could have been used to prove the agreement which they had made for the letting of the property and it would indeed be extraordinary if the improper action of Mr. Mason in purporting to confer on the document the higher status of an "authentic writing" should have operated to deprive it thenceforth of the lower status which it had hitherto enjoyed. For these reasons their Lordships cannot accept the submission made on behalf of the respondent. Accordingly they will humbly advise Her Majesty that the appeal be allowed, the judgment of Renwick J. restored, and the respondent ordered to pay the costs in the Court of Appeal and before this Board.

In conclusion their Lordships would say that they fully concur with everything which was said by the judges in the Court of Appeal as to the duties of "notaries royal." When the parties live at a distance from his office and he knows their signatures or they are certified by some person of standing known to him a notary may be tempted to certify that a document has been signed in his presence when in fact it has not been so signed. It is a breach of his professional duty for him to succumb to that temptation and if as the judgments in the Court of Appeal suggest a practice may have been growing up among notaries in Saint Lucia of acting as the late Mr. Mason acted in this case the sooner such practice ceases the better.

Solicitors: *Durrant Piesse; Michael Cohen, Rosenberg & Co.*

R. W. L.-S.

[HOUSE OF LORDS]

TAYLOR . . . . . APPELLANT

AND

PROVAN (INSPECTOR OF TAXES) . . . . RESPONDENT

1974 Jan. 15, 16, 17; March 13

Lord Reid, Lord Morris of Borth-y-Gest, Lord Wilberforce, Lord Simon of Glaisdale and Lord Salmon

Revenue—Income tax—Employment—Emolument—Canadian resident unpaid director of company in England—Special assignment involving travelling to England—Travelling expenses reimbursed—Whether duties in respect of special assignment to be differentiated from duties as director—Whether payments in respect of duties performed in United Kingdom—Income Tax Act 1952 (15 & 16 *Geo.* 6 & 1 *Eliz.* 2, *c.* 10), *ss.* 156, 160 (1)

Revenue—Income tax—Expenses of employment (Schedule E)—Unpaid director of company in England resident in Canada—Special assignment involving travelling to England—Travelling

expenses reimbursed—Whether travelling expenses "necessarily incurred" in performance of duties of office—Income Tax Act 1952, Sch. 9, para. 7 [1]

The taxpayer, a Canadian citizen resident in Canada and subsequently also in the Bahamas, made a speciality of takeovers and mergers in the brewing industry. From 1958 to 1967 he was a director successively of several English brewery companies with the special assignment of expanding the group by further mergers and amalgamations. He was not paid for his work but was reimbursed expenses incurred in the performance of his duties. He performed his duties mainly in Toronto, but the nature of his work made necessary personal visits to breweries in the United Kingdom. He was assessed to income tax under Schedule E for the years 1961–62 to 1965–66 in amounts including sums reimbursed to him in respect of transatlantic air fares. He appealed against the assessments to the special commissioners, contending that the travelling expenses were not emoluments of his office as director within the definition of section 160 (1) of the Income Tax Act 1952 [1]; alternatively that, if they were emoluments, they were deductible under paragraph 7 of Schedule 9 to that Act as being expenses necessarily incurred in the performance of the duties of his office. The special commissioners found that the travelling expenses did not arise from the nature of the taxpayer's office as director and dismissed his appeal. The taxpayer appealed and Pennycuick V.-C., allowing the appeal, held that, although the taxpayer could have carried out his special assignment exclusively in the United Kingdom, his contract of employment expressly contemplated his having two places of work and, accordingly, sums reimbursed to him in respect of expenses incurred in travelling between those two places of work were money expended wholly, exclusively and necessarily in the performance of his duties and accordingly deductible. The Court of Appeal allowed the Crown's appeal.

The taxpayer appealed:—

Held, (1) that the sums in question constituted emoluments within the scope of Schedule E for albeit the taxpayer was a director with a special assignment he was none the less a

[1] Income Tax Act 1952, s. 156 (as amended): "The Schedule referred to in this Act as Schedule E is as follows—Schedule E: 1. Tax under this Schedule shall be charged in respect of any office or employment or on emoluments therefrom which fall under one, or more than one, of the following Cases, namely— . . . Case II: where that person is not resident or, if resident, then not ordinarily resident in the United Kingdom (and the emoluments are not excepted as foreign emoluments), any emoluments for the year of assessment in respect of duties performed in the United Kingdom; . . ."

S. 160 (1): "Subject to the provisions of this chapter, any sum paid in respect of expenses by a body corporate to any of its directors . . . shall, if not otherwise chargeable to income tax as income of that director . . . be treated for the purposes of paragraph 1 of Schedule 9 to this Act as a perquisite of the office . . . of that director . . . and included in the emoluments thereof assessable to income tax accordingly: Provided that nothing in this subsection shall prevent a claim for a deduction being made under paragraph 7 of . . . Schedule 9 in respect of any money expended wholly, exclusively and necessarily in performing the duties of the office . . ."

Sch. 9, para. 7: "If the holder of an office or employment of profit is necessarily obliged to incur and defray out of the emoluments thereof the expenses of travelling in the performance of the duties of the office or employment, or of keeping and maintaining a horse to enable him to perform the same, or otherwise to expend money wholly, exclusively and necessarily in the performance of the said duties, there may be deducted from the emoluments to be assessed the expenses so necessarily incurred and defrayed."

director, and section 160 of the Act of 1952 warranted no distinctions as to the duties in respect of which the relevant payments were made (post, pp. 204E–F, 209E—210C, 215C–E, 218G—219F, 225A).

(2) Allowing the appeal (Lord Wilberforce and Lord Simon of Glaisdale dissenting), that the primary facts as found by the special commissioners proved that in reality there were at least two places of work required by the taxpayer's very special employment, which entailed work that could be done by no one else, that accordingly the travelling expenses were necessarily incurred whilst he was travelling between Canada and the United Kingdom on the business of the English companies, and that therefore they came within paragraph 7 of Schedule 9 to the Act (post, pp. 208D–H, 212C—213A, F–G, 227E—228E).

Pook v. *Owen* [1970] A.C. 244, H.L.(E.) applied.

Ricketts v. *Colquhoun* [1926] A.C. 1, H.L.(E.) considered.

Decision of the Court of Appeal [1973] Ch. 388; [1973] 2 W.L.R. 675; [1973] 2 All E.R. 65, C.A. reversed.

The following cases are referred to in their Lordships' opinions:

Commissioner of Stamp Duties v. *Atwill* [1973] A.C. 558; [1973] 2 W.L.R. 327; [1973] 1 All E.R. 576, P.C.

Cook v. *Knott* (1887) 2 T.C. 246.

Newsom v. *Robertson* [1953] Ch. 7; [1952] 2 All E.R. 728; 33 T.C. 452, C.A.

Pook v. *Owen* [1970] A.C. 244; [1969] 2 W.L.R. 775; [1969] 2 All E.R. 1; 45 T.C. 571, H.L.(E.).

Practice Statement (Judicial Precedent) [1966] 1 W.L.R. 1234; [1966] 3 All E.R. 77, H.L.(E.).

Reg. v. *National Insurance Commissioner, Ex parte Hudson* [1972] A.C. 944; [1972] 2 W.L.R. 210; [1972] 1 All E.R. 145, H.L.(E.).

Revell v. *Elworthy Brothers & Co. Ltd.* (1890) 3 T.C. 12.

Ricketts v. *Colquhoun* [1925] 1 K.B. 725, C.A.; [1926] A.C. 1; 10 T.C. 118, H.L.(E.).

The following additional cases were cited in argument:

Brown v. *Bullock* [1961] 1 W.L.R. 1095; [1961] 3 All E.R. 129; 40 T.C. 1, C.A.

Davies v. *Braithwaite* [1931] 2 K.B. 628; 18 T.C. 198.

Edwards v. *Bairstow* [1956] A.C. 14; [1955] 3 W.L.R. 410; [1955] 3 All E.R. 48, H.L.(E.).

Newlin v. *Woods* (1966) 42 T.C. 649, C.A.

Nolder v. *Walters* (1930) 15 T.C. 380.

APPEAL from the Court of Appeal.

This was an appeal by the appellant, Edward Plunket Taylor, from an order of the Court of Appeal (Russell, Buckley and Orr L.JJ.), dated March 15, 1973, allowing an appeal by the respondent, Frank Williamson Provan (Inspector of Taxes), from the judgment of Pennycuick V.-C., dated June 30, 1972, whereby an appeal by the appellant by way of case stated from a determination of the Commissioners for the Special Purposes of the Income Tax Acts made on May 6, 1971, was allowed.

The following facts are taken from the case stated by the special commissioners. The appellant taxpayer, Edward Plunket Taylor, was a Canadian citizen and resident. From 1930 to 1939 he concerned himself

with brewery amalgamations in Canada and built up Canadian Breweries of which he became president. In 1958 he offered to negotiate on behalf of Hope and Anchor Brewery, Sheffield, the takeover of four breweries and he successfully arranged the amalgamation of three of the breweries with Hope and Anchor. The amalgamated breweries became United Breweries Ltd. and the taxpayer was made a director thereof, with a special assignment, namely, to expand the group by further mergers and amalgamations, without being paid any remuneration but being reimbursed for proper expenses. As a result of the taxpayer's efforts further breweries in Scotland, Northern Ireland and the northern half of England were taken over by United Breweries Ltd. In 1962, as a result of the taxpayer's further efforts United Breweries Ltd. merged with Charrington Ltd. becoming Charrington United Breweries Ltd. The group acquired outlets in the southern half of England and the taxpayer was again made a director with a similar unpaid assignment as before. In 1967 Charrington United Breweries Ltd. merged with Bass Mitchells and Butlers Ltd., becoming Bass Charrington Ltd., and the taxpayer was once again made a director with a similar unpaid assignment. The taxpayer was made a director of all three companies for reasons of prestige. He had none of the normal duties of a company director and did not attend the board meetings unless he happened to be in England on the business of his special assignment, and not always on those occasions. There was no written agreement with any of the companies but arrangements were expressed to be confirmed in a resolution of the board of Charrington United Breweries Ltd. passed on September 21, 1967, which, having expressed to the taxpayer the board's appreciation of the special services which he had contributed in guiding the expansion committee of the board over the previous last five years, continued:

> "The board recalled that the principal business commitments of Mr. Taylor were in Canada and the Bahamas and the consequent arrangement that he would perform his duties on behalf of this company as far as he could from his offices in those countries, but that it was necessarily envisaged that he would be required to visit the United Kingdom from time to time as well. The board having felt that a reconfirmation of its arrangements with Mr. Taylor was desirable, it was resolved: (1) that he was to receive no remuneration for his services; (2) that he had no day to day administrative duties and was not normally required to attend the company's offices or routine board meetings; (3) that his special assignment was the expansion and development of the group, and, in particular to take charge of negotiations for other brewery companies to join the group; (4) that it was recognised that he did not reside in the United Kingdom and that, accordingly, his duties were to be performed so far as possible from his residence abroad. If and to the extent that it was necessary for him to come to the United Kingdom to carry out the duties of his special assignment, he would be regarded as travelling on the business of the company, and consequently the company would bear all expenses of such visits to the United Kingdom."

A resolution in similar terms was passed by the board of United Breweries Ltd. on the same date.

