No. 951—HIGH COURT OF JUSTICE (KING'S BENCH DIVISION)—12TH AND 13TH JULY, 1933

COURT OF APPEAL—27TH AND 28TH NOVEMBER, 1933

HOUSE OF LORDS—22ND AND 25TH FEBRUARY AND 8TH MARCH, 1935

## CORPORATION OF BIRMINGHAM *v.* BARNES (H.M. INSPECTOR OF TAXES)[1]

*Income Tax, Schedule D—Wear and tear allowance—"Actual "cost" to person charged of machinery or plant—Income Tax Act,* 1918 (8 *&* 9 *Geo.* V. *c.* 40), *Schedule D, Cases* I *and* II, *Rule* 6 (6).

*The Appellant Corporation entered into an agreement with a company to lay a tramway track and establish a tramway service to the company's works and, by virtue of the work having been completed and the service established by a certain date, received from the company, in accordance with the terms of the agreement, a specified sum.*

*The Corporation also expended considerable sums on the renewal, etc., of their tramway tracks, in respect of which they received grants from the Unemployment Grants Committee. These grants were made under certain conditions to local authorities to assist them in carrying out at once approved schemes of work of public utility on which a substantial number of unemployed persons could be engaged.*

Held, *that the payment by the company and the grant from the Unemployment Grants Committee should not be taken into account in ascertaining, under Rule* 6 (6) *of Cases* I *and* II *of Schedule D, the "actual cost" to the Corporation of the tramway tracks in question for the purposes of computing the allowance due to the Corporation for wear and tear of such tracks.*

### CASE

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

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on 13th December, 1932, for the purpose of hearing appeals, the Corporation of Birmingham (hereinafter called "the Corporation") appealed against assessments to

[1] Reported (C.A.) [1934] 1 K.B. 484; (H.L.) [1935] A.C. 292.

Income Tax for the years ending 5th April, 1931, and 5th April, 1932, respectively, made upon it in respect of the profits of its tramways undertaking by the Additional Commissioners of Income Tax for the Division of Hemlingford under the provisions of the Income Tax Acts.

2. The sole question at issue on the appeal was the amount of the deductions to be allowed under Rule 6 of the Rules applicable to Cases I and II of Schedule D in respect of the diminished value by reason of wear and tear during the respective years of the Corporation's tramways tracks.

3. On 19th April, 1920, the Corporation entered into an agreement with the Dunlop Rubber Company, Ltd., (a copy of which marked "A" is attached hereto and forms part of this Case)(1) to lay a tramway track and establish a tramway service between Salford Bridge, Erdington, and the Company's works upon the terms that in view of the facilities which the tramway would give for the employees of the Company to travel to and from its works the Company would pay the Corporation the sum of £10,000 if the track was laid and a regular service established by the 1st June, 1920, and a further sum of £50 for each day the service was run prior to that date. The Corporation fulfilled these requirements, and a sum of £10,806 was paid by the Dunlop Rubber Company, Ltd. The Corporation laid the track by direct labour at a total cost of £54,752.

4. In the year ending 31st March, 1922, the Corporation spent £271,399 on renewals of its tramway tracks, and received £46,238 from the Government Unemployment Grants Committee.

5. On 22nd December, 1920, the Unemployment Grants Committee had issued a Circular Letter to County Councils and other Local Authorities (a copy of which marked "B" is attached hereto and forms part of this Case)(1), drawing attention to an announcement made in Parliament that the Government had decided to provide a grant of £3,000,000 for the purpose of assisting Local Authorities to carry out at once works on which a substantial number of the unemployed could be engaged. This letter described the conditions imposed upon or adopted by the Committee to govern the distribution of the grant. These conditions were that works would be approved only in areas where the existence of serious unemployment which was not otherwise provided for was certified by the Ministry of Labour; that preference in employment must be given to unemployed Ex-Service Men; that the grant must not in any case exceed 30 per cent. of the wages bill of additional men taken on for work; that the works must be such as were approved by the appropriate Department of the Government as suitable works of public utility; that the unemployed workmen taken on must remain on the registers of the Employment

(1) Not included in the present print.

