1980 April 30

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEO. PAVLIDES LTD.,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTRY OF FINANCE,
2. THE COMMISSIONER OF INCOME TAX,

Respondents.

(*Case No.* 269/78).

Judicial notice—Facts concerning the political situation in Cyprus—Judicial notice of.

Income tax—Balancing deduction—Section 12(3)(*b*) *of the Income Tax Laws—Temporary inaccessibility to immovable property and temporary inability to use same for purposes of applicants' trade or business, due to enemy occupation—Does not amount to a "definite" ceasure of use or "definite" loss of the property within the meaning of the said section* 12(3)(*b*)*—Respondent Commissioner rightly refused to accept a balancing deduction in respect of the said property*—George Tsimon Ltd. *v.* Republic (*reported in this Part at p.* 321 ante) *followed.*

Applicants are the owners of a building at Myrtou village within Kyrenia District which was built in 1973 at a total cost of £111,954. As they claimed capital allowance because they submitted then that the building in question was used partly for their business purpose and partly for private purposes, the respondent Commissioner agreed that 50 per centum of the cost of the said building, that is £55,977, should qualify for capital allowance and an annual allowance of £2,568 was granted.

As a result of the turkish invasion of Cyprus the said building was rendered inaccessible to applicants since 1974 when the area within which it is situated, came under the occupation of

the Turkish forces. Applicant submitted a balancing statement for the year 1974 and claimed a balancing deduction for the unwritten balance of the value of the said property which, at the end of 1974, stood at £53,409 and treated such amount as counterbalancing any profits of the applicant company in respect of such year. The respondent Commissioner did not accept such deduction and as a result the applicants were assessed to pay £7,408.600 mils income tax. Hence this recourse in which the sole issue was whether the subject matter assets of the applicants have "definitely" ("ὁριστικῶς") ceased to be used for the purpose of their trade as envisaged by section 12(3)(b)* of the Income Tax Laws.

Held, (after taking judicial notice of certain facts concerning the political situation in Cyprus and which formed the background of this case—vide pp. 354–6 post) that, taking into consideration all the surrounding facts and circumstances of this case the applicants have failed to satisfy the Court that they have "ὁριστικῶς" (definitely) under section 12(3)(b) of the income Tax Laws ceased to use their property, the subject matter of this case, for the purpose of their trade, or business; that the mere temporary inaccessibility by the applicants of such property and their temporary inability to use same for the purpose of their trade or business, due to enemy occupation and for so long as such occupation lasts, does not amount to a "definite" ceasure of use or "definite" loss of their property which, as admitted by the applicants, still stands registered in their names as absolute owners and it is not alleged as having been lost permanently; that, therefore, the Commissioner of Income Tax rightly refused to accept a balancing deduction in respect of such properties; and that, accordingly, the present recourse fails and must be dismissed.

Application dismissed.

Cases referred to:

George Tsimon Ltd. v. *The Republic of Cyprus* (reported in this Part at p. 321 *ante*);

Seaford Court Estates Ltd. v. *Asher* [1949] 2 All E.R. 155; [1950] 1 All E.R. 1018;

Notham v. *London Borough of Barnett* [1978] 1 All E.R. 1243;

Attorney-General of the Republic v. *Ibrahim and Others*, 1964 C.L.R. 195;

* Quoted at p. 352 *post*.

Magor and St. Mellons Rural District Council v. *Newport Corporation* [1951] 2 All E.R. 839;

Duport Steel Ltd., and Others v. *Sirs and Others* [1980] 1 All E.R. 529.

Recourse.

Recourse against the validity of the income tax assessment raised on the applicants for the year of assessment 1975.

A. Triantafyllides, for the applicant.

A. Evangelou, Counsel of the Republic, for the respondent.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicants by the present recourse pray for—

"(a) Declaration that assessment No. 157/AD/76/75, is null and void and of no effect whatsoever.

(b) Declaration that the decision of the Respondents to impose income tax on Applicants for the year of assessment 1975 amounting to £7,408,600 mils or any other sum or at all, is null and void and of no effect whatsoever.

(c) Declaration that the decision of the Respondents contained in *exhibits* 1 and 3 attached hereto not to accept Applicants' balancing statement and/or balancing deduction in respect of the 50 per cent cost of their building and installations at Myrtou is null and void and of no effect whatsoever."