The taxpayer had no fixed base for working on his special assignment. He did his thinking and planning wherever he happened to be, which to begin with was mostly Toronto, Canada. The presentation of a merger scheme was largely a matter of judgment, and it was no use proposing something that was going to fail. Although personal visits to breweries or persons in England were important, the bulk of the taxpayer's work was done outside the United Kingdom by correspondence or telephone. On occasions he interviewed brewers from the United Kingdom in his Canadian office. He did not find it necessary always to visit the United Kingdom for completion of negotiations; sometimes his merchant banker could close the deal. He had an office on his farm near Toronto, an office at Canadian Breweries in Toronto until 1965, and after 1965 an office at the Argus Corporation in Toronto. From 1965 he had a residence in the Bahamas; he had a secretary in Toronto and one in the Bahamas. He never came to England specially to attend board meetings. Whenever he came an office was always made available to him in London by United Breweries Ltd. When he came to England he stayed initially at Claridges and subsequently at a private residence in Bagshot. In 1965 he retired from the presidency of Canadian Breweries. He was a director of numerous other concerns but gradually gave up most of them as opportunity arose. In 1963 he took residential status in the Bahamas but at no time was he ever resident or ordinarily resident in the United Kingdom. He undertook his special assignment as a kind of business recreation—amalgamations were what he knew most about and he enjoyed the processes.

During the years under appeal, namely, 1961–62 to 1965–66, he incurred travel and hotel and other expenses; he paid his own bills and was subsequently reimbursed the amounts which he claimed. The inspector of taxes assessed him to income tax in respect of amounts reimbursed for transatlantic air fares but not in respect of amounts reimbursed for hotel and other expenses. On a yearly average the taxpayer spent between 100 and 150 days in Canada, 50 to 85 in the United Kingdom and the remainder in the Bahamas.

The taxpayer appealed to the commissioners against his assessment to income tax in respect of amounts reimbursed for Atlantic air fares. The commissioners were not satisfied that the taxpayer's offices in Toronto and Nassau, Bahamas, were or should be regarded as places of work for the purposes of his special assignment; they reached the conclusion that the travelling expenses in question arose not from the nature of the taxpayer's office but from circumstances personal to himself and they, accordingly, dismissed the appeal. The taxpayer appealed, and Pennycuick V.-C. held that, although the taxpayer could have carried out his special assignment exclusively in the United Kingdom, his contract of employment expressly contemplated his having two places of work and therefore sums reimbursed to him in respect of expenses incurred in travelling between those two places of work were money expended wholly, exclusively and necessarily in the performance of his duties and were deductible from his emoluments for the purposes of assessing the amount of income tax payable.

On appeal by the Crown the Court of Appeal allowed the appeal and restored the decision of the special commissioners.

A *F. Heyworth Talbot Q.C., Barry Pinson Q.C.* and *J. R. Gardiner* for the appellant. Two questions arise for decision: (1) Were the sums paid to the appellant as a reimbursement of the amount of his air tickets an emolument under Schedule E? and, if so, (2) Was the cost of these air tickets a deductible expense in computing the amount of these emoluments?

The relevant statutory provisions are sections 1, 156, 160, 161, and 163 and Schedule 9, paragraphs 1 and 7 of the Income Tax Act 1952; and B section 10 (1) and Schedule 2, paragraphs 1 and 9 of the Finance Act 1956.

Although *Pook* v. *Owen* [1970] A.C. 244 was not concerned with section 160, nevertheless it is of great importance in relation to the present case. Reliance is placed on the opinions of Lord Guest and Lord Pearce that for the purposes of Schedule E a payment does not constitute an emolument unless it represents a true reward for services.

C As to the effect of section 160, the phrase "to any of its directors" means to a director in his capacity of director. In other words, an expense to be chargeable must have reference to the taxpayer's duties as a director. This is supported to a certain extent by the language of section 163 (3) (*b*) for if anything paid to a director in his employment is covered by section 160, why is the proviso in section 163 (3) (*b*) necessary? In the present case, the reimbursement of travelling expenses was made ex- D clusively in relation to the appellant's special assignment which was not part of the appellant's functions as a director. The special assignment is not an employment of the company because it is not properly describable as a "post": see *Davies* v. *Braithwaite* [1931] 2 K.B. 628. This special assignment was not a contract of service, but a contract for services. It is therefore not a Schedule E case at all. If it is anything, it comes under Schedule D. It is emphasised that this special assignment was not a post. E It was not a contract of service. It was merely an arrangement under which the appellant was to do his best to bring about the proposed mergers. It is conceded that the appellant had all the fiduciary duties of a director, but the special assignment had nothing to do with his directorship. No fiduciary duties were laid upon the appellant in relation to his special assignment.

F If the appellant comes within Schedule E at all, he is within Case 2 of Schedule E. The appellant is liable only in respect of the tax on any emolument in respect of duties performed in the United Kingdom. In the circumstances of the present case, it may be asked what is the standard of measurement?

To summarise question (1): The sums reimbursed to the appellant were G not emoluments of his office as director within section 160 (1) of the Act of 1952 because they were paid to him not qua director, but qua holder of the special assignment. That special assignment was not an office or employment of profit within Schedule E because there was no element of profit in the reimbursements: *Pook* v. *Owen* [1970] A.C. 244.

If the sums reimbursed were emoluments of the appellant's office as H director assessable under Schedule E the alternative question then arises whether the appellant was entitled under paragraph 7 of Schedule 9 to deduct the cost of travelling between Canada or the Bahamas to the United Kingdom as an allowable expense.

The true principle relating to paragraph 7 is: where the terms on which the office or employment is constituted are such that it is contemplated that the holder of the office or employment will have two or more places of work, in the sense of bases in or from which he has to perform his duties, so that in the performance of the office or employment the holder thereof will have or may have to travel in order to carry out those duties, any expenses so incurred in travelling from one place of work to the other are deductible. It follows that where an office or employment is constituted on those terms, it is immaterial that the personal circumstances of the appointee enter into the selection of one or more of the places of work, for example, it may be convenient that the appointee's home may be selected as one of those places of work. The test proposed is an objective test when the postulated circumstances are satisfied. Necessity must always be judged in relation to the facts as they are found. The above proposition is supported by observations in the opinion of Lord Wilberforce in *Pook* v. *Owen* [1970] A.C. 244, 262F.

It was proper in the present case to draw the inference from the primary facts that there were two places of work. The appellant is entitled to succeed whether there were one or two places of work. Either way travelling was incurred in performance of the special assignment. Reliance is placed on the observations of Lord Radcliffe in *Edwards* v. *Bairstow* [1956] A.C. 14 that the findings of fact by the commissioners can be overruled by a court where the only proper inference from the facts contradicts the commissioner's finding as showing, as for example here, that the tax payer comes within the above observations of Lord Wilberforce in *Pook* v. *Owen* [1970] A.C. 244, 262.

As to *Ricketts* v. *Colquhoun* [1926] A.C. 1, it is not necessary for the appellant in order to succeed to contend that it was wrongly decided for the present case is distinguishable. There was no suggestion on the facts of that case that part of the taxpayer's work had to be done in London. But it is a reasonable inference that it was contemplated that the taxpayer would continue his work in London. It was necessary for the proper performance of the duties to have a barrister who was in practice and living in the centre of things and not a barrister living in Portsmouth. This proposition is not vitiated by the fact that there are a few permanent recorders and certain retired barristers who still function as recorders. The House is invited to reconsider *Ricketts* v. *Colquhoun* for the purpose of determining whether the ambit of the decision was not too wide. It is not an essential prerequisite to the application of paragraph 7 to consider the case of every person who can be postulated as a possible taker of the office but the true rule is that one looks at the particular circumstances of the person who the appointor desires to appoint. The expression "the holder of the office" means what it says and not "each and every holder" as Lord Blanesburgh decided in *Ricketts* v. *Colquhoun*. In conclusion, the position of the present appellant is plainly distinguishable from the facts in the *Ricketts'* case.

Pinson Q.C. following. A third question arises in relation to the effect of case 2 of Schedule E on this appointment. Let it be supposed that the appellant had been paid a salary and had received no reimbursement at all. Section 10 of the Finance Act 1956 and the rules make it abundantly

clear that the effect of the change of law in 1956 made the place where the duties are performed a vital factor in determining liability under Schedule E: see Finance Act 1956, Sch. 2, paras. 4, 5 and 6 which demonstrate the importance of the place where the duties are performed. If the taxpayer is paid a salary then, in order to apply Case 2, it is necessary to determine where the duties were in fact performed. The Commissioners found that the bulk of the taxpayer's work was done outside the United Kingdom. Therefore, if the appellant had received a salary and paid his own expenses, the bulk of the salary would have escaped tax. It cannot make any difference that the appellant was given expenses instead of a salary: section 160 does not put a taxpayer in a worse position than if he had been paid a salary.

M. P. Nolan Q.C., *Patrick Medd* Q.C. and *H. K. Woolf* for the respondent. The first question is whether section 160 applies to the payments in question so as to make them emoluments. This is a clear case of sums paid in respect of expenses by a body corporate to one of its directors. It was said that the appellant was reimbursed not as a director, but as the holder of a special assignment.

[LORD REID intimated that their Lordships did not wish to hear argument on this point.]

It was also suggested in argument that the Schedule E legislation in its original form had referred to offices of gains or profit. In the present case there was no profit and therefore, it was said, one would not expect there to be a charge. But this was a perquisite.

As to whether the expenses were deductible under paragraph 7 of Schedule E: (1) The paragraph only covers the cost of travelling which is made necessary by the requirements of the office or employment—not requirements extraneous to the employment objectively considered; (2) The requirements of the employment in any given case are a matter of fact to be determined by the commissioners. (3) On the facts here, the special commissioners were entitled to conclude that transatlantic travel was not made necessary by the requirements of the employment.

A place of work means a place where the work of the employment has to be carried out. The question always is: must the taxpayer travel in order to carry out his work? For example, a judge of assize, a travelling salesman. If he need not, then he obtains no travelling allowance. The criterion is always whether the travel is inherent in the nature of the work. The cardinal principle in applying the rule is that the need to travel from home to work does not arise from the employment, but from the employee's choise of residence. Rule 7 is an objective rule.

The Crown rely on *Ricketts* v. *Colquhoun* [1926] A.C. 1. The scheme of the Act is to treat the employee's work as a totality. The special commissioners found no need for part of the appellant's work to be performed abroad. This was necessitated by the appellant's other commitments.

The governing feature which made travelling a necessity in *Pook* v. *Owen* [1970] A.C. 244 was that the appointment was not a living-in post at the hospital, but a part-time post held by a doctor living outside the hospital. The commissioners found that his work related to emergency calls and that his work started as soon as he received a telephone call at

his home. It is vital to remember that in that case the commissioners found that there were two places of work.

The requirements of paragraph (then rule 9) are succinctly put by Pollock M.R. in *Ricketts* v. *Colquhoun* [1925] 1 K.B. 725, 730–734. See also in this House [1926] A.C. 1, 4, *per* Viscount Cave L.C. *Ricketts* shows that needs personal to the employee are not to be taken into account for the purposes of paragraph 7. The requirements of the paragraph are rigid.

