VOL V.—PART V.

No. 287.—IN THE HIGH COURT OF JUSTICE (KING'S BENCH DIVISION).—4th and 20th December, 1905.

COURT OF APPEAL.—27th and 28th November, 1906.

HOUSE OF LORDS.—18th and 19th June, 1907.

YSTRADYFODWG AND PONTYPRIDD MAIN SEWERAGE BOARD v. BENSTED.

YSTRADYFODWG AND PONTYPRIDD MAIN SEWERAGE BOARD *v.* BENSTED (Surveyor of Taxes).[1]

Income Tax, Schedule A.—A sewer runs partly above and partly below ground, and has an outfall with sluices and other apparatus. Rates are payable in respect of it. Except for certain rents paid for the use of the sewer by various bodies no income is derived from it. The balance of the necessary expenditure is paid out of rates. The Appellants claimed that Income Tax was not payable in respect of the sewer as it did not fall within No. I. of Schedule A in Section 60 of the Act 5 and 6 Vict., Cap. 35; and that even if it could be regarded as falling within No. III. of Schedule A, there were not and could not be any profits for assessment under that Case.

Held, *that Income Tax is payable on the full annual value of the sewer under No. I. of Schedule A.*

APPELLANT'S CASE.

1. This Appeal is from an Order of His Majesty's Court of Appeal dated the 28th November 1906, confirming an Order of the High Court of Justice, King's Bench Division, dated the 20th December 1905.

2. The matter came before the King's Bench Division on a Case stated under the Statute 43 and 44 Vict. c. 19 s. 59 by the Commissioners for the general purposes of the Income Tax Acts for the District of Newport in the County of Monmouth.

3. A Copy* of the Case is set forth in the Appendix.

4. The question involved in this Appeal is whether or not the Appellants, who are a statutory body formed for the purpose of performing certain sanitary duties within a given area and without any view to profit or gain, are assess-

(1) Reported K.B.D. [1906] 1 K.B. 294; C.A. [1907] 1 K.B. 490; H. of L. 1907, A.C. 264.

* Omitted from the present print.

able to income tax under Schedule (A) in respect of a sewer constructed by them in the execution of their duty.

5. The material facts which give rise to the questions involved on this Appeal are as follows :—

6. The Appellants are the governing body of a united drainage district consisting of the Urban District of Rhondda (formerly known as Ystradyfodwg) and the Urban District of Pontypridd, constituted by virtue of a Provisional Order of the Local Government Board dated 4th June 1885 and duly confirmed by the Local Government Board's Provisional Orders Confirmation (No. 7) Act 1885 (and hereinafter referred to as The Ystradyfodwg and Pontypridd Main Sewerage Order 1885) for the purpose of carrying into effect a system of sewerage for the use of the said Urban District and by Article 19 of the said Order it was provided that all sewers made by the Appellants should vest in and be under the control of the Appellants.

7. Pursuant to the powers vested in them by the said Order the Appellants designed and constructed, and have since always maintained, a certain sewage carrier for the use of the said districts, and have erected, maintained, and worked, such works, machinery, and plant, as were required for the conveying the sewage of the said united district to the sea. The total length of the said sewage carrier is about 17¼ miles, whereof nearly 2½ miles passes through or over land situate in the Parish of Rumney, in the County of Monmouth.

8. The construction of the said sewage carrier within the said Parish of Rumney is as follows :—

(A) 182 yards of iron pipes carried on concrete arches above the surface of the ground.

(B) 1,021 yards of pipes laid below the surface and ordinary level of the ground.

(C) 1,890 yards carried below the surface of the ground, but covered by an artificial embankment of varying height which rises above the level of the adjacent land ; and

(D) 1,246 yards of pipes (hereinafter called the outfall) passing partly over and partly beneath the surface of the foreshore of the Bristol Channel.

In connection with the outfall certain works have been erected by the Appellants.

