No. 602.—High Court of Justice (King's Bench Division).—17th March, 1925.

Court of Appeal.—1st, 2nd and 13th July, 1925.

House of Lords.—9th and 13th December, 1926, and 24th February, 1927.

Ingle *v.* Farrand (H.M. Inspector of Taxes). [1]

Income Tax—Office or employment—Finance Act, 1922 (12 & 13 *Geo.* V, *c.* 17), *Section* 18 (6).

The Appellant, who was a Second Class Assistant in the employ of the London County Council, was assessed to Income Tax for the year 1921–22, *in October*, 1921, *under Schedule E*

[1] Reported C.A., [1925] 2 K.B. 728; H.L., [1927] A.C. 417.

in respect of salary and bonus. No appeal was entered against the assessment and the duty thereon was paid. The actual amount of his salary and bonus for the year 1921–22, *however, exceeded the sum already assessed and on the* 13th *September,* 1922, *an additional assessment under Schedule E was made upon him in respect of the difference.*

He appealed against the additional assessment, contending that he did not hold a public office or employment, that he should therefore have been assessed originally for the year 1921–22 *under Schedule D on the average basis, and that, as the first Schedule E assessment exceeded the amount assessable under Schedule D, no additional assessment could be made on him for that year.*

The General Commissioners decided that, while the Appellant did not occupy a public office or employment during the year 1921–22, *the additional Schedule E assessment, having been made after the* 1st *May,* 1922, *was a valid assessment by virtue of the provisions of Section* 18 (6) *of the Finance Act,* 1922.

Held, *that Section* 18 (6), *Finance Act,* 1922, *did not apply to the first assessment which had become final and conclusive prior to the* 1st *May,* 1922, *that accordingly the first assessment should be under Schedule D as the Appellant did not occupy a public office or employment, and that as the first assessment under Schedule E exceeded the amount upon which the Appellant should have been assessed under Schedule D, there had been no under-charge for the year* 1921–22, *and the additional assessment could not be supported.*

CASE

Stated under the Income Tax Act, 1918, Section 149, for the opinion of the King's Bench Division of the High Court of Justice.

1. At a meeting of the Commissioners for the General Purposes of the Income Tax Acts for the Division of St. Martin-in-the-Fields in the County of Middlesex held at 31/32, Bedford Street, Strand, W.C.2, on the 18th day of July, 1923, Mr. Henry Serjeant Ingle, Assistant in the Offices of the London County Council (hereinafter called "the Appellant") appealed against an additional assessment to Income Tax in the sum of £77, made under Schedule "E" of the Income Tax Act, 1918, in respect of his office or employment for the financial year 1921-22.

The Appellant was represented by Mr. E. W. Cave, K.C., and with him Mr. J. L. D. Ridsdale.

2. The following facts were found or admitted—

(*a*) The Appellant was at all material times an Assistant of the Second Class in the employment of the London County Council, to which employment he was appointed in 1911, at a commencing salary of £80 per annum.

(*b*) His duties were generally to carry out the directions of the person to whom he was allocated for the time being to assist. On his appointment in 1911 the Appellant was allocated to the Comptroller's Department and placed by the Comptroller in that branch which dealt with the collection of licence duties in which branch the Appellant remained until he joined His Majesty's Forces in 1914. After his discharge from the Forces the Appellant returned to his employment in the Comptroller's Department, performing such duties as were assigned to him. In January, 1921, on the coming into force of the Roads Act, 1920, the Appellant was allocated to receive the cash and cheques paid in respect of licence duties under that Act and to pay over the same to the cashier at the close of each day's work. In March, 1921, the Appellant was allocated to assist with work arising out of the exchange and surrender of licences and the refund of duties over-paid. In November, 1921, the Appellant was allocated to assist in matters relating to motor vehicle licences and has continued to be so employed up to the present time. The Appellant's employment was terminable at any time by a month's notice at the discretion of the London County Council.

(*c*) The Appellant's remuneration for the year of assessment was £436 6*s*. 5*d*. made up of substantive salary £194 7*s*. 3*d*. and bonus £241 19*s*. 2*d*. His remuneration for the three preceding years was as follows :—

	Substantive Salary.			Bonus.			Total.		
	£	*s*.	*d*.	£	*s*.	*d*.	£	*s*.	*d*.
1920–21 ...	171	17	3	184	0	2	355	17	5
1919–20 ...	141	13	2	102	9	7	244	2	9
1918–19 ...	126	13	2	52	10	0	179	3	2

(*d*) The first assessment on the Appellant for the financial year 1921–22 in respect of his office or employment was made under Schedule E, in the sum of £359. No appeal was made against that assessment and the duty thereon was paid.

The additional assessment in respect of which the present appeal was brought was made on the difference between the full sum of £436 6*s*. 5*d*. and the first assessment of £359 so as to charge tax on the full remuneration for the year.

(*e*) The said first assessment was made on the 6th October, 1921, and notice thereof was given to the Appellant on 21st December, 1921. The additional assessment was made on the 13th September, 1922.

(*f*) The administrative and clerical staff of the London County Council consists in general of :—

(1) Officers with special designations such as—

The Clerk of the Council,
The Medical Officer of Health,
The Comptroller of the Council.

(2) Chiefs of Departments, Deputy Chiefs and Assistant Chiefs.

(3) Assistants.

Those Assistants who are appointed at an annual salary are divided into four grades or ranks :—

Principal Assistants, Senior Assistants, First Class Assistants and Second Class Assistants.

The grade or rank of an Assistant denotes the salary grade which he has reached and does not determine the duties which such Assistant will be required to perform or the standard of qualifications required.

(*g*) Appointments to the Second Class of Assistants are made by open competitive examination and are held during the pleasure of the London County Council. Promotion to a higher rank is made by resolution of the London County Council, generally on the recommendation of the Establishment Committee. While on the occurrence of a vacancy in any rank it is the natural expectation of those in the rank below that one of them will be selected to fill the vacancy, it is not a matter of certainty that the vacancy will be filled. If the exigencies of the London County Council service require the vacancy may not be filled and on the other hand an Assistant may be promoted to a higher rank although no vacancy may have occurred by retirement, death or other specific happening, and in such cases the Assistant may continue to perform the same duties as he performed prior to his promotion to the higher rank. There is accordingly no fixity of numbers in any rank so as to make the filling of a vacancy inevitable.

