

# VOL. XVII.—PART IV.

---

No. 840.—HIGH COURT OF JUSTICE (KING'S BENCH DIVISION).—  
6TH AND 7TH MAY, 1930.

---

COURT OF APPEAL.—18TH, 21ST AND 22ND JULY, 15TH, 16TH AND  
17TH OCTOBER, AND 17TH NOVEMBER, 1930.

---

HOUSE OF LORDS.—29TH JANUARY, 1932.

---

- (1) TOWLE (H.M. INSPECTOR OF TAXES) *v.* THE IMPROVED  
INDUSTRIAL DWELLINGS CO., LTD.  
THE IMPROVED INDUSTRIAL DWELLINGS CO., LTD. *v.* TOWLE  
(H.M. INSPECTOR OF TAXES).<sup>(1)</sup>
- (2) JOHNSTONE (H.M. INSPECTOR OF TAXES) *v.* THE CONSOLIDATED  
LONDON PROPERTIES, LTD.<sup>(2)</sup>
- 

*Income Tax, Schedule A—Metropolitan area—Assessment of property let in flats—Allowance for repairs, etc., where rent exceeds assessment—Valuation (Metropolis) Act, 1869 (32 & 33 Vict., c. 67), Section 45; Income Tax Act, 1918 (8 & 9 Geo. V, c. 40), Schedule A, No. VII, Rule 8, and No. V, Rule 7, as amended by Finance Act, 1923 (13 & 14 Geo. V, c. 14), Section 28.*

(1) *A block of buildings within the Metropolitan area comprising between fifty and sixty self-contained flats was assessed to Income Tax, Schedule A, for the year 1926–27, by eight assessments, the assessments being made on the basis that each group of flats approached from the street by a separate entrance was assessable in one sum by one assessment under Rule 8 (c), No. VII, Schedule A. A separate valuation had been made for each flat under the Valuation (Metropolis) Act, 1869, and had been included in the valuation list which came into force on the 6th April, 1926. The amounts of the "group" assessments were arrived at by adding together the valuation list valuations of the separate flats in the group.*

*Held, in the Court of Appeal, that the assessments were rightly made.*

---

<sup>(1)</sup> Reported (K.B.D.) 46 T.L.R. 409 and (C.A.) [1931] 1 K.B. 263.

<sup>(2)</sup> Reported (K.B.D.) 46 T.L.R. 409, (C.A.) [1931] 1 K.B. 263 and (H.L.) [1932] A.C. 351.

(2) A block of eight self-contained flats, within the Metropolitan area, with one street entrance for the whole building, was assessed to Income Tax, Schedule A, by separate assessments for each flat. Each flat was entered separately in the valuation list.

The rents covered rates, cost of lighting and cleaning entrance and staircases, maintenance of a porter, a lift, etc. The proprietors (the Respondent Company) were also liable for external repairs.

These rents exceeded the gross Schedule A assessments by more than the authorised reductions for repairs mentioned in Rule 7 of No. V, Schedule A. The assessments were made in the amounts appearing in the valuation list as the gross values without any reductions under Rule 7 on the ground that paragraph (2) of the Rule applied. The Company appealed, contending that they were entitled to such reductions on the ground that the gross values in the valuation list were conclusive for all purposes of the Income Tax Acts and that Rule 7 (2) had no application.

The Crown opposed the claim to reductions and further raised the contention that the whole premises ought to have been assessed by one assessment (Rule 8 (c), No. VII, Schedule A) in the amount of the total of the valuations of the flats and of the remainder of the premises (porter's rooms).

Held, in the House of Lords, that it was not competent for the Crown at the hearing of the case before the Commissioners to take the point that the whole building should be assessed by one assessment, and that, in determining the Company's title to the reductions for repairs, paragraph (2) of Rule 7 should be applied, the gross Schedule A assessment of each flat being compared with the rent less the outgoings referred to in that paragraph.

#### CASES.

- (1) *Towle (H.M. Inspector of Taxes) v. The Improved Industrial Dwellings Company, Limited.*

#### CASE

Stated under Statute 8 & 9 Geo. V, c. 40, Section 149, by the Commissioners for the General Purposes of the Income Tax Acts for the Division of the Tower in the County of Middlesex for the opinion of the High Court of Justice.

1. At a meeting of the said Commissioners held at 21, Spital Square, E.1, within the said Division, on the 16th day of November, 1927, the Improved Industrial Dwellings Company, Limited, (hereinafter called "the Company") appealed against assessments on a new basis on groups or blocks of certain flats (built for the housing of the working classes) under Schedule A of the Income Tax Acts for the year ending 5th April, 1927, known as Nos. 1 to 54 and 54a b c and d, Morrison Buildings South, Commercial Road,

Whitechapel, in the Borough of Stepney, in the County of London assessed as follows :—

| <i>Street Numbers of Flats.</i> | <i>Assessment.</i> |
|---------------------------------|--------------------|
| 1-3                             | £49                |
| 4, 5                            | £37                |
| 6-25                            | £336               |
| 26, 27                          | £36                |
| 28, 29                          | £37                |
| 30-45                           | £283               |
| 46-54 (less No. 47*)            | £89                |
| 54a-54d                         | £26                |

\* No flat of that number.

which had theretofore been assessed as separate flats, whereby the Company contended they were aggrieved in being deprived of the legal right to claim allowances of Income Tax in respect of voids of one or more flats when the whole of the block in which they were grouped for assessment was not empty, and also whereby a reduced scale of allowance for repairs would be allowed under such grouping as compared with the larger allowance made in the case of each flat being assessed separately.

2. In the course of the hearing of the said appeal the following facts were proved or admitted :

Morrison Buildings South aforesaid is a block of artisans' dwellings in Commercial Road East, Stepney. The ground floor flats are approached by passages direct from the street and access to the upper floors of the building is obtained by two flights of stairs leading from the street to landings and passages off which the front doors of the various flats open. (See plan "A" hereto which forms part of this Case<sup>(1)</sup>). In some cases, there are three flats on the ground floor and in others, two, as will be seen from the ground plan "B" attached hereto which forms part of this Case<sup>(1)</sup>. There is no door at the foot of the staircases, which are open to the air on each floor, and the passages to the ground floor have no door on the street. Each separate flat has its own front door, knocker and letter plate and each is self-contained and having no means of communication from one flat to another.

3. The said dwellings are in the Metropolis and are in the area to which the Valuation (Metropolis) Act, 1869, applies, and were duly assessed as separate flats, and not in blocks or groups, by the Stepney Borough Council, without objection by the Inspector of Taxes for the time being in the District, in the valuation list made in the year 1925. The gross values of the respective flats as several hereditaments in their respective classes contained in the said

(<sup>1</sup>) Not included in the present print.

valuation list are set out in the table annexed hereto, marked "C" <sup>(1)</sup>, which forms part of this Case, and, under the provisions of the said Act, are not liable to be re-assessed for rating purposes (except in the case of structural alterations, which have not occurred in this case) during the quinquennial period ending 1930, and allowances for Income Tax purposes in previous years for repairs in respect of such flats have been allowed heretofore at the rates set out in the Finance Act, 1923, and allowances have been made for any period for which any of the said flats may have been void, or rent may have been lost.

4. The assessments to Income Tax appealed against were not made in respect of each flat separately, but each assessment included all the flats in one group or block, approached from the street by a separate entrance, the amount of each assessment being arrived at by adding together the gross values shown in the said valuation list of all the flats in the group comprised in the assessment. As an illustration of this it will be seen that in the said valuation list the annual values of Nos. 1, 2 and 3 are £18, £15 and £16, respectively. These three flats comprise one group and, following the above method, were accordingly assessed to Income Tax in one assessment in the sum of £49, with the consequence that the allowance for repairs is reduced and (as the Company contend) that no allowance for voids or loss of rent can legally be claimed unless the whole of the flats in a particular block or group are empty or not rent producing at one and at the same time.

5. The said Company contended (*inter alia*) that :

- I. (a) Each of the above-named flats was in fact and in law a separate house for all the purposes of the Income Tax Acts and was to be assessed and charged separately.
- (b) Rule 8 (c) of No. VII of Schedule A to the Income Tax Act, 1918, upon its true construction and the facts of the case, had no application to the property in question.
- (c) There was no evidence upon which it could be held that the property in question was within the said Rule 8 (c), or alternatively, that any such finding would be wrong in law.
- (d) In law and under the circumstances of the case, the amount of assessment to be reduced by the authorised reduction for the purposes of collection, pursuant to the relative provisions of Rule 7 of No. V to the said Schedule A (as amended), was the amount of the assessment upon each flat or house separately.

---

(<sup>1</sup>) Not included in the present print.

- II. (a) The property in question is situate within the administrative County of London, with respect to which the valuation list under the Valuation (Metropolis) Act, 1869, is made conclusive for the purposes of the Income Tax Acts.
- (b) Each of the said flats is entered in the said relative valuation list as a several and separate hereditament or house with its separate gross value in its appropriate class pursuant to the said Act and Schedules Nos. 2 and 3 thereof.
- (c) The Inspector of Taxes had a statutory right of appeal from the said assessment which was not exercised and the said valuation list thereby became conclusive for the purposes of the Income Tax Acts.
- (d) The assessment of the said flats or houses, by grouping the same as contended for by the Inspector of Taxes, involves an alteration of the said valuation list and the said gross values and classes contrary to the provisions of the said Valuation Act and the Income Tax Acts.
- (e) The assessment of the said flats or houses by grouping, as contended for by the Inspector of Taxes, is pursuant to Rule 8 (c) of No. VII of the said Schedule A to the Income Tax Act, 1918, or otherwise, which is a Rule relating to valuation and is expressly excluded by the provisions of the said Schedule A.

6. The Inspector of Taxes contended (*inter alia*) that :

- (a) The unit of assessment in each case was each group of flats in accordance with Rule 8 (c) of No. VII of Schedule A of the Income Tax Act, 1918, notwithstanding that the flats in question were situate within the area of the Valuation (Metropolis) Act, 1869.
- (b) The amount of the assessment for the purposes of Rule 7 of No. V of Schedule A of the Income Tax Act, 1918, as amended, was the amount of the assessment on each group of flats.
- (c) The assessments as made were correct and should be confirmed.

7. (a) We, the Commissioners, determined firstly that the gross assessments of the several flats or separate houses made under the Valuation (Metropolis) Act, 1869, are conclusive for the purposes of the Income Tax Acts during the quinquennial period 1925-1930 and that Rule 8 (c) of No. VII of the said Schedule A of the Income

Tax Act, 1918, is a Rule relating to valuation and is excluded by the first general paragraph of the First Schedule, Schedule A of the Income Tax Act, 1918, from affecting the existing valuation of the said flats under the Valuation (Metropolis) Act, 1869.

(b) If, in the opinion of the High Court, such first determination is wrong and the said flats can in law be re-assessed during such quinquennial period then we determined secondly that under Rule 8 of No. VII Schedule A of the Income Tax Act, 1918, the various flats should be assessed together in blocks or groups consisting of those flats approached from the street by a separate entrance, but no figures were gone into before us.