There is nothing in the stated case in the present case to show any need for the appellant to carry out any part of his special assignment in Canada, apart from the fact that his business interests were in Canada and his home was in Canada. There was no finding that the appellant was required to live in Canada or in the Bahamas. Let it be supposed that there had been such a requirement. Would it mean that paragraph 7 applied to that personal requirement? So to hold would entail overruling *Ricketts* v. *Colquhoun*. It is necessary to look beyond the contract to see what the necessities of the employment were. The stated case shows that the appellant had no fixed place for doing the work connected with his special assignment. It would follow from the appellant's argument that all travelling expenses incurred by him in connection with it would come within paragraph 7. It is precisely this point which divides Warrington L.J. from the other judges in the *Ricketts* case. A strict and objective construction of the paragraph in respect of commercial employments is necessary in order to apply it fairly as between taxpayers. The contract cannot be conclusive but if it imposes a requirement, it is strong prima facie evidence of necessity, but it is then open to the revenue to rebut the suggestion that it was a necessary requirement of the employment. The proposition can be tested in the case of the one-man company who could make a contract requiring him to do his work in a particular place. The court is entitled to scrutinise the contract to ascertain whether the requirement was necessary objectively considered in relation to the employment in question. Once one took into consideration the personal requirements of the taxpayer, who was in a strong bargaining position, it would lead to great anomalies and let in cases hitherto disallowed. The decision in *Ricketts* v. *Colquhoun* [1926] A.C. 1 has been extensively applied and it is not a case which should be reconsidered by this House: see *Reg.* v. *National Insurance Commissioner, Ex parte Hudson* [1972] A.C. 944. Further, it is to be noted that paragraph 7 has been amended: see section 159 of the Income Tax Act 1952 and section 16 of the Finance Act 1958 and section 15 (1) (*b*) of the Finance Act 1965. So it is a rule which has been reconsidered by Parliament in the light of the decision in *Ricketts* [1926] A.C. 1.

For an example of the application of the paragraph: see *Nolder* v. *Walters* (1930) 15 T.C. 380. The distinction between *Nolder* and *Pook* v. *Owen* [1970] A.C. 244 is that the airline pilot did not have to do any of his work at home. *Brown* v. *Bullock* [1961] 1 W.L.R. 1095 shows that the requirements of the work may be narrower than the requirements of the employer. In *Newlin* v. *Woods* (1966) 42 T.C. 649 the taxpayer could have asked the companies by which he was employed to pass a resolution similar to the one in the case under appeal. This illustrates that the circumstances of the present case are far from unique as has been contended.

Pook v. *Owen* [1970] A.C. 244 shows that the mere fact that duties are performed in two places does not per se mean that travelling expenses are deductible: it must be shown as a fact that it was necessary to have the two places of work. It was Lord Guest's opinion that there were two places of work and on that view of the facts, the decision is consistent with that of *Ricketts* [1926] A.C. 1. It is then akin to the case of the Member of Parliament. Lord Pearce held that the duties of the doctor were to be performed in two places and on that view the decision in *Ricketts* is distinguishable and it was not necessary to attack the ratio decidendi of *Ricketts* in order for Lord Pearce to come to his decision. Lord Wilberforce held that there were two places of work and that expenses had to be incurred in travelling from one to the other. This is the view adopted by the Crown and it is consonant with the decision in *Ricketts*. It is the test which the present appellant endeavoured to come within before the special commissioners and failed. The conclusion of the special commissioners in the present case was a justifiable finding. Nothing short of necessity will avail the taxpayer. The special commissioners correctly applied the authorities to their findings of fact.

Pennycuick V.-C.'s judgment [1972] 1 W.L.R. 1459 shows the difficulties which arise if there is a confusion between the requirements of the employee and the requirements of the office. The judgment of the Court of Appeal was right in all respects and should be upheld.

Pinson Q.C. in reply. *Ricketts* v. *Colquhoun* [1926] A.C. 1 has been described as a special case which should not be carried beyond its own particular facts. Further, it was the case of the holder of a statutory office and in respect of such an office it is possible to speak of "any and every holder of the office." The present appellant was a director and a holder of an office, but he was more than this and therefore one should concentrate on the word "employee" in paragraph 7. The appellant was uniquely qualified. It was an ad hoc office. The appellant was resident outside the United Kingdom. The company regarded the appellant's office as its own office for this purpose. If the company had set up an office in the Bahamas for the appellant, unquestionably he would have been entitled to his expenses of travelling to London, He travelled in order to continue his work and not to start it. This fact alone distinguishes the present case from *Ricketts*.

If a base of operations be relevant, then the base is solely outside the United Kingdom or both in and outside the United Kingdom but it is impossible to say that the place of work was wholly in the United Kingdom. It is relevant to ask: (1) What were the terms on which the employee was engaged? (2) Do those terms require the employee to travel for the purposes of this work? *Nolder* v. *Walters*, 15 T.C. 380 and *Brown* v. *Bullock* [1961] 1 W.L.R. 1095 are distinguishable. As to *Reg.* v. *National Insurance Commissioner, Ex parte Hudson* [1972] A.C. 944, the appellant is not inviting the House to overrule the decision in *Ricketts* [1926] A.C. 1, but to explain it in relation to offices which are not statutory offices. The ratio of *Pook* v. *Owen* [1970] A.C. 244 exactly covers the present case.

Their Lordships took time for consideration.

March 13, 1974. LORD REID. My Lords, the appellant is a Canadian who has never resided in England. After acquiring experience in brewing and finance he was successful in bringing about several brewery amalgamations in Canada and he became a wealthy man. In 1958 he became involved in the affairs of a brewery in Sheffield which wished to expand. "As a kind of business recreation" he enabled them to acquire three other breweries. They then became United Breweries Ltd. Then in 1962, as a result of his further efforts, United Breweries merged with Charrington and in 1967 there was a further merger to form Bass Charrington Ltd.

Throughout this period the appellant resided in Canada. In later years he also resided for considerable periods in the Bahamas. He had offices in both places from which he directed his Canadian interests. He did most of his work in connection with the English amalgamations in Canada or the Bahamas but made frequent visits to England.

He neither sought nor received remuneration from these English companies but they repaid to him the expenses of his visits to England. "For reasons of prestige" he was made a director of each of these companies but he did none of the ordinary work of a director. He was given "special assignments" to deal with the work involved in these mergers and amalgamations.

In 1967 he was assessed to income tax in respect of the sums which he had received as repayment of his expenses during the years 1961–62 to 1965–66. Later the assessment was limited to the sum which he had received in repayment of fares for journeys between Canada and England, the total for the five years being over £8,000.

Two questions arose (1) whether these sums were emoluments within the scope of Schedule E and (2) if they were, were they deductions allowable under paragraph 7 of Schedule 9 of the Income Tax Act 1952.

I have no doubt that these sums were emoluments. It was argued that they were not paid to the appellant as a director because they were paid under special assignments independent of his directorships. I can see no ground for splitting up his duties in that way. He was made a director with a special assignment. There was one appointment not two. Section 160 of the Act of 1952 provides that any sum paid to a director in respect of expenses shall be treated as a perquisite of the office and included in the emoluments thereof assessable to income tax.

The substantial question in the case is whether these expenses of travelling are a permissible deduction. If so, then the whole of the sum assessed to tax is deductible and the appeal succeeds. This depends entirely on the proper construction of paragraph 7 of Schedule 9:

> "7. If the holder of an office or employment of profit is necessarily obliged to incur and defray out of the emoluments thereof the expenses of travelling in the performance of the duties of the office or employment, or of keeping and maintaining a horse to enable him to perform the same, or otherwise to expend money wholly, exclusively and necessarily in the performance of the said duties, there may be deducted from the emoluments to be assessed the expenses so necessarily incurred and defrayed."

Before proceeding further it is necessary to deal with the precise terms

of the special assignment. This was not set out in writing until 1967 but it is admitted that a resolution of the board of Charrington United Breweries of September 21, 1967, sets out the terms of the agreements between the appellant and each of the successive companies of which he was a director. The resolution was in the following terms:

> "*Mr. E. P. Taylor* The board recalled its decision to set up the expansion committee of the board on July 10, 1962, and formally resolved that in view of the company's merger with Bass, Mitchells & Butlers Ltd., this committee be and is hereby dissolved. The board wished to express its appreciation to Mr. Taylor of the special services he has contributed in guiding the expansion committee in the continuous work upon which it has been engaged over the last five years and in particular for the many journeys he has made to the United Kingdom for this purpose.
>
> "The board recalled that the principal business commitments of Mr. Taylor were in Canada and the Bahamas and the consequent arrangement that he would perform his duties on behalf of his company as far as he could from his offices in those countries, but that it was necessarily envisaged that he would be required to visit the United Kingdom from time to time as well. The board having felt that a reconfirmation of its arrangements with Mr. Taylor was desirable, it was resolved:
>
> "(1) that he was to receive no remuneration for his services; (2) that he had no day to day administrative duties and was not normally required to attend the company's offices or routine board meetings; (3) that his special assignment was the expansion and development of the group, and, in particular, to take charge of negotiations for other brewery companies to join the group; (4) that it was recognised that he did not reside in the United Kingdom and that, accordingly, his duties were to be performed so far as possible from his residence abroad. If and to the extent that it was necessary for him to come to the United Kingdom to carry out the duties of his special assignment, he would be regarded as travelling on the business of the company, and consequently the company would bear all expenses of such visits to the United Kingdom."

The case for the revenue is that the appellant was not "necessarily obliged" to incur these travelling expenses because if he had so chosen he could have resided during these five years in England and then there would have been no need to cross the Atlantic. To that the appellant replies that the terms of his office or employment were that he was to perform his duties so far as he could in Canada or the Bahamas and only to visit the United Kingdom when necessary. Then the revenue say that the test is not what the parties had agreed, however reasonable their agreement might be, but what his work required. Here they say that all his work could equally well have been done if he had resided throughout in England. There is no finding to that effect but I shall assume that that is so.

I can understand a distinction between what the parties' contract requires and what the work requires when the office has an independent existence so that if this man had not been appointed someone else would have been.

But here the office or employment was created for the appellant because of his special qualifications and there is nothing to suggest that if he had not been available anyone else would or could have been appointed for this very special work. The appellant clearly would not have agreed to reside in England. So I do not see how in any reasonable sense it can be said that this travelling was unnecessary if this peculiar work was to be done. I think that the Court of Appeal were in error in saying [1973] Ch. 388, 398: "There is no evidence that no one could hold the office and perform its duties other than a person living across the Atlantic."

It was argued that the special commissioners had found otherwise. They say in their decision:

> "Having considered the facts as a whole we are not satisfied that the appellant's offices in Toronto and Nassau were or should be regarded as places of work for the purposes of his special assignment and we have reached the conclusion that the travelling expenses in question arose, not from the nature of the appellant's office, but from circumstances personal to himself."

But that is not a finding of fact. It is an inference which they draw from the findings which precede the decision in the case stated, and their inference flows largely from what I think was an unduly narrow reading of the authorities.

