COURT OF SESSION (FIRST DIVISION)—28, 29 AND 30 OCTOBER AND 20 NOVEMBER 1980

HOUSE OF LORDS—19 AND 20 OCTOBER 1981 AND 4 MARCH 1982

Commissioners of Inland Revenue *v.* Scottish & Newcastle Breweries Ltd.[1]

Corporation tax—Capital allowances—Plant—Expenditure on electric fittings, wall decor and metal sculptures in hotels and licensed premises—Whether expenditure on the provision of plant—Finance Act 1971, *ss* 41 *and* 42.

The Respondent Company operated a range of hotels and licensed premises which were either purpose-built or leased as a shell and completed according to the Company's specifications. In fitting out a number of premises the Company incurred expenditure on electric wiring and light fittings, on wall decor including murals, tapestries and plaques, and on two metal sculptures displayed in one of its hotels. On appeal against an assessment to corporation tax for the accounting period to 29 April 1973 the Company contended that the expenditure qualified for capital allowances as plant used in the carrying on of its trade.

In allowing the Company's appeal, except for the expenditure on electric wiring, the Special Commissioners found that the Company's trade consisted of the provision of facilities to the public, including the provision of "atmosphere". Since the items in question were installed for this purpose they satisfied the functional test required of plant, notwithstanding that they formed part of the setting within which the trade was carried on.

The Court of Session, unanimously dismissing the Crown's appeal, held that on the facts found by the Special Commissioners the items in dispute did have the characteristics of plant despite forming part of the setting in which the Company carried on its trade. The Crown appealed.

In the House of Lords it was agreed that the decor, murals and electric light fittings in dispute be treated for the purposes of argument as falling into the broad category of "decor".

Held, unanimously dismissing the Crown's appeal, that the expenditure on "decor" was on the provision of plant because on the clear and emphatic findings of the Commissioners the "decor" went to create the "atmosphere" or "ambience" which it was an important function of the Company's particular trade to provide for its customers to resort to and enjoy.

Per Lord Lowry: the test accepted by the Commissioners and affirmed by the Inner House draws a line which can be held without trouble: something which becomes part of the premises, instead of merely embellishing them, is not plant, except in the rare case where the premises themselves are plant.

[1] Reported (CS) [1981] STC 50; (HL) [1982] 1 WLR 322; [1982] 2 All ER 230; [1982] STC 296; 126 SJ 189.

A

CASE

Stated for the opinion of the Court of Session as the Court of Exchequer in Scotland under the Taxes Management Act 1970, s 56.

I. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on 2 and 3 October 1978, Scottish & Newcastle Breweries Ltd. (hereinafter called "the Company") appealed against an
B assessment to corporation tax for its accounting period from 1 May 1972 to 29 April 1973 in the sum of £11,040,000.

II. Shortly stated the question for our decision was whether certain items of electric light fittings, electrical wiring, decor and murals in the Company's hotels and licensed premises were "plant" and so qualify for first year allowances under s 41, Finance Act 1971.

C III. The names of witnesses who gave evidence before us are set out in sub-para 4 of our written decision (see para VIII below).

IV. The following documents were proved or admitted before us: (*a*) an agreed statement of facts, and (*b*) a set of photographs of some of the items of electric light fittings, murals and decor.

These are available for inspection by the Court if required. We also visited the
D King James Hotel, Edinburgh, and viewed the lighting arrangements.

V. In our decision (para VIII below) we summarise the facts admitted between the parties (para VIII(3)) and we set out the further facts which we find proved (para VIII(5)).

VI. It was contended on behalf of the Company that all the items in question were plant so that the expenditure thereon qualified for first year
E allowances under s 41, Finance Act 1971.

VII. It was contended on behalf of the Commissioners of Inland Revenue that (subject to the minor concession mentioned in sub-para 4 of our decision) none of the items in question was plant qualifying for first year allowances.

VIII. We, the Commissioners who heard the appeal, took time to consider our decision and gave it in writing on 20 November 1978 as follows:

F (1) The Appellant company ("the Company") is a company incorporated in Scotland. Its trade includes carrying on hotels and public houses. The appeal before us is against an assessment on the Company to corporation tax for its accounting period from 1 May 1972 to 29 April 1973.

(2) It is common ground between the Company and the Inspector of Taxes that during the said accounting period the Company incurred for the purposes
G of its trade capital expenditure amounting to £108,498 on the provision of electric light fittings, electrical wiring, decor and murals in its hotels and licensed premises. The question for our decision is which if any of the items provided were "plant" and thus qualifying for first year allowances under s 41, Finance Act 1971.

(3) We had before us a statement agreed between the parties of the basic facts. This showed a breakdown of the expenditure as follows:— A

(I) Royal Scot Hotel London (a 349-Bedroomed hotel opened in November 1972: Leasehold): electric light fittings

		£	£	£	
(*a*)	Main contract for general electric light fittings: (fluorescent, pendant and ceiling)		23,760		B
	Subsidiary contracts for:				
(*b*)	Spotlights and spotlamps		80		
(*c*)	Table lampshades		71		
(*d*)	Brass bedside lamps	216			
	Lampshades with fringe	93	309		C
(*e*)	Cost of conversion of ten "Royal Scots" drums to form light fittings		99	24,319	

(II) Thatched Barn Hotel, Boreham Wood: electric light fittings D

	£	£	
Pendant and ceiling light fittings	1,455		
Exterior floodlighting	270		
Spotlights	110		
Tablelamps	95	1,930	E

(III) Lorne Hotel, Glasgow: electric light fittings

	£	£	
Fluorescent light fittings, pendant and wall bracket			
Light fittings	1,646		F
Table lamps	340	1,986	

(IV) Electric light fittings installed in 178 hotels and managed houses £ 33,506

(V) Electrical wiring

Electrical wiring for electric lighting circuits in new hotels or extensions to existing hotels: G

	£	£	
Lorne Hotel, Glasgow	670		
Ten other hotels	1,965	2,635	H

(VI) Decor and murals in 156 hotels and licensed premises

		£	£	
(i)	Wall decor	10,453		
(ii)	Plaques	183		
(iii)	Tapestries	378		
(iv)	Murals	7,195		I
(v)	Pictures	20,463		
(vi)	Metal sculptures	5,450	44,122	
	Total		108,498.	

A The agreed statement before us included detailed analyses of the expenditure under various categories, a definition of each category and details of the amounts of expenditure in each of the Company's premises. The definitions of the various light fittings were more or less self-evident from the categories and we do not reproduce them in our decision. The decor and murals were defined as follows:—Wall decor consists of general decorative items, such as pictures, B plaques, tapestries, plates, horse harnesses, stags heads, pewterware, brassware, copperware, swords, axes, bagpipes, pistols and deer skins. The afore-mentioned items can be either screwed to the wall and easily removed or hung on the wall and movable. Plaques are brass and copper embossed plates mounted on wooden blocks which can be either screwed to the wall and easily removed or hung on the wall and movable. Tapestries are machine woven C fabric panels made from cotton or man-made fibres. Designs are based on traditional tapestries. The tapestries can be either screwed (using washers and screws) to the wall and easily removed or hung on the wall and movable. Murals are fibre glass, leather or metal sculptured panels which are screwed to the wall. They are removable and often are removed for redecoration purposes or change of theme. All murals are specially designed to suit specific themes. D Pictures are a representation on a surface by painting or drawing of an object or objects, scene or portrait. (All pictures are framed.) They can be either screwed to the wall and easily removed or hung on the wall and movable. Two metal sculptures: One hangs from the ceiling to which it is bolted and is supported by steel rods. The other is a standing feature which is permanently fixed to the forecourt. The sculptures represent "Seagulls in Flight". It is E common ground (as appears from the analyses before us) that the expenditure on decor and murals can be further classified as follows:—

(i) items fixed but not easily removable (i.e. the metal sculptures) £5,450;

(ii) items fixed but easily removed £35,820;

(iii) items not fixed but movable (i.e. pictures and wall decor) £2,852.

We also had before us photographs of murals and decor in the Royal Scot F Hotel, London, and photographs of two sculptures at the Atlantic Tower Hotel, Liverpool. We also visited the King James Hotel, Edinburgh, and viewed the lighting arrangements. The expenditure in the King James Hotel during the accounting period ended 29 April 1973 on items claimed to be plant was:—

	£
Mural covering three walls of restaurant	2,000
G 165 hand coloured pictures on a "Scottish" theme	1,980
Hand coloured picture "Bonnie Prince Charlie"	178
Light fitting	8.

It was common ground that the lighting in the King James Hotel was typical of that in the Company's other high quality hotels. We are grateful for the Company's co-operation in arranging our visit which we found helpful.

H (4) Evidence was given before us by Mr. G. B. Reed a director of the Company and managing director of its retail division with responsibility for maintaining all its hotels and by Mr. C. S. Gauld F.R.S.A., Fellow of the British Institute of Interior Design, Associate of the Society of Industrial Artists and Designers and Fellow of the Institute of Purchase Managers, the Company's deputy manager with responsibility for interior decorating and I design in the Company's hotels and for the purchase of furniture and fittings. In the course of the proceedings before us it was conceded on behalf of the

Inspector of Taxes that nine spotlights in the meeting room at the Royal Scot Hotel qualified as plant. It is not clear to us however, from the analyses presented in evidence, whether the expenditure on the provision of these was £92.70 (nine at £10.30 each) or, if these are the spotlights referred to in the breakdown mentioned in sub-para 3, £80; but the difference is trivial and will, if necessary, no doubt be settled by agreement between the parties.