8. The Inspector of Taxes expressed dissatisfaction with our first decision and the said Company expressed dissatisfaction with our second decision and both parties having duly asked for a Case to be stated for the opinion of the High Court, we hereby state and sign this case accordingly.

Given under our hands this 21st day of November, 1929.

HARRY MACHIN, } Commissioners for the Division of the  
W. F. FENTON JONES, } Tower in the County of Middlesex.

---

(2) *Johnstone (H.M. Inspector of Taxes) v. The Consolidated London Properties, Ltd.*

---

CASE

Stated under the Income Tax Act, 1918, Section 149, by the Commissioners for the General Purposes of the Income Tax for the Division of Kensington in the County of Middlesex for the opinion of the King's Bench Division of the High Court of Justice.

At a meeting of the Commissioners for the General Purposes of the Income Tax acting for the Division of Kensington in the County of Middlesex held at No. 23, Young Street, Kensington, W., on the 21st day of November, 1927, the Consolidated London Properties, Limited, of Bush Lane House, Bush Lane, Cannon Street, E.C.4, (hereinafter referred to as "the Respondent Company") appealed against eight assessments made under Schedule A of the Income Tax Acts in respect of eight flats in their property known as No. 1, Linden Gardens, Notting Hill Gate, W., in the sums hereinafter set out in respect of the year ending on the 5th day of April, 1927, on the ground that they were entitled to allowances under Schedule A, No. V, Rule 7 (1) (b) of the Income Tax Act, 1918, as amended by the Finance Act, 1923, Section 28.

I. No. 1, Linden Gardens aforesaid is a building which contains eight flats used for residential purposes and rooms resided in by a porter. All the flats are self-contained and each flat is let to a separate tenant. These flats have separate front doors abutting on to a staircase inside the building which is common to all the flats. None of the flats communicates with any other. There is one entrance from the public street giving access to the whole building. A porter (who superintends the whole building) in the employ of the Respondent Company, resides in rooms in the basements. The appeals were against the respective assessments in respect of the eight flats let to tenants. There was no appeal against the assessment of the rooms resided in by the porter. The corresponding allowance claimed by the Respondent Company in respect of the eight flats had in fact been made in respect of the porter's rooms, to which Schedule A, No. V, Rule 7 (2), as amended by the Finance Act, 1923, Section 28 (3), does not apply, no rent being payable therefor the Respondent company being the occupier.

II. The property is within the area to which the Valuation (Metropolis) Act, 1869, applies and in the valuation list in force during the year ended 5th April, 1927, the gross value of each flat is shewn separately, and the assessments now in question are in amounts which are the same as the respective gross values appearing in such valuation list.

III. Under its lease, each flat is let on the terms that the rent hereinafter appearing is payable and that the rates, cost of lighting the common entrance and staircases of the building by electricity and gas, the cost of the maintenance of the lift and other parts of the building and of the provision of a porter and the cost of cleaning the common entrance and stairways is borne by the Respondent Company. In the case of two flats only did the tenants make a fixed contribution of £10 per annum towards the lighting of the entrance and staircase and services of porters and use of lift, etc. The Respondent Company is liable for external repairs to the whole building. The tenants of six of the flats are responsible for internal repairs. Copies of the leases under which each flat was let are hereto annexed and form part of this Case<sup>(1)</sup>.

IV. During the year of assessment, the total rents payable under the said leases of the flats amounted to £1,471, and the additional payment by way of fixed contribution of £20, but details were at the appeal refused of particulars necessary to arrive at any outgoings which should by law be deducted in making the assessment.

V. The gross values of the eight flats and the porter's rooms appearing in the valuation list for the quinquennial period 1926 to

---

(1) Not included in the present print.

1930 and the amounts of the assessments made to Income Tax in respect of the year ending 5th April, 1927, are shewn below in column A, and the rents reserved under the leases in column B.

|            | A   | B   |                | A   | B   |
|------------|-----|-----|----------------|-----|-----|
|            | £   | £   |                | £   | £   |
| Flat 1 ... | 75  | 140 | Flat 5 ...     | 127 | 235 |
| Flat 2 ... | 108 | 200 | Flat 6 ...     | 86  | 160 |
| Flat 3 ... | 88  | 163 | Flat 7 ...     | 113 | 210 |
| Flat 4 ... | 118 | 220 | Flat 8 ...     | 77  | 143 |
|            |     |     | Porter's rooms | 8   | —   |

VI. On behalf of the Respondent Company it was contended that :

- (1) The gross assessments of the eight flats as fixed by the Valuation committee for the Royal Borough of Kensington were conclusive of the rents at which the flats might reasonably be expected to let during the quinquennial period and were conclusive for the purpose of Income Tax under the Valuation (Metropolis) Act, 1869, during that quinquennial period, and that the actual outgoings during the three years ending 5th April, 1927, were irrelevant.
- (2) Under Rule 7 of Schedule A No. V, of the Income Tax Act, 1918, as amended by Section 28 of the Finance Act, 1923, the Respondent Company were entitled to the appropriate allowances from the gross Schedule A assessment set out in paragraph (3) of that Rule for the purpose of collection.

VII. On behalf of the Crown it was contended (*inter alia*) :

- (1) That for the purposes of Income Tax under the Income Tax Act, 1918, Schedule A, No. VII, Rule 8 (c), the whole of No. 1, Linden Gardens was the unit of assessment and assessable as such in one sum and that under section 45 of the Valuation (Metropolis) Act, 1869, such sum was the total amount of the gross values of the various flats (including the porter's rooms) appearing in the valuation list made under the last-mentioned Act for the time being in force, *i.e.*, £800.
- (2) In any event, the figures before the Commissioners shewed that there was no title to the reduction claimed, as by the Income Tax Act, 1918, Schedule A, No. V, Rule 7 (2), as amended by the Finance Act, 1923, Section 28, there is no title to the reduction of the assessment claimed where the amount of the assessment " is less " than the rent by a sum greater than the authorised " reduction which would be allowable if the assessment



“ were on the amount of the rent after deducting from  
“ such rent any outgoing which should by law be  
“ deducted in making the assessment.”

VIII. In reply to the first contention on behalf of the Crown, the Respondent Company contended that each flat was rightly assessed as a separate hereditament and furthermore that whether this were so or not the Valuation (Metropolis) Act, 1869, was conclusive as to the hereditaments in the present case and that the deductions to be allowed in fixing the gross value might not have been the same and, in fact, would probably have been greater if the whole of No. 1, Linden Gardens had been treated as a single hereditament.

IX. We, the Commissioners, were of the opinion that the Income Tax assessments should follow the assessments as fixed under the Valuation (Metropolis) Act, 1869, and therefrom the appropriate deductions allowed for repairs in the case of each flat. We accordingly reduced the assessments by amounts arrived at in accordance with the scale in paragraph 3 of the said Rule 7.

X. Whereupon the Inspector of Taxes, on behalf of the Crown, expressed dissatisfaction with the decision of the Commissioners as being erroneous in point of law, and in accordance with the provisions of Section 149 of the Income Tax Act, 1918, duly required us to state and sign a Case for the opinion of the High Court of Justice, which we do hereby state and sign accordingly.

GEORGE M. FREEMAN, K.C.,  
J. H. TOWNSEND GREEN,  
WILLIAM H. WELLS,  
A. D. DERRY,  
JAMES W. CARPENTER,  
TIMOTHY DAVIES.

16th October, 1929.

---

The cases came before Rowlatt, *J.*, in the King's Bench Division on the 6th and 7th May, 1930, and on the latter date judgment was given in favour of the Crown in both cases, with costs. The second case was remitted to the Commissioners to discharge the existing assessments on the separate flats and to raise one assessment on the building.

Mr. A. M. Latter, K.C., and Mr. L. Tooth appeared as Counsel for The Improved Industrial Dwellings Co., Ltd., Mr. R. M. Montgomery, K.C., and Mr. E. G. Palmer for The Consolidated London Properties, Ltd., and the Attorney-General (Sir W. A. Jowitt, K.C.) and Mr. R. P. Hills for the Crown.

---

JUDGMENT.

**Bowlatt, J.**—I do not think I need trouble you, Mr. Attorney. I have come to a clear conclusion in these cases, although I think it is a rather confusing matter. Both these cases relate to houses or buildings in the Metropolis, if I may use the word, speaking without prejudice, let in flats; and the question arises in two forms. In both cases the question is as to the bearing of the position as regards such houses under the Valuation (Metropolis) Act, 1869, on the right to allowances given by Rule 7 of No. V to Schedule A of the Income Tax Act, 1918.

The point common to both these cases is that there should not have been upon the landlord one assessment covering a number of these flats. The position is this. Mr. Latter led me through the Sections, and under Schedule A the tax "shall be charged in respect of the property in all lands, tenements, hereditaments . . . for every twenty shillings of the annual value thereof," and, as Mr. Latter pointed out, by virtue of the Valuation (Metropolis) Act of 1869, particularly Section 45 and Section 51 and the Schedule, that "annual value" is to be "the gross value stated in" the valuation list.

Now the flats in these edifices have been separately assessed under the Valuation (Metropolis) Act, 1869, and appear in a Schedule under that Act. But then an assessment has been made in respect of them all together—that is to say, in respect of the houses of which they form parts, purporting to be under Rule 8 of No. VII to Schedule A, which prescribes that assessments shall be made upon the landlord in respect of—(a), which does not apply; and (b), which does not apply—(c) "any house or building let in different apartments or tenements" and so on, "Any such house or building shall be assessed and charged as one entire house or tenement."

What has been done is to make, for Schedule A purposes, an assessment which consists of the adding together of the assessments, under the Valuation (Metropolis) Act, 1869, of the individual flats. That is the assessment which has been taken. It is to be observed that no alteration has been made at all in the valuation. What has been altered is the unit of assessment; and several units separately assessed have been taken with their values and put into a new assessment in obedience to Rule 8 (c) of No. VII to Schedule A. As I read the cases, it has been held that that is in obedience to Section 45 of the Valuation (Metropolis) Act. I myself cannot see any difficulty about that when one thinks it over; because it seems to me, as I said just now, that all that is being done is simply to apply a provision which prescribes, first of all, that you are to assess the landlord and not the tenant; and, secondly, which says, in

(Rowlatt, J.)

assessing him you are to use only one assessment for the different flats and not a number of assessments, and you are to group the assessments; and I cannot see how it touches value at all.

It has been argued very strenuously—and, of course, quite truly, if it were relevant—that the value of a block is not the same thing as the aggregate value of its component parts. But I do not think that is the question. I think that the value of the component parts remains the point. And it is simply that they are to be added together not to reach the value of the aggregate but because there is to be only one assessment in placing all the component parts in one assessment. I think that is the long and short of it. That case has been decided, at any rate so far as I am concerned, and it seems to me that I am precluded by my own decision in the other case<sup>(1)</sup> from questioning that.