Exchanges and would be required to take other work at any time if the Exchanges were in a position to offer them such work; and that the actual working of the schemes and the accounts relating thereto should be open at any time to any inspection required by the Committee. Applications for a grant were invited, which were to be accompanied by a general description of the works to be undertaken; a statement of the estimated expenditure on the whole scheme, showing the cost of labour as a separate item; an estimate of the expenditure which would be incurred on labour during the next three months; an estimate of the average number of men likely to be continuously employed on the work during the next three months, or of the number of additional men who would be taken on if a grant were made; information as to the manner in which the balance of the cost of the scheme would be defrayed, and the date when the scheme could be commenced or additional men taken on.

6. The Corporation made applications to the Unemployment Grants Committee for assistance under the specified conditions and furnished the particulars required in regard to the works to be undertaken and the Committee assented to the grants. The schemes in respect of which applications for assistance were made included, *inter alia*, works described as the reconstruction of tramway tracks in certain named roads, and in applying for the actual payment of the grants the proper officers of the Corporation set out in the prescribed form the numbers of and payments made to workmen in respect of whose wages a claim was made, and certified that all workmen in respect of whose wages a claim was made had been taken through the agency of an Employment Exchange; that the accounts and vouchers of the Corporation relating to the work in question were available to be submitted to audit when required by the District Auditor on behalf of the Unemployment Grants Committee; and that the payment of wages to workmen engaged for the work through the Employment Exchange had been duly made and accounted for as shown in the statement submitted. Copies of the documents relevant to the applications for and payments of the grants, marked " C," are attached hereto and form part of this Case(1).

7. As a matter of administrative convenience, the Board of Inland Revenue have from time to time agreed with representatives of Local Authorities and other persons working tramways schemes for the computation of the deductions to be allowed in respect of the wear and tear of the machinery and plant used for the purposes of such concerns. By paragraph 2 of a scheme adopted in 1922 it was provided that " From the date when the track, or any portion " thereof, is or has been renewed, such renewal shall be recorded " and dealt with as if it were a new track, and annual allowances

(1) Not included in the present print.

" shall be granted in respect thereof on the basis of the sum " actually expended and of the agreed life as provided in para- " graph 3, provided that such allowances shall continue until the " full cost has been allowed, notwithstanding that the said track " or portion thereof may be again renewed before such aggregate " cost has been allowed. This proviso shall apply also to expendi- " ture on new track since 1908." Paragraph 3 of the scheme dealt with the methods to be adopted in computing the life of the permanent way of a tramway undertaking. In the case of the Corporation's tramways the agreed life of the tracks has been taken as twelve years.

8. Between 1921 and 1926 several questions were under debate between the Board of Inland Revenue and various Local Authorities in regard to the manner in which grants from the Unemployment Grants Committee ought to be dealt with for the purposes of computing the liability to Income Tax of the Authorities which had received them, and the determination of the amount of the deductions to be allowed to the Corporation in respect of the wear and tear of its plant was left in suspense. In October, 1926, the Special Commissioners heard an appeal by another Local Authority in which one of the questions at issue was whether the deduction to be allowed in respect of the diminished value of the permanent way of the Authority's tramways by reason of wear and tear during the year under review ought to be based on the full value of the track or on the net cost to the Authority of the relaying of the track after the deduction of the amount of a grant received from the Unemployment Grants Committee towards the cost of the work. The Commissioners who heard that appeal decided that they must fix the allowance under Rule 6 on the value of the plant in question, irrespective of the fact that the cost of the plant was in part defrayed by some other person than the owner. In giving this decision they observed that the question of the actual cost to the Appellant Authority would become material in course of time when Sub-section (6) of the Rule was applied.

9. The principle of this decision was followed in settling the deductions allowed for wear and tear of the Corporation's tramways tracks. A deduction at the rate of £4,563, or one-twelfth of the total cost of £54,752, was allowed for each of the years from 1921–22 to 1929–30 inclusive, in respect of the new track laid in 1920, and a deduction at the rate of £22,617, or one-twelfth of the total cost of £271,399, for each of the years from 1922–23 to 1930–31 inclusive, in respect of the tracks renewed in 1921–22. These deductions amounted in the aggregate to £41,067 up to the 5th April, 1930, in respect of the new track laid in 1920, and to £203,553 up to the 5th April, 1931, in respect of the tracks renewed in 1921–22. The Corporation in making its returns for the purposes of assessment claimed that similar deductions of £4,563 and £22,617 respectively should be allowed for each of the