9. For the purpose of obtaining money for making and maintaining the said sewage carrier and the necessary works appurtenant thereto the Appellants, in accordance with the provisions of the Public Health Act 1875, incorporated in the said Order, borrowed from the Public Works Loan Commissioners the sum of £156,000, to be repaid with interest at the rate of 3½ per cent. per annum by equal annual payments extending over 30 years, which annual payments (except-

ing only to the extent of the payments received from the District Councils and Corporations hereinafter mentioned) are raised by means of rates levied by the Appellants within the area of their said district. The proportion of the said annual repayment payable in respect of the portion of the said sewage carrier situate in the said Parish of Rumney amounted to £1,210.

10. In pursuance of powers vested in them by a Provisional Order of the Local Government Board dated 15th April, 1896, and duly confirmed by the Local Government Board's Provisional Orders Confirmation (No. 8) Act 1896 (hereinafter referred to as The Ystradyfodwg and Pontypridd Main Sewerage Order 1896), the Appellants, with the consent of the Local Government Board, had prior to the date of the making of the assessment now appealed against, entered into agreements with the Dinas Powis Urban District Council, the Caerphilly Urban District Council, and the Cardiff Corporation, whereby the sewage of the districts under the control of the said local bodies was to be received in and carried away, by the said sewage carrier upon payment to the Appellants by the said local bodies of sums levied upon the respective rateable value of the districts under their control at the rate of 3¾d., 4d., and 3½d., in the £ per annum respectively. The total amount paid to the Appellants by the said local bodies in respect of the financial year ending 31st March 1904 (the figures of which year for the purposes of the case stated by the said Commissioners are to be taken as approximately representing the financial year covered by the assessment appealed against) was £943 19s. 7d.

11. The aggregate sum received by the Appellants from the said three local authorities is applied by the Appellants towards defraying the general costs and expenses incurred by them in connection with the undertaking, including the annual repayments in respect of the said loan; and in consequence of receiving the said sum from the said local bodies the Appellants are enabled to raise sufficient money for the purpose of repaying the annual instalments of the said loan by two precepts at the rate of 2½d. in the £ in each year upon the entire area within the Appellants' united district. The rate in the £ in such last mentioned area would have to be considerably increased in order to prevent the Appellants incurring a loss owing to their yearly expenditure in connection with the said sewage carrier, if the money received by the rates levied outside such area (being money paid for the use of the said sewage carrier) were not available for use by the Appellants. No estimate has been made of the costs incurred by the Appellants to earn the sums received from the said three local bodies, and the said sums have not been apportioned in respect of the portion of the said sewage carrier within the said Parish of Rumney.

12. The seat of management of the Appellants' concern and the place where its accounts are usually made up is the town of Pontypridd, which is not in the same district for Income Tax Purposes as the said Parish of Rumney.

13. Throughout the whole of its course within the said Parish of Rumney the said sewage carrier (except as to the portion over the foreshore of the Bristol Channel) runs through or under agricultural land, the use of which for agricultural purposes is not materially interfered with by the said sewage carrier. The embankment through which a portion of the said sewage carrier passes as aforesaid, and which varies in height from 18 inches to 6 feet above the ordinary level of the ground, is covered throughout with a mound of earth, which is overgrown with permanent grass pasture, except where a footpath runs over the top of the mound and where man-holes are placed, and is not separated by any fence from the adjoining land, and cattle have full access upon and across it throughout its entire length. The rack rental at which the adjoining land is worth to be let by the year does not exceed £2 per acre.

14. No change has been made by reason of the construction of the said sewage carrier and works in the assessment under Schedule (A) of the owners or occupiers of the land over through or under which the said sewage carrier is placed, and such owners or occupiers are still assessed upon the basis of their ownership and occupation of such land.

15. The Appellants are assessed to the relief of the poor in respect of that portion of the said sewage carrier with the outfall and appurtenances thereof which is within the said Parish of Rumney at £800 gross estimated value and £700 rateable value.

16. An assessment was made upon the Appellants in respect of Income Tax for the year ending the 5th April 1905, under Schedule (A) of the Statute 5 and 6 Vict., c. 35 s. 60, for the sum of £666 14*s.* 0*d.*, in respect of so much of the said sewage carrier and works as is within the said parish of Rumney, which sum was arrived at by taking the sum of £800 as the gross estimated annual value thereof and deducting a sum of £133 6s. 0d. in respect of repairs. The sum of £800 is the gross estimated value at which the Appellants are assessed to the poor rate in respect of the said portion of the said sewage carrier and works.

