



RA/87/2006

LANDS TRIBUNAL ACT 1949

RATING – plant and machinery – sludge tank scrapers in sewage disposal works – whether rateable – principal beam element held not to be support or bridge or walkway and not a structure or in the nature of a structure – handrail attached to beam held not to be structure or in the nature of a structure – appeal allowed – Valuation for Rating (Plant and Machinery) (England) Regulations 2000 reg 2, Sch Class 4 Table 3

IN THE MATTER OF A NOTICE OF APPEAL

BETWEEN

THAMES WATER plc

Appellant

and

**PETER HANDCOCK
(Valuation Officer)**

Respondent

**Re: Sewage Disposal Works
Great Shefford
Hungerford
Berkshire
RG17 7DU**

Before: The President and A J Trott FRICS

**Sitting at Procession House, 110 New Bridge Street, London EC4V 6JL
on 18 to 19 February 2008**

Jennifer Wigley, instructed by Charles Russell LLP, for the Appellant
Timothy Morshead, instructed by HM Revenue & Customs Solicitor's office, for the respondent

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The following cases are referred to in this decision:

Cardiff Rating Authority and Cardiff Assessment Committee v Guest Keen Baldwin's Iron and Steel Co Limited [1949] 1 KB 385
Jones (VO) v Eastern Valley (Monmouthshire) Joint Sewerage Board (No.2) (1960) 6 RRC 387
BP Refinery (Kent) Limited v Walker (VO) [1957] 2 QB 305
Monsanto plc v Farris (VO) [1998] RA 217
Shell-Mex and BP Limited v Holyoak (VO) [1959] 1 WLR 188
Manchester Marine Limited v Duckworth (VO) [1973] 1 WLR 1431
Chesterfield Tube Co Ltd v Thomas (VO) [1970] RA 471
Whitfield (VO) v National Transcommunications Ltd [1995] RA 214

DECISION

Introduction

1. This is an appeal by the ratepayer, Thames Water plc, against a decision of the Berkshire Valuation Tribunal dated 14 November 2006 (re-issued as corrected on or about 11 December 2006) determining the assessment in the 2005 local non-domestic rating list of the Sewage Disposal Works, Great Shefford, Hungerford, Berkshire RG17 7DU at a rateable value of £57,000. The material day and the effective date for the purposes of the entry are 1 April 2005.

2. The single disputed issue between the parties is whether four rotating half-bridge scrapers (two in primary sedimentation tanks and two in humus tanks) are rateable under the Valuation for Rating (Plant and Machinery) (England) Regulations 2000. The VT determined this issue in the respondent valuation officer's favour. The appellant argues that they are not rateable and that accordingly the rateable value of the hereditament should be reduced from £57,000 to £56,500. These values are agreed between the parties as the correct alternative values depending on the determination of the disputed issue.

3. Although the amount of rateable value that depends upon the issue in dispute is small, we were told that the issue is of wide significance because of the existence of similar items of plant at sewage treatment works throughout England and Wales and that our decision would therefore be regarded as providing general guidance.

4. Under the Regulations each of the items of plant in issue will be assumed to be part of the hereditament, and so rateable, if it belongs to any of the classes specified in the Schedule to the Regulations, provided that it is, or is in the nature of, a building or structure. The Schedule contains tables that set out lists of the items within the classes of rateable plant. There are thus two potential primary issues in cases of this sort: whether the item under consideration is an item listed in one of the tables and whether it is, or is in the nature of, a building or structure. The appellant originally contended only that the scrapers in dispute were not, and were not in the nature of, buildings and structures, but in the course of the hearing Miss Jennifer Wigley sought leave to amend the appellant's statement of case in order to contend also that the scrapers were not items listed in any of the tables. In view of the fact that the appeal was in effect being regarded as a test case, Mr Timothy Morshead for the VO did not oppose this, and the amendment was accordingly made with our leave.

5. During the hearing reference was made to the different types of scraper that are installed at sewage treatment works and to the ways in which these have been treated in respect of their rateability. In order that we might have a fuller picture we asked that the parties should produce an agreed statement relating to this and that we should be taken to view representative examples of the different types of scraper. We made accompanied site inspections of four sewage treatment works on 7 April 2008. These were at Chieveley (scrapers similar in design and type to those at the appeal site), Reading (large circular tanks each with a scraper spanning the diameter), Slough (two types of scraper) and Rickmansworth (large rectangular tanks with

scrapers that move from end to end, and circular tanks, some with half-bridge scrapers, some with pole scrapers). In addition to the further statement we also received and accepted supplementary expert reports, and the parties subsequently agreed that it was not necessary to re-open the hearing in order that these should be considered or further representations made upon them. Final submissions were received on 21 and 29 July 2008.

Facts

6. The sewage disposal works at Great Shefford were constructed in 1969. There are two primary sedimentation tanks (PST). Their function is to allow sludge to settle to the bottom of the tank from where it is removed, allowing the treated liquid to flow out of the tank over a weir around the perimeter wall. The PSTs are circular concrete tanks, each having a volume of 364 cubic metres and a base that slopes towards a concrete sump in the centre. In the centre of the tank is a steel tripod which is connected to the sump by a base plate. The purpose of the tripod is to support, by means of a moving thrust bearing, a rotating half-bridge scraper. This rotates around the central bearing and is supported at the outer edge of the tank on wheels that are driven by an attached motor. A diffuser drum, the primary purpose of which is to prevent turbulence in the tank from the incoming effluent, surrounds the top of the tripod.

7. Each rotating half-bridge scraper weighs approximately 600 kg and is 6.82 metres long and 0.46 metres wide, and its principal structural element is a beam or girder made from six millimetre thick metal plate in an inverted “U” shape with cross bracing welded to the underside. There are handrails to three sides, the supports for which are bolted to the main beam, as are metal kicker plates. The top of the inverted “U” beam is used as a walkway, when the scraper is stationary, to provide access to the central thrust bearing and a set of slip rings that supply electricity to power the drive motor at the tank wall end of the bridge.