(*h*) The Appellant is a member of the London County Council Superannuation and Provident Fund, such membership being a condition of his appointment.

(*i*) The Appellant in common with all the members of the staff of the London County Council has since January, 1918, been paid in addition to his substantive salary a bonus in consideration of the higher cost of living. Since the 1st March, 1920, the bonus scheme has been as follows :—The bonus is based on a standard cost-of-living figure of 130, this being the figure shown in the Labour Gazette as the percentage increase in the cost of living at the 1st March, 1920, as compared with July, 1914.

Where the ordinary rate of remuneration does not exceed £91 5*s*. per annum the bonus amounts to 130 per cent. of the ordinary remuneration.

Where the ordinary rate of remuneration exceeds £91 5*s*. per annum but does not exceed £200 per annum the bonus amounts to 130 per cent. on the first £91 5*s*. per annum and 60 per cent. on such amount of ordinary remuneration as is in excess of £91 5*s*. per annum.

Where the ordinary rate of remuneration exceeds £200 per annum the bonus amounts to 130 per cent. on the first £91 5*s*. per annum, 60 per cent. on the next £108 15*s*. per annum, and 45 per cent. on such amount of ordinary remuneration as is in excess of £200 per annum, up to £500 per annum.

The bonus was applied as from the 1st March, 1920, irrespective of age or sex and was subject to revision every four months during the first 12 months, i.e. on the 1st July, 1920, 1st November, 1920, and 1st March, 1921, and thereafter every six months.

For the purpose of these revisions the standard cost-of-living figure is arrived at by taking the average of the official figure for the preceding four months, or for the preceding six months in the case of revisions subsequent to that of March, 1921.

The bonus is increased or decreased by 1/26th for every full five points by which the average cost of living figure so determined rises or falls below 130.

The scheme has subsequently been extended to cases where the rates of remuneration exceed £500 with certain limitations and variations.

3. It was contended for the Appellant *inter alia* :—

(1) That the Appellant did not hold a public office or employment under Rule 6 of Schedule E of the Income Tax Act, 1918.

(2) That said first assessment was wrongly made under Schedule E and should have been made under Schedule D on the average of the three preceding years, which average being £259 the first assessment was excessive by the sum of £100 and the liability for tax being covered by the first assessment it was not competent for the Revenue to make an additional assessment.

(3) That the Finance Act, 1922, Section 18, does not authorise the making of any assessment or any additional assessment.

(4) That before any additional assessment can be made, the provisions of Section 125 (1) of the Income Tax Act, 1918, must be complied with and that there are no circumstances which bring the present case within the scope of that Section.

(5) That the Finance Act, 1922, Section 18, Sub-section (1), has no retrospective effect except to the extent provided by Sub-section (6) and that the retrospective effect is thereby limited to assessments which are made after 1st May, 1922, or which being made before 1st May, 1922, by reason of an appeal did not become final and conclusive until after 1st May, 1922.

(6) That the words "any assessment" in the said Sub-section (6) mean any first assessment and do not include an additional assessment.

(7) That if the Appellant were held to execute a public office or employment that part of his remuneration which is bonus (based on cost-of-living index figure) was "perquisites" within the meaning of Rule 4 of Schedule E of the Income Tax Act, 1918, and should be assessed on the average of the three preceding years, in accordance with the decision in *M'Donald* v. *Shand* (1), [1923] A.C. 337, and that the additional assessment should be reduced accordingly.

4. The Inspector of Taxes contended on behalf of the Revenue *inter alia* :—

(1) That while Section 18 (1) of the Finance Act, 1922, relates only to the year 1922-23, Sub-section (6) of that Section makes Sub-section (1) operative for earlier years in the case of any assessment which is made or becomes final and conclusive after 1st day of May, 1922, in respect of the employments mentioned in Sub-section (6).

(2) That the Appellant's employment was such an employment as is mentioned in Sub-section (6) of Section 18.

(3) That the additional assessment was an assessment to Income Tax within the meaning of Sub-section (6) of Section 18 of the Finance Act, 1922.

(4) That the additional assessment was made after the 1st day of May, 1922.

(5) That the additional assessment had not become final and conclusive on or before the 1st day of May, 1922.

(6) That the provisions of Section 125 of the Income Tax Act, 1918, had been complied with, the Inspector having discovered that the Appellant had been undercharged in the first assessment.

(7) That the Appellant exercised a public office or employment and was assessable under Schedule E on the actual remuneration of the year.

(8) That that part of the Appellant's remuneration which consisted of bonus was not a perquisite.

(9) That the additional assessment was correct and should be confirmed.

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(1) 8 T.C. 420.

5. We the Commissioners having heard the evidence and the contentions of the Appellant and the Respondent found that :—

(1) The Appellant did not during the year 1921-22 occupy a public office or public employment of profit within the meaning of Schedule E of the Income Tax Act, 1918.

(2) As the Appellant's additional assessment was made after 1st May, 1922, such additional assessment was a valid assessment.

(3) The bonus was not " perquisites " within the meaning of Rule 4 of Schedule E of the Income Tax Act, 1918, but was part of the salary of the Appellant.

We accordingly confirmed the additional assessment.

Counsel for the Appellant immediately expressed dissatisfaction with our determination, and subsequently duly required us to state and sign a Case for the opinion of the High Court, which we have stated and do sign accordingly.

Dated 19th December, 1924.

(*Sd.*) EDGAR E. HARRISON,
J. V. ELLIOTT TAYLOR,
} Commissioners of Income Tax for St. Martin-in-the-Fields.

The case came before Rowlatt, *J.*, in the King's Bench Division on the 17th March, 1925, when judgment was given against the Crown with costs.

Mr. E. W. Cave, K.C., and Mr. J. L. D. Ridsdale appeared as Counsel for the Appellant and the Attorney-General (Sir Douglas Hogg, K.C.) and Mr. R. P. Hills for the Crown.

JUDGMENT.

