Elitestone Ltd v. Morris and Another [1997] UKHL 15; [1997] 2 All ER 513; [1997] 1 WLR 687 (1st May, 1997)

HOUSE OF LORDS

Lord Browne-Wilkinson Lord Lloyd of Berwick Lord Nolan Lord Nicholls of Birkenhead Lord Clyde

OPINIONS OF THE LORDS OF APPEAL FOR JUDGEMENT IN THE CAUSE

ELITESTONE LIMITED
(RESPONDENTS)

v.

MORRIS AND ANOTHER (A.P.)
(APPELLANTS)

ON 1ST MAY 1997

LORD BROWNE-WILKINSON

My Lords,

I have had the advantage of reading in draft the speeches of my noble and learned friends, Lord Lloyd of Berwick and Lord Clyde. For the reasons which they give I would allow the appeal and restore the order of the assistant recorder.

LORD LLOYD OF BERWICK

My Lords,

The plaintiffs, Elitestone Ltd., are the freehold owners of land known as Holt's Field, Murton, Near Swansea. The land is divided into 27 lots. The defendant, Mr. Morris, is the occupier of a chalet or bungalow on Lot No. 6. It is not known for

certain when the chalet was built. But it seems likely that it was before 1945. Mr. Morris has lived there since 1971.

The plaintiffs acquired the freehold in 1989 with a view to redevelopment. On 30 April 1991 they issued proceedings in the Swansea County Court claiming possession against all 27 occupiers. Five lead actions were selected, including that in which Mr. Morris was defendant. They came on for trial before Mr. Assistant Recorder Bidder in November 1994. The assistant recorder had a number of issues to decide. He dealt with them in a most impressive manner. So far as Mr. Morris is concerned, his defence was that he is a tenant from year-to-year, that he occupies the premises as his residence, and is therefore entitled to the protection of the Rent Act 1977. He claims a declaration to that effect.

The assistant recorder held, correctly, at the end of what was necessarily a very lengthy judgment that the question in Mr. Morris's case turned on whether or not the bungalow formed part of the realty. If it did, then Mr. Morris was entitled to his declaration.

Having visited the site, the assistant recorder had this to say:

> "While the house rested on the concrete pillars which were themselves attached to the ground, it seems to me clear that at least by 1985 and probably before, it would have been clear to anybody that this was a structure that was not meant to be enjoyed as a chattel to be picked up and moved in due course but that it should be a long-term feature of the realty albeit that, because of its construction, it would plainly need more regular maintenance."

The Court of Appeal disagreed (unreported), 28 July 1995, Court of Appeal (Civil Division) Transcript No. 1025 of 1995. Aldous L.J., who gave the leading judgment, was much influenced by the fact that the bungalow was resting by its own weight on concrete pillars, without any attachment. He was also influenced by the uncertainty of Mr. Morris' tenure. Although Mr. Morris had been in occupation since 1971, he was required to obtain an annual "licence." At first the licence fee was £3 a year. It rose to £10 in 1984, then to £52 in 1985, and finally to £85 in 1989. In 1990 the plaintiffs required a licence fee of £1,000: but Mr. Morris, and the other occupiers declined to pay.

On these facts Aldous L.J. inferred that it was the common intention of the parties that the occupiers should acquire the ownership of their bungalows, but the ownership of the sites should remain in the freeholders. On that footing Mr. Morris' bungalow was to be regarded as a chattel. It was never annexed to the soil, so it never became part of the realty. It followed that the tenancy did not include the bungalow, and Mr. Morris was not a protected tenant.

Unlike the judge, the Court of Appeal did not have the advantage of having seen the bungalow. Nor were they shown any of the photographs, some of which were put before your Lordships. These photographs were taken only very recently. Like all photographs they can be deceptive. But if the Court of Appeal had seen the photographs, it is at least possible that they would have taken a different view. For the photographs show very clearly what the bungalow is, and especially what it is not. It is *not* like a Portakabin, or **mobile home**. The nature of the structure is such that it could not be taken down and re-erected elsewhere. It could only be removed by a process of demolition. This, as will appear later, is a factor of great importance in the present case. If a structure can only be enjoyed in situ, and is such that it cannot be removed in whole or in sections to another site, there is at least a strong inference that the purpose of placing the structure on the original site was that it should form part of the realty at that site, and therefore cease to be a chattel.