17. Against this assessment the Appellants appealed, and, on the hearing before the Commissioners, the Commissioners were of opinion and determined:—

(A) That the Appellants' concern was not one which falls within 5 & 6 Vict. c. 35, s. 60, Schedule (A), Rule 3, and was not chargeable as a whole in respect of its profits in accordance with the rules prescribed by Schedule (D).

(B) That the Appellants were chargeable in respect of the portion of their sewer and works situate in the said Parish of Rumney under Schedule (A) in respect of the annual value thereof according to the General Rule, Schedule (A), No. 1.

(C) That there was no evidence before the Commissioners of the gross annual value of the subject matter of assessment other than by reference to the annual value as stated in the poor rate assessment.

18. Thereupon the Appellants expressed their dissatisfaction with the decision of the Commissioners as being erroneous in point of law and required the Commissioners to state and sign a Case for the opinion of the King's Bench Division of the High Court of Justice, which they did.

19. The Case was heard on the 4th December 1905 before the Honourable Mr. Justice Walton, who on the 20th December 1905 gave judgment in favour of the Crown. The Judgment of the Honourable Mr. Justice Walton is set out in the Appendix.*

20. From this decision the Appellants appealed to the Court of Appeal, and the Appeal was heard on the 27th and 28th days of November 1906 before the Master of the Rolls, Lord Justice Cozens-Hardy, and Lord Justice Farwell, who on the 28th November 1906 gave Judgment dismissing the Appeal of the Appellants. The Judgments* delivered in the Court of Appeal are set out in the Appendix.

21. The Appellants humbly submit that the Order of the Court of Appeal dated the 28th November 1906, affirming the Order of the King's Bench Divison of the 20th December 1905, and such last mentioned Judgment, respectively are erroneous and ought to be reversed for (amongst others) the following :—

REASONS.

1. Because the Appellants are not assessable to Income Tax in respect of their undertaking or any part thereof.

2. Because the Appellants are not the owners or occupiers of any lands, tenements, or hereditaments, within the parish of Rumney capable of actual occupation, or having any annual value within the meaning of the Income Tax Acts.

3. Because the statutory provision vesting their sewer in the Appellants effects only a constructive or notional vesting for the purpose of performing their statutory duties, and does not bring their interest in the sewer within the purview of Schedule (A), or extend the application of that schedule to an interest in land which at

* Omitted from the present print.

the time of the enactment of the schedule was not in point of law an interest capable of actual occupation.

4. Because the Appellants are not owners or occupiers of any land and derive no benefit from the land through which the said sewage carrier passes.

5. Because the land through which the said sewage carrier passes is properly assessable and is already assessed to income tax according to its value upon the owners and occupiers of such land who have the occupation and enjoyment thereof as land.

6. Because the Appellants are chargeable to income tax (if at all) only under the Statute 5 & 6 Vict. c. 35 s. 60 Schedule (A) No. III. (Third).

7. Because the Appellants do not receive, and the sewer does not and cannot produce, any income assessable to the income tax.

8. Because a public sewer constructed by and belonging to a public authority is not assessable to the income tax.

9. Because the said Judgments are erroneous in law and ought to be reversed.

W. O. DANCKWERTS.
S. T. EVANS.
J. H. REDMAN.

RESPONDENT'S CASE.

1. This is an Appeal from an Order of the Court of Appeal (England) dated the 28th of November, 1906, confirming an Order of the King's Bench Division dated the 20th of December, 1905. This latter Order was made upon the hearing of a case stated under the 59th Section of the Taxes Management Act, 1880, by the Commissioners for the General Purposes of the Income Tax Acts for the district of Newport in the County of Monmouth, and it confirmed the decision of the Commissioners.

2. The question in issue in this Appeal is whether the Appellants were properly assessed to Income Tax (Schedule A) in respect of their occupation of part of a sewer or sewage carrier.