(5) In addition to the agreed facts we find the following facts proved:

(i) The Company's hotels and licensed premises are either purpose-built throughout or leased as a shell (including the basic electrical wiring) and completed according to the Company's special requirements as to lighting arrangements and interior decor. In either case the Company considers on commercial principles what type of clientele it wishes to attract and on that basis draws up a detailed brief for architects and interior designers on the equipment and facilities needed. Different types of clientele (e.g. tourists, businessmen, etc.) want different kinds and standards of facilities. It is not always possible to decide at the outset what type of market it would be most profitable to try for and during the life of a building many changes on interior design may be made for commercial reasons. When, for example, the takings at the King James Hotel's lounge bar, which was run on solid traditional lines, were disappointing, the bar was converted into a discotheque with a complete transformation of the decor and lighting effects—a conversion which proved commercially successful. The style of the hotel restaurant was also upgraded producing greatly improved profits. This view is supported by market research carried out by the Company and we accept it. Similarly with the Royal Scot Hotel which was designed principally for tourists on an economy budget. This did not turn out to be as profitable as had been hoped and it was decided to try to attract more business customers. Changes in the bar, restaurant and cuisine were made giving a more intimate atmosphere. As a result custom from businessmen increased to about one-half of the total.

(ii) In what we may call the common living spaces (restaurants, bars and lounges) the level of lighting is varied for different purposes, e.g., to give a bright breakfast room and soft lights in the evening. The appropriate level is controlled by the staff and the layout of circuits and controls takes account of this. In the hotel bedrooms the light fittings are designed not only to give general illumination but also to include lights for reading, writing and mirrors, all (except the bathroom lights) being controlled by the customer by means of switches in a panel by his bedside. Much of the lighting equipment is especially designed for the hotel trade. Its type, design and layout (especially in the common living spaces) is selected with the aim of producing the atmosphere appropriate to attract custom of the kind sought. This is regarded by the Company as an important factor in the commercial success of its premises—a view which is supported by market research carried out for the Company and one which we accept. The expenditure of £2,635 (referred to in sub-para (3) above) on electrical wiring for electric lighting circuits represents the total expenditure on the basic general wiring built into the fabric of a new hotel or into extensions of existing hotels up to the point of the wall socket or ceiling rose.

(6) There is no statutory definition of "plant" for the purposes of s 41, Finance Act 1971. We must therefore interpret the word in its ordinary sense with the assistance of judicial decisions in other cases. Our starting point is

A the description of plant given by Lindley L.J. in *Yarmouth* v. *France* (1887) 19 QBD 647 at page 658 in the following words:

> "There is no definition of plant in the Act: but, in its ordinary sense, it includes whatever apparatus is used by a business man for carrying on his business,—not his stock-in-trade which he buys or makes for sale; but all goods and chattels, fixed or moveable, live or dead, which he keeps for
B permanent employment in his business."

We also obtain guidance from a number of subsequent cases in which Lindley L.J.'s description has been quoted with approval and has been refined in its application to particular instances. We take the following principles to be settled law:

(i) Something which is properly to be regarded as part of the setting in
C which a business is carried on and not as part of the apparatus used for carrying on the business is not plant: see *J. Lyons and Co. Ltd.* v. *Attorney-General* [1944] Ch 287. In this case Uthwatt J. decided that electric lamps, the sockets into which they fitted and the cords connecting the lamps with the electric wiring of premises used as a tea-shop (with associated kitchen, offices etc.) were not plant. He regarded them as lighting the premises generally and not
D used for the purposes of or in connexion with any manufacturing operation or trade process. On that footing he held that they were not properly described as plant but were part of the general setting in which the business was carried on. He said, however: "the actual lamps themselves, so far as the evidence goes, present no special feature either in construction, purpose or position and, being supplied with electricity from public suppliers, they form no part of an electric
E lighting plant . . .". Moreover, he excluded from consideration a number of lamps (counter lamps directly over the service bar and a window lamp) which he said "may stand in a different position from the other lamps by reason that they may be connected with the needs of the particular trade carried on upon the premises" and as to which no evidence had been given of the particular purpose they served.

F (ii) Something which forms part of the setting of a trade may nevertheless be plant if it is more a part of the apparatus than part of the setting (*Jarrold* v. *John Good & Sons, Ltd.*[1] 40 TC 681).

(iii) The term "plant" is not apt to cover the permanent structure of a building in which a business is carried on (*John Good & Sons, Ltd.'s* case).

(iv) Something which is a structure or part of a structure may nevertheless
G be plant, if it fulfills the function of plant in the trader's operations. (*Commissioners of Inland Revenue* v. *Barclay, Curle & Co. Ltd.*[2] 45 TC 221—see, e.g., Lord Reid at pages 238–9, Lord Guest at page 244 and Lord Donovan at page 250.)

(v) Apparatus which has no functional purpose in the commercial process, even if it serves to attract custom, is not plant (*Dixon* v. *Fitch's Garage Ltd.*[3]
H 50 TC 509, in this case the apparatus in question was a canopy constructed over the pumps of a petrol filling station to provide shelter while the commercial process of delivering fuel was carried on).

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[1] [1963] 1 WLR 214. [2] 1969 SC (HL) 30. [3] [1976] 1 WLR 215.

We apply these principles as best we can to the facts of the present case. The key is, we think, the nature of the Company's trade; the Dean of Faculty on behalf of the Company describes it as the provision of facilities to the public. This includes providing accommodation and providing it in a situation which includes "atmosphere"—atmosphere judged in the light of the market which the premises are intended to serve. We agree with that description and it is in that context that we consider the nature and function of the various items in question. In our view, and we so find, all the light fittings comprised in headings (I) to (IV) in the list in sub-para (3) above are of such a design and are so laid out as to be properly regarded as apparatus serving a functional purpose in the Company's trade. While it is also true that they also serve as part of the setting for the benefit of the customer, we think that it is one of the main functions of the Company's trade to provide a special and attractive setting for its customers. In this we see no inconsistency with the *J. Lyons* decision(1), which related to the general illumination of a tea shop by what appear to have been very ordinary lights with "no special feature either in construction, purpose or position". In the present case we find that there are such special features. Accordingly we decide that all these items are plant and to that extent the appeal succeeds in principle.

We think however that different considerations apply to the electrical wiring ((V) in the list in sub-para (3)) which was incorporated in new construction. We regard this as integral with the fabric of the building—as to which no question arises in the proceedings. We find that the electrical wiring is not plant and to this extent the Company's appeal fails. The wall decor, plaques, tapestries, murals and pictures comprised in heading (VI) in the list in sub-para (3) above are, in our view, apparatus which (in the same way as the light fittings) serves a functional purpose in the Company's trade. Accordingly we find that they are plant and to that extent the Company's appeal succeeds in principle. We found more difficulty with the two metal sculptures of seagulls at the Atlantic Towers Hotel, Liverpool (heading (VI) in sub-para (3)). They are clearly part of the setting and we think it fair to describe them as structures but, as we interpret the authorities, neither of these factors taken alone disqualifies the sculptures from being plant. They are fixed but not easily removed and on balance (but not without doubt) we are of the view that they should not be regarded as part of the permanent structure of the hotel but that they can be properly described as apparatus which in view of the nature of the Company's trade, functions as plant.

Accordingly the Company's appeal succeeds in part and fails in part. We adjourn proceedings for figures to be agreed, whereupon we shall issue our formal determination.

IX. In due course figures were agreed between the parties and on 28 December 1978 we reduced the assessment to the agreed figure of £10,933,145.

X. The Appellants, immediately after the determination of the appeal, declared to us their dissatisfaction therewith as being erroneous in point of law and in due course required us to state and sign a Case for the opinion of the Court of Session as the Court of Exchequer in Scotland, which Case we have stated and signed accordingly.

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(1) [1944] Ch 287.

A XI. The question of law for the opinion of the Court is whether our decision except in so far as it relates to electrical wiring was correct.

J. G. Lewis
H. H. Monroe } Commissioners for the Special Purposes of the Income Tax Acts

Turnstile House
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20 September 1979

The case came before the First Division of the Court of Session (the Lord President (Emslie) and Lords Cameron and Stott) on 28, 29 and 30 October 1980 when judgment was reserved. On 20 November 1980, judgment was given C unanimously against the Crown, with expenses.

W. D. Prosser Q.C. and *A. C. Hamilton* for the Crown.

Lord McCluskey Q.C. and *J. E. Drummond Young* for the Company.

The following cases were cited in argument in addition to those referred to in the judgments:—*Schofield* v. *R. & H. Hall Ltd.* 49 TC 538; *Dixon* v. *Fitch's Garage Ltd.* 50 TC 509; [1976] 1 WLR 215; *Hampton* v. *Fortes Autogrill* D *Ltd.* 53 TC 691; *Cole Bros. Ltd.* v. *Phillips* 55 TC 188.

The Lord President (Emslie)—This is an appeal by the Commissioners of Inland Revenue against a determination of the Special Commissioners. The Respondents, the taxpayers, had been assessed to corporation tax for its accounting period from 1 May 1972 to 29 April 1973 in the sum of £11,040,000. E What the Special Commissioners decided was that that assessment should be reduced because the taxpayers were, in their judgment, entitled to first year allowance, under s 41(1) of the Finance Act 1971, in respect of capital expenditure on the provision of certain "plant" for the purposes of their trade. Before the Commissioners it was common ground that the taxpayer Company's trade or business was to carry on hotels and public-houses throughout Great F Britain and that during the relevant accounting period it incurred, for the purposes of its trade, capital expenditure amounting to £108,498 on the provision of electric light fittings, electric wiring, decor and murals in its hotels and licensed premises. The sole question in dispute was whether these items, or any of them, so provided under these four headings, were "plant" within the meaning of s 41. The answer to that question given by the Special G Commissioners was that the items described under the headings "electric fittings", "decor" and "murals", were "plant" to which s 41 applied, but that the electric wiring was not.