Then it is said that this Rule 8 is excluded by the first of the Rules in Schedule A from the General Rule which provides that nothing in the rules shall affect the valuation of lands within the administrative county of London with respect to its valuation under the Valuation (Metropolis) Act, 1869, although made quite conclusive for Income Tax, and so on. And certain rules are not applicable; then, any rule which relates to the ascertainment of the value of such land is not applicable. Now it is said that this is a rule which affects the valuation within the meaning of the first line of this general rule, or is a rule which relates to the ascertainment of value. That is the same point over again as that with which I have already dealt, and I do not think 8 (c) is a rule which touches the question of value; it touches only the question of the aggregation of assessments.

The particular point which arises in the first case, the case of the *Improved Industrial Dwellings Co. Ltd.*, is this. That having got this assessment which, of course, is in a very much larger figure than the assessment on a smaller unit would have been, then that introduces a lower level of allowance under Clause 3 of Rule 7 of No. V to Schedule A,—I think it is.

Upon that I have to make this observation, that those allowances depend on the assessment that you have got; and it was argued before me in the *Norwich Union* case<sup>(1)</sup> that you ought to split up the assessment again and look at the small properties out of which it is aggregated under Rule 8—the other rule. I said that could not be done; and I cannot certainly decide contrary to that decision here. It seems to me that you have got to look at the assessment and at the assessment only; and that when you have once got your aggregation then, looking at the assessment, you

<sup>(1)</sup> *Embleton v. The Norwich Union Life Insurance Society*, 11 T.C.681.

**(Rowlatt, J.)**

must put up with the figures of the assessment for the purpose of getting your allowance under Rule 7. That is the appeal in the first case.

Then there was a cross point in the first case which has been argued. Mr. Latter contends that supposing the point of law is rightly resolved as I have explained, still here the valuation is all wrong because here is no house or building let in separate apartments or tenements, and so on. What we have to deal with is this, a number of self-contained tenements (as I will call them) reached by common stairs if they are upstairs, and by a common passage if you have not to go beyond the ground floor, neither the common stairs nor the passage having an entrance door into the street, but the tenements having entrance doors into the common passage or staircase—that is what we have to deal with—and the contention is that each of those tenements is a house and that there is no house or building let in tenements because the passage, it is true, is a private right of way, but it is only a right of way which happens to be covered, and that the house or building begins when you reach the private door of the tenement. Of course, in point of law probably it is only a private right of way there; but it is quite true. No one could say that if you have got a private way serving a number of houses and serving them only, all belonging to one owner, that made all the houses one house or building let in separate tenements or apartments. Any contention of that kind is outrageous. But I think there is all the difference when you go into a passage or a staircase; are you then going into the house or building, or are you not? That is the question I ask myself.

Of course, there comes the point where there might be a very small porch, or something of that sort. It might be practically the same as standing on the door-step or on the pavement outside. But when you go into a passage which is designed really to prevent the front door from opening on to the street—that is really what it is designed for—or go upstairs several storeys, to say that you are only doing the same thing from the point of view of answering the question whether you have gone into a house or building or not, as if you were walking along a private road under the open sky, I do not think is sound. It seems to me that when you have gone inside walls and under the roof of a building, or entered a passage which was meant to make everything, when you have entered that passage, interior to the building—because that is what it comes to—then you have entered the house or building, and the house or building must be taken to include that passage, and the tenements which are let off are parts of the whole building let in tenements.

Therefore I think the appeal of the Crown must succeed in the first case.

(Rowlatt, J.)

In the second case, where I had another argument from Mr. Montgomery for which I am much obliged to him, the first point is the same and I will not repeat what I have said about that.

But now the application is different. The way it affects the subject is different here because now it is a question as to whether his right to an allowance under Rule 7 is barred by sub-rule (2) of that Rule. The point is this. The Poor Law assessment, which, of course, the Inspector is bound by—I will instance the case of the first flat—gave an assessment of £75 and the rent is said to be £140. By sub-rule (2) of Rule 7, “. . . in the case of any house or building (except a farmhouse or building included with lands in assessment) is less than the rent by a sum greater than the authorised reduction which would be allowable if the assessment were on the amount of the rent, after deducting from such rent any outgoing which should by law be deducted in making the assessment, this rule shall not apply.”

Of course, if £140 is to be taken as the rent, after deductions, with which the £75 is to be compared, the rule does not apply. But it is said by Mr. Montgomery that in the Metropolis it is the Valuation authorities who have to determine what the amount of the deductions is when they arrive at the assessment, and, therefore, when they have arrived at the assessment they really have arrived at the same figure as the figure which would be the assessment if the assessment were made on the rent after allowing the proper deductions. In other words, Mr. Montgomery says—it comes to this—that the assessment figure is really to show what the assessment ought to be and also what the rent, after deductions, ought to be, so that there can be no comparison between them because they are really the same thing. That is what it comes to.

It seems to me that this sub-rule is not defeated at all in that way. The sub-rule applies not only to London but it applies to the country. In the country the Revenue officers are in charge of the assessment itself. In the Metropolis their right is to attend the rating proceedings and to object to the valuation if they want to object to it. But in the country they assess on their own account. Therefore, in the country one would have thought that there would not be any difference between the assessment and what the assessment ought to be if you took the rent and allowed the proper deductions, and the Inspector would bring the one up to the other. But in practice, as I apprehend, what this is for is this—I am dealing with the country now to illustrate it: the Revenue authorities have made an assessment, and there has been no appeal against it by the subject, and there it is. Then comes the subject and says: “I want an allowance”—I do not know whether he says it or not, but, anyhow, there is an assessment to be made and he says: “I want an allowance.”

(Rowlatt, J.)

Then the subject is told : " We have assessed you at that, but what is your rent? " Then he tells them that his rent is far more ; so that even when you have allowed the deductions the assessment ought to have been more. It may be too late to alter it, if they want to alter it ; but they do not alter it, and then he loses his allowance. That is how it works out in the country.

In London far more so because the rents may go up although the valuation remains constant, and this sub-rule sends you to the rent, it tells you to look at the rent apart from the assessment, and I do not see why you should not do it in London as well as anywhere else. The assessment is made taking into account the proper deductions by the Assessment Committee, in the year 1, and it remains for five years. Now in year 4 I cannot conceive why it is not exactly what the Section meant, that the Revenue authorities, upon this deduction being asked, should say, " What is the actual rent so that if that were going to be the basis of the assessment " (it is all hypothetical) " then when you had made the proper deductions from it your assessment would turn out to be far more than that which we freely admitted is your real assessment, only you cannot get this allowance "—that is all there is in it ; and I really do not see any difficulty upon that point at all ; in fact I think it is really hardly intelligible except upon the principle that Mr. Montgomery is free to argue in the Court of Appeal, although he did not argue before me, and I do not think he could unless it is on the theory that sub-rule (2) of Rule 7 does not apply in London at all.

On those grounds I think in both of these cases the Crown are entitled to succeed with costs.

**The Attorney-General.**—I think the Order is this, my Lord, in the first case—the *Improved Industrial Dwellings*—there are, in a sense, two appeals—

**Rowlatt, J.**—The appeal will be allowed with costs.

**The Attorney-General.**—Allow the Crown's appeal with costs and dismiss the Company's appeal with costs.

**Rowlatt, J.**—Yes, it is really the same thing.

**The Attorney-General.**—Then the next case is more difficult.

**Rowlatt, J.**—Is it?

**The Attorney-General.**—Yes, my Lord, for this reason. I am not quite sure what is the right Order. We contended there that the right form of assessment was the grouping together, making that the unit. The assessment as it exists is, of course, eight separate assessments, and that is wrong on your Lordship's judgment. What has happened is this. In the last case the existing assessments are not one assessment upon the block, but there are eight separate assessments upon each flat. Those are the assessments

**(Rowlatt, J.)**

that exist to-day. That is wrong. It does not matter—it makes not one pennyworth of difference—but it is wrong. Under those circumstances I wondered whether the Order ought not to be in the latter case: Allow the Crown's appeal with costs, remit the case to the Commissioners with a direction to discharge the existing assessments and raise an assessment on the whole building. That is the difficulty.

**Rowlatt, J.**—Why did the first point come in the second case about the block assessment? I remained, Mr. Montgomery, with my mind charged with the first case during the argument on the second case; I thought someone was objecting to your having grouped all these flats into one assessment in the second case, but they never did.

**The Attorney-General.**—No, my Lord, we never did.

**Rowlatt, J.**—How did the point arise in the second case?

**The Attorney-General.**—We sought to, that is our contention. Our contention was that they ought to be grouped, but they were not grouped.

**Rowlatt, J.**—I see; you were asking that they should be grouped?

**The Attorney-General.**—Yes, my Lord, that they should be grouped; but they never have been grouped. What is to be done? In the latter case the position is this, that there are existing at the moment eight assessments.

**Rowlatt, J.**—They ought to be put into one.

**The Attorney-General.**—Yes, my Lord, they ought to be put into one. Therefore there is an error. It does not make one pennyworth of difference now, but there are eight assessments and there ought to be but one assessment.

**Rowlatt, J.**—Yes.

**The Attorney-General.**—And I suppose, as a matter of regularity, although it does not make any difference, we ought to get it right and, if so, it ought to be remitted to the Commissioners to discharge those eight assessments and make one assessment.

**Rowlatt, J.**—Yes, I suppose it ought, Mr. Montgomery, ought it not?

**Mr. Montgomery.**—I submit that that cannot be done at all. There were eight assessments. The point was taken, no doubt, that there ought to be one assessment proper, in the sense that you were to add them together. But that was all. The Commissioners were never asked to correct the assessments from eight to one, and I submit that they cannot now be asked to do that.

**The Attorney-General.**—Yes, they were asked to do it.

**Rowlatt, J.**—Yes, they must put it in order. It must go back for them to do that.

**The Attorney-General.**—Then the Order will be: Allow the Crown's appeal with costs and remit the case to the Commissioners with a direction to them to discharge the existing assessments and to raise an assessment on the whole building.

**Rowlatt, J.**—Yes.

**The Attorney-General.**—If your Lordship pleases.

(1) *Towle (H.M. Inspector of Taxes) v. The Improved Industrial Dwellings Co., Ltd.*

*The Improved Industrial Dwellings Co., Ltd v. Towle (H.M. Inspector of Taxes).*

The Company having appealed against the decision in the King's Bench Division, the case came before the Court of Appeal (Lord Hanworth, *M.R.*, and Slesser and Romer, *L.J.J.*) on the 22nd July, and the 15th, 16th and 17th October, 1930, when judgment was reserved. On the 17th November, 1930, judgment was given in favour of the Crown, with costs, confirming the decision of the Court below (Romer, *L.J.*, dissenting from the view that the annual value of each group of tenements was the sum of the gross values of the individual tenements appearing in the valuation list).

Mr. A. M. Latter, *K.C.*, and Mr. L. Tooth appeared as Counsel for the Company and the Attorney-General (Sir W. A. Jowitt, *K.C.*), the Solicitor-General (Sir Stafford Cripps, *K.C.*) and Mr. R. P. Hills for the Crown.

#### JUDGMENTS.

**Lord Hanworth, M.R.**—This is an appeal by the Company against the decision of Mr. Justice Rowlatt given on the 7th May, 1930, whereby he held that the mode of assessment upon the Company was correct.