There were a number of other issues in the Court of Appeal. I need only mention one. This was an argument by the plaintiffs that Mr. Morris was estopped by convention from denying that the bungalow was a chattel. There was, so it was said, a common assumption that the chalets were owned separately from the land, since each occupier purchased his own chalet from the previous occupier (Mr. Morris paid £250 for No. 6 in 1971), and each occupier paid an annual licence fee to the freeholders. Since the Court of Appeal held that the bungalow was a chattel, they did not find it necessary to deal with the estoppel argument. The plaintiffs might have renewed the argument before your Lordships. But in the meantime the House had given judgment in *Melluish v. B.M.I. (No. 3) Ltd.* [1996] A.C. 454. In that case Lord Browne-Wilkinson said, at p. 473:

> "The terms expressly or implicitly agreed between the fixer of the chattel and the owner of the land cannot affect the determination of the question whether, in law, the chattel has become a fixture and therefore in law belongs to the owner of the soil: . . . The terms of such agreement will regulate the contractual rights to sever the chattel from the land as between the parties to that contract and, where an equitable right is conferred by the contract, as against certain third parties. But such agreement cannot prevent the chattel, once fixed, becoming in law part of the land and as such owned by the owner of the land so long as it remains fixed."

If an express agreement cannot prevent a chattel from becoming part of the land, so long as it is fixed to the land, it is obvious that a common assumption cannot have that effect. It is not surprising, therefore, that Mr. Thom abandoned his estoppel argument.

Thus the sole remaining issue for your Lordships is whether Mr. Morris' bungalow did indeed become part of the land, or whether it has remained a chattel ever since it was first constructed before 1945.

It will be noticed that in framing the issue for decision I have avoided the use of the word "fixture." There are two reasons for this. The first is that "fixture", though a hallowed term in this branch of the law, does not always bear the same meaning in law as it does in everyday life. In ordinary language one thinks of a fixture as being something fixed to a building. One would not ordinarily think of the building itself as a fixture. Thus in *Boswell v. Crucible Steel Co.* [1925] 1 K.B. 119 the question was whether plate glass windows which formed part of the wall of a warehouse were landlord's fixtures within the meaning of a repairing covenant. Atkin L.J. said, at p. 123:

> ". . . I am quite satisfied that they are not landlord's fixtures, and for the simple reason that they are not fixtures at all in the sense in which that term is generally understood. A fixture, as that term is used in connection with the house, means something which has been affixed to the freehold as accessory to the house. It does not include things which were made part of the house itself in the course of its construction."

Yet in *Billing v. Pill* [1954] 1 Q.B. 70, 75 Lord Goddard C.J. said:

> "What is a fixture? The commonest fixture is a house which is built into the land, so that in law it is regarded as part of the land. The house and the land are one thing."

There is another reason. The term fixture is apt to be a source of misunderstanding owing to the existence of the category of so called "tenants' fixtures", (a term used to cover both trade fixtures and ornamental fixtures) which are fixtures in the full sense of the word (and therefore part of the realty) but which may nevertheless be removed by the tenant in the course of or at the end of his tenancy. Such fixtures are sometimes confused with chattels which have never become fixtures at all. Indeed the confusion arose in this very case. In the course of his judgment Aldous L.J. quoted at length from the judgment of Scott L.J. in *Webb v. Frank Bevis Ltd.* [1940] 1 A.E.R. 247. The case concerned a shed which was 135 feet long and 50 feet wide. The shed was built on a concrete floor to which it was attached by iron straps. Having referred to *Webb v. Frank Bevis Ltd.* and a decision of Hirst J. in *Deen v. Andrews* [1986] 1 E.G.L.R. 262 Aldous L.J. continued:

> "In the present case we are concerned with a chalet which rests on concrete pillars and I believe falls to be considered as a unit which is not annexed to the land. It was no more annexed to the land than the greenhouse in *Deen v. Andrews* or the large shed in *Webb v. Frank Bevis Ltd.* Prima facie, the chalet is a chattel and not a fixture."