At first sight it might seem a simple matter to determine whether an officer or employee was necessarily obliged to incur certain travelling expenses. The first question would be whether it was necessary to make the journeys in respect of which the claim to deduct expenses is made. But everyone is agreed that it is not enough to show that on the facts as they existed the man's duties could not have been performed if he had not made the journeys. Something more is needed. But what? That can only be discovered by a careful examination of two decisions of this House: *Ricketts* v. *Colquhoun* [1926] A.C. 1 and *Pook* v. *Owen* [1970] A.C. 244. I do not think that the interpretation of these two decisions is materially assisted by a consideration of other reported cases and I propose to confine my attention to them.

Up to a point the facts in these two cases were similar. Both concerned part-time offices or employments. In the first a barrister practising in London was appointed Recorder of Portsmouth and on at least four occasions in each year he travelled from London to Portsmouth to perform his official duties there. In the second a doctor practising in Fishguard was given an appointment in a hospital at Haverfordwest and he made frequent journeys from Fishguard to Haverfordwest to perform his duties there. But the barrister was held not to have necessarily incurred his travelling expenses, whereas the doctor was held to have necessarily incurred his travelling expenses.

In *Ricketts'* case [1926] A.C. 1 the findings of fact of the commissioners were very short, containing nothing material beyond what I have already stated. Reasons were given in only two speeches in this House—those delivered by Viscount Cave L.C. and Lord Blanesburgh. The speech of Lord Blanesburgh has generally been regarded as best expressing the ratio of the decision. He said, at p. 7:

A " . . . the language of the rule points to the expenses with which it is concerned being only those which each and every occupant of the particular office is necessarily obliged to incur in the performance of its duties—to expenses imposed on each holder ex necessitate of his office, and to such expenses only."

Then, having pointed out that the terms of the rule are not personal but objective, he continued:

B " . . . the deductible expenses do not extend to those which the holder has to incur mainly and, it may be, only because of circumstances in relation to his office which are personal to himself or are the result of his own volition."

Mr. Ricketts had no finding to show either that he had to reside at a C distance from Portsmouth or that no one could have been appointed to the office who could reside in Portsmouth. So it was true to say on the facts found in the case that his continuing to reside in London was " the result of his own volition."

Lord Cave's speech was on the same lines. He put the matter rather differently in one passage, at p. 4:

D " they must be expenses which the holder of an office is necessarily obliged to incur—that is to say, obliged by the very fact that he holds the office and has to perform its duties—and they must be incurred in—that is, in the course of—the performance of those duties. The expenses in question in this case do not appear to me to satisfy either test."

E Then apparently explaining what he meant by " in the course of," he said that the expenses were incurred because he travelled to Portsmouth before he could begin to perform his duties and travelled home after concluding them.

I have considerable doubt whether Lord Cave's second test is not too rigid. He does not refer to the fact that the rule also authorises the deduc- F tion of the expenses " of keeping and maintaining a horse to enable him to perform " the duties of the office. The holder of the office would keep his horse at his home, so he would use it to get from his home to the various places where his duties had to be performed. So this part of the rule must mean to enable the holder of the office to get from his home to the place where his duties are to be performed as well as to enable him to get from one place to another in the course of performing his duties. G There is no suggestion of a distinction between travelling from his home to the place of work and travelling between places of work. He can deduct the whole cost of keeping his horse—not merely part of it.

Lord Cave recognises that the holder of an office may have to travel if his duties have to be performed in several places in succession. I would doubt whether such travelling is always " in the course of " the perform- H ance of his duties. If a part-time officer has to work at A today and at B a week hence he is not on duty meanwhile and can travel whichever day he chooses. He is entitled to deduct the expense of travelling from A to B but it seems to me unreal to say that during the hours he is travelling he is

on duty. He is travelling not in the course of performing his duties but to enable him to perform his next duty when the time comes.

In *Pook* v. *Owen* [1970] A.C. 244 the findings of the commissioners were also comparatively short. In addition to the facts which I have mentioned they found that there was a scarcity in the area of persons duly qualified to do the work and they found facts with regard to the nature of the work which enabled the majority in this House to hold that Dr. Owen had two places of work: some of his work had to be done at his home in Fishguard and some at the hospital in Haverfordwest. The question whether he had two places of work was the main question at issue.

But I do not see how consistently with the main ratio in *Ricketts'* case [1926] A.C. 1 that could in itself be sufficient to justify the decision. And no one suggested that the House was reaching a decision inconsistent with *Ricketts*. *Ricketts* decided that if the place where a man resides is his personal choice he cannot claim with regard to expenses made necessary by that personal choice. If the holder of an office or employment has to do part of his work at home the place where he resides is generally still his personal choice. If he could do his home work equally well wherever he lived then I do not see how the mere fact that his home is also a place of work could justify a departure from the *Ricketts* ratio.

I do not find it easy to discover the ratio decidendi of *Pook's* case. But that does not diminish the authority of the decision. I am sure that the majority did not intend to decide that in all cases where the employee's contract requires him to work at home he is entitled to deduct travelling expenses between his home and his other place of work. Plainly that would open the door widely for evasion of the rule. There must be something more.

I think that the distinguishing fact in *Pook's* case was that there was a part time employment and that it was impossible for the employer to fill the post otherwise than by appointing a man with commitments which he would not give up. It was therefore necessary that whoever was appointed should incur travelling expenses. It was theoretically possible for Dr. Owen to give up his practice and go to live in Haverfordwest. His employer would not have objected. The nearer to the hospital Dr. Owen lived the better. But the majority disregarded that theoretical possibility and had regard to the realities of the situation. I do not think that there was any departure from the ratio in *Ricketts'* case in deciding in favour of Dr. Owen. He contracted on the basis that he would continue to live at Fishguard and be paid expenses of travelling. He would not have contracted on any other basis. And it was impossible to find an appointee who was free to avoid incurring travelling expenses. I find nothing in *Ricketts* which necessarily excludes such a case.

Turning then to the present case, I think that it is covered by *Pook's* case. It was not enough that the appellant contracted to do the most of his work in Canada, and would not have taken the employment otherwise. It was impossible for the companies which contracted with him to get the work done by anyone else. That I regard as the essential feature. That made it necessary that these travelling expenses should be incurred, and that is what is required to satisfy the rule.

I would allow this appeal.

LORD MORRIS OF BORTH-Y-GEST. My Lords, the first question which arises is whether the sums now under consideration (i.e. the sums which were paid to the appellant to reimburse him for the cost of his flights to and from England) were sums paid in respect of expenses by a body corporate to one of its directors (or to a person employed by it in an employment to which Chapter II of Part VI of the Income Tax Act 1952 applied) within the meaning of section 160 (1) of the Income Tax Act 1952. The first part of that subsection provides as follows:

> "(1) Subject to the provisions of this chapter, any sum paid in respect of expenses by a body corporate to any of its directors or to any person employed by it in an employment to which this chapter applies shall, if not otherwise chargeable to income tax as income of that director or employee, be treated for the purposes of paragraph 1 of Schedule 9 to this Act as a perquisite of the office or employment of that director or employee and included in the emoluments thereof assessable to income tax accordingly:"

On behalf of the appellant it was contended that the section only referred to sums paid to a director "as such" or in other words paid to him in respect of the performance of his ordinary duties as a director. It was urged that the appellant was only appointed a director for reasons of prestige and that his real and sole function in each company was to carry out the special assignment of planning and arranging mergers and that he had none of the normal duties of a company director and never attended board meetings unless he happened to be in England on the business of his special assignment and not always then. So it was urged that the reimbursements were not made to him as a director or because he was a director but were made in respect of his position as one to whom certain special duties were assigned. He was, however, appointed a director albeit one with limited and special duties. It was because he undertook the special assignment that he was made a director, and the result of this was to link rather than to separate his position as a director with his position in carrying out his specially assigned duties. I see no warrant for saying that the sums paid to him in respect of expenses were other than sums paid by a body corporate to one of its directors within the words of section 160 (1).

He was a member of the board of directors and by section 163 (1) (*a*) it is provided that "director" means "in relation to a body corporate the affairs whereof are managed by a board of directors or similar body, a member of that board or similar body."

If the sums came within the opening words of section 160 then for the purposes of paragraph 1 of Schedule 2 to the Finance Act 1956, they were to be treated as "perquisites" of the office or employment and included in the emoluments thereof assessable to income tax. The result of this was (see paragraph 1 of Schedule 2 to the Finance Act 1956) that tax under Case I, II or III of Schedule E became, subject to certain exceptions, chargeable on the full amount of the emoluments, falling under the particular Case, subject to such deductions as might be authorised by the Income Tax Acts: the expression "emoluments" including all salaries, fees, wages, perquisites and profits whatsoever.

Tax under Schedule E is charged (see section 10 of the Finance Act 1956) in respect of any office or employment on emoluments therefrom which fall under one or more of Cases I, II and III. The present appellant was not resident or ordinarily resident in the United Kingdom, so under Case II tax would be charged—unless an exception applied—in respect of the appellant's office or employment on emoluments for the year of assessment " in respect of duties performed in the United Kingdom." It was submitted that the appellant's travelling expenses to and from the United Kingdom (which as I have indicated must be treated as perquisites and within the word emoluments) were in any event not emoluments " in respect of duties performed in the United Kingdom." I am unable to accept this submission. The appellant was not resident in the United Kingdom, and when he travelled to and from the United Kingdom in order to perform such part of his duties as had to be performed in the United Kingdom he was reimbursed his travelling expenses. I consider that the sums that he received were emoluments " in respect of " his duties performed in the United Kingdom.

This brings me to the question whether the appellant can claim to make a deduction from the emoluments to be assessed so as to reduce the assessment to nil. Section 160 (1) of the Income Tax Act 1952 contains a proviso

> " that nothing in this subsection shall prevent a claim for a deduction being made under paragraph 7 of the said Schedule 9 in respect of any money expended wholly, exclusively and necessarily in performing the duties of the office or employment."

By paragraph 9 of Schedule 2 to the Finance Act 1956, the above-mentioned paragraph 7 is maintained as applicable. Paragraph 7 of Schedule 9 to the Income Tax Act 1952 is in the following terms:

> " 7. If the holder of an office or employment of profit is necessarily obliged to incur and defray out of the emoluments thereof the expenses of travelling in the performance of the duties of the office or employment, or of keeping and maintaining a horse to enable him to perform the same, or otherwise to expend money wholly, exclusively and necessarily in the performance of the said duties, there may be deducted from the emoluments to be assessed the expenses so necessarily incurred and defrayed."

The circumstance that when referring to paragraph 7 of Schedule 9 the proviso to section 160 uses the words " in performing the duties " whereas the words in paragraph 7 are " in the performance of the duties " shows that there is no variation of meaning between the two sets of words.

In considering in any particular case whether the wording of paragraph 7 is applicable it seems to me that it is first essential to have clear and explicit findings of fact. Thereafter the application of the words of the paragraph should not in most cases present much difficulty. I regard many of the reported cases as being no more than illustrative of the divergent sets of circumstances that may arise and of the way in which in reference to particular facts the words of paragraph 7 have in particular cases been applied. Most of the words are, as words, well understood. I refer

A to the words "necessarily" and "wholly" and "exclusively." There is little room for doubt as to the meaning of those words. They are not ambiguous.