The Company are the owners of certain blocks, or groups, of flats built for the housing of the working classes and known as Nos. 1-54 and 54 a, b, c and d, Morrison Buildings, South Commercial Road, Whitechapel, in the Borough of Stepney in the County of London. The assessments complained of were assessments to Income Tax under Schedule A for the year 1927. Previously the flats had been assessed severally and separately whereas under the assessments objected to they were assessed in groups. Thus, for illustration, 1-3 were assessed at £49, 4 and 5 at £37, and 6-25 at £336. They were so assessed on the ground



**(Lord Hanworth, M.R.)**

that each group formed a house or building let in different tenements within Rule 8 (c) of Rule No. VII of Schedule A, for each group had a separate entrance from the street which led to them.

The Commissioners decided that the above Rule 8 (c) did not apply within the County of London, and that the valuation of the flats or tenements existing under the Valuation (Metropolis) Act, 1869, was not affected or altered by the Rule.

If, however, this decision was held to be erroneous, and Rule 8 (c) did apply, then, secondly, they decided that the various flats or tenements should be assessed together in blocks or groups consisting of those flats approached from the street by a separate entrance, common to the group.

The Inspector of Taxes appealed from the first decision, and the Company from the second. A case was stated accordingly, and Mr. Justice Rowlatt heard arguments on both these points. He decided, reversing the decision of the Commissioners upon the first point, that Rule 8 (c) did apply and that the assessments in groups were rightly made. He also agreed with the Commissioners on the second point that the integer to be assessed is the group of tenements to which there is a common entrance and access from the street.

From this decision the Company appeal to this Court, on both points.

The appeal undoubtedly raises a point of substance ; for the Company claim that they are aggrieved in being deprived of the legal right to claim allowances in respect of voids, if the assessment is charged upon a group of tenements said to form one entity. They also claim that the allowance permitted for repairs is larger, if each tenement is treated individually, than it would be if the entity assessed is a group of tenements.

As the Case states in paragraph 3, these dwellings or tenements are in the area to which the Valuation (Metropolis) Act, 1869, applies, and they were duly assessed as separate flats and not in blocks or groups by the Stepney Borough Council in the valuation list made in the year 1925, which remains in force during the quinquennial period ending 1930. In previous years before the year of assessment 1927, allowances for repairs for Income Tax purposes in respect of the flats have been allowed at the rates set out in the Finance Act, 1923, and allowances have been made for any period during which any of the flats, separately, may have been empty or rent lost.

In the case of the first group, Nos. 1-3, the annual values in the valuation list were £18, £15 and £16 respectively.

They are now assessed in a group together at the figure reached by the addition of these three sums totalling £49 ; and it is obvious on this system that there is less chance of any allowance being

(Lord Hanworth, M.R.)

permitted in respect of voids, and that the rate of allowances for repairs is smaller. I have set out these facts in order to emphasise the importance of the case to the Appellants, though they do not assist in the solution of the difficult problem, which is to determine whether the Rule 8 (c) applies, and gives the Inspector the right to the assessment which he has now adopted. It is agreed that it is under this Rule that he finds his authority, and not elsewhere.

By Section 36 of the Income Tax Act, 1853, it is provided that "Any house or building let in different apartments or tenements, and occupied by two or more persons severally, shall nevertheless be charged to the duty . . . as one entire house or tenement, and the assessment thereof shall be made on the landlord ; but in default of payment by him the duty so charged and assessed may be levied on the . . . occupiers respectively," and they have a right of deduction against the landlord out of "any subsequent payment on account of rent."

This Section is the forerunner of Rule 8 (c) ; and the latter Rule which is found in the consolidating Income Tax Act, 1918, replaces Section 36 which is repealed in the Seventh Schedule of the Act of 1918. Section 36 does not, nor indeed does the Act of 1853, purport to deal with the mode of valuation for Income Tax or its imposition. By Section 5 of that Act, the duties of Income Tax imposed by it are to be "assessed, raised, levied, and collected under the regulations and provisions" of the Income Tax Act of 1842. It is true that the words of Section 36 are "that any house . . . let in different . . . tenements . . . shall . . . be charged to the duty . . . as one entire house . . . and the assessment thereof shall be made on the landlord ;" but stress cannot be laid upon these words, "charge," "assess," or "assessment," for as pointed out by Lord Wrenbury in *Aramayo v. Kensington Income Tax Commissioners*<sup>(1)</sup>, [1916] A.C. at page 227, these words are used in a number of senses throughout the Income Tax Acts. It is enough to note that Section 36 does not provide the machinery for the measurement of the tax charged. It only deals with the unit in respect of which the tax shall be ascertained and from whom in respect of that unit it is to be collected or recovered.

The Valuation (Metropolis) Act, 1869, was passed to secure uniformity in the assessment of rateable property in the Metropolis and it is based upon its predecessor, the Union Assessment Committee Act, 1862, 25 & 26 Vict. cap. 103, which is referred to as "the principal Act."

The valuation list is to be made under these two Valuation Acts. A duplicate of it is to be sent to the Surveyor of Taxes who may insert the amount, in his opinion, of the gross value of

<sup>(1)</sup> *Rex v. The Kensington Income Tax Commissioners (ex parte Aramayo)*, 6 T.C. 613 at p. 622.

(Lord Hanworth, M.R.)

the hereditaments comprised in such list where such amount differs from the amount inserted by the Overseers, and the Surveyor has a right to object to the valuation list and to carry his objection further for decision by the Assessment Committee. But he has no separate and independent right of valuing or inserting his own value in the valuation list. He can contest the value inserted by the Overseers, but he is not the authority to determine what shall be the value ultimately contained in the valuation list. When the valuation list has been ultimately settled it is conclusive of the values contained in it for the purpose of the Income Tax charged under Schedule A. See Section 45 (Sub-section (2) (b)).

Section 75 saves the mode of valuing or taxing any hereditament which is not included in any valuation list or which is not charged under Schedule A. It preserves the system of the Income Tax Acts except when the value in the valuation list had under Section 45 been made conclusive.

Finally, it may be worth while noting that by a Rule laid down in the Third Schedule of this Act, the maximum rate of deductions prescribed in that Schedule is not to apply to houses or buildings let out in separate tenements, but the rate of deductions in such cases is to be determined in each case according to the circumstances and the general principles of law. There is thus no prescribed rate of deductions on which reliance can be placed as necessarily applicable to houses or buildings of this class.

In 1875 the case of the *Attorney-General v. Mutual Tontine Westminster Chambers Association*, L.R. 10 Ex. 305, was decided. The question raised was whether the owners of a building let out in separate tenements to several occupiers were assessable to the Inhabited House Duty, or whether the respective tenants of the different tenements must be assessed as occupiers of distinct properties. There was a Rule in the Schedule to the Act which is *in pari materia* with Section 36 above. It was held that the Rule applied and that the Association must be assessed and treated as occupiers of the several blocks which comprised in the whole one dwelling house. It was also held that, inasmuch as Section 45 of the Valuation Act, 1869, made the valuation list in force under that Act conclusive for the tax levied for Inhabited House Duty, the right way to value such a block was by aggregating the value of the several tenements appearing in the valuation list, although, owing to some of the suites being unlet and producing no rent, the valuation list did not correctly represent the annual value to the Association.

That decision was affirmed in the Court of Appeal which consisted of Sir George Jessel, Lord Coleridge, Chief Justice of the Common Pleas, and Baron Pollock. It seems to me that if the matter rested at this point, this Court would be bound to

**(Lord Hanworth, M.R.)**

hold in accordance with that decision that the assessments in question were rightly made. It would seem, as said by Mr. Cripps, that the effect of the Valuation Act, 1869, is to lift out of the valuation list the values contained in it, and to place them in the assessment to be made for Income Tax under Schedule A ; and this, despite the obvious criticism that such a transfer prevents the full rebate being granted for voids or in respect of repairs.

It is now necessary to turn to the Income Tax Act, 1918. Rule 8 (c) of No. VII would appear to be explicit, and in terms the equivalent of Section 36 of the Act of 1853. Its effective words run : " The assessment and charge shall be made upon " the landlord in respect of . . . any house or building let in " different . . . tenements, and occupied by two or more persons " severally. Any such house . . . shall be assessed and charged " as one entire house or tenement." Although in different sequence, they are the same words that appear in Section 36.

But it is claimed that the Rule does not apply because it is excluded from being of effect in the area of the administrative County of London to which the valuation list under the Valuation Act of 1869 is by that Act made conclusive, by the terms of the preliminary statement to the Rules applicable to Schedule A. That provides that " any other rule which relates to the ascertainment of the value of such lands, tenements . . . shall not " apply within the administrative County of London." The short point therefore that remains may be stated as follows : Is Rule 8 (c) one which relates to the ascertainment of the value of such lands, tenements, etc. ?

For the reasons given it appears to me that its predecessor—Section 36—did not relate to the ascertainment of value. That was to be reached *aliunde*, by a different process and under a different series of Sections. But Rule 8 (c) deals with the incidence of the charge when ascertained—in other words, with the mode of collection of the tax at a standard or value reached before the direction contained in the Rule comes into play.

The criticism that the plan now adopted is new, or a reversion from the practice hitherto adopted, does not assist the determination of the question. It may be that the previous practice was wrong. Whether right or wrong, we have to decide what is the true interpretation of these complex provisions in several Statutes which are made to interact upon each other.

I come, therefore, to the conclusion that the judgment of Mr. Justice Rowlatt on this point must be affirmed.

Upon the second point argued, namely, of what does the house consist which is let in separate apartments or tenements ? Is each separate tenement, or is each group of tenements to which

**(Lord Hanworth, M.R.)**

there is a common entrance from the street, a house ; or is the larger building, of which these groups form part, the house?

I agree with the conclusion reached by Mr. Justice Rowlatt who on this point affirmed the Commissioners and also with the judgments which Lords Justices Slesser and Romer are going to deliver.

I would, however, like in addition to add that it appears to me that the question, what is the entity which is to be treated as a house, is one of fact rather than of law. It is one of degree on which different minds might form different opinions. It is just the sort of point on which the Court is entitled to accept the decision of the Commissioners unless they have, in reaching their conclusion, made an error in point of law. We have had plans—A and B—which form part of the Case stated, shown to us for the purpose of completing the materials and facts upon which a decision is to be reached.

It is, however, not for the Court to express its opinion upon these data. In such cases the Court has the advantage of relying, and ought to rely, upon the estimation of them made by the Commissioners. Their conclusion was upheld by Mr. Justice Rowlatt. In my judgment the appeal fails upon this point also and must be dismissed with costs.

**Slesser, L.J.**—The subject-matter of this appeal is a number of flats built for the housing of the working classes, the assessment on which has been made on a basis of which The Improved Industrial Dwellings Co., Ltd., the owners, complain. The whole of the flats are contained physically in one block of artisans' dwellings in Commercial Road, Stepney, the ground floor flats being approached by passages direct from the street and access to the upper floors of the building is obtained by two flights of stairs leading from the street to landings and passages off which the front doors of the various flats open. There is no door at the foot of the staircases which are open to the air on each floor and the passages to the ground floor have no door on the street. Each flat is self-contained. There is a number of such ground floor passages and stairs and the contention of the Crown is that the whole of the flats served by one common staircase form a separate house or building. There is no opening between any such group of flats so served by one opening or staircase and another group similarly served.