A little later he said: "Unit 6 was just as much a chattel as the very large shed was in the *Webb* case and the greenhouse in *Deen v. Andrews*."

But when one looks at Scott L.J's. judgment in *Webb v. Frank Bevis Ltd.* it is clear that the shed in question was not a chattel. It was annexed to the land, and was held to form part of the realty. But it could be severed from the land and removed by the tenant at the end of his tenancy because it was in the nature of a tenant's fixture, having been erected by the tenant for use in his trade. It follows that *Webb v. Frank Bevis Ltd.* affords no parallel to the present case, as indeed Mr. Thom conceded.

For my part I find it better in the present case to avoid the traditional two-fold distinction between chattels and fixtures, and to adopt the three-fold classification set out in *Woodfall, Landlord and Tenants*, Release 36 (1994), vol. 1, pp. 13/83, para. 13.131:

> "An object which is brought onto land may be classified under one of three broad heads. It may be (a) a chattel; (b) a fixture; or (c) part and parcel of the land itself. Objects in categories (b) and (c) are treated as being part of the land."

So the question in the present appeal is whether, when the bungalow was built, it became part and parcel of the land itself. The materials out of which the bungalow was constructed, that is to say, the timber frame walls, the feather boarding, the suspended timber floors, the chip-board ceilings, and so on, were all, of course, chattels when they were brought onto the site. Did they cease to be chattels when they were built into the composite structure? The answer to the question, as Blackburn J. pointed out in *Holland v. Hodgson* (1872) L.R. 7 C.P. 328, depends on the circumstances of each case, but mainly on two factors, the degree of annexation to the land, and the object of the annexation.

Degree of annexation

The importance of the degree of annexation will vary from object to object. In the case of a large object, such as a house, the question does not often arise. Annexation goes without saying. So there is little recent authority on the point, and I do not get much help from the early cases in which wooden structures have been held not to form part of the realty, such as the wooden mill in *Rex v. Otley* (1830) 1 B. & Ad. 161, the wooden barn in *Wansborough v. Maton* (1836) 4 Ad. & El. 884 and the granary in *Wiltshear v. Cottrell* (1853) 1 E. & B. 674. But there is a more recent decision of the High Court of Australia which is of greater assistance. In *Reid v. Smith* [1905] 3 C.L.R. 656, 659 Griffiths C.J. stated the question as follows:

> "The short point raised in this case is whether an ordinary dwelling-house, erected upon an ordinary town allotment in a large town, but not fastened to the soil, remains a chattel or becomes part of the freehold."

The Supreme Court of Queensland had held that the house remained a chattel. But the High Court reversed this decision, treating the answer as being almost a matter of common sense. The house in that case was made of wood, and rested by its own weight on brick piers. The house was not attached to the brick piers in any way. It was separated by iron plates placed on top of the piers, in order to prevent an invasion of white ants. There was an extensive citation of English and American authorities. It was held that the absence of any attachment did not prevent the house forming part of the realty. Two quotations, at p. 667, from the American authorities may suffice. In *Snedeker v. Warring*, 2 Kernan 178 Parker J. said:

> "A thing may be as firmly fixed to the land by gravitation as by clamps or cement. Its character may depend upon the object of its erection."

In *Goff v. O'Conner*, 16 Ill. 422, the court said:

> "Houses in common intendment of the law are not fixtures, but part of the land. . . . This does not depend, in the case of houses, so much upon the particular mode of attaching, or fixing and connecting them with the land, upon which they stand or rest, as upon the uses and purposes for which they are erected and designed."