8. Three tubular steel scaffolding poles are bolted to the beam. Scraper boards are attached to the bottom of each pole in an echelon pattern. Each scraper board has a flexible bottom edge and squeegee, and as the beam rotates these remove the sludge that has collected at the bottom of the tank by scraping it into the central sump from where it is removed by de-sludge pumps. A scum board, which removes scum and floating debris from the surface of the tank, is attached to the underside of the beam.

9. The effluent passes from the PSTs into three percolating bacteria filter beds from where it goes into two circular concrete humus tanks to settle out any particles that may still be in the effluent. The humus tanks have a slightly larger volume than the PSTs (367 cu m) but are otherwise of identical construction with the same specification.

10. Each rotating half-bridge scraper at Great Shefford SDW was fabricated off-site. The handrails and walkways were attached at the factory and the whole fabrication was then transported to the site by road where it was lowered onto the thrust bearing and outer wall by crane. The poles, scum board and scraper boards were attached to the beam after it had been placed in position.

11. The parties are in agreement that the scraper attachments (poles, scraper boards, squeegees and scum boards) and the diffuser drum are not rateable and that the central tripod is rateable.

12. The other types of scraper to which our attention was drawn are principally four. Firstly there are very large circular tanks (at Reading they are 34 m across) each with a scraper beam that spans the whole of the diameter. There is a meshed metal walkway with handrails on one half of the beam giving access to the centre of the tank. A second type of scraper spans three-quarters of a circular tank (with the central half of the tank base thus being scraped twice in every revolution of the beam). Here again there is a walkway with handrails up to the centre of the tank but not beyond. Thirdly there are smaller circular tanks with steeply sloping bases. Here the scraper consists of a pole with suspended chains across the radius of the tank. The fourth type of scraper is one that moves along the length of a large rectangular tank. Those that we saw at Rickmansworth each consisted of a substantial structural member with walkway and handrails on top and retractable scraper blades below. It appears that valuation officers have sought to treat the first two types of scraper as rateable plant, but not the last two.

The statutory provisions

13. Under paragraph 2(8) of Schedule 6 to the Local Government Finance Act 1988 the Secretary of State may make regulations providing for prescribed assumptions to be made for the purpose of the valuation of any hereditament of a prescribed class. Regulation 2 of the Valuation for Rating (Plant and Machinery) (England) Regulations 2000, made under this power, provides that:

- “(a) in relation to a hereditament in or on which there is plant or machinery which belongs to any of the classes set out in the Schedule to these Regulations, the prescribed assumptions are that:
 - (i) any such plant or machinery is part of the hereditament; and
 - (ii) the value of any other plant and machinery has no effect on the rent to be estimated as required by paragraph 2(1) [of Schedule 6 to the Act]”.

14. The Schedule to the Regulations sets out the classes of plant and machinery to be assumed to be part of the hereditament. Class 4 consists of:

“The items specified in Tables 3 and 4 below, except –

- (a) any such item which is not, and is not in the nature of, a building or structure;
- (b) any part of any such item which does not form an integral part of such item as a building or structure or as being in the nature of a building or structure;
- (c) so much of any refractory or other lining forming part of any plant or machinery as is customarily renewed by reason of normal use at intervals of less than fifty weeks;

- (d) any item in Table 4 the total cubic capacity of which (measured externally and excluding foundations, settings, supports and anything which is not an integral part of the item) does not exceed four hundred cubic metres and which is readily capable of being moved from one site and re-erected in its original state on another without the substantial demolition of any surrounding structure.”

15. In a list of items Table 3 includes the following items that may be of relevance for present purposes:

“... Bridges, tunnels, tunnel linings, tunnel supports and viaducts....

Foundations, settings, fixed gantries, supports, walkways, stairways, handrails, catwalks, stages, staithes and platforms...”

16. The present Plant and Machinery Regulations are the latest in a line of statutory provisions providing in the same manner for the treatment of specified items of plant and machinery as part of the hereditament. The earliest specification was contained in the Plant and Machinery (Valuation for Rating) Order 1927. The preparation of the 1927 Order was the result of a report (the Shortt Report of 1926), and the subsequent changes that were made to Class 4 have been the result of other reports, the Ritson Report of 1958, the McNairn Report of 1972, and the Wood Report of 1993.

The Valuation Tribunal decision

17. In its decision the valuation tribunal said:

“The only issue for the Tribunal to consider was whether or not the rotating bridge/walkway are rateable.

The assessment before the Tribunal relates to the 2005 Rating List and the Tribunal concludes that it must have regard to the legislation that currently applies. It has therefore referred to Class 4 of the Valuation for Rating (Plant and Machinery) (England) Regulations 2000. In considering this legislation the Tribunal was satisfied that bridges/walkways were named items.

However, whilst they were named items the Tribunal had to consider whether or not these items were in the nature of a building or structure. The Tribunal agreed that the bridge/walkway was not a building and therefore concentrated on the issue of structure.

It has looked at the manufacturers own description where they describe the items as structures. Furthermore, in considering the four factors that has emerged from other decisions, it considered that due to the construction, size and weight, the degree of attachment to land, buildings or other structures and its degree of permanence, the bridges/walkways were of the nature of a structure. Whilst it was constructed off site, the size and weight was quite considerable and specific to the settlement tank upon

which it was to be placed. It was rested on a central pivot, a structure in its own right, and whilst it may be removed for repair and maintenance the evidence of the Valuation Officer is that the items are normally in place for a number of years and in some instances even after the decommissioning of the settlement tank itself.

The Tribunal was therefore satisfied that the rotating bridge/walkway was a structure which was named within class 4 of the Valuation for Rating (Plant and Machinery) (England) Regulations 2000 and accordingly should be rated.”