Rowlatt, J.—This is a very curious case indeed, as I think. The Appellant was a clerk in the employment of the London County Council. In respect of the year 1921–22 he was assessed under Schedule E; and was assessed therefore at a higher figure than if he had been assessed under Schedule D, because his income had been rising. He did not appeal against that. That assessment, I think, became final and conclusive upon him, although by way of an additional assessment the Surveyor could have further assessed him. Then by a decision in the Courts it turned out that he ought to have been assessed under Schedule D, and, therefore, he had been assessed under the wrong Schedule; and the result is that he had been assessed at too high a figure. Then comes the Finance Act of 1922, which corrects that decision of the Court and puts him back again

(Rowlatt, J.)

under Schedule E. Sub-section (6) of Section 18 of the Act of 1922 says that this change shall have effect, and shall be deemed always to have had effect, for the purpose of any assessment to Income Tax which is made or becomes final and conclusive after the 1st May. I do not think the original assessment under Schedule E was thereby kept open and could be altered. I think that had become final and conclusive Now an additional first assessment is made upon him which has this effect: it adds to the assessment under Schedule E further sums which undoubtedly, on the footing that he is assessable under that Schedule, he ought to be assessed to. Mr. Cave urges that in Sub-section (6) of Section 18 the word " assess- " ment " means only the first assessment, not an additional first assessment. I do not think that is so as a matter of words. I think " assessment " must be read as being any assessment; I think that is the meaning of it; but I am bound to say I think that the application of it to additional first assessments may arise in very few cases; because that brings me to what I think is really the main point, and that is this: Can there be, by looking at the machinery of the general Income Tax Acts, any additional first assessment here at all? The additional first assessment can only be made when profits chargeable to tax have been omitted, or, to read the one applicable here, a person has been undercharged in the first assessment. Mr. Cave says this: According to the law when the first assessment was made, I ought to have been charged under Schedule D and charged less than I was; that was the law then and as of that date the law has never been altered; I have been charged too much. Now what has been done is to add to that. Whereas the Surveyor in 1921 loaded him with an excessive burden, the Surveyor in 1924 says he will add to the burden. Mr. Cave says that that is not the meaning of the Act. It can be the meaning in one way only. It can be the meaning if the Crown are entitled to say: As we assessed you wrongly under Schedule E in the past and you did not appeal against it, but sat down under the assessment under Schedule E, we will hold you to that and holding you to that, although it was wrong, on the footing that it was right, you were under-assessed, and, therefore, we now assess you again. I do not think that is the fair result of it. It seems to me I ought to look at it in substance; and if you cannot get the man undercharged except by saying that the assessment upon him was right at the time when it was wrong, although the law has never been altered as of that date—I do not think that is a sound argument at all. Therefore upon that point, which does not involve the difficulty of construction of " assessment " in Sub-section (6) of Section 18 for which Mr. Cave contends, and on the other hand does not require consideration of the subsequent points which have been adverted to, I think this appeal must be allowed with costs.

The Crown having appealed against the decision in the King's Bench Division, the case came before the Court of Appeal (Pollock, *M.R.*, and Warrington and Atkin, *L.JJ.*) on the 1st and 2nd July, 1925, when judgment was reserved.

On the 13th July, 1925, judgment was delivered unanimously in favour of the Crown with costs, reversing the decision of the Court below.

The Attorney-General (Sir Douglas Hogg, K.C.) and Mr. R. P. Hills appeared as Counsel for the Crown, and Mr. E. W. Cave, K.C., and Mr. J. L. D. Ridsdale for Mr. Ingle.

JUDGMENT.

Pollock, M.R.—This is an appeal by the Crown against the judgment of Mr. Justice Rowlatt dated 17th March, 1925, who allowed an appeal from the decision of the Commissioners who had confirmed an additional assessment for Income Tax upon Mr. Ingle for the year 1921–22. Mr. Ingle, hereinafter referred to as the Respondent, was an Assistant of the Second Class employed by the London County Council, and was assessed for the financial years 1918–19, 1919–20, 1920–21, successively, under Schedule E, that is " in respect of all salaries, fees, wages, " perquisites or profits whatsoever therefrom for the year of " assessment." In the year 1921–22 he was also charged upon a first assessment in that year in respect of his office or employment under Schedule E in the sum of £359. No appeal was made against that assessment, and Income Tax on that sum was duly paid. It now appears that in that year the Respondent's remuneration was composed of a sum of £194 7*s.* 3*d.* for his substantive salary, and also of a bonus of £241 19*s.* 2*d.*, making together £436 6*s.* 5*d.* Accordingly an additional assessment was made upon him in the sum of £77, being the difference between the sum of £359 on which he had paid under the first assessment and the sum of his total emolument, £436 6*s.* 5*d.*

It is against this additional assessment, which was confirmed on appeal by the Commissioners, that the Respondent successfully appealed to Mr. Justice Rowlatt, and the question we have to determine is whether that additional assessment is rightly made upon him, or whether he has already satisfied all proper claims for Income Tax upon him by reason of the fact that he ought to have been assessed under Schedule D upon the average of his wages or profits for the three preceding years, which in 1921–22 would amount to a less sum than that of £359 on which he has already paid tax.

The practice which obtained until, on 13th March, 1922, the case of *Great Western Railway* v. *Bater*(1) was decided by the House of Lords, [1922] 2 A.C. 1, of assessing under

(1) 8 T.C. 231.

(Pollock, M.R.)

Schedule E those who hold any employment of a continuous or permanent nature under a public company, was altered by that decision. No precise tests were laid down in it to determine what persons ought or ought not to be so assessed; the question was left as one of fact and degree, although the House determined that the clerk whose salary had raised the question in that case was not the holder of a public office or employment of a public nature within Schedule E. In the present case the Commissioners have determined upon the evidence before them, which was sufficient for their consideration, that the Respondent did not during the year of assessment 1921–22 occupy a public office or public employment of profit within the meaning of Schedule E of the Income Tax Act, 1918.

Upon this finding, therefore, the Respondent would appear to have solid ground for his contention that the additional assessment upon him in respect of the £77 under Schedule E ought not to be made, if he falls to be assessed under Schedule D with the arithmetical result already stated.