In statement VIII(3) of the Case the Special Commissioners set out a breakdown of the capital expenditure in the provision of the items falling under each of the four headings. So far as electric light fittings are concerned H they include general lamp fittings (fluorescent, pendant and ceiling), spotlights, table and bedside lamps and shades, floodlights, and ten "Royal Scots" drums converted to form light fittings. Of all these electric light fittings the only ones

conceded by the Inspector to be plant for the purposes of s 41 were nine spotlights in the meeting room of the Royal Scot Hotel in London. The headings "decor" and "murals" include what is described as wall decor, plaques, tapestries, murals, pictures and metal sculptures, and the Case contains its own ampler description of each of these categories.

The remaining facts held proved by the Special Commissioners are in these terms:

"(i) The Company's hotels and licensed premises are either purpose-built throughout or leased as a shell (including the basic electrical wiring) and completed according to the Company's special requirements as to lighting arrangements and interior decor. In either case the Company considers on commercial principles what type of clientele it wishes to attract and on that basis draws up a detailed brief for architects and interior designers on the equipment and facilities needed. Different types of clientele (e.g. tourists, businessmen, etc.) want different kinds and standards of facilities. It is not always possible to decide at the outset what type of market it would be most profitable to try for and during the life of a building many changes on interior design may be made for commercial reasons. When, for example, the takings at the King James Hotel's lounge bar, which was run on solid traditional lines, were disappointing, the bar was converted into a discotheque with a complete transformation of the decor and lighting effects—a conversion which proved commercially successful. The style of the hotel restaurant was also upgraded producing greatly improved profits. This view is supported by market research carried out by the Company and we accept it. Similarly with the Royal Scot Hotel which was designed principally for tourists on an economy budget. This did not turn out to be as profitable as had been hoped and it was decided to try to attract more business customers. Changes in the bar, restaurant and cuisine were made giving a more intimate atmosphere. As a result custom from businessmen increased to about one-half of the total. (ii) In what we may call the common living spaces (restaurants, bars and lounges) the level of lighting is varied for different purposes, e.g., to give a bright breakfast room and soft lights in the evening. The appropriate level is controlled by the staff and the layout of circuits and controls takes account of this. In the hotel bedrooms the light fittings are designed not only to give general illumination but also to include lights for reading, writing and mirrors, all (except the bathroom lights) being controlled by the customer by means of switches in a panel by his bedside. Much of the lighting equipment is especially designed for the hotel trade. Its type, design and layout (especially in the common living spaces) is selected with the aim of producing the atmosphere appropriate to attract custom of the kind sought. This is regarded by the Company as an important factor in the commercial success of its premises—a view which is supported by market research carried out for the Company and one which we accept. The expenditure of £2,635 (referred to in sub-para (3) above) on electrical wiring for electric lighting circuits represents the total expenditure on the basic general wiring built into the fabric of a new hotel or into extensions of existing hotels up to the point of the wall socket or ceiling rose."

I have only to add that in holding that the electric light fittings, items of decor, and murals were "plant" the Special Commissioners proceeded upon the view that the taxpayers' trade was the provision of facilities to the public and that this included the provision of accommodation "in a situation which includes 'atmosphere'—atmosphere judged in light of the market" which

particular premises are intended to serve. In their opinion the light fittings and the various items under the description decor and murals "are of such a design and so laid out as to be properly regarded as apparatus serving a functional purpose in the Company's trade". They then go on to say: "While it is true that they also serve as part of the setting for the benefit of the customer, we think that it is one of the main functions of the Company's trade to provide a special and attractive setting for its customers".

In opening their attack upon the decision of the Special Commissioners, Counsel for the Commissioners of Inland Revenue recognised that in reaching that decision the Special Commissioners had noted, correctly, that the word "plant" in s 41(1) of the Act, which is not defined, falls to be interpreted in its ordinary sense with the assistance of judicial guidance given in certain decided cases. Again, perfectly correctly, they observed that in the search for the meaning of "plant" in this section the starting point is the description of "plant" given in another statutory context by Lindley L.J. in *Yarmouth* v. *France* (1887) 19 QBD 647, at page 658, which they quote in full in para VIII(6) of the Case. They then discovered from a number of later cases in which this description of "plant" was applied—(i) that something which is truly just part of the place or setting in which the trade is carried on and not part of apparatus used for carrying on the business in that place or setting is not "plant"; (ii) that what is part of the place or setting in which a trade or business is carried on may also be plant if it fulfils the function of plant in the trader's business, i.e. the function of plant with which the business is carried on; and (iii) that the distinction between that which serves merely to provide the setting and that which may be used as part of the setting but which is also plant is a functional one. It was, however, evident that in spite of having addressed themselves to the relevant and authoritative guidance as to what ought and ought not to be regarded as "plant" they had misunderstood that guidance. In particular their decision proceeded upon a fundamental error as to the meaning of "plant" and, more particularly, as to the nature of the functional test which falls to be applied when considering whether articles, which admittedly were introduced into the taxpayers' premises to serve as part of the setting, ought nevertheless to be regarded as plant with which their business was carried on.

In developing this submission Counsel observed, accurately, that although a distinction might conceivably have been made between the light fittings and the items of decor, in that the former were not only used to create atmosphere or setting but to provide light necessary for the carrying on of the business, the Special Commissioners treated all the items in precisely the same way. It was, therefore, convenient to test the decision of the Special Commissioners by asking whether they were entitled, for the reasons which they give, to hold that the expenditure on the various items under the general labels "decor" and "murals" was expenditure on the provision of plant for the purposes of the taxpayers' business. In relation to these items all they have decided is that these items were used for the purposes of the taxpayers' business and that that use was their functional purpose. They did not consider at all, as they should have done, whether their function was a "plant" function as well as a "setting" function. Indeed, they appear to have assumed that if one of the purposes of the taxpayers' business was to provide a particular atmosphere in particular premises, and to spend on articles of decor calculated to produce the desired atmosphere, and thus to attract the kind of custom they wanted in each particular hotel or public-house, then by virtue of that fact alone the articles qualified as "plant". In particular they failed to appreciate that if articles of decor which form part of the setting in which the business is carried on are to

qualify as "plant" they must also be seen to possess the characteristic functions of plant. In short, the articles acquired must not only be acquired and used to adorn the setting in which the business is carried on; they must also be seen, in a reasonable sense, to have been acquired and to be used in the activity carried on in that setting. If the only function of an article is to help to create atmosphere or a setting it cannot be "plant". In this case the decision of the Special Commissioners appears to have proceeded upon findings which demonstrate that the only function of the articles of decor (and of the electric light fittings) is to contribute to the production of atmosphere or the setting in which the taxpayers, in their various premises, carried on their trade.

Upon a consideration of the decision of the Special Commissioners in this case I have not been persuaded by the attractive argument for the Crown that they misdirected themselves as to the meaning of "plant", or as to the nature of the functional test which falls to be applied in order to decide whether articles brought into a trader's premises for the purposes of the trade, and which admittedly have a function in the provision of atmosphere or setting, are nevertheless "plant" within the meaning of s 41(1). It has for long been accepted that the word "plant" in s 41(1), "in its ordinary sense includes whatever apparatus is used by a business man for carrying on his business—not his stock-in-trade which he buys or makes for sale; but all goods and chattels, fixed or moveable, live or dead, which he keeps for permanent employment in his business" (*Yarmouth* v. *France* (1887) 19 QBD 647, at page 658, *per* Lindley L.J.). In subsequent cases it has been held that that definition, properly understood, may not include the place where the business is carried on, and "place" has been variously described as premises, buildings, structure or setting. But even buildings or structure and machinery and plant are not mutually exclusive, and it is well recognised that something which forms part of the setting of a trade (a somewhat imprecise phrase in itself) can also be "plant". It will qualify as plant if it "fulfils the function of plant in the trader's operations" (see the speech of Lord Reid in *Commissioners of Inland Revenue* v. *Barclay, Curle & Co. Ltd.*[1] 1969 SC (HL) 30, at page 51). In the present case it is not suggested that the articles held by the Special Commissioners to be plant fall to be regarded as part of the structure of the various premises. They are undoubtedly "apparatus" used by the Respondents "for carrying on their business" and articles which they keep "for permanent employment" in their business. It is said, however, that they do not qualify as "plant" because they were introduced into the various premises merely to provide a particular atmosphere or setting for the business, and have no "plantlike" function. The question is therefore—taking the approach of the Crown—whether these articles have a "plantlike" function. How is that question to be answered? The best guidance I can discover in authority is still in the definition of Lindley L.J. and in the functional test propounded by Pearson L.J. in *Jarrold* v. *John Good & Sons, Ltd.*[2] [1963] 1 WLR 214. That test was itself in the form of a question and for the purposes of this case it may be paraphrased thus: "whether the articles are part of the premises or setting in which the business is carried on or part of the plant with which it is carried on". In applying that test, however, one must bear in mind that "setting" and "plant" are not mutually exclusive, and that some plant may perform its function passively and not actively (see the speech of Lord Donovan in *Commissioners of Inland Revenue* v. *Barclay, Curle & Co. Ltd.*[3] *cit.* sup. at page 66).

In this case it was conceded by the Crown that for the purposes of the business of the taxpayers many of the articles with which their various premises

(1) 45 TC 221, at p 239. (2) 40 TC 681. (3) 45 TC 221 at p 250.