The flats in question, being in the Metropolis, have each been separately valued and assessed for the purposes of rating in accordance with the decision in *The Queen v. St. George's Union*, 7 Q.B.D. 90, and there is no dispute here but that each flat is a rateable hereditament and has been properly so separately rated and assessed in the valuation list under the Valuation (Metropolis) Act, 1869.

(Slessor, L.J.)

By Section 45 of that Act it is provided that the valuation list for the time being in force shall, for all or any of the purposes in the Section mentioned, be conclusive evidence of the gross value and of the rateable value of the several hereditaments included therein and, by Sub-section (2) of the same Section, it is provided that one of the purposes in the Section mentioned is: "(b) Any tax assessed in pursuance of the Income Tax Act . . . on any lands tenements and hereditaments, in all cases where the tax is charged on the gross value, and not on profits."

The effect of this provision is reflected in the First Schedule of the Income Tax Act, 1918, headed: "Rules applicable to Schedule A," which provides that: "Nothing in these rules shall affect the valuation of lands, tenements or hereditaments within the administrative county of London with respect to which the valuation list under the Valuation (Metropolis) Act, 1869, is by that Act made conclusive for the purposes of Income Tax," and (certain rules which are distinguished by an asterisk) and "any other rule which relates to the ascertainment of the value of such lands, tenements or hereditaments shall not apply within the administrative county of London, except in the case of hereditaments which are not included in any such valuation list . . . ."

It follows therefore from the combined effect of Section 45 of the 1869 Act and the Rule which I have just quoted that the valuation in the Metropolitan area on which tax under Schedule A is to be charged is to be equivalent to the rateable value of the several hereditaments, that is, in this case, of the individual flats and no other. But the issue which is to be determined on this appeal is, having regard to certain further statutory provisions whether each of the said flats is to be assessed on a separate gross value in its appropriate class, as is contended by the subject, or whether the assessment of the flats is to be arrived at by grouping the flats which are served by a common staircase and aggregating their value, as is contended by the Crown. The financial effects of adopting either view and the consequent burdens on the subject and rights of the Crown as to voids and repairs and otherwise, have been pointed out by the Master of the Rolls.

Apart from the particular problems raised by the Valuation (Metropolis) Act, the Crown point to the fact that whereas under Schedule A, No. VII, Rule 2, "Every person having the use of any lands or tenements shall be deemed to be the occupier thereof," under No. VII, Rule 8 (c) an exception is made as follows, namely that the assessment and charge shall be made upon the landlord in respect of "any house or building let in different apartments . . . and occupied by two or more persons severally. Any such house or building shall be assessed and charged as one entire house or tenement."

(Slessor, L.J.)

Outside the Metropolis at any rate, therefore, they contend that there can be no question that this, being a house or building let in different apartments or tenements, the house or building would fall to be charged as one entire house or tenement, and further, by the opening words of Rule 8 (c) that the assessment and charge should be made upon the landlord. Outside the Metropolis, such an assessment and charge would be made directly upon the whole house or building, for in such case the annual value would not have to be ascertained by reference to the rateable value of the component hereditament flats and therefore, the problem of the possibility of the aggregation of these component rateable values would not arise ; but in London it is clear that no such independent valuation of the whole house or building is possible, because Section 45 of the 1869 Act has defined the valuation by reference to the rateable valuation of the several hereditaments in the valuation list and it cannot be arrived at in any other way.

If the aggregation of the rateable values affects the valuation of lands, tenements or hereditaments within the Administrative County of London or if the aggregation is the ascertainment of the value of such lands, tenements or hereditaments, Rule No. 8 (c) is excluded by the operation of the governing words relating to London which I have quoted, and as Rule 8 (c) is now the sole authority for assessing or charging the house or building let in apartments or tenements as one entire building, if such a Rule is to be excluded there is no power left to aggregate and, consequently, the subject must succeed in this appeal. But I have come to the conclusion that it is not possible to say that the mere aggregation of the rateable values, so as to assess and charge the landlord as one entire house or tenement, by adding up the values of the tenements is either to affect the valuation of lands, tenements or hereditaments nor does the application of Rule 8 (c) relate to the ascertainment of the value so as to exclude its application within the Metropolitan area.

Rule 8 (c) in the Consolidation Act repeats in substance Section 36 of the Income Tax Act, 1853, before which time each tenement would have been separately charged. Between 1853 and 1869, therefore, the landlord would have been assessed and charged in London as in the rest of the country and in that Section it is further provided (a provision which is substantially repeated in Rule 8 of No. VII of Schedule A of the 1918 Act) that in default of payment by him (the landlord) the duty so charged and assessed may be levied on the occupier or occupiers respectively, and be paid by them or one of them and shall be deducted and allowed off the next or any subsequent payment on account of rent. In Rule 8 (c) this default provision appears as follows :—“ Provided that in “ each of the above cases in default of payment by the landlord,

(Slessor, L.J.)

"the tax may be levied upon the occupier or occupiers respectively." This default clause indicates that the Legislature has not entirely lost sight of the occupiers of the various apartments or tenements notwithstanding the fact that the charge is primarily since 1853 to be made upon the landlord and this in itself points to the liability of the landlord being one which is arrived at by the aggregation of the component tenements.

Despite the forcible argument of Mr. Latter, I am unable to see how the provisions in Schedule A, No. VII (8) (c) or, for the matter of that, in Section 36 of the Act of 1853, can be said to be a mode of ascertaining value. It is to be observed that by Section 77 of the 1869 Act and the Fifth Schedule of that Act, there is repealed, where they relate to the Metropolis, "any Act authorising any valuation of hereditaments to be made for the purposes of any . . . tax in respect of which the valuation list is by this Act made conclusive," and Sections 32 and 47 (neither of which is applicable here) and so much of the Act of 1853 "as relates to the mode of ascertaining the value of any hereditaments with respect to the value of which the valuation list is conclusive:" no reference being made at all to Section 36 of the 1853 Act. Had the Legislature in 1869 intended to limit the operation of Section 36 of the Act of 1853, it would, I think, have amended or repealed it in some more or less specific manner; but the difficulty of Mr. Latter does not end there. It is I think clear that the first provision of Rule 8 (c), namely, that the assessment and charge shall be made upon the landlord cannot, on any construction, be said to be a mode of ascertaining the value as stated in the 1869 Act, nor, to use the somewhat different though substantially similar language of the Rules applicable to Schedule A, the ascertainment of the value or the affecting of the valuation. If, then, this part of the Rule is so applicable to London so that the landlord on any construction is to be assessed and charged, the Appellant is limited on any contention in his exclusion of Rule 8 to paragraph (c), so that the result, on his construction, would be that even in London, the assessment and charge would be made upon the landlord (this not being a mode of valuation) but the house or building would be assessed and charged upon the several rateable hereditaments in the valuation list. The language of the Rules applicable to Schedule A makes this construction difficult for, after setting out certain specific Rules, the whole of which are distinguished by an asterisk, which are, therefore, totally excluded, it goes on to exclude in London any other Rule relating to the ascertainment of value and does not purport to include part of any such other Rule and exclude another part. Again, if the assessment and charge is to be made upon the landlord in respect of each rateable hereditament separately, he is not the occupier of such hereditament and, therefore, if the latter part



(Slessor, L.J.)

of Rule 8 is to be excluded, one would have expected to find, as regards London, some amendment of Rules 1 and 2 of No. VII, which provides that the tax shall be charged on and paid by the occupier for the time being and that any person having the use of any lands or tenements shall be deemed to be the occupier thereof. I find it impossible, therefore, to believe that Rule 8 can be so interpreted that the earlier limb relating to the chargeability of the landlord shall apply in London and that the latter limb, that the assessment and charge shall be made upon the whole house, shall not.

Although there is no direct authority on this point, there is a case decided under the Inhabited House Duty Acts, which fortifies me in the opinion which I have indicated. That case is *The Attorney-General v. Mutual Tontine Westminster Chambers Association* which is reported in the first instance in 1 Ex. D. 469. In that case, an Association owned several blocks of buildings, each block was divided into two ranges by an internal staircase having one door at the principal or street entrance and was structurally divided into different tenements or suites of rooms quite distinct from and having no means of communication to each other except that each had a common door opening on to the common staircase. In the valuation list prepared under the Valuation (Metropolis) Act, 1869, in accordance with the decision in *The Queen v. St. George's Union*, decided in 1871, to which I have already referred, each suite of rooms was entered in the valuation list under the Act of 1869 as a separate hereditament and the question arose whether for the purposes of the Inhabited House Duty the Association should be assessed as occupiers and each block treated as one dwelling house. It was held by a majority and confirmed unanimously in the Court of Appeal that the landlord must be assessed as occupier of the whole block treated as one dwelling house, and, secondly, that the value of each block was properly represented by the aggregation of the values appearing in the valuation list.

A provision very similar to that which was inserted by Section 36 of the Income Tax Act, 1853, but applicable to House Duty, was contained in a Rule made under 48 Geo. 3, c. 55, Schedule (b) to the following effect:—"Rule VI.—Where any house shall be let in different Stories, Tenements, Lodgings, or Landings, and shall be inhabited by Two or more Persons or Families, the same shall nevertheless be subject to and shall in like manner be charged to the said Duties as if such House or Tenement was inhabited by One Person or Family only, and the Landlord or Owner shall be deemed the Occupier of such Dwelling House, and shall be charged to the said Duties." By Rule XIV it was provided that "Where any Dwelling House shall

(Slessor, L.J.)

"be divided into different Tenements being distinct Properties, every such Tenement shall be subject to the same Duties as if the same were an entire House, which Duty shall be paid by the Occupiers thereof respectively." This latter Rule is substantially to be found in Rule 12 of No. VII of Schedule A of the Income Tax Act to the following effect, namely:—"Where a house is divided into distinct properties, and occupied by distinct owners or their respective tenants, such properties shall be separately assessed and charged on the respective occupiers thereof." Part of the argument in the *Tontine* case was devoted to the question whether the properties were or were not distinct properties so as to come within this Rule 14, a point not here argued, but the *Tontine* case, in my view, raised other considerations more material to the present case. The Act of 1869, by Section 45 (2) (a) makes applicable the valuation list thereunder to the tax on houses levied under the House Tax Acts as well as under the Income Tax Acts and, in the Fifth Schedule, repeals so much as relates to the mode of ascertaining the value of a house with respect to the value of which the valuation list is conclusive under the House Tax Act. Sir George Jessel, in the Court of Appeal, 1 Ex. D. at page 480, appears to accept the contention of the Crown as regards Inhabited House Duty that you can ascertain the value of the house from the valuation list by adding up the value of all the tenements. He says, at page 482: "in the present case you can ascertain its separate value" (the house) "from the valuation list by adding up the value of all the tenements; in fact, that it is for this purpose separately valued, because you can ascertain without going beyond the list" (i.e. the valuation list under the Act of 1869) "the total separate valuation of the hereditaments." In that case, according to the judgment of Baron Cleasby in the Court below, the question was: "Is the house to be assessed under rule 6 or rule 14?" That is to say, the issue was whether the properties were distinct properties or not. But this very question seems to assist the interpretation for which the Crown here contend, namely, that Rule 6 of the House Tax Act (which is equivalent to Rule 8 (c) under the Income Tax Acts) did apply if the properties were not distinct properties, notwithstanding the fact that under the Act of 1869 and the decision in *The Queen v. St. George's Union* the tenements had been separately valued. Further, in the *St. George's Union* rating case, at page 95, Mr. Justice Blackburn said in the course of the argument that the aggregate of the values of each set will be the value of the whole block and, though such an observation is there made *obiter* it is, in my view, consistent with the opinions expressed in the *Mutual Tontine* case. All the authority, therefore, which exists on this point is in favour of the construction contended for by the Crown. That is to say, if the aggregation

(Slessor, L.J.)

of values of the flats for the purpose of House Tax is not a mode of ascertaining value, so also is it not for the purpose of Income Tax.