It will, however, always be essential to have clear findings of fact on certain matters. In the first place, it will be necessary to know what exactly was the office or employment that a person held. In the second place, it will be necessary to know what exactly were the duties of the B office or employment. In a great many cases it might be determined that a person's obligations were to be in an office at a certain place at certain appointed times and in that office to perform certain duties. The person concerned would probably reside elsewhere. But the position of his home would be a matter for him to decide. For reasons personal to himself he might wish to live near to his work or he might wish to live far away from C his work. How much time or how much, if any, expense would be involved in getting to his work would be entirely his affair. If of two such men who had to be in an office at a certain place at certain appointed times so as there to perform similar duties one lived within walking distance and had no travelling expenses while the other chose to live a long distance away with consequent heavy travelling expenses it could not successfully be argued that the latter as the holder of an office or employment of profit D was "necessarily obliged" to incur travelling expenses nor that he was necessarily obliged to incur such travelling expenses in performing the duties of his office or employment. The phrases "in the performance of the duties" or "in performing the duties" may to some extent be inexact. There may be cases in which someone who has performed certain duties at place A is then obliged to go on to place B and to perform certain E duties there. While actually travelling between A and B he might or might not be able to perform any of his specifically assigned duties but yet he might be incurring travelling expenses in the performance of or in performing the duties of his office or employment. On those facts he would be necessarily obliged to get from A to B: his duty would require him to travel. He would be travelling on his work.

In the present case the question that arises is whether on the facts as F found the appellant "wholly, exclusively and necessarily" incurred the travelling expenses (for we are not concerned with any other expenses) in performing his duties. If his duties were such that some of them were to be performed in Canada (or Nassau) and some of them (perhaps consequentially or by way of continuation) were to be performed in the United Kingdom it seems to me to follow that his journeys to and from the G United Kingdom were made necessary by the very nature of his office or employment and of his assigned duties. The fact that his skilled and specialised services were being obtained without any remuneration had the result that there was no formal document of appointment with formulation of duties couched in precise language. Apart from the fact that unique services were being given without reward the status of the appellant H was such that certain decisions (such as a decision as to when and whether merger discussions had reached such a point that his presence in the United Kingdom became requisite) were for him to take without waiting for the specific direction or permission of the board.

Though there was no formal document recording the terms upon which the appellant was employed it is accepted that the resolution of September 21, 1967 (which is set out in the case stated) accurately and in good faith recorded what had throughout been the position. The arrangement that had been made was

> " that he would perform his duties on behalf of this company so far as he could from his offices in those countries, but that it was necessarily envisaged that he would be required to visit the United Kingdom from time to time as well ": so also " that it was recognised that he did not reside in the United Kingdom and that, accordingly, his duties were to be performed so far as possible from his residence abroad."

It was found as a fact that the bulk of the appellant's work was done outside the United Kingdom. Had the arrangement been phrased in the language of contract it would have provided that the appellant would so far as he could perform the duties of his employment in planning and negotiating mergers from his office or residence abroad and that he would when necessary travel to the United Kingdom in order to continue or complete any merger negotiations. In my view, it follows that the travelling expenses now under consideration were wholly, exclusively and necessarily incurred in the performance of the duties of the office or employment held by the appellant. It was because of the nature of and the duties and obligations of the office or employment that he held that the appellant had of necessity to travel to and from the United Kingdom.

On its facts the present case is essentially different from *Ricketts* v. *Colquhoun* [1926] A.C. 1. I would not wish in any way to question the reasoning which guided the decision in that case. On the facts as there found the duties of the recorder were all to be performed in Portsmouth. I do not find it necessary to speculate whether there might have been some additional findings of fact and whether they might have produced a different result. As Lord Blanesburgh pointed out, the expenses of travelling from London to Portsmouth and back were not expenses which each and every recorder would be obliged ex necessitate of his office to incur. Such expenses would be incurred because of circumstances which were entirely personal to himself and the result of his own volition. On the facts as found the activities in London of the particular recorder had nothing to do with the performance of his duties as recorder in Portsmouth.

In the present case the facts are entirely different. The office or the employment was very special. There was probably no one else who could have filled it. It was an office created to be held by one particular person, i.e., a person living in Canada who had unique and unrivalled experience and knowledge in regard to arranging mergers of brewery companies.

The facts as found show that one of the appellant's achievements had been to persuade Canadian Breweries of which he had been president to finance the British brewery companies with which he was concerned to the extent of some 20 million pounds and that in some cases mergers had as a result been assisted. The office was only created because the appellant in Canada was specially and personally equipped and was willing to make his services available in Canada and also in England. The

office was to be held in Canada by a Canadian and the duties of the office were to be performed largely in Canada but partly also in England. The feature of there being in a real sense a dual location of the performance of the duties is more pronounced than it was in the case of *Pook* v. *Owen* [1970] A.C. 244.

When analysed it seems to me that the contention of the revenue must amount to a contention that the company (or companies) need not have made the arrangement that they did make and might have made an arrangement that the appellant would do all his work in England. But there is no evidence that they ever could have made such an arrangement. All the indications are that they would never have secured the appellant's services on terms other than those which were made: and the fact remains that they did make the arrangement as found.

It is accepted that the resolution recorded faithfully what the arrangement was. There was nothing spurious or colourable about the arrangement. This is important because any fact-finding body must be on guard to ensure that no device or form of words is used so as to disguise as expenses ex necessitate of an office those which in reality are only the result of personal volition.

On the facts as found by the commissioners I do not think that it was open to them to say that they were not satisfied that the appellant's offices in Toronto and Nassau were or should be regarded as places of work for the purposes of his special assignment. It was the very centre of the arrangement that they were.

It is suggested that the appellant could in fact have come to live in England or could have stayed in England for such periods as would enable him to do all his work in England. But these are mere speculations. The appellant never agreed so to operate. Doubtless the companies would not have objected had the appellant found it possible to abandon Canada as the place where he would work on his special assignment but that would have involved a complete departure from the arrangement made. If it is even conceivable that the appellant could have done all that was expected of him in Canada without ever coming to England it is sufficient to say that that was never contemplated and there are no facts which warrant any supposition that he need never have come to England.

On the facts as found I consider that the money which the appellant spent in travelling was money expended wholly, exclusively and necessarily in performing the duties of his office or employment.

I would allow the appeal and restore the judgment of the learned Vice-Chancellor.

LORD WILBERFORCE. My Lords, Mr. Taylor is a brewery magnate. He is a Canadian citizen who, before the war of 1939–45, built up a powerful business called Canadian Breweries, and succeeded in reducing by amalgamation the breweries in Canada from over 100 to about 20. After the war he continued, as President of Canadian Breweries, to enlarge that company by mergers and amalgamations in North America. Recently he has taken to arranging brewery amalgamations as a "business recreation."

The pattern of his activities has been clear for many years. In 1958 he became involved, as a consultant without reward, in negotiations for amal-

gamation of a Sheffield brewery with others. His efforts were successful and brought about the formation of United Breweries Ltd. He became a director of that company with a special assignment to expand the group by further mergers. This he did without any remuneration but his expenses were reimbursed.

In 1962 United Breweries merged with Charrington Ltd. and became Charrington United Breweries Ltd. Mr. Taylor became a director with a similar unpaid special assignment as before; in 1967 the process was repeated when Charrington United Breweries Ltd. merged with Bass Mitchells & Butlers Ltd. becoming Bass Charrington Ltd. Mr. Taylor became a director of all these companies "for reasons of prestige." He had none of the normal duties of a company director: his only function was the special assignment described above.

The present appeal relates to assessments to income tax for the years 1961/2 to 1965/6. During this time he had no written agreement with any of the companies. But the terms of his employment were set out ex post facto in a board resolution of Charrington United Breweries Ltd. and of United Breweries passed on September 21, 1967. It is accepted that there is nothing fictitious in the resolutions but the fact that Mr. Taylor served the companies for several years without any written or formal definition of the terms of his employment throws some light on the question, later to be developed, to what extent his duties, and the manner of their performance, were permissive or obligatory. Since, in my opinion, the whole case turns upon the terms on which Mr. Taylor was employed or held his office it is necessary to set out the resolution in full. [His Lordship read the resolution, set out in Lord Reid's opinion, ante, pp. 399D—400A, and continued:] Certain further facts were found by the special commissioners as to the manner in which Mr. Taylor carried out his assignment. These are fully set out in the case stated, paragraph 5, sub-paragraph 8. I mention those which I regard as material. He had no fixed base for working. He did his thinking and planning described by the Vice-Chancellor as his peripatetic musing wherever he happened to be. He had a library of useful material including accounts, lists of shareholders, and company reports which he carried round with him. Planning a merger included viewing the premises, discussions with directors, usually in London, working with a merchant bank, securing his board's agreement to his proposals, and making an offer for the company to be taken over, sometimes through his merchant bank. The bulk of his work was done outside the United Kingdom by correspondence or telephone. In the earlier years of assessment he worked largely from Toronto, either from his farm, or from an office at Canadian Breweries, or, after 1965, from an office at Argus Corporation. In 1963 he acquired residential status and in 1965 a residence in the Bahamas. On the yearly average he spent between 100 and 150 days in Canada and 50 to 85 days in the United Kingdom and the remainder in the Bahamas.

The subject matter of the assessments was Mr. Taylor's travelling expenses between Toronto, Nassau and London. It may appear hard to Mr. Taylor that, after he had worked for nothing, or at least for no salary, his travelling expenses should be taxed. But the law as to expenses is severe upon directors of companies and we have to apply the law as enacted. The assessments were made under Schedule E, Case II, Mr. Taylor being

neither resident nor ordinarily resident in the United Kingdom and on the basis that section 160 (1) of the Income Tax Act 1952 applied. This, so far as relevant, is as follows:

> "Subject to the provisions of this chapter, any sum paid in respect of expenses by a body corporate to any of its directors . . . shall, if not otherwise chargeable to income tax as income of that director . . . be treated for the purposes of paragraph 1 of Schedule 9 to this Act as a perquisite of the office . . . of that director . . . and included in the emoluments thereof assessable to income tax accordingly: Provided that nothing in this subsection shall prevent a claim for a deduction being made under paragraph 7 of the said Schedule 9 in respect of any money expended wholly, exclusively and necessarily in performing the duties of the office . . ."

The first question is whether, by virtue of the section (which precludes, in the case of directors, any such argument as was accepted in *Pook* v. *Owen* [1970] A.C. 244) Mr. Taylor's travelling expenses are to be included in the emoluments of his office or of his employment (I do not think that it matters which description is applied). The only ground on which the contrary was asserted was that the relevant sums were paid to him not qua director but by virtue of his special assignment. Both courts below have rejected this argument, and I need say no more than that I agree with them. A director with a special assignment is none the less a director, and the section warrants no distinctions as to the duties in respect of which the relevant payments were made.

The critical question is whether Mr. Taylor is entitled to the benefit of the proviso. If its requirements are satisfied, the potential charge on emoluments is cancelled out by deduction of the expenses. But the wording is strict and narrow. It introduces the test from rule 7 of Schedule E (paragraph 7 of Schedule 9 to the Income Tax Act 1952) whether the expenses were wholly, exclusively and necessarily incurred in performing the duties of the office or employment.