A are furnished qualify as plant in spite of the fact that they also play an important and intended decorative function in creating the desired atmosphere or setting. Such articles include chairs, tables of all kinds, carpets, beds, curtains and so on. They are, accordingly, articles with which the business is carried on. As to the articles with which this case is concerned the Special Commissioners have, it seems to me, reached the conclusion that they, too, are articles with which the B business is carried on in the particular circumstances of the particular business of the taxpayers. Like the decorative chairs and tables and curtains they were deliberately put there by these taxpayers to create something which it is their very business to market. As I read the findings of the Special Commissioners they have recognised that the special feature of the trade in which the respondents are engaged is the marketing of the setting—including C atmosphere—itself. All the articles of furniture in their premises—those conceded to be plant and the articles in dispute—play their intended part in creating the planned character and atmosphere of the various settings, and all were selected carefully to play this part. In all these circumstances it appears to me to be difficult, if not impossible, to draw any intelligible distinction between them, and I am unable to find that the Special Commissioners in reaching their D decision on the question of fact, failed to ask themselves the right question of law, namely, whether the articles in dispute could reasonably be said to be articles with which the Respondents carry on their particular business—a business which, they have found, includes the marketing of the deliberately contrived setting itself.

For all these reasons I would refuse the appeal and, on the assumption E that the question stated means whether the Special Commissioners were entitled to determine the assessment in the sum of £10,933,145, I would answer it in the affirmative.

Lord Cameron—The Respondents in this appeal are a company who, as part of their enterprise, operate a number of hotels and licensed premises and the questions which arise for decision are related to certain items of electric F light fittings, electrical wiring, decor and murals in these hotels and licensed premises. The issue is whether the Special Commissioners were entitled on the facts found by them to hold that these items, other than the electrical wiring, were "plant" within the meaning of that word as it appears in s 41 of the Finance Act 1971 and so qualify for first year allowances under that section.

The determination of that issue, in my opinion, turns upon the proper G interpretation to be given to the word in its context and in relation to the particular trade or profession or industry of the taxpayer. The right to receive the benefit of first year allowances is not limited in the Statute to manufacturing industry, in relation to which the use of the word "plant" is familiar and normal—even if in given cases it may not be easy to determine what objects or items of property qualify for such description. Whatever meaning is to be H attached to the word, the Statute makes it applicable to the widest variety of industrial and commercial undertaking as also to the exercise of a profession—see s 47(1) of the Act of 1971. Many members of my own profession might well express surprise at the description of a law library as "plant". However that may be, it is clear enough that the word "plant" is one which is intended to be applicable to a much wider field of activities in industry and commerce I than the word itself at first reading would convey to a reader with the Oxford English Dictionary at his elbow. What, however, is "plant" in the context of any particular trade is another matter. There are two major questions in the present appeal, the first whether the Commissioners misdirected themselves

in law or whether, having accurately ascertained the law, they misapplied it and, second, whether in any event the decision at which they arrived is so unreasonable that no reasonable tribunal properly directed in law could arrive at it.

In my opinion the Commissioners have not been shown to have misdirected themselves nor is the conclusion at which they arrived in any sense unreasonable. The problem which the Commissioners were called upon to solve was one concerned with a "service industry": I think this factor is important, because the question of what is properly to be regarded as "plant" can only be answered in the context of the particular industry concerned and, possibly, in light also of the particular circumstances of the individual taxpayers' own trade. That to have regard for this is both relevant and may be decisive is well illustrated by the "dry dock" case of *Commissioners of Inland Revenue* v. *Barclay, Curle & Co. Ltd.*(1) 1969 SC (HL) 30. In that case the dry dock was held to be both a structure and "plant" for the purposes of first year capital allowance made under the provisions of Chapter II of Part X of the Income Tax Act 1952 and the question in that case was identical with that posed in the present appeal.

I think that the Commissioners rightly applied their minds to the proper initial and fundamental questions which they had to answer—the meaning of "plant" in its statutory context and as applicable to the trade carried on by the taxpayer. In so doing I think they rightly proceeded by using as their point of departure in the search for the right answer to the questions posed in the present case the classic definition set out by Lindley L.J. in *Yarmouth* v. *France* (1887) 19 QBD 647, at page 658, which I make no apology for quoting since it has been generally accepted as providing as compendious and comprehensive a definition as can properly be made.

> "There is no definition of 'plant' in the Act:" [nor is there any in the Finance Act 1971] "but, in its ordinary sense, it includes whatever apparatus is used by a businessman for carrying on his business,—not his stock-in-trade which he buys or makes for sale; but all goods and chattels, fixed or moveable, live or dead, which he keeps for permanent employment in his business."

The words of Lindley L.J. were adopted as a general test of the meaning of the word "plant" by the House of Lords in *Hinton* v. *Maden and Ireland Ltd.*(2) [1959] 1 WLR 875; see *per* Lord Reid at page 889 and Lord Jenkins at page 898.

I think that much difficulty is caused by seeking to place limitative interpretations on the simple word "plant": I do not think that the classic definition propounded in *Yarmouth* v. *France* suggests that it is a word which is other than of comprehensive meaning—"whatever apparatus is used by a businessman for carrying on his business"—whatever the business may be. Here the business is not the buying or making for sale any industrial product, but the business of hotel-keepers or operators of licensed premises and in so doing providing a variety of services of and commodities for the use and benefit of the customers of these businesses. The services which are provided may well vary not only in quality but in number and type and, further, may at the same time be designed and intended to attract customers of a variety of means and tastes. It is difficult to see that the provision of conditions of comfort or even luxury lies outside the legitimate operations of an hotel-keeper or by consequence that he should not be entitled in his business to make use of articles designed to subserve that purpose, to diffuse an air or "atmosphere" of

(1) 45 TC 221. (2) 38 TC 391, at pp 417 and 424.

comfort or to make aesthetic appeal as an element of the services which he offers to organise and provide, quite apart from the fact that at the same time the maintenance of such standards is of itself useful as a means of attracting customers to make use of the services offered by the operator. To do this may, in one sense of the word, no doubt be regarded as providing or enhancing the "setting" in which the services are themselves provided, but at the same time the "setting" (as opposed to the structure or place within which the businessman conducts his business) in the case, as here, of an hotel-keeper, or other licence holder whose premises fall within that covered by this appeal, is something the use of which is itself one of the services which the hotel owner makes available to his customer. Put another way, the hotel-keeper sells services and commodities of various kinds; if one of these commodities or services can be described as "atmosphere", then it is nothing more than the creation and provision of a set of physical conditions designed and intended to attract, to please and to conduce to the comfort of the customer—a service provided for or, if you will, on sale to the customer. In principle, therefore, I find it difficult to see why the creation of an attractive aesthetic atmosphere for the comfort of customers should not be regarded as a legitimate element of an hotel-keeping enterprise. The creation of that kind of "atmosphere" may well be provided by the appeal to the eye or other senses of the customer. Objects which by their presence serve that purpose to that extent, by their presence alone, are being used albeit passively as "tools" of that particular hotel-keeper's trade and part of the apparatus of his business. A chair or a bed is being used as apparatus in the trade even though neither are occupied for days or weeks on end. Objects of decoration, even if static or even fixed to floor or wall, are discharging their function if the purpose of their presence is to provide an atmosphere of comfort or luxury—or even its illusion.

But it was powerfully urged on behalf of the Crown that, while attraction of custom and service to the customer, when attracted, might well be the purpose for which the taxpayer acquired the objects and installed the lighting in the form and manner described, this was all for the sole purpose of enhancing the attractiveness and attraction of the "setting"—consequently these objects were not within the category of those things with which the business was carried on. Structure and setting were one thing, "plant" was another and where, as here, all of the objects in issue were intended and used, passively it might be, to enhance the amenity of the "setting", and this being their sole purpose, they could not be regarded as plant. The Commissioners had therefore misread the authorities and consequently misdirected themselves.

Mr. Prosser, in his elegantly propounded submissions, urged the necessity of giving proper meaning to words which could be of "slippery" interpretation: it was necessary to distinguish those objects which enhanced or embellished what he called "setting" from those which had a functional use for the purposes of the taxpayer's trade. It was these latter items which alone merited the name and designation of "plant". To embellish "setting" might well have the effect of enhancing "amenity", but so to do was not the function of plant. But it may well be that the enhancement of the "setting", i.e., structure within which the trade is carried on, can be treated as putting the elements which embellish to serve the purpose or one of the purposes of the particular trade of the taxpayer. Here I think it is clear enough, both in principle and in light of recent English decisions, that use of items for enhancement of "setting" and for the purpose of the trade carried on in the "setting" may be the simultaneous

functions of the same items of equipment, e.g., *Cooke* v. *Beach Stations Caravans Ltd.*(1) [1974] 1 WLR 1398 as illustrative of this. The matter was put in a paragraph by Lord President Clyde in the *Barclay, Curle* case(2) when he observed:

> "It is true that, as Uthwatt J. said in *J. Lyons & Co. Ltd.* v. *Attorney-General* [1944] Ch. 281, at page 287, 'plant' in s. 279(1) does not include the place in which business is carried on—the setting, as it has been called in several of the cases. A building or structure may be something quite different in kind from plant. On the other hand, however, a building or structure may fall within the meaning of plant (and this seems to be recognised in s. 276(1) of the Act). As the authorities show, however, it is necessary in each case to consider the characteristics and purpose of the building or structure in order to ascertain whether or not it properly falls to be treated as plant."