The case for the appellant

18. Evidence for the appellant was given by Christopher James Biddle FRICS, Director and Head of the Rating Department at the Birmingham office of Lambert Smith Hampton. Mr Biddle said that he had advised eight out of the ten water companies on rating matters since 1974 and that in all the many cases that he had had to deal with the rotating gantries (as he described them) were always treated as non-rateable plant up to 1 April 2000. In his opinion they, together with the handrails and scraper mechanisms, were not rateable under Class 4 because they were not, and were not in the nature of, a building or structure and, when described and named accurately according to their primary function, they were not among the items listed in the table. He emphasised that while the technical literature referred to a rotating half-*bridge* scraper it was simply a beam that rotated around the tank as part of the scraping process. Enabling pedestrian access to the central thrust bearing was only a secondary function of the beam.

19. Mr Biddle said that he relied upon the Court of Appeal decision in *Cardiff Rating Authority and Cardiff Assessment Committee v Guest Keen Baldwin's Iron and Steel Co. Limited* [1949] 1 KB 385 for guidance as to the meaning of the expression “is, or is in the nature of, a building or structure”. In the light of this he said that the scrapers were not within the expression. They were not of substantial size. They were simple beams weighing 0.6 tonnes with handrails bolted on. They were not complex constructions. Each beam rested on the central thrust bearing at one end and the wheels running on the outer wall at the other end. They were not connected to the tanks. The beams were lifted by a crane to enable replacement of the thrust bearings which had a design life of six years. The beams were not built in situ but were transported to the appeal site by road.

20. He also relied upon *Jones (VO) v Eastern Valley (Monmouthshire) Joint Sewerage Board (No.2)* (1960) 6 RRC 387, in which the Tribunal (Erskine Simes QC) held that the scrapers of the settlement tanks at Llangattock SDW had been properly excluded from rateability by the local valuation court. Mr Biddle said that the agreed description of the scrapers of the settlement tanks in that case was similar to that of the current appeal and that the expression “scrapers” included the bridge to which the scraper boards and squeegees were attached, the total weight of which was 1½ tons. The bridge radius was 35 feet (10.7m). The Tribunal determined that the scraper was not rateable because it played no part in the treatment of the sewage for which the tank was designed. Moreover, it found on the facts that the scraper was not, nor was it in the nature of, a building or structure. Mr Biddle said that the facts of *Jones*

were the same as those in the current appeal except that in *Jones* the scraper (bridge and attachments) was longer, wider and heavier.

21. In cross-examination Mr Biddle accepted that the rotating half-bridge scraper was properly described as a bridge, that it acted as a support and that the walkway and handrail were listed items in Table 3 of Class 4 in the 2000 Regulations. He accepted that he had described the gantry in his expert report as a structure but he said that he had used this description demotically to reflect the fact that it was an object that had been constructed. He agreed that there was no specific reference in *Jones* to the bridge being used as a walkway. Mr Biddle denied that he had failed to use *Cardiff* to gain insight as to why there was a structural test for exceptions to Class 4. He had taken guidance from the tests laid down in that decision and had applied them to the facts of this appeal. He acknowledged that he had not said what it was about fabrication of the bridge off-site that meant it lacked the quality of a structure. Nor did he say at what point a bridge should be considered too small to have structural qualities. He did not explain how the attachment and permanence tests referred to in *Cardiff* helped to isolate such structural qualities.

22. In his second supplementary expert report submitted on 4 March 2008, Mr Biddle expressed the view that the rotating half-bridge scrapers were not listed as items in Tables 3 or 4 to Class 4 of the Schedule to the 2000 Regulations. He explained that whereas elements of the rotating half-bridge scraper were items contained in the list in Table 3, such as bridges, walkways, handrails and supports, as he had accepted in cross-examination, the whole unit was designed and built as a scraper and any other use that was made of it was incidental and secondary. He agreed that personnel used the beam or gantry to cross from the edge of the tank to the central tripod for the purpose of maintenance and repair but this use of it as a bridge was a secondary one. Similarly, it was used as a walkway, but this was incidental to its main function. Health and safety requirements dictated the use of handrails. These were separately itemised in Table 3. But to be rateable they would have to be, or be in the nature of, a building or structure. They did not satisfy this criterion because they were not attached to the hereditament in any way, being bolted to the scraper unit which was a non-rateable item itself, and one which did not form part of, nor was attached to, the hereditament.

23. The beam/gantry formed part of a single scraper unit that was supported by the edge of the tank and the central tripod. There were other designs of scraper that did not incorporate the bridge or walkway, such as rotating poles and rectangular tanks, and these had not been rated. If the respondent considered the gantry to be a support then that description would also have to apply to other types of scraper, potentially making them all rateable (albeit subject to the structure/nature of a structure test). In Mr Biddle's experience they had not been treated as rateable.

24. Ms Wigley submitted that the physical and functional characteristics of the rotating bridge part of the plant under consideration in *Jones* was identical in all material respects to the rotating half-bridge scraper in the current appeal. She said that the respondent had erred by interpreting the Tribunal's decision in *Jones* as having applied a building/structure test to the scrapers alone and not to the rotating bridge as well. The only sensible reading of that decision

was that the Tribunal was referring to “scrapers” as shorthand for both the scrapers and the moving bridge together.

25. Ms Wigley referred to *Cardiff* and to *BP Refinery (Kent) Limited v Walker (VO)* [1957] 2 QB 305, which considered it, and to the more recent Lands Tribunal decision in *Monsanto plc v Farris (VO)* [1998] RA 217. She said that the principles from the case law could be distilled into four tests which she summarised as: the way the item is constructed; its size and weight; its degree of attachment to the land or other buildings or structures; and its degree of permanence. None of the tests were conclusive in themselves and they required to be considered collectively.