The relevant word for the purpose of this case is "necessarily." It is a word which has a long history of interpretation and application. It does not mean what the ordinary taxpayer might think it should mean. To do any job, it is necessary to get there: but it is settled law that expenses of travelling to work cannot be deducted against the emoluments of the employment. It is only if the job requires a man to travel that his expenses of that travel can be deducted, i.e. if he is travelling on his work, as distinct from travelling to his work. The most obvious category of jobs of this kind is that of itinerant jobs, such as a commercial traveller. It is as a variant upon this that the concept of two places of work has been introduced: if a man has to travel from one place of work to another place of work, he may deduct the travelling expenses of this travel, because he is travelling on his work, but not those of travelling from either place of work to his home or vice versa. But for this doctrine to apply, he must be required by the nature of the job itself to do the work of the job in two places: the mere fact that he may choose to do part of it in a place separate from that where the job is objectively located is not enough. The case of *Pook* v. *Owen* [1970] A.C. 244 brought out this distinction. The

basis of the decision of the majority in that case (the minority holding the opposite) was that the nature of the office, or employment, of part-time anaesthetist and obstetrician required the doctor to work partly at his surgery and partly at the hospital. This was what the general commissioners found and the finding was accepted in this House. The words which I used in that case, and which have been invoked on the present appeal, presuppose, as the context would show, that the matter must be viewed objectively and were intended to provide a test whether the office or employment in question so regarded was such as to require that its duties be performed in two places.

The question then, in this case, is whether the element of "necessity" in the objective sense existed. Necessity from the personal circumstances of the taxpayer is not enough. Necessity for the employer to agree to Mr. Taylor's terms if it was to get his services, even if proved, which it certainly was not, is not enough—still less is a demonstration either that Mr. Taylor was the best, or only, man for the job, or that to obtain his services was beneficial to the company. This sort of consideration, even if proved, is irrelevant to the question whether Mr. Taylor should be taxed. The only necessity which is relevant is an objective necessity arising from the nature of the job itself to travel in the performance of its duties.

I have stated these propositions rather dogmatically because I regard them as firmly established by the authority of this House in *Ricketts* v. *Colquhoun* [1926] A.C. 1 and *Pook* v. *Owen* [1970] A.C. 244. Not for the first time your Lordships were invited to examine, which I take to be a euphemism for depart from, *Ricketts* v. *Colquhoun*. But it is one thing to say that *Ricketts* v. *Colquhoun* reached a wrong conclusion on the facts, if not on the facts as proved (which I would not agree), at least on the facts as they could have been proved (as to which I offer no opinion). But that is not the question. The question is what proposition of law was laid down by this House and whether that proposition should be regarded as incorrect. For my part I regard the case as an authority for the proposition that, for the purposes of rule 7 of Schedule E, the office (for that was a case of an office, but the same principle must apply to employments) must be objectively considered: what is its nature? what did it call for, or involve, in the way of duties? and as an authority against the proposition that the individual's personal circumstances can be brought in as part of the duties of the office, or as indicating what is necessary for its performance. The latter view was that of Warrington L.J. He interpreted the word "necessary" to mean necessary in regard to the circumstances of the individual concerned [1925] 1 K.B. 725, 735–736 and it may well be that this would represent a fair and reasonable view of what the law might be. But this House held that it was not the law, on the wording of the rule. The appellant's essential submission in this appeal in my opinion rests on Warrington L.J.'s judgment, and cannot be upheld unless that judgment is the law. But Rowlatt J., the majority of the Court of Appeal and this House took the other view. On this point, vital in the application of rule 7, *Ricketts* v. *Colquhoun* [1926] A.C. 1 has stood for nearly half a century, through several revisions of the Income Tax Code, was accepted in *Pook* v. *Owen* [1970] A.C. 244 and, on the point I have stated, cannot now be departed from. It does not of course follow that, as

a decision on its set of facts, it necessarily applies to other situations. I turn, therefore, to consider the situation of Mr. Taylor.

In general terms there is no doubt what the duties of his employment were. They must be sought in the board resolutions and the factual circumstances of the parties to the contract. Mr. Taylor's duties were, by the use of his special experience, expertise and negotiating skill, to bring about further mergers between his company and other United Kingdom companies. The centre of gravity of his work was clearly in the United Kingdom. As regards the location of his work and the manner of performing it the situation seems to me to be clear enough. Mr. Taylor was a Canadian citizen, resident in Canada and/or the Bahamas, with business interests in both places. No doubt to become resident in the United Kingdom would for him involve unpleasant fiscal consequences. The companies did not, in these circumstances, require him to come to the United Kingdom and establish himself there. They therefore made it clear that he could operate, so far as practicable, overseas, only coming to the United Kingdom when necessary. There is nothing more here, as I understand it, than a recognition by the company of Mr. Taylor's personal circumstances, and consequently a permission to Mr. Taylor to do his planning, and possibly his negotiating, where he pleased. This is quite a different thing from a contractual agreement that his duties or any of them should or must be carried out abroad. Indeed, only the clearest wording to that effect could support a conclusion that so unlikely an arrangement was made. The company had no interest in binding Mr. Taylor to operate outside the United Kingdom, all it desired was to secure his services: and all it needed in order to secure his services, was to give him liberty of action. But merely giving him liberty of action, even coupled with a recognition that he was likely to exercise this in the way he did, does not involve that expenses of travelling to the United Kingdom were expended wholly, exclusively and necessarily in performing the duties of his office. He was given the choice where to operate: he exercised his choice according to the requirements of his personal circumstances. The Court of Appeal neatly summed up the situation in the words " the arrangement did no more than to recognise the particular and personal situation of the taxpayer and was in no way dictated by the nature of the tasks involved in the office."

This was the view taken by the special commissioners—the judges of fact. In their words

> " we are not satisfied that the appellant's offices in Toronto and Nassau were or should be regarded as places of work for the purposes of his special assignment and we have reached the conclusion that the travelling expenses in question arose, not from the nature of the appellant's office, but from circumstances personal to himself."

I think, and I regret to differ from the Vice-Chancellor on this point, that this conclusion correctly reflects the facts—and if so the appeal must fail.

In my opinion then the taxpayer clearly fails in this case on the terms of his contract. But I must make it clear, in view of some of the arguments used, and which have appeared to find some favour in this House,

that even if the contract had been drafted so as to impose a duty on Mr. Taylor to work in the Bahamas I could not accept that this was enough to bring him within the proviso. If, as I believe to be the law, expenses incurred on account of personal circumstances are not deductible under the rule, they cannot be made so merely by the technique, or device, of injecting them into the contract of employment. To hold that they could, would invite the creation of arrangements which might not correspond with reality and which would produce gross inequality of treatment. The commissioners must always have the right to examine the whole circumstances and to decide what, objectively, the duties of the office or employment were and what was necessary in their performance. It was this kind of situation that I had in mind when I used, no doubt imperfectly, the words " in a real sense " in *Pook* v. *Owen* [1970] A.C. 244, 262. The commissioners' findings of fact in the present case, in my opinion, effectively negative the reality of any argument that by the nature of his employment Mr. Taylor was required to work in two or more places.

I would dismiss the appeal.

LORD SIMON OF GLAISDALE. My Lords, two main questions arise on this appeal: (I) were the payments (which have been described by my noble and learned friends) " emoluments " from any office or employment falling under Case II of Schedule E (see Finance Act 1956, section 10 (1), amending Income Tax Act 1952, section 156)?; (II) if so, were such emoluments immediately cancelled by the travelling expenses in respect of which they were paid, such expenses being deductible from the emoluments by virtue of paragraph 7 of Schedule 9 to the Income Tax Act 1952?

(I) Apart from section 160 of the Income Tax Act 1952, I should have thought that, in principle, the answer to the first question depends on the answer to the second. If the expense in respect of which the reimbursement is made is not deductible under paragraph 7, its reimbursement to the taxpayer would, in my view, be an emolument, making him so much better off than another employee or office holder who has to bear such an expense out of his own pocket. But in *Pook* v. *Owen* [1970] A.C. 244 a majority of your Lordships' House (Lord Guest, Lord Pearce, Lord Donovan) held otherwise. In *Reg.* v. *National Insurance Commissioner, Ex parte Hudson* [1972] A.C. 944 it was held that it would only in exceptional circumstances be proper to depart (under the Practice Statement of July 26, 1966 (*Practice Statement* (*Judicial Precedent*) [1966] 1 W.L.R. 1234) from a previous decision of your Lordships' House on a point of statutory construction. Were it not for section 160 of the Act of 1952 it would be necessary to determine whether this aspect of the decision in *Pook* v. *Owen* [1970] A.C. 244 produces such anomalies between the treatment of one taxpayer and another (i.e. such injustice) that it would be one of those exceptional decisions that your Lordships should reconsider notwithstanding that it turned on a point of statutory construction. However, such determination is unnecessary in the instant appeal, in view of section 160. [His Lordship read subsection (1) and continued:] The appellant taxpayer falls fairly and squarely within the words of this subsection. The sums in question in this appeal were paid to the taxpayer by a body corporate of which he was one of the directors; " director " being

A defined by section 163 (1) (*a*) to mean " in relation to a body corporate the affairs whereof are managed by a board of directors or similar body, a member of that board or similar body; . . ."

It was argued for the appellant that the sums were not paid to him qua director, but in respect of his special assignment. But section 160 does not say that the sums referred to must be paid to a director qua director: its terms are general. The object of the provisions now consolidated in B Chapter II of Part VI of the Income Tax Act 1952 must have been to obviate fiscal inequity through directors and high-paid employees receiving tax-free benefits in the form of expenses allowances and benefits in kind. It would defeat the object of these provisions, as well as reading into the subsection words which are not there, if it were open for a taxpayer who was, say, managing director, personnel director, sales director, export director, technical director or development director, to claim that his expenses allow- C ance was with reference to his special responsibility. To escape the taxing provisions of section 160 (1) such persons must bring themselves within the proviso to that subsection, by showing that the expense in respect of which the sum is paid comes within the last limb of paragraph 7 of Schedule 9.

Counsel for the appellant argued that his reading of " qua director " into section 160 (1) was supported by proviso (*b*) to section 163 (3), which D extends the provisions of Chapter II of Part VI relating to expenses allowances to cover employees paid £2,000 a year or more. Proviso (*b*) reads:

> " (*b*) where a person is a director of a body corporate, all employments in which he is employed by the body corporate shall be treated as employments to which this chapter applies."

E It was claimed that this proviso would be unnecessary if the special employments of a director were already within section 160. But the construction of a positive enactment by reference to a proviso calls for considerable caution (see *Commissioner of Stamp Duties* v. *Atwill* [1973] A.C. 558 and cases there cited). Provisos are often inserted ex abundanti cautela. That, indeed, seems to be the purpose of proviso (*b*) to section 163 (3).

F II. The substantial question in this appeal is, therefore, whether the taxpayer can bring himself within the proviso to section 160 (1), which invokes the last limb of paragraph 7 of Schedule 9—in other words, whether he can show that he, the holder of an office or employment of profit, was necessarily obliged to spend the money in question wholly, exclusively and necessarily in the performance of the duties of the office or employment. It has not been disputed that the appellant was " the holder of an office . . . G of profit " within the meaning of the rule, and no part of the argument before your Lordships has turned on the words " wholly " or " exclusively "; the question has been whether the expenditure was *necessarily* incurred within the meaning of the rule.