The distinction between "plant" and "structure" or "setting", in that sense, was succinctly drawn by Pearson L.J. in *Jarrold* v. *John Good & Sons Ltd.*(3) [1963] 1 WLR 214, at page 225, when he spoke of plant being that with which the trade is carried on as opposed to the place where it was carried on: but, as Lord President Clyde noted, the two concepts are not mutually exclusive. Further, the question is a practical one and the answer is necessarily, in my opinion, conditioned not only by reference to the nature of the trade but to the particular operations and methods of the taxpayer in the pursuance of his particular business. There can, in my opinion, be no "standard pattern" of permissible plant in respect of each industry, trade or profession covered by the Act. The problem to be solved in light of the general principle accepted by the courts since *Yarmouth* v. *France*(4) is one to be solved with reference to the particular circumstances of the case under review. I see no reason in principle, why, in the case of a taxpayer engaged in this service industry, he should not be entitled to claim that what he has provided to "embellish" the surroundings provided by him in his premises should be held to be as much "plant" of his business as the beds or chairs or carpets with which he has furnished his bedrooms or lounges. I think it is idle to consider such provision as merely an addition to the "amenity" of the "setting". While provision of an item of shelter against inclemency of the climate in a self-service petrol station may in particular circumstances be regarded as a mere "amenity" undeserving of the description of "plant"—a matter I should not have thought wholly free from doubt—I do not think that there is any reason in principle or decision binding on this Court why provision of objects be it lighting or items of pure decor, which add or are thought to add to the attractions or even "amenity" of an hotel should not be capable of being held or regarded as part of the apparatus of the hotel-keeper in his legitimate trade. I do not think that the fact that certain objects of furnishing or even of decorative quality alone can be characterised as serving only an "amenity" purpose is in any way to be regarded as a *prima facie* ground for rejecting a claim to have expenditure upon them held to be expenditure on "plant". The "amenity" of an open air petrol station is one thing, but the "amenity" of an hotel or public-house seems to me to fall into a very different category. The fact that in certain cases objects could at the same time be regarded as forming part of or as an embellishment of the "setting" of an hotel—as could well be the case—does not seem to me to warrant a conclusion that this fact alone should deprive them of the character of "plant". It is well settled that the fact that something is part of the structure and may even itself be of a heritable character is no reason why in given

(1) 49 TC 514. (2) 45 TC 221, at p 232.
(3) 40 TC 681, at p 696. (4) 19 QBD 647.

circumstances it should not also be regarded as plant, cf. *Commissioners of Inland Revenue* v. *Barclay, Curle & Co. Ltd.*(1). If the object has a function in the promotion of the taxpayer's business, be it an active or a passive function, then I think that, *prima facie* in light of the accepted width of construction to be put on the word, such an object may not unfairly or improperly be regarded as part of the taxpayer's "plant". It may well be that it is impossible *a priori* to define precisely a line of demarcation between what is "plant" and what is "setting": the two can overlap or coincide, they are not and cannot be mutually exclusive, so that description as part of "setting" is not of itself fatal to identification of objects as "plant" at the same time. Provided, therefore, the Commissioners have asked themselves the proper question which they have to answer and address themselves to that question in light of the legal principle or principles they have to apply, as I think they have done, then I think that it is a case of applying a reasonable judgment to the facts which they find established. Necessarily, when the variety of trades is so wide and where within each trade the particular circumstances of individual trades may also present wide variations in their particular facts different conclusions may be reached on a consideration of those same facts by different tribunals properly directing themselves on the law they have to apply. In the present appeal I do not think that it has been demonstrated that the Commissioners misdirected themselves in law. On the contrary, I think they have fully and accurately stated the law which they have applied and illustrated it by reference to a variety of decisions. They did apply their minds to the function which the items under review were called on to perform in the taxpayer's business. They considered both the items of decor and lighting fittings and reached a discriminating decision. Their decision as to the electrical wiring is not challenged and as to the rest of the lighting equipment specified I think that they were well enough entitled to reach the conclusion at which they arrived, although I understand Counsel for the Respondents was prepared to concede the exclusion of the specified floor lighting equipment. Before I pass from the light fittings I would pause to note that in the *J. Lyons & Co. Ltd.* case(2) already referred to, the learned Judge was not concerned with the precise questions agitated in the present appeal, as it was conceded that the light or lamps in question in that case were not required or in use for the purposes of the business, as appears from the fuller reports of the judgment in [1943–44] 60 TLR 313. That case is in effect no more than one in the procession of reported decisions in which the basic interpretation of the word "plant" in *Yarmouth* v. *France*(3), which has now stood for almost a century, was accepted as the necessary starting point for any inquiries into the application of the word to the facts—of infinite variety—of a particular case. I may perhaps add at this point parenthetically that, while in their full and careful submissions Counsel traversed the whole gamut of reported cases, in the end of the day for the most part these are no more than illustrations of the application of a basic and well tried definition to a variety of factual circumstances.

In my opinion the Special Commissioners were well entitled to hold that the series of electric light fittings which they specify, having regard to their functions, were apparatus used in the taxpayer's business. I turn now to the items of decor; I do not think it could be denied that those items were "used" even though the use was passive. It was not in dispute that they were intended to perform a function in the taxpayer's business and that the function as well as to provide illumination was "embellishment". What in fact may be "embellished" is a matter of aesthetic judgment but not one of law. It was not challenged by the Crown that the creation or enhancement of an "atmosphere"

(1) 45 TC 221. (2) [1944] Ch 281. (3) 19 QBD 647.

was the purpose of the taxpayer in making use of this variety of objects, but it was urged that the "atmosphere" was that of the "setting". In my opinion, in the present case, that of a taxpayer engaged in a service industry, it can be fairly and accurately said that this is precisely one of the services which the taxpayer offers and contracts to provide for his customers actual and prospective. I am further of the opinion that when the word "setting" is used in such a case as that of an hotel-keeper or keeper of licensed premises, while the setting may be inextricably associated with or even be a fixed part of the structure in which the business is carried on, that provision of "atmosphere" is just one of the ways in which the services offered and utilised are made palatable and attractive. The items of decor were acquired and were in a reasonable sense used to "manufacture" atmosphere by the fact of their presence, and in that sense they were in my view clearly part of the apparatus used by the taxpayer for carrying on his business. Consequently items or objects employed or used for that purpose in such a business may not improperly or unreasonably be regarded and treated as "plant" of that business.

In these circumstances I think that the appeal fails and the questions should be answered accordingly.

Lord Stott—I agree. No doubt, as Lord Cooper suggested, the primary purpose of the introduction of capital allowances was to lighten the burden of taxation on the industrial community (see *Commissioners of Inland Revenue* v. *George Guthrie & Son*[1] 1952 SC 402); and any problems of construction in relation to the word "plant" have arisen from the necessity of applying a word which has a primarily industrial connotation to trades and occupations of a different type. In the present case the fallacy in the Crown's contention, as it seems to me, comes from a failure to recognise the true character of a hotelier's trade. The hotelier is in business not simply to supply the basic elements of food, drink and accommodation. Comfort, ambience and setting are not only the environment in which the hotelier operates, but may constitute a material part of his trade, and the findings in fact afford ample material on which they might be held to constitute a material part of the trade of these hoteliers. The chair and table which provide for the bodily comfort of the guests and the lighting and decor which provide for his visual or mental enjoyment are alike material by the use of which the hotelier may provide the service which it is part of his function to provide and accordingly, in my opinion, may alike be held to fall within the definition of "plant" as the word has been construed in the relevant authorities. I should respectfully adopt the distinction made by Shaw L.J. in *Benson* v. *Yard Arm Club Ltd.*[2] [1979] 1 WLR 347, at page 358, where (after having had the advantage, as he points out, of an able analysis by counsel of the functional element in the concept of plant) his Lordship says: "A characteristic of plant appears to me to be that it is an adjunct to the carrying on of a business and not the essential site or core of the business itself." Applying those criteria to the facts found in the present case, I can find no indication of misdirection in the Commissioners' approach, and I am of opinion that on the facts as found they were well entitled to reach the conclusion at which they arrived.

Appeal dismissed, with expenses.

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(1) 33 TC 327. (2) 53 TC 67, at p 88.

A The Crown's appeal was heard in the House of Lords (Lords Wilberforce, Salmon, Fraser of Tullybelton, Lowry and Bridge of Harwich) on 19 and 20 October 1981 when judgment was reserved. On 4 March 1982 judgment was given unanimously against the Crown, with costs.

Lord McClusky Q.C. and *J. E. Drummond Young* for the Company.

W. D. Prosser Q.C., Robert Carnwath and *A. C. Hamilton* for the Crown.

B The following case was cited in argument in addition to those referred to in the judgment:—*St. John's School* v. *Ward* 49 TC 524; [1975] STC 7.

Lord Wilberforce—My Lords, the Respondents own and manage a large number of hotels and licensed premises in Scotland and England. In 1972–73 they decided that if they were to increase or even maintain their turnover they C ought to brighten and modernise the facilities offered to the public. They therefore spent money on electrical rewiring, installation of new electric light fittings and of various categories of decor and murals, such as plaques, tapestries, and pictures. In one hotel they set up two elaborate metal sculptures said to represent seagulls in flight. The question of law for us is whether all or part of this expenditure attracts a first-year capital allowance which would D entitle them to deduct from their trading income the whole of the expenditure in the first year.

The Finance Act 1971, states as the condition for obtaining the allowance that the claimant must be carrying on a trade (as the Respondents undoubtedly were) and incur capital expenditure on the provision of machinery or plant for the purposes of the trade (Finance Act 1971, s 41).

E The question for decision, which both Courts below have answered in the Respondents' favour is whether the expenditure, undoubtedly capital expenditure, was on the provision of "plant".