Purpose of annexation

Many different tests have been suggested, such as whether the object which has been fixed to the property has been so fixed for the better enjoyment of the object as a chattel, or whether it has been fixed with a view to effecting a permanent improvement of the freehold. This and similar tests are useful when one is considering an object such as a tapestry, which may or may not be fixed to a house so as to become part of the freehold: see *Leigh v. Taylor* [1902] AC 157. These tests are less useful when one is considering the house itself. In the case of the house the answer is as much a matter of common sense as precise analysis. A house which is constructed in such a way so as to be removable, whether as a unit, or in sections, may well remain a chattel, even though it is connected temporarily to mains services such as water and electricity. But a house which is constructed in such a way that it cannot be removed at all, save by destruction, cannot have been intended to remain as a chattel. It must have been intended to form part of the realty. I know of no better analogy than the example given by Blackburn J. in *Holland v. Hodgson*, L.R.7 C.P.P. 328, 335:

> "Thus blocks of stone placed one on the top of another without any mortar or cement for the purpose of forming a dry stone wall would become part of the land, though the same stones, if deposited in a builder's yard and for convenience sake stacked on the top of each other in the form of a wall, would remain chattels."

Applying that analogy to the present case, I do not doubt that when Mr. Morris' bungalow was built, and as each of the timber frame walls were placed in position, they all became part of the structure, which was itself part and parcel of the land. The object of bringing the individual bits of wood onto the site seems to be so clear that the absence of any attachment to the soil (save by gravity) becomes an irrelevance.

Finally I return to the judgment of the Court of Appeal. I need say no more about the absence of attachment, which was the first of the reasons given by the Court of Appeal for reversing the assistant recorder. The second reason was the intention which the court inferred from the previous course of dealing between the parties, and in particular the uncertainty of Mr. Morris' tenure. The third reason was the analogy with the shed in *Webb v. Frank Bevis Ltd.* [1940] 1 All E.R. 247, and the greenhouse in *Deen v. Andrews* [1986] 1 E.G.L.R. 262.

As to the second reason the Court of Appeal may have been misled by Blackburn J.'s. use of the word "intention" in *Holland v. Hodgson*, L.R.7 C.P. 328. But as the subsequent decision of the Court of Appeal in *Hobson v. Gorringe* [1897] 1 Ch 182 made clear, and as the decision of the House in *Melluish v. B.M.I. (No. 3) Ltd.* [1996] A.C. 454 put beyond question, the intention of the parties is only relevant to the extent that it can be derived from the degree and object of the annexation. The subjective intention of the parties cannot affect the question whether the chattel has, in law, become part of the freehold, any more than the subjective intention of the parties can prevent what they have called a licence from taking effect as a tenancy, if that is what in law it is: see *Street v. Mountford* [1985] AC 809.

As for the third of the reasons, I have already pointed out that *Webb v. Frank Bevis Ltd.* does not support the Court of Appeal's conclusion, because the shed in that case was held to be a fixture, albeit a fixture which the tenant was entitled to remove.

In *Deen v. Andrews* the question was whether a greenhouse was a building so as to pass to the purchaser under a contract for the sale of land "together with the farmhouses and other buildings." Hirst J. held that it was not. He followed an earlier decision in *H.E. Dibble Ltd. v. Moore* [1970] 2 Q.B. 181 in which the Court of Appeal, reversing the trial judge, held that a greenhouse was not an "erection" within section 62(1) of the Law of Property Act 1925. I note that in the latter case Megaw L.J., at p. 187G, drew attention to some evidence "that it was customary to move such greenhouses every few years to a fresh site." It is obvious that a greenhouse which can be moved from site to site is a long way removed from a two bedroom bungalow which cannot be moved at all without being demolished.

For the above reasons I would allow this appeal and restore the order of the assistant recorder.

LORD NOLAN

My Lords,

I have had the advantage of reading in draft the speeches prepared by my noble and learned friends, Lord Lloyd of Berwick and Lord Clyde. For the reasons which they give I too would allow the appeal and restore the order of the assistant recorder.

