed and breakfast transactions required a disposal to be effective.
53. We hold that Rackham Ltd never acquired the beneficial ownership of the property even for a moment in time. We accept Mr Tidmarsh’s comment that the facts are unusual and it is no surprise if the result is unusual. The appeal is dismissed.

54. This is a decision in principle. In view of the lapse of time since the dates of the assessments the subject of the appeal we are of the view that the final figures should be determined without further delay. **WE THEREFORE DIRECT** that if the amounts of the assessments have not been agreed within one month of the date of the release of this Decision the Appellant may apply to the Special Commissioners to determine the amounts of the assessments.