It is now necessary to consider the meaning and effect of Section 18 of the Finance Act, 1922, which was passed to overcome the difficulties created by the decision in *Bater's* case(1), difficulties which were foreshadowed in his speech by Lord Sumner at page 30 of the Report. By Sub-section (1): " Such " profits or gains arising or accruing to any person from an office, " employment or pension as are, under the Income Tax Act, " 1918, chargeable to income tax under Schedule D . . . . " shall cease to be chargeable under that schedule and shall be " chargeable to tax under Schedule E and the Rules applicable " to that schedule shall apply accordingly, subject to the pro- " visions of this Act." Thus—in spite of the finding of the Commissioners—were an assessment made upon the Respondent when that Section is operative, he would be chargeable under Schedule E.

By Sub-section (6) the provisions of Sub-section (1) " shall " have effect and shall be deemed always to have had effect, for " the purpose of any assessment to income tax which is made " or becomes final and conclusive after the first day of May, " nineteen hundred and twenty-two, in respect of any employ- " ment (other than that of a weekly wage-earner employed by " way of manual labour) under any public department, or under " any company, society or body of persons or other employer " mentioned in Rule 6 of the Rules applicable to Schedule E." The additional assessment was made on 13th September, 1922, so that if the words " any assessment " used above include an additional assessment, Section 18 applies to it, and the Schedule applicable is " E."

(1) 8 T.C. 231.

(Pollock, M.R.)

Additional assessments are made under the powers conferred by Section 125 of the Income Tax Act, 1918. Where a person has been undercharged in the first assessment, then upon compliance with the conditions laid down in the Section, an additional first assessment may be made upon him, and the additional first assessment is subject to appeal and other proceedings as in the case of a first assessment. I see no reason to differentiate these assessments; and herein I agree with the conclusion of Mr. Justice Rowlatt. Both are assessments, and are in my judgment included in and covered by the words " any assessment " in Section 18, Sub-section (6). If so, the additional assessment upon the Respondent was rightly made under Schedule E. Further, no appeal was taken from the first assessment under Schedule E. It became final and conclusive, though not subsequently to May 1st, 1922. If the whole matter were reopened and a new assessment made, Schedule E applies.

It is argued that the opening words of Section 125 of the Act of 1918 were not complied with because the Surveyor ought to have discovered that the first assessment had been wrongly made under Schedule E, and that if he had applied the average system under Schedule D, as ought to have been done at the time that first assessment was made, no discovery of an undercharge could have been made. I do not accept this argument.

The Surveyor is not required to form an opinion, which is later held by the Courts to be the correct view, before he takes action. There must be information before him which would enable him, acting honestly, to come to the conclusion that a state of facts exists requiring him to take action (see *Rex* v. *Bloomsbury Commissioners*(1), [1915] 3 K.B. 768, following *Rex* v. *Kensington Commissioners*(2), [1913] 3 K.B. 870). In the present case there appears to me to have been abundant cause and reason for him to proceed under Section 125. Then Section 18, Sub-section (6), says in terms that " for the purpose " of any assessment to income tax which is made or becomes " final and conclusive after the first day of May, nineteen hundred " and twenty-two," as this additional assessment does, the provisions of Sub-section (1), which introduce Schedule E once more, are to have and be deemed always to have had effect. Hence at the moment when this additional assessment comes up for consideration, Schedule E with its assessment upon actual profits governs the case, and in order to see if it has been rightly made, for that purpose, Section 18, Sub-section (1), is to have effect and to be deemed always to have had effect. Thus there has been nothing wrong in the procedure adopted, or in the standard applied to this additional assessment, and in my judgment it stands good.

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(1) 7 T.C. 59. (2) 6 T.C. 613.

(Pollock, M.R.)

The Commissioners have found that the bonus received by the Respondent was not " perquisites " within Rule 4 of Schedule E, a Rule which it may be mentioned has been repealed in the Third Schedule of the Finance Act, 1922, and no point upon this finding was taken before us. The appeal must be allowed with costs here and below and the additional assessment confirmed.

Warrington, L.J.—The question in this appeal is whether an additional assessment in the sum of £77 made upon the 13th September, 1922, in respect of the Respondent's (Mr. Ingle's) profits for the year of assessment 1921–22 from his employment under the London County Council was legally made upon him. The Commissioners decided that it was so made and dismissed his appeal. Mr. Justice Rowlatt on the other hand has reversed the decision of the Commissioners and discharged the assessment.

The decision turns upon the true construction and effect of Section 18 of the Finance Act, 1922, and particularly of Sub-sections (1) and (6). This Section was introduced into the Act in consequence of the decision of the House of Lords in March, 1922, in *Great Western Railway* v. *Bater*(1), [1922] 2 A.C. 1, in which it was held that an employee of the Railway Company was not the holder of a public office or employment of profit within the meaning of Rule 6 of Schedule E to the Income Tax Act, 1918, and was therefore to be assessed under Schedule D, and not under Schedule E under which he had been in fact assessed.

The distinction between the two Schedules for the present purpose is that under Schedule D the tax for the year of assessment is computed upon an average of the three preceding years, whereas under Schedule E it is computed on the actual profits in the year of assessment.

The two Sub-sections on which the question turns, so far as they are material, are as follows: Section 18, Sub-section (1): " Such profits or gains arising or accruing to any person from an " office, employment or pension as are, under the Income Tax " Act, 1918, chargeable under Schedule D . . . . shall " cease to be chargeable under that schedule and shall be charge- " able to tax under Schedule E, and the Rules applicable to that " schedule shall apply accordingly subject to the provisions of " this Act ", and Sub-section (6): " The provisions of sub- " section (1) . . . . of this section shall have effect and " shall be deemed always to have had effect, for the purposes of " any assessment to income tax which is made or becomes final " and conclusive after the first day of May, nineteen hundred and " twenty-two, in respect of any employment . . . . under " any public department, or under any company, society or body " of persons or other employer mentioned in Rule 6 of the Rules " applicable to Schedule E."

(1) 8 T.C. 231.

(Warrington, L.J.)

The Respondent was at the material time in the employment of the London County Council. It is unnecessary to mention the nature of his employment for the Commissioners have found that he did not during the year 1921–22 occupy a public office or public employment of profit within the meaning of Schedule E of the Income Tax Act, 1918. This finding of the Commissioners was not seriously challenged by the Attorney-General, and Mr. Justice Rowlatt decided the case on the assumption that it was correct and we must do so likewise. The result is that under the authority of *Great Western Railway* v. *Bater*(1) the Respondent was liable to be assessed under Schedule D and not under Schedule E. In fact he was assessed under Schedule E in accordance with the practice of the Commissioners in such cases prior to the decision in *Bater's* case. The assessment for the year 1921–22 was the sum of £359. If it had been made under Schedule D it would have been £259 only, or £100 less. However the Respondent did not appeal and in due course paid the tax.