3. The charge to Income Tax is imposed by s. 2 of the Income Tax Act, 1853 (16 & 17 Vict. cap. 34), and by s. 5 of that Act the duties are to be assessed, raised, levied, and collected under the regulations of the Income Tax Act, 1842 (5 & 6 Vict. cap. 35), and any Acts amending it.

The rules and regulations relating to Schedule (A) are to be found in s. 60 and the following sections of the Act of 1842:

YSTRADYFODWG AND PONTYPRIDD MAIN SEWERAGE BOARD v. BENSTED.

The following are the parts of the Act more immediately relevant to the point in issue :—

5 & 6 Vict. c. 35.

"Section 60.—The duties hereby granted and contained in the said Schedule marked (A) shall be assessed and charged under the following rules: . . .

"SCHEDULE (A).

"No. I.

"GENERAL RULE FOR ESTIMATING LANDS, TENEMENTS, HEREDITAMENTS, OR HERITAGES MENTIONED IN SCHEDULE (A).

"The annual value of lands, tenements, hereditaments or heritages charged under Schedule (A) shall be understood to be the rent by the year at which the same are let at rack rent, if the amount of such rent shall have been fixed by agreement commencing within the period of 7 years preceding the 5th day of April next before the time of making the assessment, but if the same are not so let at rack rent, then at the rack rent at which the same are worth to be let by the year; which rule shall be construed to extend to all lands, tenements, and hereditaments or heritages, capable of actual occupation, of whatever nature, and for whatever purpose occupied or enjoyed, and of whatever value, except the properties mentioned in No. II. and No. III. of this Schedule.

"No. III.

"RULES FOR ESTIMATING THE LANDS, TENEMENTS, HEREDITAMENTS OR HERITAGES HEREINAFTER MENTIONED WHICH ARE NOT TO BE CHARGED ACCORDING TO THE PRECEDING GENERAL RULE.

"The annual value of all the properties hereinafter described shall be understood to be the full amount for one year, or the average amount for one year, of the profits received therefrom within the respective times herein limited.

* * * * *

"Third.—Of ironworks, gasworks, salt springs or works, alum mines or works, waterworks, streams of water, canals, inland navigations, docks, drains, and levels, fishings, rights of markets and fairs, tolls, railways and other ways, bridges, ferries, and other concerns of the like nature, from or arising out of any lands, tenements, hereditaments, or heritages, on the profits of the year preceding :

"The duty in each of the last three rules to be charged "on the person, corporation, company or society of per- "sons, whether corporate or not corporate, carrying on "the concern, or on their respective agents, treasurers, "or other officers having the direction or management "thereof, or being in the receipt of the profits thereof, "on the amount of the produce or value thereof, and "before paying, rendering, or distributing the produce "or the value, either between the different persons or "members of the corporation, company, or society en- "gaged in the concern, or to the owner of the soil or "property or to any creditor or other person whatever "having a claim on or out of the said profits; and all "such persons, corporations, companies and societies "respectively shall allow out of such produce or value "a proportionate deduction of the duty so charged, and "the said charge shall be made on the said profits ex- "clusively of any lands used or occupied in or about "the concern . . . . . ."

No. IV.

"RULES AND REGULATIONS RESPECTING THE SAID DUTIES.

"First.—All properties chargeable to the duties in "Schedule (A) shall be charged in the parish or place "where the same are situate, and not elsewhere, except "as hereinafter is accepted:

"Provided that the profits arising from canals, inland "navigations, streams of water, drains, or levels, or from "any railways or other roads or ways of a public nature, "and belonging to or vested in any company of pro- "prietors or trustees, whether corporate or not corporate, "may be stated in one account, and charged in the city, "town, or place at or nearest to the place where the "general accounts of such concern shall have been "usually made up . . . . ."

Section 63.

No. IX.

"RULES FOR CHARGING THE SAID DUTIES UNDER SCHEDULES (A) AND (B).