LORD NICHOLLS OF BIRKENHEAD

My Lords,

I have had the advantage of reading a draft of the speech of my noble and learned friends, Lord Lloyd of Berwick and Lord Clyde. For the reasons they give I too would allow this appeal.

LORD CLYDE

My Lords,

It is not now disputed that Mr. Morris, the first appellant, is the tenant of Lot No. 6 in the area of land known as Holt's Field, which is owned by the plaintiffs. He and the second appellant have been living in the bungalow on that site which was erected more than half a century ago. The problem then arises whether the bungalow is part of the land so as to be included in his tenancy. An issue arose whether an estoppel by convention had arisen preventing the contention that the bungalow was part of the realty. It has been held that no such estoppel has arisen and that issue is not now argued. The only question left in the case is whether the bungalow is or is not a chattel. The assistant recorder held that it had become

annexed to and part of the realty. The Court of Appeal held that it was a chattel and so was not included in the tenancy of Lot No. 6.

It is necessary at the outset to define what the bungalow comprises. It seems from the facts in the present case as if some form of actual attachment of the bungalow to realty might exist, in the connection with the main electric supply cable and certain drain pipes. But these matters have not been explored in the facts and we are required to proceed on the basis that the bungalow is not physically attached to the land. The next consideration is whether the foundations form part of the bungalow. These are sunk into the ground and if they were to be treated as part of the bungalow would clearly be an element of physical connection with the ground. But it does not appear that there is any particular adaptation of the foundations to the structure above nor any adaptation of the structure to suit the foundations. The main structural elements of the bungalow simply rest on the concrete blocks. The bungalow and the foundations are severable from each other and it is not appropriate to treat the whole as a unum quid so as to conclude that the bungalow is built into the ground. It is with the wooden structure alone that the case is concerned. That was the view on which the Court of Appeal proceeded and on the facts available in this case I consider it correct to proceed on that basis.

The question posed by the parties in their agreed statement of facts and issues is: "Whether the bungalow erected at Unit 6, Holt's Field was a chattel or a fixture." I entirely share the unease which has been expressed by my noble and learned friend, Lord Lloyd of Berwick on the use of the word fixture. The ambiguity is illustrated by a passage in the judgment of Rigby L.J. in *In re De Falbe* [1901] 1 Ch 523, 530 where having referred to an originally unbending rule that everything affixed to the freehold was held to go with the freehold his Lordship stated:

> "But in modern times there have come to be important exceptions to this rule, one being in favour of trade fixtures and entitling a person who has put up what are now called 'fixtures' (which means removable fixed things) for the purposes of trade to remove them."

Later in his judgment he stated, at p. 533:

> "But the question is, whether they were not made 'fixtures,' meaning thereby objects fixed to the wall which might be removed at the will of the person who had fixed them."

In *Boyd v. Shorrock* (1867) L.R. 5 Eq. 72 Sir W. Page Wood V.-C. regarded as conclusive of the case before him a definition given in *Ex parte Barclay* (1855) 5 De G. M. & G. 403, 410:

> "By 'fixtures' we understand such things as are ordinarily affixed to the freehold for the convenience of the occupier, and which may be removed without material injury to the freehold, such will be machinery, using a generic term; and in houses, grates, cupboards, and other like things."

As the law has developed it has become easy to neglect the original principle from which the consequences of attachment of a chattel to realty derive. That is the principle of accession, from which the more particular example has been formulated, inaedificatum solo solo cedit. A clear distinction has to be draw between the principle of accession and the rules of removability.