A further point was taken by Mr. Latter, that the block served by a separate staircase is not a house or building, and, as I understand him, he says either, first, that each flat is a house or building or, alternatively, that the whole series of buildings, in so far as they are physically in contact under one roof, are all one house or building. The latter view would concede even more than the Crown contends is right and would still further increase the unit of assessment.

In my view, the Commissioners in finding as a fact that the words "house or building" may properly be confined in the circumstances to those properties which are served by a common staircase have made no error in law. Mr. Latter would appear to concede that if the common staircase has a front door on the street, the group of flats become one house or building, but, he says, that the absence of any such outer door turns the staircase, or, it may be on the ground floor the passage, into a mere way so that each flat becomes its own house. He relies upon certain dicta, particularly the observations of Lord Halsbury in *Grant v. Langston*<sup>(1)</sup>, [1900] A.C. 383, at page 392, where the learned Lord Chancellor says: "An outer door and a common or separate staircase have been most commonly the tests applied, and I am not myself able to see how the case of chambers in an Inn of Court and the decision of the *Westminster* case<sup>(2)</sup> are reconcilable with each other." Now in the *Westminster* case there was a street door locked at night. In the case of the Temple there is no street door so that the learned Lord does not appear to attempt to reconcile these cases on the ground of absence or presence of a door, but pronounces them irreconcilable: I read his words "An outer door and a common or separate staircase have been most commonly the tests applied" to be used disjunctively—meaning that either of them offers a test. I do not think, with every respect, that the ancient case reported in 3 Croke's Reports at page 473 of *Evans and Fynch* (a criminal case which decided apparently that chambers in the Temple was a *domum mansionalem* so that benefit of clergy could be denied to one who broke into the house) is of any assistance in this matter. But it is significant to notice that in the case of House Tax in regulation 4 of 48, George 3, c. 55, Schedule B, it is specifically provided that every chamber or apartment in any of the Inns of Court or of Chancery being severally in the occupation of any person shall be charged thereto as an entire house, which appears to indicate the necessity for stating in terms that such chambers shall be so regarded. The

(1) 4 T.C. 205 at p. 213.

(2) *Attorney-General v. Mutual Tontine Westminster Chambers Association*, L.R. 10 Ex. 305.

(Slessor, L.J.)

*Tontine* case also supports this view. It has been pointed out to us that in the case of the *Assessment Committee of the Metropolitan Borough of St. Marylebone v. Consolidated London Properties*, [1914] A.C. 870, a block of buildings made up of flats was assumed by their Lordships to be a house for the purpose of interpreting the Third Schedule of the 1869 Act, and, to my mind, it is clear that the house or building in this case is, to use the language of Lord Halsbury "that having a common or separate "staircase." It follows, therefore, that the house or building is just that unit which has been selected for assessment and charge by the Crown and that, as, in my opinion, the aggregation of the values of the component flats found under the Act of 1869 is not the ascertainment of the value or anything affecting valuation, but merely an assessment and charge stated as to unit of ascertainment and personal liability, Rule 8 (c) of part VII of Schedule A applies; that the assessment and charge should be made upon the landlord and that the assessment and charge as one entire house is rightly effected by adding together the values of the component flats duly ascertained from the valuation list under the 1869 Act.

This view is in accord with the judgment of Mr. Justice Rowlatt, and I am, therefore, of opinion that this appeal should be dismissed.

**Romer, L.J.**—In order to determine the questions raised by these appeals it is necessary to ascertain the true meaning and effect of No. VII, Rule 8 (c), Schedule A to the Income Tax Act, 1918. In order to do so, it will be convenient in the first place to consider Section 36 of the Income Tax Act of 1853, which was practically in the same terms as and has now been replaced by the Rule. Now Section 36 of the Act of 1853 was new. Under the Income Tax Act of 1842, where a house or building was let in different apartments or tenements and occupied by two or more persons severally, the tax was assessed in respect of each set of apartments or tenements separately occupied. The Act of 1842 contained no express provision as to what the unit of assessment was to be in such a case, unless the house was divided into distinct properties—(see Rules 3 and 13, pages 151 and 163, of the green Dowell<sup>(1)</sup>), and Section 5 of the Act of 1853). But inasmuch as the Act of 1842 provided that the tax was, in general, to be charged on and paid by the occupier, the unit of assessment under Schedule A was always treated as being the unit of occupation. Where, therefore, the whole of a house or building was in one occupation, the entire house was the unit of assessment, and its annual value was the rack rent of the house as a whole. But if the owner of the house or building happened to let it off in floors to separate tenants then, before 1853, each floor was the unit of

(<sup>1</sup>) Dowell's Income Tax Laws, Seventh Edition.

(Romer, L.J.)

assessment. The annual value or rack rent of the floor was separately ascertained, and the tax in respect of it was charged upon its occupier. But it is obvious that the aggregate of the rack rents of the floors might be a different sum from the rack rent of the house as a whole. The question therefore arises whether the effect of Section 36 of the Act of 1853 was not to make the unit of assessment in the case I have just been considering the unit it would have been had the house not been let off in floors but remained in one occupation. It is said on behalf of the Crown that the only effect of the Section was to transfer the liability or the primary liability for the tax from the occupiers to the landlord, leaving the unit of assessment, and therefore the total amount of the tax, unchanged. But the Section says that the house or building shall be charged as one entire house or tenement. I need not pause to consider whether there is any difference for this purpose between the word "charged" and "assessed". For they are used interchangeably in the Income Tax Acts—see observations of Lord Wrenbury in *Kensington Income Tax Commissioners v. Aramayo*<sup>(1)</sup>, [1916] 1 A.C. 215, at page 227. In Rule VII, 8 (c) of the Act of 1918, moreover, the words are "assessed and charged" as one entire house or tenement. Looking then at the Section, I find that, though a house is in fact let in different apartments and would therefore but for the Section be chargeable or assessable to Income Tax as more than one house, it is "nevertheless" to be charged or assessed as one entire house. The words seem to me to be plain, and unless there be some authority that prohibits me from so holding, I must, as it seems to me, arrive at the conclusion that in the case supposed in Section 36 of the Act of 1853, the unit of assessment and therefore the unit whose annual value would have had to be ascertained before the Valuation of Property (Metropolis) Act, 1869, was the house or building as a whole.

But it is now necessary to turn to that Act to see to what extent (if any) the operation of the Section in relation to lands, tenements or hereditaments within the "Metropolis" was altered. The first Section of that Act to which I need refer is Section 45. That Section, so far as is material to be stated, provides, in effect, that the valuation list made under it shall be conclusive evidence of the gross value and of the rateable value of the several "hereditaments" included therein for (amongst other purposes) the purpose of any tax assessed in pursuance of the Income Tax Acts on any lands, tenements and hereditaments in all cases where the tax is charged on the gross value; and that, in construing the Income Tax Acts with respect to Schedule A, annual value shall be deemed to mean the gross value stated in such list. Section 75 provides that nothing in the Act shall in any way alter

(<sup>1</sup>) 6 T.C. 613 at p. 622.

(Romer, L.J.)

or affect the mode of valuing or taxing any hereditament which is not included in any valuation list. Section 76 enacts that: "Where for the purposes of the Acts relating to the duty on inhabited houses, or to the duties charged under Schedule B of the Income Tax Act, or to the sale of exciseable liquors, it is necessary to make a separate valuation of any hereditament by reason of its not being separately valued in any valuation list, the value of such hereditament shall be ascertained in the same manner as if this Act had not been passed." Finally, Section 77 repeals the enactments specified in the Fifth Schedule and so much of any other Acts, . . . as authorizes any valuation of hereditaments to be made for the purposes of any rate or tax in respect of which the valuation list is by that Act made conclusive. Included in the Fifth Schedule is part of the Income Tax Act of 1853, viz.: "Sections thirty-two and forty-seven, and so much of the rest of the Act as relates to the mode of ascertaining the value of any hereditaments with respect to the value of which the valuation list is conclusive." There is no doubt that this Act gives rise to some questions of difficulty in relation to the operation of Section 36 of the Act of 1853. For where a house or building within the area affected by the Act of 1869 is let in different apartments or tenements and occupied by two or more persons severally the house as a whole does not appear in the valuation list nor is its gross or rateable value ascertained under that Act. If, therefore, as I think is the right view, the annual value of the entire house had to be ascertained in cases coming within Section 36 of the Act of 1853, it would have to be ascertained by the Income Tax Commissioners. For neither Section 45 nor Section 76 of the Act of 1869 would have any application. The relevant Section of that Act would be Section 75.

It was, indeed, argued on behalf of the Appellants that the Act of 1869 repealed Section 36 of the Act of 1853 as being a part of that Act that related to the mode of ascertaining the value of hereditaments with respect to the value of which the valuation list is conclusive. This would be somewhat startling if true. In my opinion, however, the argument is unfounded. Whether Section 36 did or did not alter the unit of assessment in the cases to which it refers, it had nothing to do with the ascertainment of the value of any hereditaments in the valuation list, and it is with respect to these hereditaments alone that the list is made conclusive by the Act of 1869. For if the unit of assessment was not altered, then for the purpose of charging the landlord it was, in the case of the Metropolis, only necessary to add together the gross values at which the several apartments or tenements appeared in the valuation list. If the unit of assessment was altered, neither the entire house or building nor its value would appear on the list at all.

(Romer, L.J.)