26. Applying these tests to the present appeal Ms Wigley argued that the rotating half-bridge scraper was not a structure or building, nor in the nature of a structure or building. It was a simple construction with few component parts; manufactured off-site and delivered as a single unit; of modest size and weight; not attached to the tank or the land and rotated whilst in place; removed without being dismantled when repairs were required to the central thrust bearing; akin to the condensers considered by Lord Denning in *Kent*; and functioned primarily as a scraper rather than as a bridge or walkway. The scraper should be considered as a whole and not as a collection of parts some of which, if considered separately, were listed items. *Jones* was correctly decided and should be followed.

27. In the appellant’s final submissions, it was noted that the whole item of plant was referred to as a scraper and that it was common ground that its primary purpose was to provide for the scraping function. Any use of the plant as a bridge or walkway was secondary, and such terms did not accurately communicate the nature of the plant. Nor could the part of the plant that spanned the tank be accurately described as a support. It was not a support but an integral part of the scraper.

28. Furthermore, as was clear from the Valuation Office Agency’s guidance, only those scraper arms that had a secondary function as a bridge or walkway had been treated as rateable, and then only on the basis that it was a walkway and not as a support. It was telling also that in the *Jones* case the VO had not sought to argue that any part of the scraper was a support.

The case for the respondent

29. Evidence for the respondent was given by Ronald Allan Heeley MRICS, a Chartered Quantity Surveyor with the Valuation Office Agency, and David John Raley FRICS, the Plant and Machinery Valuer (Rating) for the VOA since 1986. Mr Heeley described the construction and function of the rotating half-bridge scraper. He disagreed with Mr Biddle’s description of it as a rotating gantry. He preferred the term bridge/walkway that was used in the document “Water Industry Mechanical and Electrical Specification 2.01”, an exhibit attached to Mr Biddle’s expert report. Mr Heeley considered that the bridge/walkway was properly described as a structure because it was fabricated from metal plate with cross supports welded to the underside and handrails and other parts bolted or welded to it. He did not think that its size was relevant to whether it was correctly called a structure. Mr Heeley said that it was more

usual for the bridge/walkway to be made from two parallel metal beams that supported an open grid metal walkway between them. It was rarely constructed as a single beam.

30. Mr Raley said that the rotating half-bridge scraper comprised a number of items that were specified in Table 3 of Class 4 of the Schedule to the 2000 Regulations, namely bridges, supports, walkways and handrails. That being so he then considered whether the scraper was a structure or in the nature of a structure. He relied upon the decisions in *Cardiff* and *Kent* for guidance and concluded, as did the appellant, that in order to determine whether an item was a structure it was necessary to consider the four tests referred to in paragraph 25 above.

31. He also considered the question in the historical context of the four reports referred to in paragraph 16. Looking at the Shortt Report of 1926 Mr Raley noted that it had introduced the concept that items should only be specified as rateable if they were, or were in the nature of, a building or structure. The Shortt Committee introduced this qualification due to the semantic difficulties caused by the use of particular words in the itemised list. It used the example of a “still” which it noted would necessarily be included in the rateable class when used for an industrial technical process carried out on a large scale but which might also refer to a small glass bottle on a chemist’s bench. Mr Raley interpreted this passage as directing the rating surveyor to consider whether an item was of sufficient presence to be a structure. He concluded that not all items listed in Class 4 were structures but that they were, in certain circumstances, capable of being so. In his opinion the rotating half-bridge scraper was properly so described. He thought that neither a walkway nor a bridge could be imagined as anything other than a structure. It was a matter of fact. He supported this conclusion by reference to *Monsanto* in which the Tribunal found that a staircase was a structure and which Mr Raley considered was analogous to the facts of this appeal.

32. He interpreted the reference to scrapers in *Jones* as excluding the rotating bridge. The Tribunal had a clear distinction in mind as to what was a scraper assembly and mechanism and what was a bridge/walkway. Because the Tribunal in *Jones* did not rule on the rateability of bridges in this context he thought the case had no relevance to the present appeal. He also rejected Mr Biddle’s description of the bridge/walkway as either a beam or a rotating gantry. Applying the four tests set down in the relevant case law in the historical context of the development of the rating of plant and machinery, Mr Raley concluded that the bridge/walkway was rateable.

33. In his second supplementary expert report dated 11 March 2008, Mr Raley stated that the VO had arrived at a total cost for the whole of the rotating half-bridge scraper by adding up the four rateable parts as listed in Table 3 of Class 4. He now described the rotating arm as a “mainframe” rather than a bridge/walkway and said that it was rateable as a support. He acknowledged that such mainframe supports are also found on rectangular settlement tanks, together with walkways and handrails. These have not been rated although Mr Raley considered that they should have been.

34. Mr Raley explained that the mainframe of the rotating half-bridge scraper was an example of one of the various types of supporting structure to be found at a SDW. Agents

acting on behalf of water companies had accepted many of them as being rateable as supports under Table 3 of Class 4. In the present appeal the appellant had included in its valuation a 1.8 sq m steel platform and ladder to the percolating bacterial filter bed together with associated steel work weighing approximately 0.2 tonnes, i.e. one third of the weight of the rotating half-bridge scraper. The structural support frame of such a scraper, however it was constructed, was designed to support a walkway, scraper retaining poles, the central diffuser drum and the upper scum board retainers. Without this structure the tanks could not operate as designed. Mr Raley described the mainframe as the key element to providing a settlement tank facility. He was of the opinion that it was rateable as a support, as was the central tripod. He accepted that the primary function of the mainframe was to support the scrapers rather than to act as a bridge. The walkways and handrails were structures that were itemised in Table 3 of Class 4 and were also therefore rateable.