My Lords, the distinction between these two matters was pointed out long ago by Lord Cairns L.C. in *Bain v. Brand* (1876) 1 App.Cas. 762. In that case it was declared that the law as to fixtures is the same in Scotland as in England. His Lordship stated, at p. 767, that there were two general rules under the comprehensive term of fixtures:

> "One of these rules is the general well-known rule that whatever is fixed to the freehold of land becomes part of the freehold or inheritance. The other is quite a different and separate rule;--whatever once becomes part of the inheritance cannot be severed by a limited owner, whether he be owner for life or for years, without the commission of that which, in the law of England, is called waste, and which, according to the law of both England and Scotland, is undoubtedly an offence which can be restrained. Those, my Lords, are two rules, not one by way of exception to the other, but two rules standing consistently together. My Lords, an exception indeed, and a very important exception, has been made, not to the first of these rules, but to the second. To the first rule which I have stated to your Lordships there is, so far as I am aware, no exception whatever. That which is fixed to the inheritance becomes a part of the inheritance at the present day as much as it did in the earliest times. But to the second rule, namely, the irremovability of things fixed to the inheritance, there is undoubtedly ground for a very important exception. That exception has been established in favour of fixtures which have been attached to the inheritance for the purposes of trade, and perhaps in a minor degree for the purpose of agriculture. Under that exception a tenant who has fixed to the inheritance things for the purpose of trade has a certain power of severance and removal during the tenancy. . . "

It would be right to add that the exception has been developed so as to extend beyond the purposes of trade. By the end of the 19th century it was clearly established that the exception included objects which had been affixed to the freehold by way of ornament: *In re De Falbe* [1901] 1 Ch 523, 539. This reflected not a change in the law but, as Lord Macnaghten put it in *Leigh v. Taylor* [1902]

AC 157, 162, a change "in our habits and mode of life." No doubt the category of exceptions may continue to change.

The present case, however, is concerned with the first of the two rules and not the second. But it is not altogether clear that the distinction between the two rules was clearly put before the Court of Appeal in the present case. If the distinction is not noticed there is a danger that the true issue may become confused by questions truly relating to removability. The Court of Appeal found assistance in the decision in *Webb v. Frank Bevis Ltd.* [1940] 1 All E.R. 247, regarding the bungalow as no more annexed to the land and just as much a chattel as the large shed in that case. But the court in the *Webb* case held that the large shed was a fixture but was removable by the tenant. I should add that the second rule may involve particular consideration of the various relationships between the interested parties which may play a part in the matter of removability, such as landlord and tenant, or mortgagor and mortgagee. But those differences play only a subordinate role in relation to the first rule.

The answer to that question is to be found by a consideration of the particular facts and circumstances. In the generality there are a number of considerations to which resort may be had to solve the problem. But each case in this matter has to turn on its own facts. Comparable cases are useful for guidance in respect of the considerations employed but can only rarely provide conclusive answers. It has not been suggested that if the bungalow is real property it can be regarded as distinct from the site so as to be excluded from the property let to Mr. Morris. The question then can be simply asked whether the bungalow is a chattel or realty. On that wider approach a useful starting point can be found in the words of the old commentator Heineccius (Elementa Iuris Civilis secundum ordinem Pandectarum, Lib.I. Tit VIII. Sec.199) where, in classifying things as moveable or immoveable he describes the latter as being things "quae vel salvae moveri nequeunt, ut fundus, aedes, ager . . . vel usus perpetui causa iunguntur immobilibus, aut horum usui destinantur."

The first of these factors may serve both to identify an item as being real property in its own right and to indicate a case of accession. But account has also to be taken of the degree of physical attachment and the possibility or impossibility of restoring the article from its constituent parts after dissolution. In one early Scottish case large leaden vessels which were not fastened to the building in any way but simply rested by their own weight were held to be heritable since they had had to be taken to pieces in order to be removed and had then been sold as old lead: *Niven v. Pitcairn* (1823) 2 S. 270. In *Hellawell v. Eastwood* (1851) 6 Exch. 295, 312, Parke B., in considering the mode and extent of annexation of the articles in that case, referred to the consideration whether the object in question "can easily be removed, integré, salvé, et commodé, or not, without injury to itself or the fabric of the building." It is agreed in the present case that as matter of fact that "the bungalow is not removable in one piece; nor is it demountable for re-erection

elsewhere". That agreed finding is in my view one powerful indication that it is not of the nature of a chattel.