I must now consider the contention advanced on behalf of the Crown that the construction I have placed upon Section 36 of the Act of 1853 is in conflict with the decision of the Court of Appeal, not indeed upon that Section, but upon the provisions of another Act of Parliament alleged to be *in pari materia*. The Act in question was that of 48 Geo. 3 c. 55, and the case in question was that of *Attorney-General v. Mutual Tontine Westminster Chambers Association*, L.R. 10 Ex. 305 and 1 Ex. D. 469. The Act contained, in Schedule B, Rules for charging Inhabited House Duty. The material parts of those Rules are set out on page 309 of the report of the case before the Court of Exchequer and I need not set them out here. It was held upon the facts of that case that certain blocks of buildings in Westminster were houses let in different tenements within the meaning of Rule 6, and not into different tenements being distinct properties within the meaning of Rule 14. The blocks therefore became chargeable to the duties as if inhabited by one person only and the landlord or owner of the blocks was to be deemed the occupier and charged with the duties. The further question then arose as to what the value of each block was to be taken at for the purpose of charging the duties. As to this, Baron Cleasby said that the value of each block was accurately represented by the aggregate sum of the values which appeared in the valuation list, which were of course the values of the separate tenements. Baron Bramwell, after referring to the Act of 1869, said:—"For the purpose of the poor-rate it was necessary to assess each set of chambers separately; for the purpose of this tax it is necessary to add up the sum so separately assessed." Neither of the learned Judges made any express reference to Rule 7, but when the case came before the Court of Appeal, Lord Coleridge, Chief Justice, suggested that this rule possibly furnished the reason for the decision. The Court of Appeal at any rate, in affirming the Court of Exchequer, seem to me to have based their judgments on this point upon the rule in question. Sir George Jessel, however, did suggest another way in which the same result "might" be arrived at. After referring to the preamble of the Act of 1869 and to Section 45, he said: "So that if that section stood alone it would be conclusive. But then comes section 76." With all possible respect I cannot see how Section 45 was conclusive if the question was as to the proper value to be placed upon the entire block as the unit of assessment. The block was not a hereditament included in the List, nor was its gross value inserted therein. Had it not been for Section 76, I should have thought that the value would have had to be ascertained under Rule 11 of Schedule B of 48 Geo. III. c. 55. Now as to Section 76, Sir George Jessel said this: "it is said that, under those words, inasmuch as you have to value the house, and the house as such has not been separately valued

(Romer, L.J.)

“ in any valuation list, though each tenement composing the house  
“ has been so valued, it is necessary to make a separate valuation  
“ of one hereditament, namely, the house. One answer to that  
“ might be that the words ‘ separately valued ’ mean when you  
“ cannot ascertain its separate value ; and that in the present  
“ case you can ascertain its separate value from the valuation list by  
“ adding up the value of all the tenements ; in fact, that it is  
“ for this purpose separately valued, because you can ascertain  
“ without going beyond the list the total separate valuation of the  
“ hereditaments. It may be in two parts or in ten parts, but the  
“ total of the two or the ten parts does give you the separate  
“ valuation.” But this was no more than a suggestion of what  
might be said. I cannot regard it as a decision that for the purposes  
of Schedule B and without Rule 7 the value of the whole block  
was the aggregate of the values of the separate tenements. It may  
also be observed that there is no express provision in Rule 6 of  
Schedule B that the house was to be charged as one entire house  
or tenement.

I have so far been considering the effect of Section 36 of the Act  
of 1853. But the considerations that have led me to the conclusion  
that I have expressed also compel me to put a similar construction  
upon Rule 8 (c), No. VII of Schedule A of the Act of 1918. It is  
true that No. VII is entitled “ Rules as to Persons chargeable.”  
But the language of Rule 8 (c) is in substance indistinguishable  
from that of Section 36 of the earlier Act, and must, as it seems  
to me, bear the same construction. It is, moreover, to be observed  
that the first Rule of No. VII enacts that the tax shall in general  
be charged on and paid by the occupier, and as it is by reason of  
this Rule that the unit of assessment is in general the unit of  
occupation, there can be no reason why Rule 8 (c) should not be  
treated as making the entire building the unit of assessment in the  
cases to which it refers.

I must now consider the Appellants’ contention that Rule 8 (c)  
does not apply to hereditaments within the Administrative County  
of London by reason of the general provision affecting the Rules  
applicable to Schedule A. Much of what I have already said in  
relation to their contention that Section 36 of the Act of 1853  
was repealed by the Act of 1869 is also applicable to the present  
one. If the true construction of the Rule be that it makes the  
entire house the unit of assessment instead of the separate tene-  
ments, there is nothing in it that affects the valuation, or relates  
to the ascertainment of the value, of any hereditament with respect  
to which the valuation list is made conclusive. As I have already  
pointed out, neither the unit of assessment nor its value appears  
in that list at all.



(Romer, L.J.)

The next question to be decided is whether in the present case the various groups of tenements which have been respectively assessed are houses or buildings within the meaning of the Rule. This question, however, is, in my judgment, concluded, so far as this Court is concerned, by the decision in the *Tontine* case to which I have already referred. In that case this Court held that blocks of buildings each of which was divided up into flats that enjoyed a common staircase and a common doorway were houses within the meaning of Rule 6 to Schedule B of the Inhabited House Duty Act of 1808. There is nothing in the Income Tax Act of 1918 to suggest that the word "house" is used in any different sense from that in which it was used in the Act of 1808. Nor are the facts of the present case distinguishable in any material respect from the facts in that case. For where a group of flats is served by a common stairway it cannot, in my judgment, matter, for the purpose of considering whether the group is a house, that there is no door giving access to the stairway from the street. In these circumstances we ought, in my opinion, to follow the decision in question and hold that each group that has been separately assessed is a house within the meaning of the Rule.

For these reasons I have come to the conclusion that Mr. Justice Rowlatt was right in holding that No. VII, Rule 8 (c) of Schedule A applied to the present case and that the tenements in each group were rightly treated as forming one unit for assessment. But I very respectfully differ from him in holding that the annual value of each group was the sum of the gross values of the individual tenements appearing in the valuation list; for I think that the annual value should be independently ascertained under the Income Tax Act, 1918.

I express this opinion with great diffidence inasmuch as both Mr. Justice Rowlatt and the other members of this Court take an opposite view. The question is not, however, of much practical importance so far as the Appellants are concerned. What they seek to obtain is an assessment of each tenement separately so that they may benefit in the event of any tenement being empty. I agree with Mr. Justice Rowlatt and the other members of this Court that they are not entitled to this. The only advantage they would gain if my view had prevailed would be that the amount of the assessment would probably be less than the aggregate of the assessments of the different tenements, and they might obtain some advantage in the matter of the allowances.

**Lord Hanworth, M.R.**—The appeal will be dismissed with costs.

[Solicitors :—Merrimans; Solicitor of Inland Revenue.]

(2) *Johnstone (H.M. Inspector of Taxes) v. The Consolidated London Properties, Ltd.*

The Company having appealed against the decision in the King's Bench Division, the case came before the Court of Appeal (Lord Hanworth, *M.R.*, and Slesser and Romer, *L.JJ.*) on the 18th, 21st and 22nd July, 1930, when judgment was reserved. On the 17th November, 1930, judgment was given unanimously in favour of the Crown, with costs, confirming the decision of the Court below.

Mr. R. M. Montgomery, *K.C.*, and Mr. E. G. Palmer appeared as Counsel for the Company and the Attorney-General (Sir W. A. Jowitt, *K.C.*), the Solicitor-General (Sir Stafford Cripps, *K.C.*) and Mr. R. P. Hills for the Crown.

---

JUDGMENT.

**Lord Hanworth, M.R.**—In this case it is unnecessary to give a separate judgment, for the decision we have just delivered in the case of *Towle v. The Improved Industrial Duellings Company, Limited* covers the first two points contended for on behalf of the Crown before the Commissioners.

On these two points we hold accordingly that the judgment of Mr. Justice Rowlatt is correct, and his Order to remit the case to the Commissioners with a direction must be affirmed.

There remains, however, one other point raised by Mr. Montgomery on which, in deference to his argument, I desire to add a very few words.

In my judgment, No. V, Rule 7 (1) (a) and (b) relate to deductions. These are to be made from the assessment, based on the valuation under the Act of 1869 for the purposes of collection. They are not Rules which are excluded from operating in London, by reason of the words preliminary to the Rules themselves already referred to in my judgment delivered in the other case.

Mr. Montgomery agrees that some part of No. V, Rule 7 applies to London, namely, Rule 7 (1) (b), but argues that Rule 7 (2) does not apply to London because it affects valuation, or that if it does, a special meaning must be attached to the word "rent."

I accept what Mr. Justice Rowlatt has said on this point. It is an abstruse one; but I think the whole of Rule 7 of Rule V relates to deductions from a value already otherwise ascertained, and so is not a rule which is excluded as one relating to valuation. It relates to a system of reducing by deductions the calculations made. The appeal on this point also fails and must be dismissed with costs. The Order will be as stated by Mr. Justice Rowlatt, with the consequence that, if it is necessary in the course of the

(Lord Hanworth, M.R.)

Commissioners' reconsideration of the Case, the Appellants must produce the figures and make a return as may be required for the purpose.

**Slessor, L.J.**—I agree exactly with the judgment of the Master of the Rolls and have nothing to add.

**Romer, L.J.**—It was held by Mr. Justice Rowlatt in this case that No. 1, Linden Gardens was a house or building let in different apartments or tenements within the meaning of Schedule A No. VII, Rule 8 (c), and he has accordingly remitted the Case to the Commissioners to discharge the separate assessments that they had made and raise one assessment on the whole building. In view of the facts stated in the Case, it follows from the decision of this Court in *Towle's* case that the learned judge was right in this holding and in making the order that he did. It also follows from that decision that the gross value of the whole building will be the sum of the gross values of the several flats as appearing in the valuation list. There remains, however, the point made by the Appellants that Rule 7 (2) of No. V of the Schedule does not apply to their case and that they are entitled to the allowances provided for by No. V, Rule 7 (1) (b) of the Schedule irrespective of the amount of the rents actually paid for the flats. Their contention is that Rule 7 (2) if applied to the present case would affect the valuation or relate to the ascertainment of the value of hereditaments with respect to which the valuation list under the Act of 1869 is by that Act made conclusive, and is therefore rendered inapplicable by the general provisions relating to the Rules under Schedule A. In my opinion, this contention is ill founded. Rule 7 (2) involves no valuation or ascertainment of value whatsoever. The values of the flats will be taken from the valuation list, and all that Rule 7 (2) requires is that those values shall be compared with the rents of the flats for the purpose of seeing whether the deductions referred to in Rule 7 (1) (b) shall or shall not be made. For this purpose no doubt the rents paid by the tenants for the flats themselves will have to be ascertained, and the Commissioners will have to determine from information supplied to them by the Appellants what the amount of the assessment would have been if based upon such rents after deducting from the rents any outgoing which would in that case have been deducted. This, however, is merely the calculation of a hypothetical figure for the purposes of comparison with the actual figures appearing in the valuation list. It does not affect the valuation or relate to the ascertainment of the value of the hereditaments in question in any way.

For these reasons I am of opinion that the appeal should be dismissed.

The Company having appealed against the decision of the Court of Appeal, the case came before the House of Lords (Lord Atkin and Lords Warrington of Clyffe, Macmillan and Tomlin) on the 29th January, 1932, when it was held that it was not open to the Crown, at the hearing of the case before the Commissioners, to take the point that the whole building should be assessed by one assessment. The Order of the King's Bench Division was discharged.

The Case was remitted to the Commissioners to determine, on the basis that Rule 7 (2) of No. V of Schedule A applied and that the amount of the outgoings therein mentioned should be ascertained separately for each flat and for each year of assessment, what deduction, if any, should be allowed from the assessment on each flat.