The actual profits for the year in question, however, including bonuses, turned out to exceed £359 by £77, and accordingly under Section 125 of the Income Tax Act, 1918, the Surveyor, conceiving that he had discovered that profits chargeable to tax amounting to £77 had been omitted from the first assessment, certified the particulars to the General Commissioners who signed and allowed the additional assessment accordingly. This is the assessment appealed against, and it is clear that but for the Act of 1922 it would have been an illegal assessment. The man was liable to be assessed under Schedule D under which the actual profits of the year of assessment are immaterial, and on this footing it was impossible to say that the £77 had been omitted. On the contrary an assessment under Schedule D would have been on £259 only, or £100 less than the actual assessment. So also if Sub-section (6) had been omitted the result would have been the same inasmuch as Sub-section (1) is clearly not retrospective.

But, though I confess to arriving at the conclusion with some regret, I can see no answer to the contention of the Crown that the assessment can be supported under Sub-section (6). I will read the two Sub-sections together because they seem to me to be applicable to the Respondent's case. " For the purpose of any " assessment to income tax made after the 1st May, 1922, the " profits or gains arising from the office or employment of the " Respondent shall be deemed to have been always chargeable " under Schedule E, and the Rules applicable to that Schedule " shall be deemed always to have applied accordingly."

The additional assessment of the 13th September, 1922, is an assessment to Income Tax and it was made after the 1st May,

(1) 8 T.C. 231.

(Warrington, L.J.)

1922. I agree on this point with Mr. Justice Rowlatt that it is impossible to so construe the Sub-section as to confine its operation to original assessments.

Again the words " for the purpose of any assessment " seem to me to cover the determination of all questions affecting the validity thereof. In the present case therefore the original assessment was made in accordance with what is to be deemed to have been the legal position at the time it was made and, having been so made, the £77 in question was omitted therefrom and the Surveyor was entitled and indeed bound to certify the fact to the General Commissioners who were themselves bound to sign and allow the additional assessment.

Unless, as the Respondent asks us to do, we are at liberty to treat the original assessment as wrong and so find that, on the true legal footing—that of assessment under Schedule D—no additional assessment could have been made, the Crown must succeed, and I see no ground on which it is possible to come to such a conclusion. The Act in effect tells us that for the purpose of the additional assessment the original assessment must be deemed to have been in accordance with the law as altered by Section 18, Sub-section (1), and on this footing the £77 was omitted therefrom.

I think on this point the appeal of the Crown succeeds.

A subsidiary point was raised as to whether bonuses are to be included in the profits or gains. The Commissioners have found that they were part of the salary and I see no sufficient ground for interfering with their finding. Even if they had been " perquisites " I think under Rule 4 (3) the result would have been the same.

I think the order appealed from should be reversed and the assessment restored with costs here and below.

Atkin, L.J.—Mr. Ingle, the Respondent, was in the year 1921–22, and had been for some years, a Second Class Assistant in the employment of the London County Council. On October 6th, 1921, he was assessed under Schedule E in respect of his office or employment in the sum of £359. Notice of assessment was given to him on December 21st, 1921. He made no appeal from such assessment, and in accordance with the Income Tax Act, 1918, Section 137, Sub-section (4), it stood good. On March 13th, 1922, in the House of Lords, was decided the case of *Great Western Railway Company* v. *Bater*(1), [1922] 2 A.C. 1, which determined that a clerk in a railway company, in similar position in material respects to the present Respondent, was not the holder of a public office or employment of a public nature, and therefore could not be assessed under Schedule E, but had to be assessed under Schedule D. The assessment under Schedule E is on the income of the year of assessment; under

(1) 8 T.C. 231.

(Atkin, L.J.)

Schedule D on the preceding three years' average. This case established that the assessment on the present Respondent under Schedule E was wrong. It also disturbed what appears to have been the general practice of the Inland Revenue authorities to assess all salaried employees of all companies under Schedule E. But the Revenue authorities are not daunted by an adverse decision. They have a touch of Nature. *Expellas furca tamen usque recurrent.* They procured the insertion in the Finance Act of 1922 of Section 18, which not only confirmed for the future their former practice but transferred all profits or gains from any office or employment from Schedule D to Schedule E. But in addition the Section included Sub-section (6), which has been read. This Sub-section clearly operates retrospectively, though to determine this case we must decide to what extent. It appears that the return made by the Respondent and the assessment based upon the return was deficient by £77 if computed in accordance with Schedule E. It is sufficient, indeed it is an overcharge, if computed on the three years' average under Schedule D. After the passing of the Finance Act, which received the Royal Assent on July 20th, 1922, the authorities made an additional assessment on the Respondent in the sum of £77 on September 13th, 1922. The power to do this is derived from Section 125, and depends upon whether the Surveyor can be said to have discovered that the Respondent had been undercharged in the first assessment. Now at the time the assessment was made it seems clear that he was not undercharged. He was not chargeable at all under Schedule E; and though he cannot dispute the propriety of the original assessment so far as his liability to pay tax on the amount contained therein is concerned, I see no kind of estoppel, statutory or otherwise, that prevents him disputing any additional assessment on any lawful ground he pleases, whether consistent with the original assessment or not. But it is here that the retrospective operation of Sub-section (6) comes into play. It appears to me that the additional assessment is " any assessment " as mentioned in the Sub-section. I think that this is plain from the words of the Income Tax Act, see in particular Section 136, Sub-section (1), and from the words of the Finance Act of 1922 itself, see Section 18, Sub-section (5), and Section 19. But " for the " purpose of " the additional assessment the profits or gains of the Respondent must be deemed always to have been chargeable under Schedule E. The additional assessment will not be valid, unless the Respondent was chargeable originally under Schedule E; the investigation whether he was or not is as I think " for the " purpose of " the additional assessment to give or deny validity; and the Section therefore operates to uphold the charge in question. There can be no doubt that employment under the London County Council is employment under a public corporation or local authority mentioned in Rule 6 (1); and we are not

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under the necessity of considering to what other companies, societies or bodies of persons the Sub-section may relate. But in respect of all such companies, etc., to which it does relate I think that the Sub-section was intended to have and has full retrospective effect, and was intended to give effect to the practice of the Revenue authorities in assessing the employees under Schedule E. I do not think it necessary to decide what would have been the case if the Respondent had been in fact originally assessed under Schedule D. We are told that there may be some difficulty in making an additional assessment under a different Schedule, though the difficulty is not to me at present apparent. But where, as in the case, the Respondent was originally assessed, though wrongly, under Schedule E, and that assessment stands good, I see no difficulty in giving full retrospective effect to the Sub-section so as to validate the additional assessment. I think therefore that this appeal should be allowed with costs.