Paragraph 7 is in the same terms as earlier rules going back to 1853, the construction of which was authoritatively declared by your Lordships' H House in *Ricketts* v. *Colquhoun* [1926] A.C. 1—itself in line with earlier cases, *Cook* v. *Knott* (1887) 2 T.C. 246 and *Revell* v. *Elworthy Brothers & Co. Ltd.* (1890) 3 T.C. 12; and itself repeatedly followed. Its ratio decidendi and its relevance to the present appeal can only be fully

appreciated if it is borne in mind that there was a dissenting judgment in the Court of Appeal by Warrington L.J. Warrington L.J. said [1925] 1 K.B. 725, 735–736:

> "the words 'necessarily' and 'necessary' in the rule do not mean necessary or necessarily in the abstract, but they mean necessary in regard to the circumstances of the individual concerned, the holder of the office, . . ."

If this were the correct construction, it would neatly cover the case of the instant appellant: he can, in my view, only succeed if it is the right construction. However, it was unanimously rejected in your Lordships' House. Viscount Cave L.C. said [1926] A.C. 1, 4:

> ". . . they must be expenses which the holder of an office is necessarily obliged to incur—that is to say, obliged by the very fact that he holds the office and has to perform its duties—and they must be incurred in—that is, in the course of—the performance of those duties."

Lord Blanesburgh said, at p. 7:

> ". . . the language of the rule points to the expenses with which it is concerned being only those which each and every occupant of the particular office is necessarily obliged to incur in the performance of its duties—to expenses imposed upon each holder ex necessitate of his office, and to such expenses only."

Lord Blanesburgh went on to cite and expressly reject the passage from Warrington L.J.'s judgment which I have just quoted.

What *Ricketts* v. *Colquhoun* decided, therefore, was that, for expenses to be deductible, they must be the necessities of the office itself, so that it is the nature of the office which necessarily obliges the office holder to incur them; and that it is immaterial that they are necessary in regard to the circumstances of the individual concerned, however special—or even, I may add, unique—those circumstances may be.

Counsel for the taxpayer submitted that your Lordships should if necessary decline to follow *Ricketts* v. *Colquhoun*. To take this course it would first be necessary for your Lordships to be satisfied that *Ricketts* v. *Colquhoun* propounded an incorrect construction of the statutory provision. Of this I am myself very far from persuaded. But, in any event, no such exceptional circumstances exist in the instant case as would justify your Lordships in abstaining from following a previous decision of your Lordships' House on a question of statutory construction. On the contrary, there are a number of circumstances which indicate that *Ricketts* v. *Colquhoun* would be a most unsuitable decision for the exercise of your Lordships' powers under the Practice Statement of July 26, 1966 [1966] 1 W.L.R. 1234. The purely objective construction which found favour in *Ricketts* v. *Colquhoun* goes back to *Cook* v. *Knott*, 2 T.C. 246 in 1887; and in the words of Viscount Cave L.C. in *Ricketts* v. *Colquhoun* [1926] A.C. 1, 5:

> "Since that decision the rule has been re-enacted in the same terms, and I should hesitate long before overruling a decision which has stood for 38 years, and upon which subsequent legislation may have been based."

Since then *Ricketts* v. *Colquhoun* has itself stood for a further 48 years. A number of proposals have been made for modification of the rule as construed in *Cook* v. *Knott*, 2 T.C. 246 and *Ricketts* v. *Colquhoun*. It has, indeed, been modified in certain circumstances: see Income Tax Act 1952, section 159; Finance Act 1958, section 16; Finance Act 1965, section 15 (1) (*b*). The Schedule E code was revised by section 10 of the Finance Act 1956, after a Royal Commission had recommended a different criterion as to deductibility for expenses for the purpose of Schedule E. But Parliament did not take the opportunity of revising the rule contained in paragraph 7 as it had been interpreted in *Ricketts* v. *Colquhoun*—and as long ago as that case Scrutton L.J. indicated ([1925] 1 K.B. 725, 740) that any change must be for Parliament and not the courts. Presumably, no alteration was made because it was thought that no other rule had been propounded which would not produce unacceptable anomalies between different classes of taxpayer or incommensurate administrative burdens or ready avenues for avoidance of equitable tax liability. It is therefore, in my judgment, far too late, and would be quite inappropriate, for your Lordships to adopt Warrington L.J.'s construction of the rule, or any other than that laid down by your Lordships' House in *Ricketts* v. *Colquhoun* [1926] A.C. 1.

But the appellant taxpayer's alternative—and indeed, main—contention was that *Ricketts* v. *Colquhoun* was distinguishable and that *Pook* v. *Owen* [1970] A.C. 244 was the governing authority. It is therefore incumbent to determine also what was the ratio decidendi of *Pook* v. *Owen*, in which *Ricketts* v. *Colquhoun* was distinguished.

Applying the rule in *Ricketts* v. *Colquhoun* [1926] A.C. 1—i.e. that the obligation to incur the expenses of travelling in question must arise out of the nature of the office or employment itself, and not out of the circumstances of the particular person appointed to the office or employed under the contract of employment—two different classes of travelling expenses readily come to mind. The first is where the office or employment is of itself inherently an itinerant one. Examples are various sorts of inspectorate (say of weights and measures or to check stock) or commercial travel or supervision of duties carried out by local subordinates. In such cases the taxpayer may well be travelling in the performance of the duties of the office or employment from the moment of his leaving home to the moment of his return there—a visit to any head office might well be purely incidental or fortuitous. The second class of case is where the taxpayer has two places of work and is required by the nature of his office or employment to travel from one to the other. The classic example (until the situation was governed by allowances) was the Member of the House of Commons: he was necessarily obliged to perform part of the duties of his office at Westminster and part in his constituency; so that travel between the two was an obligation arising by the nature of the office itself, and not by the circumstances of the particular Member—even though it may be assumed that, in the eyes of his electorate, he was the best person to be elected to the office. Another example might be a managing clerk of a solicitor who has offices in adjacent towns: the cost of travel from home to either would not be a deductible expense, since it would be an obligation arising out of his personal circumstances, having chosen to live where

he has; but the travelling between the two offices would be an obligation arising by the very nature of the employment itself.

In my view, Dr. Owen in *Pook* v. *Owen* [1970] A.C. 244 was held to fall into this second category; and this was the ratio decidendi of the case. The rule in *Ricketts* v. *Colquhoun* could therefore be applied without disqualifying Dr. Owen's travelling expenses; so that *Ricketts* v. *Colquhoun* was distinguishable. Lord Guest said, at p. 256:

> "In *Ricketts* v. *Colquhoun* there was only one place of employment, Portsmouth. It was not suggested that any duties were performed in London. In the present case there is a finding of fact that Dr. Owen's duties commenced at the moment he was first contacted by the hospital authorities. . . . There were thus two places where his duty is performed, the hospital and his telephone in his consulting room. If he was performing his duties at both places, then it is difficult to see why, on the journey between the two places, he was not equally performing his duties."

Lord Pearce said, at p. 258:

> "His duty to the hospital and the patient started on the telephone, and he was thereafter responsible to the hospital and the patient until he had dealt with the patient, whether he made his journey to the hospital in his own car or as passenger in a hired car."

Lord Wilberforce said, at p. 262:

> "What is required is proof, to the satisfaction of the fact finding commissioners, that the taxpayer, in a real sense, in respect of the office or employment in question, had two places of work, and that the expenses were incurred in travelling from one to the other in the performance of his duties. In my opinion, Dr. Owen satisfied this requirement."

When my noble and learned friend said "in a real sense" he meant, I think, since he was distinguishing *Ricketts* v. *Colquhoun* [1926] A.C. 1 and had just referred to *Newsom* v. *Robertson* [1953] Ch. 7, not only that the double work-location must not be merely colourable, but also that the two places of work were a necessary obligation arising from the very nature of the office or the employment itself and not from the circumstances of the particular person appointed or employed.

Lord Donovan and Lord Pearson both dissented on this part of the case, holding that there were not in truth two places of employment, but only the hospital; and that the case therefore was indistinguishable from *Ricketts* v. *Colquhoun*. This also helps to define the ratio decidendi of the majority.

Only in one passage in the majority judgments can I find even a reference to the fact that it would have been difficult for the hospital committee to appoint other than a doctor with an existing practice of his own, which might be at some distance from the hospital. That is in the speech of my noble and learned friend, Lord Wilberforce [1970] A.C. 256, 263; but, in my view, this would not be sufficient in itself to distinguish *Ricketts* v. *Colquhoun*, where the courts took cognisance of the

fact that a recordership calls for special qualities and that all but a small minority of recorders were appointed from the ranks of barristers actively in practice in London.

It was claimed on behalf of the appellant that, like Dr. Owen was found to be, he also was contractually bound to work in more than one place—to do part of his relevant work in Canada or the Bahamas. I do not think that any contract was established on the evidence, and certainly none containing any such term: it is inconceivable that the appellant could have been held to have been in breach of contract had he done all the work of brewery amalgamation in England. At most there was an understanding that he would do as much of the work as possible where it suited him best to be at any particular time. His relevant work-location (and consequent travel) arose, in other words, from his personal circumstances, and not from the nature of the work objectively viewed. In any case, even if a taxpayer is contractually bound to work in two stipulated places, this does not conclude the matter. The commissioners would have to see whether the contract truly reflected the real nature of the job. Not only is this inherent in *Ricketts* v. *Colquhoun*; any other principle would allow of gross fiscal inequities—for example, between office holders, on the one hand, and those working under contracts of employment, on the other (whereas paragraph 7 stipulates for their like treatment), or between holders of newly or purposely created offices or employments, on the one hand, and holders of pre-existing or common offices or employments, on the other. The finding of fact in *Pook* v. *Owen* that the doctor was obliged by the nature of his employment to have two places of work is sufficient to distinguish that case from the instant, where there is a contrary finding.

If I have correctly interpreted *Ricketts* v. *Colquhoun* and *Pook* v. *Owen*, the special commissioners in the instant case have directed themselves correctly and have come to the right conclusion. In the case stated they cited the passage from the speech of my noble and learned friend, Lord Wilberforce, in *Pook* v. *Owen* which I have quoted ("What is required is proof [etc.]"). Correctly appreciating that my noble and learned friend's observations should be read in the light of *Ricketts* v. *Colquhoun*, the special commissioners then went on to cite from Lord Blanesburgh, in *Ricketts* v. *Colquhoun*, at p. 7:

> "... the deductible expenses do not extend to those which the holder has to incur mainly and, it may be, only because of circumstances in relation to his office which are personal to himself or are the result of his own volition."

Directing themselves in the light of those two passages, so juxtaposed, the special commissioners concluded:

> "Having considered the facts as a whole we are not satisfied that the appellant's offices in Toronto and Nassau were or should be regarded as places of work for the purposes of his special assignment and we have reached the conclusion that the travelling expenses in question arose, not from the nature of the appellant's office, but from circumstances personal to himself."

In my view, this conclusion not only is unimpugnable but was inevitable. Brewery amalgamation in England did not of its very nature require as an obligation that the taxpayer should work in Toronto or Nassau and travel to England from there.

I would therefore dismiss the appeal.