Of the claimed items of expenditure the Special Commissioners disallowed that upon electrical wiring and against that decision there is no appeal. The remaining items totalled some £105,000 of which about £44,000 was on decor F and murals, and the rest on electric light fittings. The Case Stated contains a detailed description and prices of the various items but I do not think it is necessary to reproduce it, because both sides were agreed to treat them as falling within a broad category which can be described as decor and to have the question of law answered as regards the category as a whole. It is, however, necessary to draw attention to some of the findings of the Commissioners as to G the Respondents' business and the purpose for which the money was spent. These findings are as follows. The Respondents' hotels and licensed premises are either purpose-built or acquired as a shell and completed according to their special requirements for lighting and decor. The Respondents consider on commercial principles what type of clientele they wish to attract and on that basis instruct architects and interior designers. They may make changes H in interior design from time to time with a view to attracting a different class of customer. The type, design, and layout of the lighting arrangements, particularly in the common living areas, are selected with the aims of producing the atmosphere appropriate to attract the type of customers sought. This is regarded by the Respondents as an important factor in the commercial success

of their premises, a view supported by market research and which the Commissioners said that they accepted. Examples were given, and accepted by the Commissioners of cases where this was proved by results. The same appears to be true of the decor and murals. Was, then, this expenditure incurred in the provision of plant? The word "plant" has frequently been used in fiscal and other legislation. It is one of a fairly large category of words as to which no statutory definition is provided ("trade", "office", even "income" are others), so that it is left to the Court to interpret them. It naturally happens that as case follows case, and one extension leads to another, the meaning of the word gradually diverges from its natural or dictionary meaning. This is certainly true of "plant". No ordinary man, literate or semi-literate, would think that a horse, a swimming pool, moveable partitions, or even a dry dock was plant—yet each of these has been held to be so: so why not such equally improbable items as murals, or tapestries, or chandeliers? The courts have, over the years, provided themselves with some guidance in principle, starting with Lindley L.J. in *Yarmouth* v. *France* (1887) 19 QBD 647 at page 658. Plant, he said

> "in its ordinary sense . . . includes whatever apparatus is used by a business man for carrying on his business,—not his stock-in-trade which he buys or makes for sale; but all goods and chattels, fixed or moveable, live or dead, which he keeps for permanent employment in his business."

Later cases have revealed that a permanent structure may be plant (*Commissioners of Inland Revenue* v. *Barclay, Curle & Co. Ltd.*[1] 1969 SC (HL) 30) and argument has ranged over the question whether, to constitute plant, an item of property must fulfil an active role or whether a passive role will suffice—a distinction which led to some agreeable casuistry in relation to a swimming pool (*Cooke* v. *Beach Station Caravans Ltd.*[2] [1974] 1 WLR 1398). Perhaps the most useful discrimen, for present purposes, where we are concerned with something done to premises, is to be found in that of "setting": to provide a setting for the conduct of a trade or business is not to provide plant—*J. Lyons & Co. Ltd.* v. *Attorney-General* [1944] Ch 281, concerning electric lamps, sockets and cords for lighting a tea shop. But this, too, is not without difficulty. In the *Lyons* case itself Uthwatt J. thought that different considerations (so that they might qualify as apparatus) might apply to certain specific lamps because they might "be connected with the needs of the particular trade carried on upon the premises". In *Jarrold* v. *John Good & Sons, Ltd.*[3] [1963] 1 WLR 214, some fixed but moveable partitions though in a sense "setting" were thought capable of being also "apparatus". And in *Schofield* v. *R. & H. Hall Ltd.*[4] 49 TC 538, the same argument was applied to the external walls of grain silos, as well as to the connected machinery.

Another much used test word is "functional"—this is useful as expanding the notion of "apparatus"; it was used by Lord Reid in *Barclay, Curle* (above). But this too, must be considered, in itself, as inconclusive. Functional for what? Does the item serve a functional purpose in providing a setting? Or one for use in the trade? It is easy, without excessive imagination, to devise perplexing cases. A false ceiling designed to hide unsightly pipes is not plant, though the pipes themselves may be (*Hampton* v. *Fortes Autogrill Ltd.*[5] [1980] STC 80): is a tapestry hung on an unsightly wall any different from a painted mural? And does it make a difference whether there was a damp patch underneath? What limit can be placed on attractions, interior or exterior, designed to make premises more pleasing, to the eye or other senses? There is

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(1) 45 TC 221. (2) 49 TC 514. (3) 40 TC 681.
(4) [1975] STC 353. (5) 53 TC 691.

A no universal formula which can solve these puzzles. In the end each case must be resolved, in my opinion, by considering carefully the nature of the particular trade being carried on, and the relation of the expenditure to the promotion of the trade. I do not think that the courts should shrink, as a backstop, from asking whether it can really be supposed that Parliament desired to encourage a particular expenditure out of, in effect, taxpayers' money, and perhaps B ultimately, in extreme cases, to say that this is too much to stomach. It seems to me, on the Commissioners' findings, which are clear and emphatic, that the Respondents' trade includes, and is intended to be furthered by, the provision of what may be called "atmosphere" or "ambience", which (rightly or wrongly) they think may attract customers. Such intangibles may in a very real and concrete sense be part of what the trader sets out, and spends money, to C achieve. A good example might be a private clinic or hospital, where quiet and seclusion are provided, and charged for accordingly. One can well apply the "setting" test to these situations. The amenities and decoration in such a case as the present are not, by contrast with the *Lyons* case[1], the setting in which the trader carries on his business, but the setting which he offers to his customers for them to resort to and enjoy. That it is setting in the latter and not D the former sense for which the money was spent is proved beyond doubt by the Commissioners' findings.

I do not find it impossible to attribute to Parliament an intention to encourage by fiscal inducement the improvement of hotel amenity. Like the Commissioners one may feel some doubt about individual items, for example, the seagull sculptures at the Atlantic Tower Hotel, Liverpool: E decision cannot, I think, turn on whether they were moveable or fixed to the structure. But I would not differ from their hesitant conclusion that these artefacts have to be grouped with the other more prosaic objects and can, no less but no more artificially, be regarded as apparatus of the trade and so as plant.

The Commissioners' examination of the facts was exceedingly careful and F helpful, and their decision was agreed in by all members of the Inner House. I am disposed to accept the conclusion as correct and would dismiss the appeal.

Lord Salmon—My Lords, I entirely agree, for the reasons stated in the speeches of my noble and learned friends, Lord Wilberforce and Lord Lowry, that this appeal should be dismissed.

Lord Fraser of Tullybelton—My Lords, I have had the advantage of reading G in draft the speeches prepared by my noble and learned friends, Lord Wilberforce and Lord Lowry. I entirely agree with them and I do not consider that I can usefully add anything to them. For the reasons stated in those speeches I would dismiss this appeal.

Lord Lowry—My Lords, this is an appeal from an interlocutor of the Court of Session refusing an appeal by way of Case Stated under s 56 of the H Taxes Management Act 1970, taken by the Commissioners of Inland Revenue ("the Appellants") from a determination by the Commissioners for the Special Purposes of the Income Tax Acts ("the Commissioners") of an appeal by the Respondents against an assessment to corporation tax for their accounting period from 1 May 1972 to 20 April 1973 in the sum of £11,040,000 (later adjusted without prejudice to £11,038,915).

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(1) [1944] Ch 281.

The subject-matter of the proceedings is a claim by the Respondents, whose trade was to carry on hotels and public houses, that capital expenditure in the relevant accounting period on electric light fittings, decor and "murals" (a term I shall explain) should be allowed as expenditure incurred on the provision of plant within the meaning of s 41 of the Finance Act 1971, which, so far as relevant, provides:

> "41.—(1) Subject to the provisions of this Chapter, where—(*a*) a person carrying on a trade incurs capital expenditure on the provision of machinery or plant for the purposes of the trade, and (*b*) in consequence of his incurring the expenditure, the machinery or plant belongs to him at some time during the chargeable period related to the incurring of the expenditure, there shall be made to him for that period an allowance (in this Chapter referred to as 'a first-year allowance') which shall be of an amount determined in accordance with section 42 below:"

The issue, as defined by the Commissioners, is "whether expenditure incurred by a hotelier or keeper of licensed premises on the provision of decor, murals and electric light fittings for the purpose of producing an 'atmosphere' attractive to customers is (such) expenditure".

The original appeal by the Respondents had extended to money spent on installing electric wiring, but the Commissioners decided this point against the Respondents, who did not challenge that part of the determination and now accept it as correct. The amount of capital expenditure finally in issue was £105,770 of which £44,122 represented expenditure on various types of decor and murals, namely wall decor, plaques, tapestries, murals, pictures and metal sculptures, and the balance consisted of expenditure on electric light fittings.

The question of law for the opinion of the Court, and now for consideration by your Lordships' House, is badly stated in the Case to be "whether our decision except in so far as it relates to electrical wiring was correct". Appeals are of many different kinds, and it is important to understand and apply the ground rules relevant to each type. For present purposes, my Lords, I might be permitted to repeat in a slightly condensed form what I said on an earlier occasion in *Schofield* v. *R. & H. Hall Ltd.* [1975] NI 12 at page 21 (49 TC 538, at page 546), a case which was also concerned with plant: 1. It is a question of law what meaning is to be given to the word "plant", and it is for the courts to interpret its meaning, having regard to the context in which it occurs. 2. The law does not supply a definition of plant or prescribe a detailed or exhaustive set of rules for application to any particular set of circumstances, and there are cases which, on the facts found, are capable of decision either way. 3. A decision in such a case is a decision on a question of fact and degree and cannot be upset as being erroneous in point of law unless the Commissioners show by some reason they give or statement they make in the Case Stated that they have misunderstood or misapplied the law in some relevant particular. 4. The Commissioners err in point of law when they make a finding which there is no evidence to support. 5. The Commissioners may also err by reaching a conclusion which is inconsistent with the facts which they have found. I would also refer to the classic statement of Lord Radcliffe in *Edwards* v. *Bairstow* [1956] AC 14 at page 36 (36 TC 207, at page 209).

An agreed statement of facts at para VIII(3) of the Case Stated included a detailed description of the decor. I mention three items([1]):

> "Wall decor consists of general decorative items, such as: pictures, plaques, tapestries, plates, horse harnesses, stags' heads, pewterware,

([1]) Page 255 *ante*.