Applicants are the owners of a building at Myrtou village within Kyrenia district. The said property, since 1974, has been rendered inaccessible to the applicants due to the Turkish invasion and the occupation of the area within which the property is situated by the Turkish forces.

The grounds of law on which the recourse is based, as set out in the application, are as follows:

"1. Applicants have permanently lost their immovable property at Myrtou as well as they have permanently ceased to use the said assets which have been rendered permanently and indefinitely inaccessible to them due to the Turkish invasion.

2. Consequently, on the basis of section 12(3)(4) of the Income Tax Laws 1961–1975, Respondents should have accepted Applicants' balancing statement and/or balancing deduction."

This case presents similar points of law and fact as Case No. 288/78 *George Tsimon Ltd.*, v. *The Republic of Cyprus** etc. in which judgment has just been delivered. What amounts to a balancing deduction under sections 12(3) and 12(4) of the Income Tax Laws, I have already dealt with in Case No. 288/78. It is shortly as follows: Such a deduction is an allowance for wear and tear given for the acquisition of capital assets used in the business varying according to the nature of the assets. Such allowance is deducted from the original amount paid and then the balance is carried forward to the following year as a capital asset of the company. A similar procedure is followed for the ensuing years by deducting every year the allowance for wear and tear from the balance carried forward at the end of each year. If at any time the capital asset is sold by the company, any amount in excess of the value of the assets as appearing on the last return is considered as a profit, whereas, if the amount realised is loss, this is treated as a loss which the company is entitled to deduct from the accounts and such deduction amounts to a balancing deduction.

The undisputed facts of the case are shortly as follows:

Applicants are a company incorporated in June, 1938 as a private company of limited liability. In 1973 applicants erected a house at Myrtou village, Kyrenia District, at a total cost of £111,954.–., including costs of central heating, swimming pool and other installations. Applicants submitted then that the house was used partly for its business purposes and partly for private purposes, claiming capital allowance to the extent of 3/4ths of the cost of erection of the said house. At a meeting between the representatives of applicants and the respondent Commissioner, it was agreed that 50 per centum of the cost of the said house, that is, £55,977.– should qualify for capital allowance and an annual allowance of £2,568.– was granted.

As a result of the Turkish invasion the said property was rendered inaccessible to applicants since 1974 when the area within which it is situated, came under the occupation of the

* Reported in the Part at p. 321 *ante*.

Turkish forces. Applicants submitted a balancing statement for the year 1974 and claimed a balancing deduction for the unwritten balance of the value of the said property which, at the end of 1974, stood at £53,409.– and treated such amount as counterbalancing any profits of the company in respect of such year. The respondent Commissioner of Income Tax did not accept such deduction and as a result the applicants were assessed, by notice dated 16.2.1976 (*exhibit* 1) to pay £7,408.600 mils income tax for the year of assessment 1975, in respect of the financial year 1974. By letter dated the 6th April, 1976 (*exhibit* 2) the auditors of the applicants acting on their behalf, objected against the said assessment. The grounds set out in the said objection, are as follows:

"(α) Τὰ ὑπὸ συζήτησιν στοιχεῖα ἀπὸ τῆς Τουρκικῆς Εἰσβολῆς καὶ τῆς καταλήψεως τῆς βορείου Κύπρου ὑπὸ τῶν Τουρκικῶν στρατευμάτων κατοχῆς, ἤτοι ἀπὸ εἴκοσι καὶ πλέον μηνῶν, ἔπαυσαν νὰ χρησιμοποιοῦνται ὑπὸ τῶν πελατῶν μας. Οὐδεὶς δὲ εἰς τὰς ὑπὸ τοῦ κράτους ἐλεγχομένας περιοχὰς εἶναι σήμερον εἰς θέσιν νὰ ἐξακριβώσῃ κατὰ πόσον ταῦτα ἐξακολουθοῦν νὰ ὑφίστανται καὶ ἐὰν ὑφίστανται εἰς ποίαν κατάστασιν ταῦτα εὑρίσκονται.