"First. The said duties, except where other pro- "visions are made as aforesaid for estimating parti- "cular properties, shall be estimated according to the "general rule contained in Schedule (A), and shall be "charged on and paid by the occupier for the time "being, his executors, administrators and assigns;

"Second.—Every person having the use of any lands "or tenements shall be taken and considered, for the "purposes of this Act, as the occupier of such lands or "tenements:"

4. By s. 8 of the Revenue Act, 1866 (29 & 30 Vict. cap. 36) it is enacted as follows :—

> "The several and respective concerns described in "No. III. of Schedule (A) of the said Act passed in "the fifth and sixth years of Her Majesty's reign, chap- "ter thirty-five, shall be charged and assessed to the "duties hereby granted in the manner in the said "No. III. mentioned, according to the rules prescribed "by Schedule (D) of the said Act, so far as such Rules "are consistent with the said No. III. . . . ."

5. The Appellants are the governing body of a united drainage district consisting of the Urban District of Rhondda (formerly Ystradyfodwg) and the Urban District of Pontypridd, constituted by a Provisional Order of the Local Government Board dated 4th June, 1885, and duly confirmed by the Local Government Board's Provisional Orders Confirmation (No. 7) Act, 1885, for the purpose of carrying into effect a system of sewerage for the said Urban Districts.

Art. 19 of the said Order contains the following provision :—

> "For the purpose of this Order all sewers made by "the Joint Board shall vest in and be under the control "of the Joint Board." . . .

6. Acting pursuant to the powers thus conferred upon them the Appellants have constructed and they now maintain a sewer or sewage carrier, together with such plant as is necessary. The total length of the sewer is about 17¼ miles, of which 2½ miles are in the parish of Rumney.

7. The portion of the sewer situated in the parish of Rumney forms the subject matter of the present assessment. The construction of this part of the sewer is as follows :—

182 yards of iron pipes are carried on concrete arches above the surface of the ground, 1,021 yards of pipes are laid below the surface and ordinary level of the ground, 1,890 yards are carried below the surface of the ground but covered by an artificial embankment of varying height which rises above the level of the adjacent land, and 1,246 yards of pipes (hereinafter called the outfall) pass partly over and partly beneath the surface of the foreshore of the Bristol Channel. In connection with the outfall certain works have been erected by the Appellants.

8. In order to enable them to make and to maintain the sewer, the Appellants, in accordance with the provisions of the Public Health Act, 1875, borrowed the sum of £156,000 from the Public Works Loans Commissioners to be repaid with interest at the rate of 3½ per cent. by equal annual payments extending over thirty years. The proportion of the annual payment repayable in respect of the part of the sewer in question amounted to £1,210. The annual payments

are, except as in paragraph 9 of this Case mentioned, raised by means of rates levied by the Appellants.

9. The Appellants have, under powers conferred upon them by Statute, permitted sewers of three other local authorities to communicate with their sewers upon payment by the said authorities to the Appellants of varying sums. Details of the sums paid are given in the Case stated, but it is agreed that the sums received are not in themselves large enough to repay the whole of the annual instalment of the loan referred to in paragraph 8 of this Case.

10. The part of the sewer which is in question, except the portion over the foreshore, runs through or over agricultural land. The Appellants are assessed to the relief of the poor in respect of this part of the sewer at £800 gross and £700 rateable value.

11. The Case* stated by the Commissioners is printed in the Appendix. Reference is made in the Case to the Report of the case of *Ystradyfodwg and Pontypridd Main Sewerage Board* v. *The Assessment Committee of the Newport Union* reported in [1901] 1 Q.B. 406, and it was agreed between the Appellants and the Respondent that the facts and statements set forth in that report should be taken as correct and binding on the parties.

12. The Case was argued before Walton, J., on the 4th December, 1905, and on the 20th December, 1905, the learned Judge gave judgment in favour of the Respondent. He held that the interest of the Appellants in the sewer was not a mere easement but a property in the land, and a hereditament capable of actual occupation and occupied by the Appellants, and that the Appellants were rightly assessed under Rule No. I, in s. 60, Schedule (A), of the Act of 1842. The judgment* of Walton, J., is printed in the Appendix.