LORD SALMON. My Lords, I will not repeat all the relevant facts which have been so fully and lucidly stated by your Lordships. It is surely an irresistible inference from those facts that by 1960 Mr. Taylor must have long been generally recognised as the great expert in the brewing world on successful expansion by means of merger and amalgamation. That no doubt was why United Breweries Ltd. and the companies with which they subsequently merged were anxious to retain Mr. Taylor, and only Mr. Taylor in the hope that he might achieve for them a like success to that which he had achieved for Canadian Breweries; and in this they were not disappointed. Although Mr. Taylor was prepared to undertake this task without remuneration because he looked on devising and arranging mergers and amalgamations in the brewing industry as a "business recreation," there is no reason to suppose that his enthusiasm for this recreation was such that he was prepared to live permanently in the United Kingdom and thus give up his vast business interests on the other side of the Atlantic which he managed from his offices in Toronto and Nassau. Most of the investigation and planning and much of the general negotiation and arrangements for finance involved in Mr. Taylor's special assignment as director of the English companies in charge of mergers and amalgamations could conveniently be done in Toronto and Nassau. In fact, the bulk of this work was done there by correspondence and telephone; and finance was raised in Canada to the extent of £20 million for the English companies.

The arrangement between Mr. Taylor and the English companies was that he should receive no remuneration for his services, that he should render those services so far as he could from his offices in Canada and the Bahamas and that if and to the extent that it was necessary for him to come to the United Kingdom to carry out the duties of his special assignment he would be regarded as travelling on the business of the English companies and they would bear all the expenses of such visits to the United Kingdom. This arrangement, the bona fides of which no one disputes, seems to me in the light of the existing facts to have been a sensible business arrangement from the point of view of both parties. Mr. Taylor was able, at little if any expense to himself, to indulge in his "business recreation" and also to enhance his prestige as the great architect of brewery mergers and amalgamations. On the other hand, the companies, without having to pay any more than the comparatively small travelling expenses involved, were able to enjoy the extremely valuable services which Mr. Taylor uniquely could render.

Mr. Taylor did a good deal of travelling between Canada and England in the performance of his special assignment. His expenses in respect of these journeys were always repaid to him by the English companies. This appeal depends upon whether he was properly assessed to income tax for the years 1961/2 to 1965/6 in respect of fares repaid to him during those years. I respectfully agree with all your Lordships and the

Court of Appeal that it is crystal clear that these sums repaid to Mr. Taylor were emoluments within the scope of Schedule E. The assessments are therefore correct unless these sums may be deducted under the rule stated in paragraph 7 of Schedule 9 to the Income Tax Act 1952.

The present appeal turns upon the true construction of this rule which has remained on the statute book with no material alteration since 1852. It was carefully considered by this House in *Ricketts* v. *Colquhoun* [1926] A.C. 1 and in *Pook* v. *Owen* [1970] A.C. 244. Like my noble and learned friend, Lord Reid, I do not think that the interpretation of those two decisions is materially assisted by an examination of any of the numerous other reported cases in which the rule has been considered.

The rule lays down that travelling expenses may be deducted from emoluments to be assessed if "the holder of an office or employment of profit is necessarily obliged to incur . . . the expenses of travelling in the performance of the duties of the office or employment." It seems to me that logically the first question must be—were the travelling expenses incurred in the performance of the duties of the office or employment? If they were not, they cannot be deducted, and that is the end of the matter, for if they are not so incurred they cannot be necessarily so incurred. If, however, the travelling expenses were incurred in the performance of the duties of the office or employment, that is not the end of the matter for the taxpayer would then also have to show that he was necessarily obliged so to incur the expenses before he could deduct them.

It has long been generally accepted that, under the rule, a man's expenses of travelling to his work are not deductible; only his expenses of travelling on his work are deductible, for these alone are incurred in the performance of the duties of his employment. It is also well settled that if a man has several places of work, travelling between them constitutes travelling on his work. I think that in *Ricketts* v. *Colquhoun* [1926] A.C. 1 Viscount Cave L.C. rested his opinion chiefly on the ground that the appellant was not travelling on his work, only to his work. Viscount Cave said of the travelling expenses in question, at p. 4:

> "They are incurred not because the appellant holds the office of Recorder of Portsmouth, but because, living and practising away from Portsmouth, he must travel to that place before he can begin to perform his duties as recorder and, having concluded those duties, desires to return home. They are incurred, not in the course of performing his duties, but partly before he enters upon them, and partly after he has fulfilled them."

Viscount Cave gave no guide as to how the word "necessarily" was to be construed in its context in the rule. Nor did Lord Atkinson, Lord Buckmaster nor Lord Carson who all agreed with Viscount Cave. This, no doubt, was because if the travelling expenses were not incurred in the performance of the duties of recorder, ex hypothesi, they could not be necessarily so incurred. If, however, they had been incurred in the performance of those duties in the strict sense laid down by this House, it is difficult to see how they would not have been necessarily incurred

unless it could be said that they were incurred by unduly extravagant modes of travel.

Viscount Cave's interpretation of the rule certainly makes it very rigid, but I doubt whether the language in which the rule was formulated by Parliament makes it possible to put a more flexible or reasonable interpretation upon it.

Lord Blanesburgh accepted Viscount Cave's interpretation of the rule (see p. 8). Nevertheless, he did lay down the sense in which he understood the words "necessarily obliged to incur" were used in the rule. He did so in a celebrated passage, which, however, has been the subject of some criticism such as that expressed by my noble and learned friend, Lord Pearce, in *Pook* v. *Owen* [1970] A.C. 244, 258. Lord Blanesburgh said:

> "... the language of the rule points to the expenses ... being only those which each and every occupant of the particular office is necessarily obliged to incur in the performance of its duties—to expenses imposed upon each holder ex necessitate of his office, and to such expenses only ... the terms [of the rule] are ... not personal but objective: the deductible expenses do not extend to those which the holder has to incur ... only because of circumstances in relation to his office which are personal to himself or are the result of his own volition."

This would have been highly relevant if "in the performance of the duties" meant for the purpose of performing or to enable the performance of the duties—which is precisely what this House held that it did not mean. If the wider meaning had been accepted, it would have covered travelling to work for a man clearly must travel to his work in order to enable him to perform it. If such had been the law, it would, no doubt, have been important to lay down that the expenses of travelling to work could be deductible only in respect of travelling between the place of work and the nearest place to it in which it would have been reasonably possible for the taxpayer to reside—and, maybe, that this should be judged objectively and not by the personal circumstances or wishes of the taxpayer.

Lord Blanesburgh (on the assumption that "in performance of ... duties" might have had the wider meaning which this House had rejected) went on to say that although the appellant's travelling expenses were incurred to enable him to perform his duties as Recorder of Portsmouth they were not necessarily so incurred. This, he said, was because the appellant could have retired from his busy London practice and gone to live in Portsmouth in order to sit there four times a year for a few days at a time with nominal remuneration in performance of an office which is generally regarded as a public duty. It may be that the principle enunciated by Lord Blanesburgh is unexceptionable. I find it difficult, however, to accept his application of the principle to the facts of the case he was considering.

In my view, the decision in *Ricketts* v. *Colquhoun* [1926] A.C. 1 does no more than confirm the proposition that "in the performance of the duties" must be given a strict interpretation and does not mean "in order to

enable the duties to be performed." Expenses incurred in travelling to work are not deductible. This decision has been so long accepted and acted upon that it would be difficult to alter it except by legislation. It may well be, as my noble and learned friend, Lord Pearce, suggested, some review by the legislature would be appropriate. The days of 1852 are long past when persons were usually able to live very close to their work and rarely travelled except on foot or horseback or by horse-drawn vehicles. The continuous presence of the horse in the rule, in spite of its many re-enactments, hardly suggests that much attention has been given to bringing the rule up to date.

The decision and the reasons for it given in the first four speeches in *Ricketts* v. *Colquhoun* must, I think, be accepted. It is unnecessary to question the principle enunciated by Lord Blanesburgh and, for the purposes of this appeal, I am prepared to assume that it is correct. That case, however, was very different from the present and affords little guidance to how this appeal should be decided. The duties of the recorder were not itinerant. They were all performed in one place. The position of a taxpayer whose duties have to be performed in several places so that he must necessarily travel from one place to another was not in question. In *Pook* v. *Owen* [1970] A.C. 244, however, it was conceded by each member of this House that in such a case the taxpayer's travelling expenses would be deductible under the rule. The majority of this House held the taxpayer had two places of work between which he had to travel. The minority, however, considered that the primary facts set out in the case did not justify such a finding.

In my view, the only possible inference from the primary facts as found in the present case (which are more strongly in favour of the taxpayer than were the facts in *Pook* v. *Owen*) is that the places in which Mr. Taylor was required to work were Toronto and Nassau as well as the United Kingdom. This was spelt out in the terms of his employment which required the work to be done in Toronto and Nassau so far as possible and only, when necessary, in the United Kingdom. When you are considering where the duties of a man's employment require him to work, you look first at the terms of his employment. These normally are conclusive. A term which may appear to be rather more for the man's benefit than for the benefit of his employers is still a term of the employment. The fact that you may suspect that the employers might waive it is, in my view, irrelevant.

I am not suggesting that the terms of employment are conclusive in every case. It is easy to imagine a case in which, for instance, an English resident employed by an English company as a director to do work unconnected with France has a term inserted in his contract which provides that he shall do part of his work in an hotel on the French Riviera and that his employers shall pay all the expenses involved, including travelling expenses. This would obviously be colourable—a mere device to satisfy his wish to spend some time in the sun with his expenses paid tax free. The term could be of no benefit to the company which he serves and the job could, no doubt, be filled by persons of no less competence but less greed.

The present case, however, is very different. The English companies required Mr. Taylor's services and no one else's. The terms agreed were as beneficial to the companies as they were to Mr. Taylor, and probably more so. Assuming that all the services could have been rendered in England and that the terms of employment had provided that they should be, Mr. Taylor would have had to come and live here or fly here whenever any of the work was to be done. Assuming, which is unlikely, that he would have agreed to either alternative, the first would probably have cost the companies vast fees, and the second much more in travelling expenses than the present arrangement. It follows that the English companies obtained the benefit of Mr. Taylor's services more cheaply under the terms actually agreed than they would have done under any other terms which might possibly have been agreed. That is why I think that the parties, to their mutual commercial benefit, made a sensible business arrangement in requiring that the bulk of Mr. Taylor's work should be done in Toronto and Nassau.

Rigidly to apply the dicta of Lord Blanesburgh and hold Mr. Taylor's expenses are not deductible on the ground that all his work might possibly have been done in England and that the very exceptional facts of this case might have been different from what they are is to go further than I am prepared to travel in preferring theoretical possibilities to practical reality.

I agree with the learned Vice-Chancellor that the inference of fact set out at the end of paragraph 9 of the case is irreconcilable with the commissioners' findings of primary fact stated earlier in the case, and cannot be supported. I think that the primary facts as found prove that, in reality, there were at least two places of work required by Mr. Taylor's very special employment. I am satisfied that the travelling expenses in question were necessarily incurred whilst Mr. Taylor was travelling between Canada and the United Kingdom on the English companies' business. I would accordingly allow the appeal.

Appeal allowed.

Solicitors: *Allen & Overy; Solicitor of Inland Revenue.*

J. A. G.