35. Mr Morshead submitted that the dicta in *Cardiff* and the other cases needed to be considered in their historical context. The McNairn Report in 1972 proposed separate size-related criteria for some, but not all, items of plant and machinery. *Cardiff* and *Kent* were decided at a time when the legislation did not distinguish between items according to their size and the requirement for an object to be of “substantial size” in order to be a structure was just one of the “considerations” which may be “proper to be borne in mind” (per Lord Evershed MR in *Kent* at 319). It was difficult to see how, on a fair interpretation of the 1974 Regulations (that followed McNairn) and subsequently, scale could be brought into account in Table 3 of Class 4. Mr Morshead argued that the structural distinction was there for the purposes of deciding whether on a fair and proper view the item had lost its character as a chattel or a “tool of the trade” and should instead be viewed as part of the hereditament. That decision did not depend upon whether an object exceeded an arbitrary weight. It depended upon whether it was a thing of substance. On any view a support weighing 600kg had sufficient “substance” to qualify as a structure or in the nature of a structure. Mr Biddle had accepted in cross-examination that the 400kg tripod was rateable as a separate named item in Table 3 (a support) and not because it was an integral part of the tank. The tripod had sufficient substance to constitute a support and so it would be odd if the heavier and larger support beam did not. Mr Biddle had accepted that a steel platform, ladder and handrail, the largest of which weighed 200kg, were sufficiently substantial to be structures or in the nature of structures.

36. Mr Morshead submitted that the question of substantiality should be considered by reference to the particular item under consideration. If it was named in Table 4 of Class 4, then it would fail unless it met the stipulated size condition. But if it was named in Table 3 of Class 4, no size condition was stipulated. That indicated that the Parliamentary intention was to treat as rateable a wider range of items (in terms of absolute scale) in Table 3. The question should be whether the item was so small that it partook more of the quality of a chattel, or a “tool of the trade”, than of plant which might properly be regarded as part of the hereditament. Such an approach, it was submitted, would not improperly depart from the *Cardiff* line of cases but would enable the legislative intention, as disclosed by the successive versions of the Regulations, to be respected.

37. There was no requirement of structural complexity. But in any event whilst the rotating half-bridge scraper was not especially complex, it was designed to a standard so as to ensure

fitness for purpose and to enable the various loads that were imposed upon it to be borne safely. It was not simply a beam. It was a compound object consisting of structures welded and bolted together with careful strengthening.

38. Both Ritson (1958) and McNairn recommended excluding moving items from rateability. McNairn's recommendation was adopted but was subsequently reversed following the Wood Report (1993). Consequently Denning LJ's view in *Cardiff* that a thing rotating around a "pivot" (with the limited degree of attachment which that implied) could be rateable remained valid. Mr Morshead submitted that any named item of plant was liable to be rated whether or not it rotated. Rotation made no difference provided the item in question was not described in the 2000 Regulations as excluding moving elements (such as fixed gantries) and it was a structure or in the nature of a structure.

39. It was not possible to argue that the rotating half-bridge scraper could be taken out of rating by describing the collective object (including the elements of beam, walkway, handrails, scraper supports, squeegees, etc.) simply as a "scraper" and thereby remove it from the list of items in Table 3 of Class 4. Such an outcome would be inconsistent with *Shell-Mex and BP Limited v Holyoak (VO)* [1959] 1 WLR 188 where Lord Reid said at 198:

"The Order requires one to pick out of the whole installation of plant and machinery those bits which correspond to any of the items mentioned in the list irrespective of whether or not they require to be associated with other things in order to produce any useful result. Then the next step is to consider whether each bit of plant so picked out is or is not, taken by itself, a building or structure or in the nature of a building or structure."

40. *Shell-Mex* considered the 1927 Order which applied to "parts" of a plant or a combination of plant and machinery. The 2000 Regulations applied to "items". But so did the 1960 Regulations and these were considered in *Manchester Marine Limited v Duckworth (VO)* [1973] 1 WLR 1431 where at 1435 Denning LJ cited *Shell-Mex*. Consequently the change of wording from "parts" to "items" did not affect the nature of the inquiry. It was common ground that the elements in question, if they were not a bridge, were (a) a support, (b) a walkway and (c) a handrail. Each of these was a named item in Table 3. None of the items was an integral part of an un-listed item of plant. The scrapers themselves were not named but were not integral to the support, merely being attached to it. The named items were themselves structures or in the nature of structures.

41. Mr Morshead argued that all the evidence pointed towards the bridge being rateable, however it was characterised. He then considered whether the decision in *Jones* compelled a different conclusion. In that case the VO had argued that the scraper (however it was described) was an integral part of the tank. He did not seek to treat separately the different elements of analysis and apparently did not cite *Shell-Mex*. The Tribunal in *Jones* had treated the bridge and the scrapers separately in order to help isolate how, and to what extent, the scrapers could be said to be attached to the tank. The bridge was examined because it was the means by which the VO contended that the scrapers were sufficiently attached to the tank to form an integral part of it. The Tribunal's reference in *Jones* to the scrapers not being a

structure or in the nature of a structure was probably not referring to the bridge which was the means by which they were said by the VO to integrate with the tank. *Jones* was decided on the facts and was not reasoned. It was authority for no wider proposition than that the scrapers themselves (whether or not treated as one with the bridge) did not form an integral part of the tank. That was not disputed in this appeal. But *Jones* did not settle the question of whether a half-bridge rotating scraper was rateable.

Conclusions

42. Whether each of the items of plant that the VO contends to be rateable is indeed rateable depends on the answers to two questions: whether it falls within the list of items specified in Table 3 of the Regulations; and, if it does, whether it is, or is in the nature of, a building or structure. We will consider these questions in turn.

43. On the first question, there are in our view three matters of approach that must be borne in mind. The first is that, as Lord Reid put it in the passage already quoted in *Shell-Mex and BP Ltd v Holyoak (VO)* ([1959] 1 WLR 188 at 198): “the order requires one to pick out of the whole installation of plant and machinery those bits which correspond to any of the items mentioned in the list irrespective of whether or not they require to be associated with other things in order to produce any useful result.”