An appeal having been entered against the decision in the Court of Appeal, the case came on for hearing in the House of Lords before Viscount Cave, *L.C.*, Viscount Sumner and Lords Atkinson, Shaw of Dunfermline, and Carson on the 9th and 13th December, 1926, when judgment was reserved.

On the 24th February, 1927, judgment was given against the Crown with costs (Lord Atkinson dissenting), reversing the decision in the Court below.

The Attorney-General (Sir Douglas Hogg, K.C.) and Mr. R. P. Hills appeared as Counsel for the Crown, and Mr. Konstam, K.C., and Mr. J. L. D. Ridsdale for Mr. Ingle.

JUDGMENT.

Viscount Cave, L.C.—My Lords, this is an appeal against an additional assessment to Income Tax in the sum of £77 made on the Appellant on the 13th September, 1922, in respect of the tax year 1921–22, and raises a question as to the effect of Section 18 of the Finance Act, 1922. The amount in dispute is small; but the case is said to be a test case, the result of which will affect a large number of assessments made in respect of that tax year.

The Appellant is an assistant clerk in the employment of the London County Council, and receives a salary and bonus. It had been the practice of the Revenue authorities to assess him (with some other persons in the same position) under Schedule E of the Income Tax Act, 1918, as the holder of a " public office or " employment of profit ". On the 16th July, 1921, he returned his income for the tax year 1921–22 as £359; and on the 21st December, 1921, a notice was given assessing him to tax

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on that amount in accordance with Schedule E. In fact a revision of his salary and bonus in the month of September had increased his income for the year to £436; but this was of course unknown to him when he made his return, and was also unknown to the Revenue authorities when they made the assessment. There was no appeal against the assessment of £359, and it became final and conclusive under Section 136, Sub-section (1), of the Income Tax Act in the month of January, 1922.

On the 2nd March, 1922, this House gave judgment in the case of *Great Western Railway Company* v. *Bater* (1), [1922] 2 A.C.1, and by that judgment (which reversed the decision of the Court of Appeal) held that a clerk in the employment of a railway company did not hold a " public office or employment " within the meaning of the Income Tax Act and accordingly was assessable, not under Schedule E on his actual profits for the year of assessment, but under Schedule D on the average amount of his profits and gains for the three preceding tax years. It has been assumed throughout these proceedings that this decision applied to persons in the position of the Appellant; and this assumption has not been contested by the Attorney-General on the present appeal. Upon this footing the Appellant ought, as the law stood in December, 1921, to have been assessed, not at £359, but at £259, which was the average amount of his remuneration for the three preceding years; but as the time for appeal had gone by, the assessment of £359 could not be, and has not been, disputed by the Appellant.

On the 20th July, 1922, the Royal Assent was given to the Finance Act, 1922, and by Section 18 of that Act (so far as it is material to the present case) it was enacted as follows:—
" 18.—(1) Such profits or gains arising or accruing to any person " from an office, employment or pension as are, under the Income " Tax Act, 1918, chargeable to income tax under Schedule D " . . . shall cease to be chargeable under that schedule and shall " be chargeable to tax under Schedule E, and the Rules applic- " able to that schedule shall apply accordingly subject to the " provisions of this Act. . . . (3) Rule 7 of the Rules applicable " to Schedule E (which relates to the charge of tax in respect of " offices and employments of profit held under a railway com- " pany), shall apply to all offices and employments held under, and " pensions paid by, a railway company: Provided that nothing " in this subsection shall affect the provisions relating to the " quarterly assessment and the collection of income tax in the " case of weekly wage-earners employed by way of manual " labour. . . . (6) The provisions of subsection (1) and sub- " section (3) of this section shall have effect and shall be deemed " always to have had effect, for the purpose of any assessment to " income tax which is made or becomes final and conclusive after

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" the first day of May, nineteen hundred and twenty-two, in " respect of any employment (other than that of a weekly wage-" earner employed by way of manual labour) under any public " department, or under any company, society or body of persons " or other employer mentioned in Rule 6 of the Rules applicable " to Schedule E."

There is no doubt that the Appellant, as the holder of an office or employment (though not a public office) falls within the provisions of Sub-section (1) of the above Section, so as to be chargeable in respect of the tax year 1922–23 and subsequent years under Schedule E of the Act; nor is there any doubt that his employment comes within the description contained in the concluding words of Sub-section (6) as being held under an employer mentioned in Rule 6 of the Rules applicable to Schedule E.

On the 13th October, 1922, the Commissioners of Income Tax gave notice to the Appellant of an additional first assessment of £77, being the amount by which his remuneration had been increased in September, 1921, the notice being headed " Notice " of additional assessment under Schedule E in the case of " persons undercharged in the first assessment." Against this additional assessment the Appellant appealed to the General Commissioners, who decided against him and confirmed the assessment subject to a Case Stated for the opinion of the High Court. The case was argued before Mr. Justice Rowlatt, who discharged the assessment; but on appeal to the Court of Appeal that Court held that full retrospective effect must be given to Section 18 of the Act of 1922, and that the effect of Sub-section (6) of that Section was that, in considering the validity of the additional assessment, the original assessment under Schedule E must be deemed to have been in accordance with law; and they accordingly reversed the decision of Mr. Justice Rowlatt and restored the additional assessment. The Appellant has now appealed to this House.