In many cases the problem of accession arises in relation to some article or articles which have been placed in or affixed to a building. An unusual, although by no means unique, feature of the present case is that the alleged chattel is the building itself. This invites the approach of simply asking whether it is real property in its own right. Apart from the considerations which I already mentioned it seems to me that it is proper to have regard to the genus of the alleged chattel. That approach was adopted in the Australian case, *Reid v. Smith* (1905) 3 C.L.R. 656. At p. 668 Griffith C.J. said under reference to the decision in the lower court:

> "I differ from the learned judge in thinking that it is not sufficient to show that the thing in question is a dwelling-house -- an ordinary dwelling-house, on a town allotment, in an inhabited town. In the case of a similar building in another part of the country, erected under entirely different circumstances, a different conclusion might be drawn."

O'Connor J. put the point more strongly, at p. 679:

> "It would I think be stretching the rules of the common law to a point at which they cease to be rules of common sense, if it were to be laid down as a general rule that, except in very exceptional cases, wooden houses, resting by their own weight on land, could ever be regarded as mere chattels, removable at the will of the owner of the timber of which they are built."

In several cases before the Lands Valuation Appeal Court in Scotland where the issue has arisen whether particular subjects are heritable or moveable for the purposes of valuation for local taxation the test has been applied by asking the question whether the particular subjects belong to a genus which is prima facie of a heritable character and, if they are, whether there are any special facts to deprive them of that character. This approach was recognised in *Assessor for the City of Glasgow v. Gilmartin*, 1920 S.C. 488 and in *John Menzies & Co. Ltd. v. Assessor for Edinburgh*, 1937 S.C. 784. It was later applied to such subjects as residential chalets: *Assessor for Renfrewshire v. Mitchell* 1966 S.L.T. 53, contractors' huts: *Assessor for Dunbarton v. L.K. McKenzie and Partners* 1968 S.L.T. 82 and static caravans: *Redgate Caravan Parks Ltd. v. Assessor for Ayrshire* 1973 S.L.T. 52. Beyond question Mr. Morris' bungalow is of the genus "dwelling-house" and dwelling houses are generally of the nature of real property. While it is situated in a rural setting it evidently forms part of a development of a number of other houses whose positions are even noted on the ordnance survey map. I find no factors which would justify taking it out of the category of dwelling-houses. On the contrary there are powerful indications that it and its constituent parts do not possess the character of a chattel. It seems to me to be real property.

If the problem is approached as one of accession it has to be noted that in the present case the bungalow is not attached or secured to any realty. It is not joined by any physical link which would require to be severed for it to be detached. But accession can operate even where there is only a juxtaposition without any physical bond between the article and the freehold. Thus the sculptures in *D'Eyncourt v. Gregory* (1866) L.R. 3 Eq. 382 which simply rested by their own weight were held to form part of the architectural design for the hall in which they were placed and so fell to be treated as part of the freehold. The reasoning in such a case where there is no physical attachment was identified by Blackburn J. in *Holland v. Hodgson* (1872) L.R. 7 C.P. 328, 335: "But even in such a case, if the intention is apparent to make the articles part of the land, they do become part of the land." He continued with the following instructive observations:

> "Thus blocks of stone placed one on the top of another without any mortar or cement for the purpose of forming a dry stone wall would become part of the land, though the same stones, if deposited in a builder's yard and for convenience sake stacked on the top of each other in the form of a wall, would remain chattels. On the other hand, an article may be very firmly fixed to the land, and yet the circumstances may be such as to show that it was never intended to be part of the land, and then it does not become part of the land. The anchor of a large ship must be very firmly fixed in the ground in order to bear the strain of the cable, yet no one could suppose that it became part of the land, even though it should chance that shipowner was also the owner of the fee of the spot where the anchor was dropped. An anchor similarly fixed in the soil for the purpose of bearing the strain of the chain of a suspension bridge would be part of the land. Perhaps the true rule is, that articles not otherwise attached to the land than by their own weight are not to be considered as part of the land, unless the circumstances are such as to shew that they were intended to be part of the land, the onus of shewing that they were so intended lying on those who assert that they have ceased to be chattels, and that, on the contrary, an article which is affixed to the land even slightly is to be considered as part of the land, unless the circumstances are such as to shew that it was intended all along to continue a chattel, the onus lying on those who contend that it is a chattel."