44. Secondly, the purpose of the tables in the Regulations is to set out a list of items that can be readily recognised by those engaged in the process of valuation for rating. As it was put in the Wood Report, which led to the present version of Class 4:

“8.23 ... All those who gave evidence to us, from every part of the United Kingdom, were unanimously of the view that the style of the Regulations in force in England and Wales since 1925 should be followed everywhere. There should be an exhaustive statutory list of items of plant and machinery which are rated. If an item is on the list, it falls to be assessed; if it is not, it is disregarded. We wholeheartedly agree.”

It follows from this that the approach to determining whether the particular item of plant under consideration is one of those listed must be straightforward and realistic. It would be wrong to strain the application of the term used to describe an item so as to fit the item under consideration within it. The meaning of terms used in the Schedule to the Regulations “is what they mean to rating valuers and surveyors, the occupiers of hereditaments and the practical technicians concerned with the design, making and operation of the plant and machinery which the hereditaments contain”: per Salmon LJ in *Chesterfield Tube Co Ltd v Thomas (VO)* [1970] RA 471 at 480.

45. Thirdly, it is in our view necessary when applying the tables to have regard to both the function and the physical attributes of the item under consideration and the items listed in the table. In some cases the characteristics of a listed item may consist essentially of its form and appearance rather than its function (see eg *Whitfield (VO) v National Transcommunications Ltd* [1995] RA 214, where a 45m tall radio transmitter was held to be a “mast...for wireless” and thus rateable, the Tribunal rejecting the contention that, by reason of its function, it was

properly to be regarded as an aerial, an unlisted item). In other cases function may be of substantial importance in determining whether an item corresponds with an item in the list. Simply because it performs a function that corresponds with the function of one of the listed items will not, however, mean that it falls to be treated as a listed item if that function is secondary to the primary function of the part of the plant under consideration.

46. As we have said, the present Plant and Machinery Regulations are the latest in a line of statutory provisions providing in the same manner for the treatment of specified items of plant and machinery as part of the hereditament. The earliest specification was contained in the Plant and Machinery (Valuation for Rating) Order 1927. In the 1927 Order Class 4 consisted of:

“The following parts of a plant or a combination of plant and machinery whenever and only to such extent as any such part is, or is in the nature of, a building or structure:-”

Included in the list were:

“Foundations, Settings, Gantries, Supports, Platforms and Stagings for plant and machinery.”

47. The 1927 Order was replaced by the Plant and Machinery (Rating) Order 1960. In Class 4 the prefatory words of the 1927 Order were replaced by the words now in (a) and (b) of the 2000 Regulations. Included in the list of items were:

“... Bridges ...

Foundations, settings, fixed gantries, supports, platforms and stagings for plant and machinery ...

Walkways, stairways, handrails and catwalks ...”

48. The 1960 Order was amended by the Plant and Machinery (Rating) (Amendment) Order 1974, which substituted a new Class 4. The prefatory words were the same as those now in the 2000 Regulations except that the limitation on cubic capacity in the last exception ((e) in the 1974 order, (d) in the 2000 Order) was 200 cu m rather than 400 cu m and there was an additional exception as follows:

“(c) any such item or part of such item which is moved or rotated by motive power as part of the process of manufacture.”

The list of items were now divided into two tables, Table A and Table B. Those items that we have set out from the 1960 Order remained as they were.

49. Following the enactment of the 1988 Act the 1960 and 1974 Orders were replaced by the Valuation for Rating (Plant and Machinery) Regulations 1989, which were in the same terms as those two earlier Orders. The 1989 Regulations were replaced by the Valuation for Rating (Plant and Machinery) Regulations 1994. These deleted the exception relating to rotating

machinery that the 1974 Order had introduced and increased the cubic content in (d) to 400 cu m. In the specified items the following appeared:

“... Bridges ...

Foundations, settings, fixed gantries, supports, walkways, stairways, handrails, catwalks, stages, staithes and platforms.”

This list differed from the previous one through the omission of “for plant and machinery” after “stages” and the insertion of “staithes and platforms”. All previous orders and the 1989 Regulations had specified as a separate group of items “Stages, staithes and platforms for loading, unloading and handling material.”

50. The case for the VO is that the beam element of the scraper assembly is properly to be regarded as a support, as a bridge and as a walkway, so that this simple piece of plant consists in itself of no fewer than three of the listed items; and in addition there is the handrail. We do not think that it is properly to be regarded as a support. The contention is that it supports the scraper poles that are attached to it and the scrapers themselves that are attached to the poles. Where an item of plant is assembled from a number of parts each, or most, of the parts could be said to support other parts since they are attached to each other and lend strength to the whole. But this does not make them supports for the purpose of the Schedule. The mere fact that an item provides support does not make it a support for this purpose. The principal feature of a support, in our judgment, is the resistance it provides to gravitational force – a weight-bearing function, therefore, although the force transmitted to it by gravity may not, because of the construction of what it is that it supports, be wholly in a vertical plane. The tripod on which one end of the beam rests is clearly a support because it bears the weight of the beam. The poles and the scraper blades by contrast are relatively light, and, when in a tank full of sludge and resting on the bottom, can only exert a minimal gravitational force on the beam. It is not this force that the beam is designed to resist but the horizontal and torsional forces exerted by the scraper blades as they are driven through the sludge across the bottom of the tank by the rotation of the beam. We do not think that, constructed as it is to perform this function, it is properly to be regarded as a support for the purposes of the Order.

51. It is to be noted that it was only during the currency of this appeal that the VO sought to justify the rating of the beam on the basis that it was a support. Scrapers of the sort that we are considering have clearly existed for a long time, and, as can be seen from the extracts we have set out, “supports” have been an item of rateable plant throughout the history of the Plant and Machinery Orders and Regulations. Neither before nor after the *Jones* case in 1960 was it suggested that such a scraper or part of it was rateable as a support. In the VOA Rating Manual of May 1999, which set out guidance for the purpose of the 2000 rating lists, this was said in relation to “Humus and Final Settlement Tanks”:

“rateable as ‘tanks’ or ‘chambers and vessels’. The scraper, together with its motor mechanism and accessories, is not rateable. Bridges, however, both fixed and rotating, are rateable.”