My Lords, with the greatest respect for the opinion of the learned Judges of the Court of Appeal, I am unable to agree with their decision. As the law stood in December, 1921, the original assessment then made on the Appellant not only was not insufficient, but exceeded by £100 the sum at which he should have been assessed. Now the jurisdiction of the Commissioners to make an additional first assessment upon the Appellant arose (if at all) under Section 125 of the Income Tax Act, 1918, which provides that such an additional assessment may be made if the Inspector discovers that a person chargeable has been " undercharged " in the first assessment; and how the Appellant, who was not undercharged but was overcharged to the amount of £100 in the original first assessment, can come within these words, I am unable to discover. It is true that Sub-section (6) of Section 18 of the Act of 1922 provides that for the purpose of " any assessment " made

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after the 1st May, 1922, in respect of the profits of an employment there described the provisions of Sub-section (1) shall be deemed always to have had effect; but, even if it be assumed that the expression " any assessment " there used includes an additional first assessment, still the only result of that enactment is to substitute Schedule E for Schedule D so far as that additional assessment is concerned, and not to validate that assessment if it is for other reasons invalid.

The argument for the Crown appears to be that, so soon as the Inspector considers (whether rightly or wrongly) that he has discovered an undercharge in an assessment made in a previous year and gives notice of an additional assessment in respect of the supposed undercharge, then Section 18 (6) requires that the Rules under Schedule E shall be applied, not only to the additional assessment, but also incidentally to the earlier assessment to which the additional assessment relates, although that earlier assessment was made and became conclusive before the 1st May, 1922. It appears to me that this construction gives no effect to the limiting words " for the purpose of any assessment to " income tax which is made or becomes final and conclusive after " the first day of May, nineteen hundred and twenty-two "; for if, on the mere making of an additional assessment after the date there mentioned, Sub-section (1) is to have effect as regards an assessment which was made and became conclusive before that date, then the limiting words might as well have been omitted altogether. Those words appear to me to mean that, while you are to apply Schedule E for the purpose of assessments made after the 1st May, 1922, and also for the purpose of assessments made before that date which had not then become final and conclusive, you are not to apply it to assessments which were made and became conclusive before that date; and in the present case it is only if Schedule E is applied to the earlier assessment, which was made and became conclusive before the 1st May, 1922, that the earlier assessment is found to be insufficient. The words " and shall be deemed always to have had " effect ", upon which so much stress was laid in the Court of Appeal, appear to me to apply quite naturally to an assessment which though made before the 1st of May had not become final or conclusive on that date; but I do not think that they can, without running counter to the limiting words which appear later in the Section, be applied to an assessment which at that date had actually become final and conclusive.

The argument may be put in another (and alternative) way. Let it be assumed in favour of the Crown that for all the purposes of the additional assessment Schedule E must be applied, and that the Appellant ought to be and ought always to have been assessed to tax in respect of the sum of £77 mentioned in that assessment; even then you have only got half-way. You have still to consider whether on that footing there has been an undercharge in the

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earlier year, and in so doing you must apply to the assessment of that year the law which obtained when it was made; and if in the present case that course is followed, it will be found that there was in fact no undercharge. The Appellant has paid the full tax both in respect of the amount at which he should rightly have been assessed in December, 1921, and in respect of the additional sum since discovered by the Inspector; and while I agree that effect must be given (so far as the context allows) to the retrospective words contained in Section 18, Sub-section (6), of the Act of 1922, I cannot hold that the effect of those words is to make the Appellant liable to pay more.

The result is that I find myself in agreement with the conclusion of Mr. Justice Rowlatt in this case, and I am of opinion that the appeal should be allowed and that the judgment of the Court of Appeal should be discharged and the order of Mr. Justice Rowlatt restored with costs here and below, and I move your Lordships accordingly.

My noble and learned friend Lord Shaw desires me to say that he concurs in this judgment.

Viscount Sumner.—My Lords, I have already had the opportunity of reading and considering the opinion which my noble friend on the Woolsack has just read; I entirely agree with it and have nothing to add.

Lord Atkinson.—My Lords, I regret very much that I find myself unable to concur in the judgment which has just been delivered by my noble and learned friend on the Woolsack, and I take a view different from his.

The Appellant in this case was at all material times a second class clerk in the employment of the London County Council. His duties were of a clerical character. His remuneration took the shape of a yearly salary with an added bonus. In the year 1921–22 his salary was £194 7*s*. 3*d*., the bonus £241 19*s*. 2*d*., making together £436 6*s*. 5*d*. On the 6th of October, 1921, he was first assessed for Income Tax for the financial year 1921–1922 in respect of his office on the sum of £359. It is not disputed that this assessment was made under Schedule E neither is it disputed that, having regard to the decision in the case of *The Great Western Railway Company* v. *Bater*[1], [1922] 2 A.C. 1, he was not liable to be assessed under that Schedule, inasmuch as the office he held was not of a public nature, and, therefore, that he was properly assessable under Schedule D on the average of the profits and gains received by him in respect of his office during the three years immediately antecedent to the year of assessment It is not disputed that had this latter method been adopted he would have been assessed only on a sum of £259 14*s*. 5*d*., practically £100 less than the sum at which he had been actually

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assessed. On the 21st December, 1921, he received notice from the Income Tax authorities that he had been assessed on the sum of £359, yet notwithstanding the aforesaid facts, he never objected to this latter assessment, never appealed against it, or otherwise questioned it, but paid the amount of the Income Tax found to be due by him on the assumption that the higher of the two possible assessments was the proper and valid one, and in paragraph 3 of his Case it is stated that he does not now seek to disturb this assessment of £359.

The 99th Section of the Income Tax Act of 1918 requires that: "The assessors shall, within the time directed by the "precept of the general commissioners, give a particular notice to "every person chargeable within the limits wherein they act, "requiring him, within such time as shall be limited by the "precept, to prepare and deliver to the assessors all such lists, "declarations, and statements as are required by this Act to be "delivered." The 100th Section provides that: "Every person "chargeable under this Act, when required to do so by any "general or particular notice given in pursuance of this Act, "shall, within the period limited by such notice, prepare and "deliver to the assessor, a true and correct statement in writing "as required by this Act, signed by him, containing "—amongst other things "the amount of the profits and gains arising to him, "from each and every source chargeable according to the "respective schedules, estimated for the period and according to "the provisions and rules of this Act". By Sub-section (4), it is provided that: "Every person upon whom a particular notice "has been served by an assessor requiring him to deliver a "statement of any profits, gains, or income in respect of which "he is chargeable under Schedule D or Schedule E, shall deliver "a statement in the form required by the notice, whether or not "he is so chargeable." A penalty can be inflicted for the omission to comply with this notice.