It is important to observe that intention in this context is to be assessed objectively and not subjectively. Indeed it may be that the use of the word intention is misleading. It is the purpose which the object is serving which has to be regarded, not the purpose of the person who put it there. The question is whether the object is designed for the use or enjoyment of the land or for the more complete or convenient use or enjoyment of the thing itself. As the foregoing passage from the judgment of Blackburn J. makes clear, the intention has to be shown from the circumstances. That point was taken up by A.L. Smith L.J. in *Hobson v. Goringe* [1897] 1 Ch 182, 193, a decision approved by this House in *Reynolds v. Ashby & Son* [1904] AC 466, where he observes that Blackburn J.,

"was contemplating and referring to circumstances which shewed the degree of annexation and the object of such annexation which were patent for all to see, and not to the circumstances of a chance agreement that might or might not exist between the owner of a chattel and a hirer thereof."

Regard may not be paid to the actual intention of the person who has caused the annexation to be made. In *In re De Falbe* [1901] 1 Ch 523, 535, Vaughan Williams L.J. said that there was not to be an inquiry into the motive of the person who annexed the articles, "but a consideration of the object and purpose of the annexation as it is to be inferred from the circumstances of the case." As Lord Cockburn put it in *Dixon v. Fisher* (1843) 5 D. 775, 793 "no man can make his property real or personal by merely thinking it so." The matter has to be viewed objectively.

If one considers the object or purpose which the structure serves by being placed where it is, it was clearly placed there to enable the amenity of Holt's Field to be enjoyed through the establishment of a residence. The bungalow was built there in order that people could live in what is represented as being an idyllic rural environment. The Court of Appeal, however, had regard to the belief of Mr. Morris that he owned the bungalow as evidence of his intention. But his belief cannot control the operation of the law in relation to accession and the matter of intention has to be judged objectively. Indeed the fact that the freeholders may have believed and reminded the occupants that their rights to remain could be terminated, which was also a factor on which the Court of Appeal relied, cannot affect the operation of the law.

Accession also involves a degree of permanence, as opposed to some merely temporary provision. This is not simply a matter of counting the years for which the structure has stood where it is, but again of appraising the whole circumstances. The bungalow has been standing on its site for about half a century and has been used for many years as the residence of Mr. Morris and his family. That the bungalow was constructed where it is for the purpose of a residence and that it cannot be removed and re-erected elsewhere point in my view to the conclusion that it is intended to serve a permanent purpose. If it was designed and constructed in a way that would enable it to be taken down and rebuilt elsewhere, that might well point to the possibility that it still retained its character of a chattel. That the integrity of this chalet depends upon it remaining where it is provides that element of permanence which points to its having acceded to the ground. The Court of Appeal took the view that the bungalow was no more annexed to the land and just as much a chattel as the greenhouse in *Deen v. Andrews* [1986] 1 E.G.L.R. 262 (or, as I have already mentioned, the large shed in *Webb v. Frank Bevis Ltd.*). But there is a critical distinction between *Deen v. Andrews* and the present case in the fact that the greenhouse was demountable while the bungalow is not. I prefer the conclusion reached by the learned assistant recorder after hearing the evidence and visiting the site to form his own impression of the situation. As he observed

towards the end of his judgment, a judgment which deserves commendation for the detail and care which has gone into it:

> ". . . it seems to me clear that at least by 1985 and probably before, it would have been clear to anybody that this was a structure which was not meant to be enjoyed as a chattel to be picked up and moved in due course but that it should be a long-term feature of the realty albeit that, because of its construction, it would plainly need more regular maintenance."

In my view the conclusion reached on this matter by the assistant recorder was correct. The appeal should be allowed and the order made by him relating to Unit 6 should be restored.