52. We do not think that the beam, whether considered with or without its handrail attachments, is a bridge within the terms of the Order. The function of the beam that the VO relies on to say that it is a bridge is that of enabling personnel to walk across it to gain access for maintenance purposes to the thrust bearing on top of the tripod in the centre of the tank. It is said that this also makes it a walkway, and indeed “Bridge/Walkway” was the description that Mr Raley applied to it. This function is, however, essentially secondary to that of the beam as the central member of the scraper assembly that rotates round the tank. Moreover it only performs this function when the scraper is stationary. It is only then that personnel walk across it. Similarly, and for the same reasons, we do not think that it is a walkway. We can see that, in the case of a scraper where the U-shaped beam is not, as in the present case, inverted, and where a steel mesh is laid across it to enable it to be walked on, the steel mesh could properly be described as a walkway (although it would almost certainly fail the structure test). Here, however, it is simply the beam itself that is walked on.

53. We conclude, therefore, that no part of the scraper constitutes a support or a bridge or a walkway for the purposes of the Order. The handrail on the other hand is undoubtedly a named item. We think, however, that it fails the structure test. We say something more about this test below, but in relation to the handrail it is sufficient to say that we consider that a combination of its comparatively lightweight construction and the fact that it is attached to a moving piece of plant prevents it from being a structure or in the nature of a structure. Had it been attached to the land its comparative lightweight construction might not have prevented it from being a structure, like the staircase attached to the tank in *Monsanto plc v Farris (VO)* [1998] RA 217 (see at 199).

54. We should say something about the significance as we see it of the Tribunal’s decision in *Jones (VO) v Eastern Valley (Monmouthshire) Joint Sewerage Board (No.2)* (1960) 6 RRC 387. The Member (Erskine Simes QC) dealt with the question of the rateability of the scrapers at 381-4. As described the scrapers appear effectively identical to those that we are considering except that they were larger. The beam (or the bridge as, it is to be noted, it was called in the agreed description) was 35 ft (10.67 m) long, as compared with 6.82 m in the present case, 0.76 m wide (as compared with 0.46 m) and weighed 1½ tons (1520 kg as compared with 600 kg). The VO’s contention was that the settlement tanks including the scrapers were tanks or alternatively chambers for conditioning or treatment or alternatively pits, beds and bays-treatment or alternatively pits, beds and bays-settling within the 1927 Order and that the scrapers were or were in the nature of a building or structure. Reference was made for comparison to moving items of plant that had been held to be rateable in decided cases. At 382-3 the Member said:

“While it is clear that the fact that a particular piece of plant moves and rests by its own weight does not prevent it from being or in the nature of a structure or building, the things to which counsel for the appellant referred were very different in size from these scrapers, for example, the tilting furnaces weighed over 300 tons and were themselves pieces of plant of a nature described in the Order. In the present case the scraper can only be brought within the Order as part of the tank in which it is situated and I think that it is clear from Mr Ockendon’s evidence that it really plays no part in the treatment of the sewage for which the tank is designed. Moreover, upon the facts it does not appear to me to be or to be in the nature of a

building or structure and I am therefore of the opinion that the local valuation court were correct in excluding its value from that of the sewage works.”

55. Mr Morshead points out that the VO did not seek to treat separately the different elements – the scrapers, the support, the catwalk etc – and he says that it is not clear whether he had full regard to the decision in *Shell-Mex*. (He also says that it was notable that *Shell-Mex* was not cited in argument, but this cannot be derived from the report.) It seems to us improbable that the VO and those advising him would not have had *Shell-Mex* clearly in mind. It had been decided by the House of Lords exactly a year before the hearing and provided the necessary encouragement to consider bits of plant to see whether they were listed items. The Member expressly distinguished the scrapers from the tilting furnaces in the *Cardiff* case on the basis that the furnaces “were themselves pieces of plant of a nature described in the Order”. The importance of the *Jones* case in the present context, however, in our view is simply that it was a decision in 1960 that the scrapers were not rateable; while neither McNairn in 1972 nor Wood in 1993 suggested that scrapers were items of plant that ought to be added to the list. The beam was referred to as a bridge in the description agreed for the purposes of the case, and bridges had been listed items of plant since 1927; but at no time, so far as we are aware, until the 2000 rating lists were being prepared does it appear to have been thought that the beam of a scraper was a bridge in the sense in which that term is used in the Order.

56. For completeness we should address the second question we have identified above – whether, if the beam were, contrary to our conclusion, properly to be regarded as a listed item, it would nevertheless be excluded from rating on the ground that “it is not, and is not in the nature of, a building or structure”. Clearly it is not a building or in the nature of a building. The considerations to be borne in mind in determining whether an item is or is in the nature of a structure were identified in what, in the context of the rating of plant and machinery, are well-known passages in the judgments of Denning LJ and Jenkins J in the *Cardiff* case. Denning LJ said ([1949] 1 KB 385 at 396):

“A structure is something which is constructed, but not everything which is constructed is a structure. A ship, for instance, is constructed, but it is not a structure. A *structure* is something of substantial size which is built up from component parts and intended to remain permanently on a permanent foundation; but it is still a structure even though some of its parts may be movable, as, for instance, about a pivot. Thus, a windmill or a turntable is a structure. A thing which is not permanently in one place is not a *structure*, but it may be ‘in the nature of a structure’ if it has a permanent site and has all the qualities of a structure, save that it is on occasion moved on or from its site. Thus, a floating pontoon, which is permanently in position as a landing stage beside a pier, is ‘in the nature of a structure’, even though it moves up and down with the tide and is occasionally removed for repairs or cleaning. It has, in substance, all the qualities of a landing stage built on piles. So, also, a transporter gantry is ‘in the nature of a structure’, even though it is moved along its site. It has the same qualities as a fixed gantry, save that it moves on its site.”