In the Case Stated it is set forth that the first assessment was made on the Appellant on the 6th of October, 1921, and that notice thereof was given to him on the 21st of December, 1921. The first matter to be considered is the force and effect of an assessment.

In the oft-cited case of *Allen* v. *Sharp*, (1848) 2 Ex. 352, Baron Parke at page 366 uses these words: "An assessment not "appealed from stands precisely in the same situation as one "confirmed after appeal". That statement has been quoted, apparently with approval, by Mr. Justice Avory in *Rex* v. *Bloomsbury Income Tax Commissioners*(1), [1915] 3 K.B. at page 790.

The subject of assessment, its methods and consequences, are dealt with fully in Part VI of the Income Tax Act of 1918. I have already referred to the Section which imposes upon a person

(1) 7 T.C. 59, at p. 68.

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in the receipt of an income the statutory duty of making a return of that income. The 107th and some of the following Sections of this Statute prescribe the action to be taken if the taxpayer neglects to discharge this duty. The first-named of these Sections enacts: "A person who neglects or refuses to deliver, " within the time limited in any general or particular notice, or " wilfully makes delay in delivering a true and correct list, " declaration, or statement, which he is required under this Act " to deliver, shall—(*a*) if proceeded against before the general " commissioners, forfeit a sum not exceeding twenty pounds and " treble the tax which he ought to be charged under this Act, " and such penalty shall be recovered in the same manner as any " other penalty under this Act, and the increased tax shall be " added to the assessment ", or (*b*) if the person in default be " proceeded against by action or information in any court, forfeit " the sum of fifty pounds ". Then comes in Sub-section (2) the following important provision: " The commissioners shall also " proceed to assess or cause to be assessed every such person who " makes default as aforesaid ". By Section 112 it is enacted that: " If the assessor does not receive a statement from a person " liable to be charged to tax, he shall to the best of his informa- " tion and judgment—(*a*) make an assessment upon that person of " the amount at which he ought to be charged under Schedules " A, B, and E ". Under Sub-section (*b*) he must " estimate " the amount at which that person ought to be charged under " Schedule D, and make a return to the Commissioners of the " name and address of that person and of any other particulars " which the commissioners may require." The following Section (113) requires that every assessor shall deliver to the Commissioners on or before the day appointed by them his certificates of assessments under Schedules A, B and E, and all statements and lists which have been received by him before the appointed day. Subsequent provisions prescribe the use the Commissioners may make of these documents. I have referred to these provisions and the machinery set up by them to show that the first assessment made against the Appellant is a formal and valid thing; that it cannot now be set aside or even qualified, although it was in fact based on a wrong Schedule. Nor can the additional assessment be, in my view, dealt with as if its validity depended on the result as it were of an account to be taken between the Appellant and the Income Tax Department, and the additional assessment be held invalid because the Appellant was overcharged £100 on the first assessment.

Section 125 of the Act of 1918 deals with additional assessments. The first of its provisions applies to the present case. It provides that if the Inspector discovers that any properties or profits chargeable to tax have been omitted from the assessment, he may make an additional assessment. The Appellant's case comes within the second provision. He has not delivered

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any statement, and he was undercharged on the first assessment, even if it was rightly based on Schedule E. Under that Schedule E he ought to have been assessed on an income of £436 6*s*. 5*d*. instead of on an income of £359. It was not appealed against. The fact that some of the income of the taxpayer was omitted from it would not make it invalid. If it be taken as valid and binding, as on its face it must, in my view, be taken to be, then the Appellant was undercharged to the amount of £77.

Your Lordships were referred to several authorities laying down the principle upon which the question should be determined whether a Statute acts retrospectively or not. Amongst those authorities the case of *Smith* v. *Callander*, [1901] A.C. 297, and Lord Justice Lindley's judgment in *Lauri* v. *Renad*, [1892] 3 Ch. page 421, were included. The rule which according to those authorities is to be applied is thus stated in Maxwell on Statutes, page 382. " It is a fundamental rule of English law that no " statute shall be construed so as to have a retrospective operation " unless such a construction appears very clearly in the terms " of the Act or arises by necessary and distinct implication." If however, a clause in a Statute says in so many plain words that the Statute shall have retrospective operation, then it must not be construed so as to defeat those express words. Now in the present case it is not disputed that the first assessment was made on the 6th of October, 1921, that notice of it was duly given to the Appellant on the 21st of December, 1921, that he did not appeal against or question it in any way and that it consequently became valid and binding. On the 13th of September, 1922, after the 1st May, 1922, the additional assessment, the subject of this appeal, was made. The words of Sub-section (6) of Section 18 of the Finance Act, 1922, enact as plainly as words can that Sub-sections (1) and (3) of Section 18 shall have retrospective operation. The words run thus:—" The provisions of " subsection (1) and subsection (3) of this section shall have effect " and shall be deemed always to have had effect, for the purpose " of any assessment to income tax which is made or becomes " final and conclusive after the first day of May, nineteen hundred and twenty-two ". I do not know what more direct and conclusive language could be used to make those provisions of this Statute (to which the Royal Assent was given on the 20th July, 1922) retrospective in their operation for the purpose indicated. I confess I am utterly unable to construe those words so as to put the additional assessment outside their real application. I think that they clearly and directly apply to it and I am consequently of opinion that the appeal fails. If this construction of this Statute enables the Income Tax Authorities to bring up stale demands against a taxpayer under the form of additional assessments, that evil should be corrected by legislation, not by a faulty construction of a retrospective clause in an existing Statute.

Lord Carson.—My Lords, I think that this appeal should be allowed for the reasons stated by the noble and learned Viscount on the Woolsack, and I have nothing to add.

Questions put:—

That the Order appealed from be discharged.

The Contents have it.

That the Order of Mr. Justice Rowlatt be restored and that the Respondents do pay to the Appellant his costs here and below.

The Contents have it.