(β) Οὐδεὶς εἶναι εἰς θέσιν νὰ γνωρίζῃ κατὰ πόσον τὰ ἐν λόγῳ στοιχεῖα ἐὰν ὑπάρχουν σήμερον καὶ ἐὰν θὰ ἐξακολουθήσουν νὰ ὑπάρχουν εἰς τὸ μέλλον, θὰ ἐπαναπεριέλθουν εἰς τὴν οὐσιαστικὴν ἰδιοκτησίαν καὶ χρῆσιν τῶν δικαιούχων πελατῶν μας.

(γ) Οὐδεὶς δύναται νὰ προβλέψῃ καὶ εἰλικρινῶς νὰ καθορίσῃ ποῖοι θὰ εἶναι οἱ ὅροι οἱασδήποτε π ι θ α ν ῆ ς μελλοντικῆς πολιτικῆς διευθετήσεως, ἐὰν θὰ ὑπάρξῃ ποτὲ τοιαύτη, ἀναφορικῶς πρὸς περιουσιακὰ στοιχεῖα εὑρισκόμενα εἰς τὰς ὑπὸ κατοχὴν βορείας περιοχὰς τῆς νήσου μας.

(δ) Ἡ ὑφ' ὑμῶν, ὡς ἀναφέρετε, ἀκολουθουμένη τακτική, τὴν ὁποίαν οἱ πελάται μας ἐν πάσῃ περιπτώσει θεωροῦν ἐσφαλμένην, εἶναι ἀντίθετος πρὸς τὸ γράμμα καὶ πνεῦμα τοῦ νόμου καὶ ὡς ἐκ τούτου δὲν εἶναι δυνατὸν αὕτη νὰ δεσμεύῃ τὸν φορολογούμενον ἢ νὰ ἔχει οἱανδήποτε νομικὴν ἰσχύν.

(ε) Ἡ φορολογικὴ νομοθεσία προνοεῖ, κατὰ τὴν γνώμην μας, σαφῶς (Ἄρθρον 12(3) καὶ (4) τῶν περὶ φορολογίας

τοῦ εἰσοδήματος νόμων τοῦ 1961 ἕως 1969) διὰ περιπτώσεις ζημιῶν ὡς αἱ εἰς τὴν παροῦσαν περίπτωσιν τῶν πελατῶν μας.

(ζ) Πάντα τὰ ὑπὸ τοῦ σχετικοῦ νόμου προνοούμενα ἤτοι ἡ ὑποβολὴ εἰς ὑμᾶς ἐξισωτικῆς καταστάσεως μεθ' ὅλων τῶν ἀναγκαίων λεπτομερειῶν καὶ ὑπολογισμῶν ἐγένοντο ἀπὸ πάσης ἀπόψεως κανονικῶς ὑφ' ἡμῶν ἐκ μέρους τῶν πελατῶν μας.

(η) Ὅταν κατὰ τὸ ἔτος 1963 οἱ πελάται μας εἶχον δυστυχῶς καὶ τότε τὴν κακὴν τύχην νὰ ἀπολέσουν ὑπὸ παρομοίας συνθήκας περιουσίαν εἰς τὴν ὁδὸν Βικτωρίας ἐν Λευκωσίᾳ αἱ ζημίαι τὰς ὁποίας οὗτοι οὕτω ὑπέστησαν ἐγένοντο, ὀρθῶς κατὰ τὴν ἄποψιν μας, πλήρως ἀποδεκταὶ ὑφ' ὑμῶν.

(θ) Ἐὰν, ὡς πάντες εὐχόμεθα, καταστῇ δυνατὴ ἡ ἐπιστροφὴ τῶν ἐν λόγω στοιχείων εἰς τοὺς πελάτας μας, οὗτοι διὰ τῆς παρούσης μέσῳ ἡμῶν ὑπευθύνως δηλοῦν ὅτι θὰ εἶναι πλέον εὐτυχεῖς ἐὰν λογισθῇ καὶ ληφθῇ ὑπ' ὄψιν ἡ ἀξία τῶν ἐν λόγω στοιχείων εἰς τὸ ἐνεργητικὸν των γίνουν δὲ κατὰ τὸ ἔτος τῆς τοιαύτης ἐπιστροφῆς ἅπασαι αἱ σχετικαὶ φορολογικαὶ ἀναπροσαρμογαί.

Ἐν ὄψει τῶν προαναφερθέντων αἰτούμεθα τὴν ἀναθεώρησιν τῆς ἐπὶ τῶν πελατῶν μας γενομένης φορολογίας, ἐπιστρέφομεν δὲ ἐσωκλείστως τὸ σχετικὸν ἔντυπον I.R. 12 πρὸς ἀναθεώρησιν τούτου".