57. At 402-3 Jenkins J said:

It would be undesirable to attempt, and, indeed, I think impossible to achieve, any exhaustive definition of what is meant by the words 'is or is in the nature of a building or structure'. They do, however, indicate certain main characteristics. The general range of things in view consists of things built or constructed. I think, in addition to coming within this general range, the things in question must, *in relation to the hereditament*, answer the description of buildings or structures, or, at all events, be in the nature of buildings or structures. That suggests built or constructed things of substantial size: I think of such size that they either have been in fact, or would normally be, built or constructed on the hereditament as opposed to being brought on to the hereditament ready made. It further suggests some degree of permanence in relation to the hereditament, i.e., things which once installed on the hereditament would normally remain in situ and only be removed by a process amounting to pulling down or taking to pieces. I do not, however, mean to suggest that size is necessarily a conclusive test in all cases, or that a thing is necessarily removed from the category of buildings or structures or things in the nature of buildings or structures, because by some feat of engineering or navigation it is brought to the hereditament in one piece. For instance, floating docks or pontoons, items specifically mentioned in class 4, would not, I think, be excluded merely on account of having been towed complete to the hereditament instead of having been built or constructed there. The question whether a thing is or is not physically attached to the hereditament is, I think, certainly a relevant consideration, but I cannot regard the fact that it is not so attached as being in any way conclusive against its being a building or structure or in the nature of a building or structure. This is, I think, clearly shown by some of the items specifically mentioned in class 4; e.g., floating docks and pontoons would necessarily not be so attached. Nor can I regard the fact that a thing has a limited degree of motion in use, either in relation to the hereditament or as between different parts of itself, necessarily prevents it from being a structure or in the nature of a structure, if it otherwise possesses the characteristics of such. The list in class 4 includes such things as elevators and hoists, transporter gantries, transversers and turntables, and weighbridges. It is true that things in class 4 are rateable only 'to such extent' as they are buildings or structures or in the nature of buildings or structures; but I cannot regard this as necessarily excluding from rateability the movable parts of things which from their inclusion in the list are clearly regarded as capable of being in the nature of buildings or structures and from their very description must clearly possess some degree of mobility in relation to the hereditament or as between the different parts of themselves."

58. In *BP Refinery (Kent) Ltd v Walker (VO)* [1957] 2 QB 305 Lord Evershed MR said about these passages (at 319):

"It is, I think, plain, that neither Denning LJ nor Jenkins J was seeking to lay down exhaustive definitions. Rather, they were indicating by illustration and otherwise the kind of considerations which were proper to be borne in mind."

As Ryde on Rating puts it at paragraph C[768], "it must not be forgotten that the court did not purport to give a precise definition of the nature of a building or structure and that other factors may arise in other cases and possibly alter the relative importance of those specifically referred to in that case."

59. In his judgment in that case, Denning LJ gave further explanation of what constitutes something that is or is in the nature of a structure, referring to particular items of plant that were there in issue. At 328-9 he said this:

“It is, I think, a characteristic of a structure that it is built up of component parts on the site. But a thing may be in the nature of a structure, even though it is not built up on the site, but is brought there all in one piece. The nature of the thing depends on its characteristics when erected, not on whether it requires a feat of engineering to bring it there. Take, for instance, the soda flash tower. It is 25 feet high, 4 feet in diameter, weighs 9½ tons, is bolted to the ground and surrounded at its base by a fireproof wall 8 or 10 feet high. If it had been built up on the site, it would be regarded by everyone as a structure, just as much as a ‘water tower with tank’ (which is expressly mentioned in the Third Schedule). Although this tower was not built up on the site, it is of the same nature as if it had been. It is of the nature of a structure and is rateable.

By contrast take the condensers. They are cylinders filled with a bundle of tubes. They are 16 feet long, nearly 3 feet in diameter, weigh 3¼ tons and are placed horizontally one above the other. No one looking at one of those by itself would say it was a structure or in the nature of a structure. It is just a piece of plant.”

60. The item of plant which the VO in the present case contends is a structure or is in the nature of a structure is simply a beam or girder 6.82 metres long and 0.46 metres wide, to which are bolted the scaffold poles, to which the scraper blades are attached, and the handrail. Although no doubt welding was required to make it, it can scarcely be described as being built up of component parts. It is not very large. It weighs 0.6 of a tonne, and measured externally it is just over 3 cu m, which, to put it in some sort of context, compares with the minimum requirement of 400 cu m for plant in Table 4. It is not attached to the land but is part of a piece of motive plant. Taking all these factors into consideration, we do not think that it can possibly be described as a structure or in the nature of a structure.

61. We should add that we emphatically reject the contention advanced on behalf of the VO that the criterion, at least as far as “substantiality” (as it was put) is concerned, is whether the item is so small that it partakes more of the quality of a chattel, or a “tool of the trade”, than of plant which might properly be regarded as part of the hereditament. Such a criterion bears no relation to the statutory requirement that to be rateable the item must be a structure or in the nature of one.

62. Our conclusion, therefore, is that this “half-bridge scraper” as it is referred to is not, however it is looked at, a support or a bridge or a walkway, and it is in any event not a structure or in the nature of a structure. The handrail is inescapably a handrail, but in view of its size and its lack of attachment to the ground, it is not a structure or in the nature of one.

63. The appeal must therefore be allowed. The hereditament must be entered in the list at £56,500 RV. The parties are now invited to make submissions on costs, and a letter in relation to this accompanies this decision, which will become final when the question of costs has been determined.

Dated 18 August 2008

George Bartlett QC, President

A J Trott FRICS