A brassware, copperware, swords, axes, bagpipes, pistols and deer skins. The aforementioned items can be either screwed to the wall and easily removed or hung on the wall and movable . . . Murals are fibre glass, leather or metal sculptured panels which are screwed to the wall. They are removable and often are removed for redecoration purposes or change of theme. All murals are specially designed to suit specific themes . . .

B Metal sculptures: One hangs from the ceiling to which it is bolted and is supported by steel rods. The other is a standing feature which is permanently fixed to the forecourt. The sculptures represent 'Seagulls in Flight'."

The metal sculptures cost £5,450. They were the only items "fixed but not easily removable". The balance of the £44,122 spent on "decor and murals" C was accounted for by "items fixed but easily removed" costing £35,820 and "items not fixed but movable" costing £2,852. Paragraph VIII(5) sets out additional facts which were found proved and which I now summarise briefly: The premises are purpose-built or leased as a shell. In either case the Respondents choose the fittings and decor likely to create an appropriate atmosphere to suit different types of clientele. Changes of decor and lighting D are made for commercial reasons and the success of the change can be demonstrated, as at the King James and Royal Scot hotels, the aim being to produce atmosphere to attract custom of the kind sought.

In working towards an answer to their problem, the Commissioners started in time-honoured fashion by quoting the definition of plant given by Lindley L.J. in *Yarmouth* v. *France* (1887) 19 QBD 647 at page 658. The fact E that the learned Lord Justice was classifying vice in a horse as a defect in the condition of plant within the meaning of the Employers' Liability Act 1880 did not rob this judicial definition of its felicity and general usefulness or its authority, now of nearly a hundred years' standing. The Commissioners then marched along a well signposted road via *J. Lyons & Co. Ltd.* v. *Attorney-General* [1944] Ch 281, *Jarrold* v. *John Good & Sons, Ltd.* [1963] 1 WLR 214, F (40 TC 681), *Commissioners of Inland Revenue* v. *Barclay, Curle & Co. Ltd.* 1969 SC (HL) 30, (45 TC 221) and *Dixon* v. *Fitch's Garage Ltd.* [1976] 1 WLR 215 (50 TC 509) to apply the principles extracted from those authorities to the facts of the case. The Commissioners appreciated that the atmosphere point was the general touchstone, but they also considered all the items of alleged plant individually. In the result they found in the Respondents' favour on every G item except the electrical wiring, about which they said(1): "We regard this as integral with the fabric of the building—as to which no question arises in the proceedings. We find that the electrical wiring is not plant, and to this extent the Company's appeal fails." They considered that the other items were "apparatus which (in the same way as the light fittings) serves a functional purpose in the Company's trade". Therefore they found them to be plant and H continued:

"We found more difficulty with the two metal sculptures of seagulls at the Atlantic Towers Hotel, Liverpool . . . They are clearly part of the setting and we think it fair to describe them as structures but, as we interpret the authorities, neither of these factors taken alone disqualifies the sculptures from being plant. They are fixed but not easily removed and I on balance (but not without doubt) we are of the view that they should not be regarded as part of the permanent structure of the hotel but that they can be properly described as apparatus which in view of the nature of the Company's trade, functions as plant."

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(1) Page 258 *ante*.

My Lords, I have mentioned the detailed findings in order to set in clear perspective the reasoning of the Commissioners and next I wish to look at the opinions of the learned Judges of the First Division, which are worthy of study for the clarity and cogency of their expression and in which the determination of the Commissioners was upheld. These judgments, when read in their entirety, strongly support the Commissioners' determination but, because the point at issue before your Lordships is whether that determination was correct in point of law, I shall be content to cite just a few passages, starting with the opinion of the Lord President([1]).

> "In the present case" (he said) "it is not suggested that the articles held by the Special Commissioners to be plant fall to be regarded as part of the structure of the various premises. They are undoubtedly 'apparatus' used by the company, 'for carrying on their business' and articles which they keep 'for permanent employment' in their business."

(The words in quotation marks constitute a reference back to *Yarmouth* v. *France*([2]).) Again([3]),

> ". . . one must bear in mind that 'setting' and 'plant' are not mutually exclusive . . . As I read the findings of the Special Commissioners they have recognised that the special feature of the trade in which the company is engaged is the marketing of the setting—including atmosphere—itself. All the articles of furniture in their premises—those conceded to be plant and the articles in dispute—play their intended part in creating the planned character and atmosphere of the various settings, and all were selected carefully to play this part."

Turning next to Lord Cameron's opinion, I have found the following observations particularly helpful([4]):

> "In my opinion the Commissioners have not been shown to have misdirected themselves nor is the conclusion at which they arrived in any sense unreasonable. The problem which the Commissioners were called upon to solve was one concerned with a 'service industry': I think this factor is important, because the question of what is properly to be regarded as 'plant' can only be answered in the context of the particular industry concerned and possibly, in light also of the particular circumstances of the individual taxpayers' own trade. . . . I think that much difficulty is caused by seeking to place limitative interpretations on the simple word 'plant': I do not think that the classic definition propounded in *Yarmouth* v. *France* suggests that it is a word which is other than of comprehensive meaning—'whatever apparatus is used by a business man for carrying on his business'—whatever the business may be. . . . It is difficult to see that the provision of conditions of comfort or even luxury lies outside the legitimate operations of an hotel keeper or by consequence that he should not be entitled in his business to make use of articles designed to subserve that purpose. . . . To do this may, in one sense of the word, no doubt be regarded as providing or enhancing the 'setting' in which the services are themselves provided—but at the same time the 'setting' (as opposed to the structure or place within which the businessman conducts his business) . . . is something the use of which is itself one of the services which the hotel owner makes available to his customer. . . . I do not think that the fact that certain objects of furnishing or even of decorative quality alone can be characterised as serving only an

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([1]) Page 262 *ante*. ([2]) 19 QBD 647.
([3]) Pages 262 and 263 *ante*. ([4]) Pages 264, 265 and 266 *ante*.

A 'amenity' purpose is in any way to be regarded as a *prima facie* ground for rejecting a claim to have expenditure on them held to be expenditure on 'plant'."

Lord Stott, who concurred in the opinions of his brethren, said *inter alia*(1):

"In the present case the fallacy in the Crown's contention, as it seems to me, comes from a failure to recognise the true character of a hotelier's
B trade. . . . The chair and table which provide for the bodily comfort of the guests, and the lighting and decor which provide for his visual or mental enjoyment, are alike material by the use of which the hotelier may provide the service which it is part of his function to provide, and accordingly in my opinion may alike be held to fall within the definition of 'plant' as the word has been construed in the relevant authorities."

C Mr. Prosser, who appeared with Mr. Carnwath and Mr. Hamilton for the Appellants, contended in the course of a well presented argument that the Commissioners, and by necessary implication the Judges of the First Division, had misunderstood and misapplied the relevant legal principles. As the foundation for this proposition he advanced the view (1) that the setting of a trade was synonymous with the premises or place *in* which the trade is carried
D on, in contrast to the apparatus, or plant, *with* which it is carried on: (2) that articles which were used merely to enhance or adorn the setting and thereby to create atmosphere could not in law be plant because they were not used, or meant to be used, in the activity carried on in the setting; and therefore (3) that the only articles which could qualify as plant were those used in the processes of the trade, such as chairs to sit on, plates to eat off and glasses to drink out of
E (which might in themselves be chosen partly for their aesthetic qualities).

Counsel further contended that the Commissioners had misunderstood and misapplied the functional test by wrongly assuming that anything which *serves a functional purpose* in a trade must be plant used for carrying on that trade: this could not be so, because, for example, the premises here (and also the electrical wiring) performed a function, but this did not mean that they were
F plant. He also pressed your Lordships with the argument *in terrorem* that to accede to the Respondents' wide interpretation would open the gate into a large field with no definable limits.

Lord McCluskey, who appeared with Mr. Drummond-Young for the Respondents, had the easier task, but discharged it with no less skill. Generally, he supported the reasoning of the Commissioners and the First
G Division, but also relied on what Pearson L.J. said in *Jarrold* v. *John Good & Sons, Ltd.*(2) at page 225 (which my noble and learned friend Lord Wilberforce described as the highwater mark for Respondents in this type of case) to the effect that, where either of two views might have been taken, the one which the Commissioners preferred must stand if there was evidence to support it and no error of principle. He also submitted that an artefact is *prima facie* more likely
H to be plant. My Lords, the Appellants' primary fallacy, in my opinion was to identify "setting" inevitably with "premises" or "place" by misapplying to this case the observations of the judges in *Jarrold* when facing the question whether the articles are part of the premises or setting in which the business is carried on or part of the plant with which it is carried on. This was in a case where the word "setting" had no theatrical or artistic significance, as it would
I have in the phrase "appropriate setting" meaning "the right atmosphere".

(1) Page 268 *ante*. (2) [1963] 1 WLR 214; 40 TC 681.