("(a) The properties under consideration, as from the Turkish invasion and the occupation of the northern Cyprus by the Turkish invasion forces, i.e. for more than twenty months, have ceased to be used by our clients. No one residing in the parts of Cyprus controlled by the State is to-day in a position to ascertain whether they continue to exist and if they do in what state they are.

(b) No one is in a position to know whether the said properties, if they exist today and if they will continue to exist in future, will come back to the substantive possession and use by our clients who are entitled to them.

(c) No one can foresee and frankly define the conditions

of any possible future political settlement, if there will ever be one, regarding properties situated in the areas under occupation in the north part of Cyprus.

(d) The policy as you state, followed by you, which in any case is considered as a wrong one, by our clients is contrary to the letter and spirit of the law and therefore it is not possible to be binding on the tax-payer or to have any legal effect.

(e) The taxation legislation, in our view, clearly provides (section 12(3) and (4) of the Income Tax Laws, 1961-1969) for cases of loss like the ones in the present case of our clients.

(f) All the requirements of the relevant law i.e. the submission to you of a balancing statement with all the necessary details and calculations have been submitted in all respects regularly by us on our clients' behalf.

(g) When our clients, in 1963 had unfortunately the bad lack to lose under similar circumstances property in Victoria Street in Nicosia the losses which they thus suffered, have been, correctly in our view, fully accepted by you.

(h) If, as we all wish, the return of the above properties to our clients becomes possible, our clients by this letter through us responsibly declare that they will be most happy to have the value of the said properties taken into account to their credit and all relevant taxation re-adjustments be made during the year of such return.

In view of the above-mentioned we request the re-examination of the assessment raised on our clients, and we return herewith the relevant form I.R. 12 for re-examination.")

As no agreement could be reached on this issue and after the respondent considered the objections raised by the applicants, he informed the applicants by letter dated 3rd April, 1978 that their objection was dismissed and that no revision of the previous decision could be made. A final notice of assessment was sent

to the applicants asking for payment of the amounts so assessed and as a result the applicants filed the present recourse.

The issue before the Court is the same as in Case No. 288/78, that is, whether the applicants are entitled to a balancing deduction in respect of their property at Myrtou which has become inaccessible to them as a result of the Turkish invasion. Such issue depends entirely on the question whether sections 12(3) and 12(4) of the Income Tax Laws 1961–1976 are applicable in the present case.

Counsel for applicants argued that the present case depends entirely on section 12(3)(b) of the Income Tax Laws 1961–1976 as set out in the Revisional Consolidation of the Cyprus Legislation of 31st March, 1976 which reads as follows:

"(3) Where under the provisions of this section any deduction has been allowed in any year of assessment in ascertaining the chargeable income of a person engaged in a trade, business, profession, vocation or employment and any of the following events occurs in the year immediately preceding the year of assessment or, in the case of employment, in the year of assessment that is to say—

(a) .....

(b) While continuing to belong to the person carrying on the trade, business, profession, vocation or employment the property or any part thereof permanently ceases to be used for the purposes of the trade, business, profession, vocation or employment carried on by him; or

(c) ....."

The Greek text reads as follows:

("(3) Εἰς περιπτώσεις καθ' ἃς, κατὰ τὸν προσδιορισμὸν τοῦ φορολογητέου εἰσοδήματος προσώπου ἀσκοῦντος ἐμπορικὴν ἢ βιομηχανικὴν ἐπιχείρησιν, ἐπιτήδευμα ἢ βιοτεχνίαν τινά, ἐλευθέριον ἢ ἄλλο τι ἐπάγγελμα, ἢ παρέχοντος μισθωτὰς ὑπηρεσίας, ἔχει χορηγηθῆ ἔκπτωσίς τις ἐν τινι φορολογικῷ ἔτει δυνάμει τῶν διατάξεων τοῦ ἄρθρου τούτου ἀναφορικῶς πρὸς στοιχεῖόν τι παγίου ἐνεργητικοῦ καὶ ἐν τῷ ἔτει τῷ ἀμέσως προηγουμένῳ τοῦ φορολογικοῦ ἔτους, ἢ, εἰς τὴν περίπτωσιν μισθωτῶν ὑπηρεσιῶν, διαρκοῦντος τοῦ φορο-

λογικοῦ ἔτους, ἤθελεν ἐπισυμβῆ ἐν τῶν ἀκολούθων γεγονότων, ἤτοι–

(α) .....