years 1930–31 and 1931–32. H.M. Inspector of Taxes, while admitting the claim for a deduction of £22,617 for the year 1930–31 in respect of the tracks renewed in 1921–22 took the view that, in arriving at the actual cost of the tracks to the Corporation, the amounts contributed by the Dunlop Rubber Company, Ltd., and the Unemployment Grants Committee, respectively, should be deducted from the total sums expended on the tracks; that the actual cost to the Corporation of the new track laid in 1920 was £43,946 only, and the actual cost to the Corporation of the tracks renewed in 1921–22 was £225,161 only, and that consequently under Sub-section (6) of Rule 6 the deduction for wear and tear of the new track laid in 1920 should be restricted to the difference between £43,946 and £41,067, or £2,879 for the year 1930–31 and no allowance for wear and tear of that track should be made for the year 1931–32, and the deduction for wear and tear of the tracks renewed in 1921–22 should be restricted, for the year 1931–32, to the difference between £225,161 and £203,553 or £21,608. The Additional Commissioners of Income Tax, in making the assessments under appeal, restricted the deductions in accordance with the view taken by H.M. Inspector of Taxes, and disallowed the Corporation's claims to the extent of £1,684 for 1930–31 and £5,572 for the year 1931–32.

10. In the Corporation's Accounts of its Tramways Department for the year ending 31st March, 1921, the Expenditure on Permanent Way during the year was entered in the Capital Account as £43,945 11*s.* 4*d.* and no mention was made of the sum of £10,806 received from the Dunlop Rubber Company, Ltd. In the Accounts for the year ending 31st March, 1922, the contributions from the Unemployment Grants Committee were credited to a separate Renewals Fund Account, and the total expenditure of £271,399 on renewals of tracks was included in a sum debited to this Account under the head Permanent Way Reconstruction Works. The Renewals Fund Account showed a debit balance of £211,952 which was carried to the Balance Sheet. Copies of the Corporation's printed accounts, with manuscript notes explanatory of the relevant figures, marked " D " and " E " respectively, are attached hereto and form part of this Case(1).

11. Neither party sought to draw any distinction in principle between the payment received from the Dunlop Rubber Company, Ltd., and the grants received from the Unemployment Grants Committee.

12. It was contended on behalf of the Corporation :—

(*a*) That the actual cost to the Corporation of the new track laid in 1920 was the total amount of £54,752 expended thereon.

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(1) **Not included in the present print.**

(*b*) That the actual cost to the Corporation of the tracks renewed in the year 1921–22 was the total amount of £271,399 expended thereon.

(*c*) That the whole of the amounts expended by the Corporation in laying and renewing the tracks were moneys belonging to the Corporation, and it was immaterial whether they were ultimately obtained by the Corporation from contributions by other bodies, from loans, from rates, or from any other source.

(*d*) That the deductions allowed for wear and tear of the tracks in question did not amount in the aggregate to the actual cost thereof to the Corporation.

(*e*) That the Corporation was entitled to a deduction of £4,563 for each of the years of assessment in respect of the new track laid in 1920, and to a deduction of £22,617 for the year ending 5th April, 1932, in respect of the tracks renewed in 1921–22 as claimed in its return.

13. It was contended on behalf of the Crown :—

(*a*) That the sums received from the Dunlop Rubber Company, Ltd., and the Unemployment Grants Committee, though passing through the hands of the Corporation, were not at its free disposal, but were contributions by other bodies earmarked to the construction of the tracks on which they were required to be expended.

(*b*) That for the purpose of fixing the limitation of the amount of the deduction under Rule 6 (6) regard was to be had not to the actual cost of the construction or renewal respectively of the tracks, but to the actual cost to the Corporation of such construction or renewal.

(*c*) That in arriving at the amount of the actual cost to the Corporation of such construction and/or renewal the amount contributed by the Dunlop Rubber Company, Ltd., and the Unemployment Grants Committee towards the cost of such construction and/or renewal fell to be taken into account and deducted from the said sums of £54,752 and £271,399 respectively.

