SUPPLEMENTARY BENEFIT

Resources—value of jointly owned property.

In January 1984 the claimant made a claim for supplementary benefit. He had capital assets consisting of £1,124.18 in a building society and he was joint owner of a bungalow with his nephew who lived in Tasmania. The adjudication officer decided that the value of the claimant's capital resources exceeded the prescribed limit (at that time £3,000) and that he was not entitled to supplementary benefit. On appeal the tribunal confirmed the decision and the claimant appealed to a Social Security Commissioner.

Held that:

1. the claimant's joint interest in the property was not an unobtainable asset but was difficult to realize, and that interest fell to be valued (paragraph 5);

2. the market value of the property was the price that it would fetch in the market (paragraph 6);

3. applying R(SB) 21/83 the interest of a joint tenant, or tenant in common, lay not in the land itself but in the proceeds of sale of the land. As such the 10% deduction in the case of land under reg 5(a)(i) of the Supplementary Benefit (Resources) Regulations 1981 did not fall to be made, but a deduction fell to be made for the expenses of sale. Such expenses were liable to be estimated and would normally be about 10% (paragraph 6);

4. a tribunal can properly find only the minimum value of a claimant's interest in the property if that value, net of expenses, together with his other assets obviously exceeded the capital limit (paragraph 6);

5. if the value of premises which were for sale was disregarded under regulation 6(1)(a)(iii), so too was the value of the claimant's interest in those premises (paragraph 7).

The appeal was allowed.

1. My decision is that the decision of the social security appeal tribunal dated 2 July 1984 is erroneous in point of law. The matter must be remitted to another tribunal.

2. The claimant is a man aged nearly 80 who has sustained a stroke and is described as incapable of managing his affairs. I do not know if this means that he is incapable of executing a legal document or not. His claim for a supplementary benefit was rejected by the benefit officer (now the adjudication officer) on the ground that his capital resources exceeded the figure in regulation 7 of the Supplementary Benefit (Resources) Regulations 1981 as amended. This figure is currently £3,000. His resources at the time comprised a diminishing sum (at the time of the decision £1,124.18) in a building society and an interest in a bungalow at Lambley, Notts.

3. The claimant's son, who represents him, appealed against this decision complaining that it was wrong to take account of an "unobtainable asset". But the decision was confirmed by the appeal tribunal. And the claimant now appeals to the Commissioner.

4. The bungalow is described by the claimant's son as jointly owned by the claimant and his nephew in Tasmania. This needs some expansion. Literally it should mean that the claimant and the nephew are beneficially joint tenants of the property, that is to say they had equal interests in it such that the survivor of them would take the whole, unless before the death of the first to die their interest had been severed (which can be done by either joint tenant unilaterally). After severance they would have equal interests in common. Interests in common are often loosely spoken of as joint interests; and interests in common need not be equal. I do not find any indication in the case papers of the relative sizes of the interest of the claim-

ant and the nephew and would assume that they are equal. It is however undesirable to leave such an important matter to inference.

5. The claimant has described his father's interest as an unobtainable asset. It is not however accurately so described. It is an asset that is difficult to realise. The bungalow itself as opposed to the claimant's interest in it can be sold only by the person in whom the property is vested as trustees. It is not unusual in the case of joint tenants and tenants in common for the trustees to be the joint tenants or tenants in common themselves. But again this ought not to have been left to implication. If in the present case the trustees were at hand and ready and willing to sell the property there would be no difficulty in the claimant's fairly quickly getting in his share of the proceeds of sale. But if the claimant is incapable of acting and the nephew is in Tasmania and they are the trustees the mere mechanics of selling become more difficult. If the claimant is capable of so much as executing a deed of appointment of new trustees he could make an appointment of one or more trustees to replace the nephew in Tasmania without its being necessary to secure the nephew's concurrence (see *Re Stoneham's Settlement* [1953] CH 50). But if he is not, it will be necessary to procure that the nephew executes some appointment of new trustees. I understand that at the time of the hearing there was evidence of his willingness to co-operate. In the course of time the property can be sold and the claimant can receive his share of the proceeds. In the meanwhile the claimant has an interest in the bungalow which (unless it can be disregarded) falls to be valued. Its value is the market value in terms of regulation 5(1) of the Supplementary Benefit (Resources) Regulations 1981 (the Resources Regulations) subject to such deduction therefrom as is permitted by that regulation.