(β) τὸ τοιοῦτο στοιχεῖον ἢ μέρος τούτου ἤθελε παύσει ὁριστικῶς νὰ χρησιμοποιῆται διὰ τοὺς σκοποὺς τῆς ὑπὸ τοῦ προσώπου τούτου ἀσκουμένης ἐμπορικῆς ἢ βιομηχανικῆς ἐπιχειρήσεως, ἐπιτηδεύματος ἢ βιοτεχνίας, ἐλευθερίου ἢ ἄλλου ἐπαγγέλματος, ἢ μισθωτῆς ὑπηρεσίας ἐνῷ ἐξακολουθῇ νὰ ἀνήκη εἰσέτι εἰς τὸ πρόσωπον τὸ ἀσκοῦν τὴν ἐμπορικὴν ἢ βιομηχανικὴν ἐπιχείρησιν, ἐπιτήδευμα ἢ βιοτεχνίαν, τὸ ἐλευθέριον ἢ ἄλλον τι ἐπάγγελμα, ἢ τὴν μισθωτὴν ὑπηρεσίαν.

(γ) .....").

The only amendment on section 12(3) after 1976 is an amendment by Law 40/79, whereby the words "ἐν τῷ ἔτει τῷ ἀμέσως.....ὑπηρεσιῶν" ("In the year immediately..... employment") have been deleted which, amendment, in any event, has no material effect in the present case.

He further argued that a differentiation should be made between the present case and Case No. 288/78 in which judgment has just been delivered, in that the word "permanent" on which counsel in the other case based his argument which appears in the English text, was not a word appearing in the Greek text in section 12(3)(b). Because whereas under section 12(3)(c) we have the words "ὁριστικῶς καὶ μονίμως" (definitely and permanently) under section 12(3)(b) only the word "ὁριστικῶς" is mentioned which in English is equivalent to "definitely" and not "permanently". His argument therefore turned round the interpretation of the word "ὁριστικῶς" and its applicability to the present case and he referred to the definition of the word "definite" and "definitely" as given in the Universal Dictionary and Webster's Dictionary.

Counsel for applicants submitted that the word "definitely" should be construed as "precisely, for the time being, in the reasonably foreseeable future", that such word does not mean "permanently". He further said that if one asks whether applicants have lost use of their assets permanently, perhaps the answer literally may be No. But if the question is put whether they have definitely, for the time being and in the defined future, lost the

use of their assets, then the answer is Yes. And in consequence, the provisions of section 12(3)(b) amply cover this case. He concluded by saying that though the property has not been lost permanently, as provided by section 12(3)(c), that in any event applicants cannot definitely make use of the said assets. He laid stress on the difference of the wording of sections 12(3)(b) and 12(3)(c) and submitted that though section 12(3)(c) cannot apply in this case, as the applicants do not allege that they have permanently lost their property, section 12(3)(b) was applicable because under such section the use need not be deprived "permanently" but "definitely", and he invited the Court to construe it in a broad and liberal way and not in its strict literal sense following the principles enunciated by Lord Denning in *Seaford Court Estates Ltd.* v. *Asher* [1949] 2 All E.R. 155, and *Notham* v. *London Borough of Barnett* [1978] 1 All E.R. 1243, by going into the mind of the legislator and finding that the object of the law and the reason of the differentiation in the wording of the two sub-sections was because section 12(3)(b) was intended to help people who cannot definitely, or in other words, in the defined foreseeable future, be able to use their properties.

Counsel for the respondents, on the other hand, adopted his address in case No. 288/78 a brief summary of which is given in the judgment just delivered in that case.

For the purpose of determining the present case and the applicability of section 12(3)(b) to the facts of the present case, I find it necessary to deal briefly with all circumstances surrounding the present case.