And, even if one assumes that "the setting" is the same thing as "the premises", it is fallacious to say that articles used to adorn the setting thereby ceased to be apparatus used by the taxpayers for carrying on their business. It is, in my view, equally fallacious to deny that the creation of atmosphere is, for the purposes of his trade, an important function of the successful hotelier; in fact, this was admitted on behalf of the Appellants before your Lordships. Now the creation of the right atmosphere is a means to an end in the carrying on of such a trade; it is not a trade in itself or a separate part of the trade. This objective can be achieved by a combination of things—a beautiful or unusual or historic building, attractive views, gardens, shrubberies and waterfalls, ornaments, the equipment used by the staff and the glasses, china, cutlery, table linen, and the tables and chairs used by the customers. Everything in this list, from the ornaments onwards is apparatus used in the hotel business and the ornaments are used purely to create atmosphere. The mere fact that some of the ornaments are free standing on the floor or on shelves or tables and that others are suspended from or affixed to walls or ceilings is quite beside the point. They are all part of the hotelier's plant as defined in *Yarmouth* v. *France*(1). And, as my noble and learned friend Lord Salmon put it in the course of argument, one of the trade functions of an hotelier is to make the interior attractive to customers: why then should one deny that the items used for this purpose are plant? Mr. Prosser sought to persuade your Lordships that, because "murals" affixed to the wall performed the same function (of enhancing the setting) as attractive wall-paper or mural paintings, they were not plant. By this fallacy he presented in reverse the argument which he attributed to the Commissioners: the walls and the electric wiring and the electric light fittings all perform an indispensable function, but only the fittings are plant. In the same way, the mural paintings and the wallpaper, when executed or applied, are part of the walls and not plant, whereas the "murals", being apparatus are plant. The fact that two different things perform the same function or role is not the point. One thing functions as part of the premises, the other as part of the plant. One speaks of the setting of a play. The producer creates this by the use of chattels or moveables in the shape of theatrical properties or "props", which affect the audience by conveying atmosphere across the footlights, as the "props" (or plant) of the hotelier affect the customer. Your Lordships will also recall Lord McCluskey's apt illustration of the furnishings and atmosphere to be found in a private nursing home or clinic.

In support of the argument that the functional test had been misapplied, the Appellants referred to a passage in the Case Stated(2): "In our view, and we so find, all the light fittings . . . are of such a design and are so laid out as to be properly regarded as apparatus *serving a functional purpose* in the Company's trade." But here one must stress not only the words I have emphasised but the word "apparatus". The Appellants also tried to take advantage of the words attributed to Mr. Prosser by Lord Cameron in his opinion, when he said(3):

> "Counsel for Crown in his elegantly propounded submissions urged the necessity of giving proper meaning to words which could be of 'slippery' interpretation: it was necessary to distinguish those objects which enhanced or embellished what he called 'setting' from those which had a functional use for the purposes of the taxpayer's trade."

In this passage "functional" is used as the equivalent of something like "directly practical"; chairs and china for use are being distinguished from ornaments, and Lord Cameron is surely not falling into the error of saying that the electrical

(1) (1887) 19 QBD 647. (2) Page 258 *ante*. (3) Page 265 *ante*.

A wiring (which is not plant) has no *functional* use. It is correct, as the Appellants contend, that the setting, for example a beautiful house or garden, may attract custom and create atmosphere without being plant. That does not mean that a chattel or moveables used (as part of the setting) to create atmosphere is *not* plant. Having regard to the legal history of the word "plant", there is no warrant for arbitrarily confining its meaning as suggested by the Appellants.
B One might as well say that the tools and jigs of a wartime factory were part of the plant but that the apparatus used to convey "music while you work" to those employed was not.

My Lords, the length to which the Appellants' argument must go illustrates its frailty. It is also an illusion to think that a more general interpretation of plant leads to unjustified exemptions. We do not lack examples of claims which
C are rejected by the Special Commissioners or favourable decisions which are later reversed by the Courts. Moreover, the test accepted in this case by the Commissioners and affirmed by the Inner House draws a line which can be held without trouble: something which becomes part of the premises, instead of merely embellishing them, is not plant, except in the rare case where the premises are themselves plant, like the dry dock in *Barclay, Curle*[1] or the
D grain silo in *Schofield* v. *Hall*[2]. And, in the last resort, if after enduring nearly a century of *Yarmouth* v. *France*[3] Parliament decides that "plant" must receive a statutory definition, something can no doubt be done to curb the "excesses" of the Special Commissioners and the judiciary.

My Lords, both sides recognised that most of the cases are illustrations rather than authorities, but I must mention some of those relied on by the
E Appellants. In *Brown* v. *Burnley Football and Athletic Co. Ltd.*[4] [1980] STC 424, a new concrete stand was held not to be "plant", since it was not part of the apparatus with which the club carried on its trade (although the seating affixed to the stand was agreed to be plant). Vinelott J. adopted the conclusion of the Special Commissioners that "the stand is not 'plant' functioning, whether passively or actively, in the actual processes which constitute the trade". But
F the Appellants can get help from that case only by falsely assuming that the "actual processes" which constitute the hotelier's trade are strictly confined to the serving of food and drink and providing accommodations in a limited sense. In *Hampton* v. *Fortes Autogrill Ltd.*[5] [1980] STC 80, the taxpayers, who carried on the trade of public caterers, installed permanent false ceilings which both supported and concealed water pipes, ventilation trunking, electrical
G conduits and lighting apparatus. The General Commissioners allowed the claim that the ceilings were plant being "part and parcel of the services which they supported and covered", but the Court reversed this determination, holding that the ceilings were not necessary for the functioning of any apparatus used for the purposes of the company's trade and were not part of the means by which the trade was carried on. The Appellants have relied on
H observations of Fox J. who said (at page 84)[6]:

> "The covering provided by the false ceiling is not, it seems to me, part of the means by which the taxpayer company provides food and drink to its customers . . . It is merely a covering" . . . (for plant) "in the form of a plaster ceiling. The fact that it covers the pipes and services does not, it seems to me, make it plant, any more than the fact that the pipes and
I services were placed behind a true ceiling or wall would make that ceiling

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(1) 45 TC 221. (2) 49 TC 538. (3) (1887) 19 QBD 647.
(4) 53 TC 357. (5) 53 TC 691. (6) *Ibid*, at p 696.

or wall into plant. . . . If a trader has an unsightly piece of plant and wishes to mask it by some covering, the fact that what is being masked is itself plant does not turn the masking (which itself performs no function in carrying on the operations of the trade) into plant. It is plant alone which attracts the allowances . . . No doubt it is, in a restaurant, desirable visually that pipes and services should be covered by a false ceiling if they are not inside the ordinary walls or ceilings. But that merely means that the place *in* which the trade is carried on is made more attractive: it does not establish that the false ceilings are means *by* which the trade is carried on."

The Appellants relied on the reference to "the means by which the taxpayer company provides food and drink to its customers", but there was (quite apart from other considerations) no issue about the creation of atmosphere. They also pointed to the statements that the masking "performs no function in carrying on the operations of the trade" and that "the place *in* which the trade is carried on is made more attractive". My Lords, what the Appellants' argument, based on *Fortes*(1), disregards is what Fox J. said at page 84:

"A permanent ceiling, true or false, is part of the premises in which the trade is carried on. The fact that plant is attached to it does not, in my view, make the ceiling plant. It is just a ceiling, and, as such, does not perform a function in carrying out the trade any more than the remainder of the premises do. Similarly, a wall of a building may provide support for plant but, it seems to me, is not thereby plant itself."

In other words, the ceiling in *Fortes* was part of the realty and therefore part of the premises *in* which the trade was carried on. The articles now in dispute were apparatus, some of which was suspended from or attached to the wall, and the apparatus was, as the Commissioners found, plant used by the Respondents in their business. *Cooke* v. *Beach Station Caravans Ltd.*(2) [1974] 1 WLR 1398 was concerned with a swimming pool on a caravan site and, so far as it is relevant, causes much more difficulty for the Appellants than for the Respondents. In *Dixon* v. *Fitch's Garage Ltd.*(3) [1976] 1 WLR 215 a canopy at a self-service petrol station was held not to be plant but merely part of the "setting". This case seems to me to have been capable of decision either way but involves no principle destructive of the Commissioners' findings in the present case, because the word "setting" was used synonymously with "the place in which". Passing over *Cole Bros. Ltd.* v. *Phillips*(4) [1980] STC 518; (which illustrates no new principle) I come to *Benson* v. *Yard Arm Club Ltd.*(5) [1979] 1 WLR 347 in which a ship, or floating hulk, used as a restaurant was held not to be plant. The Appellants relied on the case because of the fact that the ship was used to create a "shipboard feeling", in other words, a certain kind of atmosphere, among the patrons. But the distinction is that the ship, although a chattel, was the *place in which* the trade was carried on and was therefore the equivalent of the various premises in which the present Respondents carry on their trade and not of the apparatus used as an adjunct of the trade carried on in those premises. Thus the ship, with all its novelty and atmosphere, could no more be called plant than a restaurant consisting of an Elizabethan manor-house, a thatched cottage, a barn or a converted windmill, although like all those buildings, it could be embellished and adorned with "plant" suitable to the surroundings and to the purposes of the trade. This is another way of saying that the site is not an adjunct to the carrying on of a business, although the setting can be: the good ship Hispaniola cannot bring the Appellants safe to port. The dry dock in *Barclay, Curle*(6) was a structure as well as plant.

(1) [1980] STC 80; 53 TC 691, at p 696. (2) 49 TC 514. (3) 50 TC 509.
(4) 55 TC 188. (5) 53 TC 67. (6) 45 TC 221.

Therefore the case does not directly help the Respondent because their premises are not plant. But the Appellants also rely in vain on *Barclay Curle*(1). They appeared to say that the dry dock, although it was the setting, was also plant, whereas the hotel premises are the setting but are not plant: "therefore articles used to adorn the hotel setting are *not* plant either", although they are "goods or chattels, fixed or moveable, . . . which (the Respondents) keep for permanent employment in their business". *Barclay, Curle,* however, shows that a structure in which a trade is carried on *can* be plant *with* which it is carried on; it would therefore be strange indeed if articles used in a building "for the purposes of the trade" could not also be plant within the meaning of s 41.

My Lords, for the reasons set out in this opinion, I would dismiss the appeal.

Lord Bridge of Harwich—My Lords, I have had the advantage of reading in advance the speeches of my noble and learned friends, Lord Wilberforce and Lord Lowry. For the reasons they give I would also dismiss the appeal.

Appeal dismissed, with costs.

[Solicitors:—Solicitor of Inland Revenue; Messrs. Martin & Co., agents for Messrs. Shepherd & Wedderburn, W.S.]

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(1) 45 TC 221.

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