Mr. R. M. Montgomery, K.C., Mr. A. M. Latter, K.C., Mr. E. G. Palmer and Mr. E. Gorst appeared as Counsel for the Company and Sir W. A. Jowitt, K.C., and Mr. R. P. Hills for the Crown.

---

#### JUDGMENT.

**Lord Atkin.**—My Lords, I have had the advantage of reading the judgment which is about to be delivered by my noble and learned friend, Lord Warrington, and I concur in it.

**Lord Warrington of Clyffe.**—My Lords, this is an appeal from an Order of the Court of Appeal (The Master of the Rolls (Lord Hanworth) and Lord Justices Slesser and Romer) dated the 1st December, 1930, dismissing an appeal by the Appellants from an Order of the King's Bench Division (Mr. Justice Rowlatt) dated the 26th May, 1930, whereby an appeal by the Respondent upon a Case stated by General Commissioners was allowed and the decision of the Commissioners was reversed.

The Appellants are the owners of a house, No. 1, Linden Gardens, Notting Hill Gate, within the area to which the Valuation (Metropolis) Act, 1869, applies. It contains eight flats used for residential purposes and some rooms in the basement used as a residence for the porter. Each flat is self-contained and is let to a separate tenant. The details of the arrangement of the building are stated in the Case stated and are those commonly to be found in blocks of flats in London and need not to be here repeated. The rents payable by the several tenants cover the rates and the cost of lighting the common entrance and the staircases, maintaining the lift, providing a porter and cleaning the common entrance and stairways, all of which and the cost of external repairs are borne

**(Lord Warrington of Clyffe.)**

by the Appellants. In two cases the tenants make a fixed contribution of £10 a year towards the cost of lighting and of the provision of a porter, etc., and for the use of the lift. In six cases the tenants are liable for internal repairs.

The Valuation (Metropolis) Act, 1869, provides for quinquennial valuations, which are to remain in force for five years. In this case the five years commenced on the 6th April, 1926, and expired on the 5th April, 1931. The year of assessment in question is that ending the 5th April, 1927, the first year of the period.

In the valuation list then in force the eight flats and the porter's rooms were each assessed separately and the assessment and charge were all made upon the Appellants as landlords under Rule 8 (c) of No. VII relating to Schedule A, but there was no assessment of the entire house or building such as is directed in Rule 8 (c).

The appeal to the Commissioners was confined to the eight separate assessments in respect of the eight flats, and the Commissioners expressly stated in the Case that the appeal was on the ground that the Appellants were entitled to allowances under Schedule A, No. V, Rule 7 (1) (b), of the Income Tax Act, 1918, as amended by the Finance Act, 1923, Section 28.

Much of the difficulty experienced in this House in dealing with the present appeal arose, in my opinion, from the fact that the limited nature of the appeal to the Commissioners and of the ground on which it was presented was lost sight of both in the King's Bench Division and in the Court of Appeal, and points were argued and decided which really did not in this case arise for decision.

At the hearing before the Commissioners the contentions on the part of the Appellants were (in effect) : (1) That the assessments in question were, under the Act of 1869, conclusive of the gross values, and therefore of the annual values for the purposes of Income Tax, and that the actual outgoings during the three years ending the 5th April, 1927, were irrelevant; (2) That under Schedule A, No. V, Rule 7, of the Income Tax Act, 1918, as amended by Section 28 of the Finance Act, 1923, the Appellants were entitled to the appropriate allowances from the assessments as set out in paragraph (3) of that Rule for the purposes of collection.

It was contended on the part of the Crown (in effect) : (1) That under the Income Tax Act, 1918, Schedule A, No. VII, Rule 8 (c), the whole house was the unit of assessment and assessable in one sum, *viz.*, the total amount of the gross value of the eight flats and the porter's rooms : (2) That in any event the figures before the Commissioners showed that there was no title to the reduction claimed, reliance being placed upon paragraph (2) of the Rule No. 7 above-mentioned.

**(Lord Warrington of Clyffe.)**

The first of these contentions on the part of the Crown raised altogether new matter. The officers of the Crown had had ample opportunity of raising this point before the valuation list had come into force. Under the Act of 1869, Section 45, such a valuation list is to be deemed to have been duly made in accordance with that Act and is for the purpose, amongst others, of Income Tax under Schedule A, conclusive evidence of gross values and of the fact that all hereditaments required to be inserted therein have been so inserted. The valuation list in force at the time of the appeal in question contained no valuation of the entire house as one unit and if such a contention could be raised at all before the General Commissioners it could only, in my opinion, be raised by an independent appeal on the part of the Crown (if such an appeal were competent) seeking to have the list altered by substituting one assessment in respect of the entire house for the nine separate assessments appearing in the list.

But no provision is made for an appeal by the Crown, and for, I think, obvious reasons. The assessment before it comes before the Commissioners has been examined and passed by the Surveyor and it has become, in effect, an assessment adopted by him as correct from the point of view of the Crown (Income Tax Act, 1918, Sections 119 and 120). Hence provision is made (Section 136) for an appeal by the taxpayer only, and the position of the Surveyor is defined by Section 137 (2) (a), (b) and (c). He may be present at the hearing, he may produce evidence in support of the assessment and give reasons in support thereof. It was therefore, in my opinion, incompetent for the Crown to raise the first of its two contentions mentioned above, and the Commissioners were right in refusing it.

Unfortunately, as I think, Mr. Justice Rowlatt, being of opinion that on the true construction and effect of Rule 8 (c) of No. VII of Schedule A the entire house was the proper unit, and not realizing that the only "matter" before the Commissioners and the Court was the appeal of the present Appellants for an allowance (Section 149 (2) (a)), by his Order dated the 7th May, 1930, directed that the case be remitted to the Commissioners with a direction to discharge the existing separate assessments and raise one assessment on the whole building. The Order was affirmed by the Court of Appeal. For the reason given above, *viz.*, that the question was not effectually raised so as to give the Court jurisdiction to make such an Order, I think the Order made by Mr. Justice Rowlatt and affirmed by the Court of Appeal, ought not to have been made and should now be discharged.

But the discharge of the Order of Mr. Justice Rowlatt, and that of the Court of Appeal does not dispose of the present appeal. It remains to be considered whether the Commissioners properly dealt with the matter actually before them, *viz.*, the Appellants' claim to the statutory allowances.

**(Lord Warrington of Clyffe.)**

The Commissioners state that they were of opinion that the Income Tax assessments should follow the assessments as fixed under the Act of 1869 and that therefrom the appropriate reductions should be allowed for repairs in the case of each flat. They accordingly reduced the assessments by amounts arrived at in accordance with the scale in paragraph (3) of Rule 7. In other words, they held that paragraph (2) of Rule 7 did not in this case exclude the operation of the scale in paragraph (3).

The material parts of Rule 7 as amended by Section 28 of the Finance Act, 1923, are as follows: " (1) Where tax is charged upon annual value estimated otherwise than by relation to profits, the following provisions shall have effect . . . (b) In the case of an assessment upon any house or building (except a farmhouse or building included with lands in assessment) the amount of the assessment shall, for the purposes of collection, be reduced —(i) where the owner is occupier or chargeable as landlord . . . by a sum equal to the amount of the authorized reduction herein-after mentioned . . . (2) Where the amount of the assessment in the case . . . of any house or building (except a farmhouse or building included with lands in assessment) is less than the rent by a sum greater than the authorized reduction which would be allowable if the assessment were on the amount of the rent, after deducting from such rent any outgoing which should by law be deducted in making the assessment, this rule shall not apply." In paragraph (3) are specified the authorized reductions for the purposes of the Rule, which vary with the amount of the assessment.

The construction of paragraph (2) of Rule 7 is by no means easy, but I think that the object of it from the point of view of the Revenue was to compare the net income derived from the house (i.e., the actual rent less any outgoing which should by law be deducted in making the assessment) with the annual value forming the basis of the assessment and if that net income exceeds the annual value by a sum greater than the authorized reduction which would be allowable had the assessment been on such net income, then to regard the taxpayer as having thus received an equivalent of the authorized reduction and therefore not to be entitled to any further allowance.

If I am right in this, and I do not think there is any dispute on the point, then it follows that as the net income varies from year to year, the necessary inquiries as to the outgoings to be allowed in ascertaining the amount of the net income must be made in each year of assessment and, in this case, having regard to the form of the valuation list, must be made as to each flat separately.

The Commissioners have simply allowed from the assessed annual values the appropriate reductions in accordance with the scale in paragraph (3) of Rule 7, thereby adopting the arguments on the part

**(Lord Warrington of Clyffe.)**

of the Appellants mentioned above. This seems to me to be wrong. I cannot understand how the amount of the actual outgoings can be irrelevant to a claim for reduction under Rule 7. In the present case the rents reserved by the leases so largely exceed the annual values under Schedule A that if they are to be treated as representing the "net income" for the purposes of paragraph (2), that paragraph would clearly be operative. It seems to me to follow that, if the taxpayer is to make good his claim to reduction, inquiry must be made as to outgoings and the Commissioners should not have allowed the authorized reduction until such inquiry had been made. The Commissioners have ample means of obtaining information if it is not tendered voluntarily by the taxpayer; I should have thought it was in his own interest to do so.

The result is that while the Order of the Court of Appeal should be reversed and that of Mr. Justice Rowlatt discharged, the case should be remitted to the Commissioners to determine what deduction, if any, should be allowed in respect of each assessment on the basis that the amount of the outgoings referred to in paragraph (2) is to be ascertained separately as to each flat and as to each year of assessment.

I think the expense of both appeals below and of that to this House have been substantially occasioned by the position taken up by the Respondent, and that the Crown ought to pay the costs here and below.

A great part of the argument in this House was devoted to the question of the construction and effect of Rule 8 of No. VII of Schedule A and, in particular, of its application to the area of the Metropolis in view of the Act of 1869. As I have already said, this question does not arise in the present case and for that reason I think it is undesirable that this House should express any opinion on that question and I am fortified in this view by the fact that in the case of *Towle v. The Improved Industrial Dwellings Co., Ltd.*, which was heard by Mr. Justice Rowlatt and the Court of Appeal at the same time as the present case, that question did arise and was decided against the Respondents. That case or some other like it may come before the House and it is undesirable that the arguments therein should be prejudiced by any expression of opinion which would be merely *obiter*.

**Lord Macmillan.**—My Lords, I agree.

**Lord Atkin.**—My Lords, I am asked to say that my noble and learned friend, Lord Tomlin, agrees with the judgment which has been delivered.

*Questions put:—*

That the Order appealed from be reversed.

*The Contents have it.*



That the Order of Mr. Justice Rowlatt be discharged and that the case be remitted to the Commissioners to determine what deduction, if any, should be allowed in respect of each assessment on the basis that the amount of the outgoings referred to in paragraph (2) of Rule 7 is to be ascertained separately as to each flat and as to each year of assessment.

*The Contents have it.*

That the Respondent do pay to the Appellants their costs here and below.

*The Contents have it.*

[Solicitors :—Charles Stevens and Drayton ; Solicitor of Inland Revenue.]

---