In Case No. 288/78, relying on the authority of *The Attorney-General of the Republic* v. *Mustafa Ibrahim and Others*, 1964 C.L.R. 195, in considering the surrounding circumstances, I took judicial notice of certain facts. I find it necessary, for the purposes of this case, to take also judicial notice of the same facts. Such facts are:

In July, 1974, after an unsuccessful coup against the President of the Republic, Archbishop Makarios, Turkey, under the pretext of protecting the Turkish community, invaded Cyprus and 40 per cent of the total area of Cyprus including the North of Cyprus, came under the occupation of the Turkish forces. The Greek population of such part had to seek refuge and

protection in the free area which remained under the control of the Government of Cyprus and the majority of those who remained within the area occupied by the Turkish invading forces, were forced to move away, leaving behind their properties. At some later stage, the Turks who were residing in the South, were forced by their leaders to move to the North and they were transported to the Turkish occupied areas, leaving behind their properties situated in the South.

The properties owned by the applicants and which are the subject matter of this recourse, were situated in Kyrenia within the area now under the occupation of the Turkish forces and which have become inaccessible to their owners. After the Cyprus Government had taken repeatedly the matter of the Turkish invasion before the United Nations and the Security Council, resolutions were passed at the United Nations, recommending, amongst other matters, intercommunal talks for finding a solution of the problem. As a matter of fact, intercommunal talks started under the auspices of the Secretary-General of the United Nations which, however, came to a deadlock. On the 12th February, 1977 the then President of the Republic, Archbishop Makarios and the Leader of the Turkish community, Mr. Raouf Denktash came together for negotiations on higher level at the UNFICYP Head quarters, Nicosia, in the presence of the United Nations Secretary-General, Mr. Kurt Waldheim. An agreement was reached at such meeting that the intercommunal talks should be resumed and certain guide-lines were agreed for the interlocutors. Amongst the four principles set out in the said guide-lines, were the question of freedom of movement and freedom of settlement, the right of property and other specific matters. As a result of the death of the President of the Republic, there was again a deadlock in the intercommunal talks. On the 19th May, 1979, a new meeting was arranged between the new President, Mr. Kyprianou and Mr. Raouf Denktash, in the presence, again of Dr. Waldheim, the Secretary-General of the United Nations, when a new agreement was reached for the resumption of the intercommunal talks, on the basis of the ten-point agreement reached at that meeting. Amongst the points agreed were that the guide-lines agreed on the 12th February, 1977 between Archbishop Makarios and Mr. Denktash and also the United Nations resolutions relevant to the

Cyprus question, will form the basis of the talks. Also, that there should be the respect of human rights and fundamental freedoms of all citizens of the Republic. Notwithstanding that efforts for the resumption of the intercommunal talks did not materialize, such efforts still continue on the initiative of the Secretary-General of the United Nations.

It is under these surrounding circumstances that the Court is invited to decide whether the subject matter assets of the applicants have "definitely" "ὁριστικῶς" ceased to be used for the purpose of their trade as envisaged by section 12(3)(b) of the Income Tax Laws.

The two cases *Seaford Court Estates Ltd.* v. *Asher* and *Notham* v. *London Borough of Barnett* (*supra*) cited by counsel for applicants in support of his argument as to the new approach on interpretation of Statutes are referred to by Lord Denning in his book "The Discipline of Law" in the chapter dealing with the interpretation of Statutes, in support of his theory of a new approach to the interpretation of statutes which may be summarised in his own words in the *Seaford* case (*supra*) at p. 164, as follows:

> "Put into homely metaphor it is this: A Judge should ask himself the question: If the makers of the Act had themselves come across this ruck in the texture of it, how would they have straightened it out? He must then do as they would have done. A Judge must not alter the material of which it is woven, but he can and should iron out the creases".

Though the decision in Seaford case was upheld in the House of Lords, [1950] 1 All E.R. 1018 at p. 1029, the new approach of construction was condemned by the House of Lords, the following year in *Magor and St. Mellons Rural District Council* v. *Newport Corporation* [1951] 2 All E.R. 839. I need not expound on the argument concerning interpretation of statutes, as in the present case I do not find any difficulty as to the meaning of the wording of the law and its applicability to the present case, in the light of all the surrounding circumstances as judicially noticed by me earlier in this judgment, or that any ambiguity arises for the determination of which alternative methods of interpretation have to be adopted. I would like, however, to conclude, on the question of approach to the interpretation of

statutes by reference to the very recent decision of the House of Lords in *Duport Steel Ltd. and Others* v. *Sirs and Others* [1980] 1 All E.R. 529, by which they overruled and criticized the decision of the Court of Appeal delivered by Lord Denning. Lord Diplock had this to say concerning the construction of statutes at page 541:

> ".....at a time when more and more cases involving the application of legislation which gives effect to policies that are the subject of bitter public and parliamentary controversy, it cannot be too strongly emphasised that the British Constitution, though largely unwritten, is firmly based on the separation of powers: Parliament makes the laws, the judiciary interpret them. When Parliament legislates to remedy what the majority of its members at the time perceive to be a defect or a lacuna in the existing law (whether it be the written law enacted by existing statutes or the unwritten common law as it has been expounded by the Judges in decided cases), the role of the judiciary is confined to ascertaining from the words that Parliament has approved as expressing its intention what that intention was, and to giving effect to it. Where the meaning of the statutory words is plain and unambiguous it is not for the Judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral. In controversial matters such as are involved in industrial relations there is room for differences of opinion as to what is expedient, what is just and what is morally justifiable. Under our Constitution it is Parliament's opinion on these matters that is paramount".

And Lord Scarman at page 551 of the same judgment:

> "But in the field of statute law the Judge must be obedient to the will of Parliament as expressed in its enactments. In this field Parliament makes and unmakes the law the Judge's duty is to interpret and to apply the law, not to change it to meet the Judge's idea of what justice requires. Interpretation does, of course, imply in the interpreter a power of choice where differing constructions are possible. But our law requires the Judge to choose the construction

which in his judgment best meets the legislative purpose of the enactment. If the result be unjust but inevitable, the Judge may say so and invite Parliament to reconsider its provision. But he must not deny the statute. Unpalatable statute law may not be disregarded or rejected, merely because it is unpalatable. Only if a just result can be achieved without violating the legislative purpose of the statute may the Judge select the construction which best suits his idea of what justice requires. Further, in our system the stare decisis rule applies as firmly to statute law as it does to the formulation of common law and equitable principles. And the keystone of stare decisis is loyalty throughout the system to the decisions of the Court of Appeal and this House. The Court of Appeal may not overrule a House of Lords decision; and only in the exceptional circumstances set out in the practice statement of 26th July 1966 will this House refuse to follow its own previous decisions.

Within these limits, which cannot be said in a free society possessing elective legislative institutions to be narrow or constrained, Judges, as the remarkable judicial career of Lord Denning MR himself shows, have a genuine creative role. Great Judges are in their different ways judicial activists. But the Constitution's separation of powers, or more accurately functions, must be observed if judicial independence is not to be put at risk. For, if people and Parliament come to think that the judicial power is to be confined by nothing other than the Judge's sense of what is right (or, as Selden put it: by the length of the Chancellor's foot), confidence in the judicial system will be replaced by fear of it becoming uncertain and arbitrary in its application. Society will then be ready for Parliament to cut the power of the Judges. Their power to do justice will become more restricted by law than it need be, or is today."

As to the various definitions of the words "ὁριστικὸς" and "definite" I need not repeat what I have already explicitly stated in Case No. 288/78 and for the purpose of this judgment, I adopt the various definitions of the words "ὁριστικὸς" "definite" "μόνιμος" and "permanent" referred to therein.

With all the above in mind, and having taken into considera-

tion all the surrounding facts and circumstances of this case as already mentioned by me in this judgment, I have come to the conclusion that the applicants have failed to satisfy the Court that they have "ὁριστικῶς" (definitely) under section 12(3)(b) of the Income Tax Laws ceased to use their property, the subject matter of this case, for the purpose of their trade, or business. The mere temporary inaccessibility by the applicants of such property and their temporary inability to use same for the purpose of their trade or business, due to enemy occupation and for so long as such occupation lasts, does not amount to a "definite" ceasure of use or "definite" loss of their property which, as admitted by the applicants, still stands registered in their names as absolute owners and it is not alleged as having been lost permanently. I find myself unable to give to the word "ὁριστικῶς" (definitely or definitively), in the circumstances of this case, the meaning submitted by the applicants.

In the result, I find that the Commissioner of Income Tax rightly refused to accept a balancing deduction in respect of such properties and in consequence the present recourse fails and is hereby dismissed, but taking into consideration the circumstances of this case, I make no order for costs.

Application dismissed. No order as to costs.