6. The market value of property is the price that it would fetch in the market. It might seem at first sight that no one would pay much to purchase an interest in property in common with a total stranger. But that is not the true test of the market value if the vendor is in a position to procure or has a good prospect of procuring that the underlying property is itself sold so that the proceeds of sale can be divided, and can pass on such rights or prospects to a purchaser directly or indirectly. Rights are of course more valuable than prospects. Under regulation 5 there is deductible from this market value 10 per cent in case of land and the expenses of sale in the case of property other than land. It was held in Decisions R(SB) 21/83 and that on file CSB 1189/1983 that the interest of a joint tenant or tenant in common of land (a so-called undivided share in land) was in strictness an interest in the proceeds of sale of land and not land at all so that the 10 per cent deduction did not fall to be made but (by implication) a deduction fell to be made for the expenses of sale. Had this question not come up before I should, I think, have been inclined to hold that the equitable doctrine of conversion on which this conclusion was based had no application to the meaning of land in the context of supplementary benefit, especially as I doubt whether there is, in Scots law anything comparable with it. But I do not now dissent from the conclusion. The expenses of sale are liable to be estimated expenses and in the case of an undivided share the value of which has to be determined by reference to the cost of roundabout methods of realisation, I dare say that 10 per cent would not be very wide of the mark. In the present case no one has as yet ventured any valuation at all. It would appear that it has been taken that whatever the value it must bring the claimant's resources above the statutory figure. It is however better not to leave this to inference. If the tribunal finds it manifest that the value taken with other assets of the claimant must take him above the statutory figure they could properly reach a conclusion as to some minimum value after the deduction of expenses. It is primarily because altogether too much has been

left to inference that I find the decision to have been erroneous in point of law.

7. The claimant's son asks how the claimant is to live during the period when he can realise nothing. Some provision is made in regulation 18 of the Supplementary Benefit (Urgent Cases) Regulations 1981, (the Urgent Cases Regulations) for the case of capital resources not readily realisable; though it would seem that the claimant could not have availed himself of that provision until he had exhausted his building society funds. However the claim is an open-ended claim and that regulation should be considered by the new tribunal. More pertinent however is regulation 6(1)(a)(iii) of the Resources Regulations under which there is to be disregarded in calculating a claimant's capital resources the value of any premises which are for sale and the value of which it would in all the circumstances be reasonable to disregard for such period as the benefit officer may estimate as that during which the sale will be completed. It is to be noted that it is the value of the premises for sale that is to be disregarded and not the value of the claimant's interest in those premises. It follows that the disregard is independent of any refinement about the equitable doctrine of conversion. If the value of the premises themselves is disregarded, so too will the value of the claimant's interest in those premises, which is a function of the value of the premises themselves.

8. The tribunal considered this provision. But it would appear from their decision that they considered it only at the date of the claim, whereas on a continuing claim they should have considered it week by week (see Decision R(SB) 14/85 at paragraph 11(2) and R(SB) 4/85 at paragraph 13). The tribunal will have to decide for themselves for what period or periods before the date of their decision the premises were for sale (applying the test laid down in Decision R(SB) 32/83). In terms of the regulation the value is to be disregarded for a period estimated by the benefit officer (now the adjudication officer) as that during which the sale will be completed. Such estimation on an appeal will (under regulation 71(2)(b) of the Social Security (Adjudication) Regulations 1984) be for the appeal tribunal; see Decision R(SB) 9/82 at paragraph 8 in any case where estimation is called for. In the present case however the tribunal is likely to be dealing with a past period and it will be a matter of history how long it was before the sale was completed. There is no provision for reducing the period if sale is unduly prolonged, though there may sometime be room for the conclusion, if sale is unduly prolonged that the property is no longer bona fide for sale. By giving their decision by reference only to the date of claim the tribunal erred in law. For this reason in particular I set aside the decision and remit it to another tribunal.

9. The new tribunal should ascertain in whose name or names the property was vested (as this may bear on the difficulty and expense of realisation) at the time of claim and pending sale; what was the size of the claimant's interest in it; and what was the market value (or at least) some relevant minimum market value) of the property. If the claimant's interest in it was an undivided share then it is the expenses of sale rather than a straight 10 per cent that falls to be deducted because this is a case where the interest pending sale is to be treated as converted into money. The tribunal should in relation to any period for which the property is not disregarded consider the possible application of regulation 18 of the Urgent Cases Regulations.

10. The appeal is allowed.

(Signed) J. G. Monroe
Commissioner