13. From this decision the Appellants appealed to the Court of Appeal, and the Court on the 28th November, 1906, gave judgment dismissing the Appeal. Collins, M.R. held that it was settled by authority that a sewer such as the one in question was a hereditament capable of actual occupation, and that No. III. in Schedule (A) s. 60 had reference to trading concerns and did not apply to this case which fell under the general rule No. 1. Cozens-Hardy, L.J. was of opinion that the Appellants had acquired the sewer in fee subject to a defeasance and were in actual occupation of it, and he agreed with Collins, M.R. in thinking that No. III. had reference to trading concerns. Farwell, L.J., delivered judgment agreeing on both points. The judgments* delivered by the Court of Appeal are printed in the Appendix.

* Omitted from the present print.

14. The Respondent submits that the Order appealed from is right and should be affirmed for the following among other

REASONS :—

1. Because the sewer in question is a hereditament within the meaning of s. 2 Schedule (A) of the Income Tax Act, 1853.

2. Because the said hereditament is capable of actual occupation and is in fact occupied by the Appellants.

3. Because the Appellants were rightly assessed to Income Tax in respect of their occupation of the said hereditament.

4. Because the assessment on the Appellants was rightly made under the General Rule No. I. in s. 60 Schedule (A) of the Income Tax Act, 1842.

5. Because this sewer does not fall within any of the properties specifically set out in No. III. in Schedule (A) s. 60 of the Income Tax Act, 1842.

6. Because the said No. III. has reference only to concerns carried on for purposes of profit.

7. Because the decision arrived at by the Commissioners and the Judgments of Walton, J., and of the Court of Appeal are right.

JOHN L. WALTON.
R. B. FINLAY.
WILLIAM FINLAY.

JUDGMENT.

Earl of Halsbury.—My Lords, I think in this case the judgment of the Court of Appeal ought to be affirmed.

It appears to me that there is a mixture, not to say a confusion of thought, in using the word "profits" in a sense which is not consistent with the mode in which it is used in the Statutes relating to Income Tax. It may be—I do not propose to controvert the idea—that in an ordinary sense there might be some difficulty in saying what are "profits," but really it seems to me every part of the argument here has been covered by authority. In the first place it is clear there is an occupation, and in the next place it is clear there is a beneficial occupation.

The alternative suggested, namely, that this is one of those excepted undertakings (the only colour for which is that the word "drain" is used in the excepting section) is to my mind untenable. The word "drain" used by itself might perhaps bear the meaning that it is suggested by the Appellants it ought to bear, but when you look at the mode

in which the word "drain" is introduced and the other words with which it is associated, you see that its meaning depends upon a very familiar canon of construction, that where you have a word which may have a general meaning wider than that which was intended by the Legislature, when you find it associated with other words which show the category within which it is to come, it is cut down and overriden according to the general proposition, which is familiarly described as the *ejusdem generis* principle. Accordingly, the word "drain" used in that sense is not included in the excepted businesses which are described in the section so as to make the word "drain" applicable to the present question. Then if it is not, the rest seems to me to be perfectly clear; because you have here a beneficial occupation and by the Rules applicable to Schedule A you have to take a hypothetical tenant, and to calculate the rent which the hypothetical tenant would give if he were called upon to get rid of this sewage, ascertaining it by the mode by which that is to be calculated and by the machinery by which the Legislature has supposed that somewhat difficult problem is to be solved.

My Lords, I really do not feel it necessary to do more than say that I concur with the Judgments that have been delivered on this subject by every judicial person before whom it has come. I entirely concur with them and I cannot forbear pointing out that the Attorney-General in the course of exactly seven minutes appeared to me to dispose of the whole day's argument with which we had been entertained. I must say I congratulate him and I am endeavouring to emulate his success by the length of the Judgment which I am now delivering.

Lord James of Hereford.—My Lords, I concur.

Lord Robertson.—My Lords, I agree that the Judgment is right, and I think the controverted subjects have been accurately and adequately discussed in the Court of Appeal.

Lord Atkinson.—My Lords, I concur.

QUESTIONS PUT.

That the Order appealed from be reversed.

The Not Contents have it.

That this Appeal be dismissed with costs.

The Contents have it.