(*d*) That the deductions allowed in the assessments, when added to the deductions allowed for previous years, amounted in the aggregate to the actual cost of the tracks to the Corporation.

(*e*) That the deductions had rightly been restricted to the amounts allowed in the assessments.

14. We, the Commissioners who heard the appeals, held that the actual cost of the tracks to the Corporation was the net cost after deducting from the total amount expended on the construction of the tracks that part of the expenditure which was paid by

the Unemployment Grants Committee and by the Dunlop Rubber Company, Ltd. We accordingly adopted the view that the deductions allowed amounted in the aggregate to the actual cost of the tracks to the Corporation, and we rejected the appeal.

15. The Corporation immediately after the determination of the appeal declared to us its dissatisfaction therewith as being erroneous in point of law, and in due course required us to state a Case for the opinion of the High Court pursuant to the Income Tax Act, 1918, Section 149, which Case we have stated and do sign accordingly.

P. WILLIAMSON,
R. COKE,
} Commissioners for the Special Purposes of the Income Tax Acts.

York House,
23, Kingsway,
London, W.C.2.

3rd May, 1933.

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The case came before Finlay, *J.*, in the King's Bench Division on the 12th and 13th July, 1933, and on the latter date judgment was given against the Crown, with costs.

Mr. A. M. Latter, K.C., and Mr. G. R. Blanco White appeared as Counsel for the Corporation and the Attorney-General (Sir Thomas Inskip, K.C.) and Mr. Reginald P. Hills for the Crown.

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JUDGMENT

**Finlay, J.**—This case, like most of these cases, is troublesome, and it is shown to be a case of difficulty by reason of the circumstance that I have, on the whole, arrived at a conclusion contrary to that of the very experienced Special Commissioners who heard the case.

The matter arises with reference to two payments which were undoubtedly made to the Corporation of Birmingham, and somewhat different considerations may apply to the Dunlop part of the case and to the unemployment grant part of the case. I arrive at the same conclusion as to each, and I will endeavour to state and to define my conclusions, but I may say that I think the matter is somewhat stronger for the Appellants, somewhat clearer for the Appellant Corporation, with reference to the Dunlop part of the case than it is with reference to the unemployment grant part of the case, though, as I say, my conclusion as to both is the same.

The matter arises upon a well-known Rule, Rule 6 in Cases I and II of Schedule D, the Rule which relates to the allowance for wear and tear; that, as was pointed out to me, and it is, of

(Finlay, J.)

course, familiar, had its origin in the Customs and Inland Revenue Act of 1878. Upon that state of the law there was in 1906 a decision of Mr. Justice Walton in the case of *John Hall, Junior & Co.* v. *Rickman*, [1906] 1 K.B. 311, and the actual point which was there decided by the learned Judge was that where depreciation was claimed in respect of a ship in a particular year and it was shown that the ship was, in fact, in that particular year depreciated, it was no answer to the claimant to say that in previous years he had, in fact, received back in depreciation the whole cost to him of the ship. What the learned Judge said was that you have got to look at the particular year and give whatever was the proper allowance to be given in that year, and the learned Judge, by way of explaining the reasoning which commended itself to him, says this(1): "It "seems plain that if the vessels had been sold and had been the "property of some one other than the appellants during the years "in question, and had been used by those other owners for the "purposes of their business, the Commissioners would have been "obliged to make up their minds as to what was a just and reasonable "allowance." Sub-rule (6) of Rule 6, upon which all this matter turns, was introduced, I think, in 1907, and no doubt was introduced in consequence of that decision.

Some observations were addressed to me both by Mr. Latter and by Mr. Hills with reference to the way in which a thing of that sort should be looked at. I do not think there is any doubt or difficulty about it. In considering legislation, and amending legislation particularly, one always must look at the state of the law before the legislation was introduced, with a view of ascertaining what it was that the Legislature was dealing with. Having done that, having ascertained what the position of the law was with a view of approaching, so to speak, from the proper angle, the new legislation, then one must look at the new legislation and see exactly what it says and give it what one conceives to be its proper construction. It was clearly in the light of *John Hall, Junior & Co.* v. *Rickman*, it was in consequence of that decision, that this legislation, or this Rule 6, was introduced in the form in which it was introduced in 1907, and there is not the least doubt that the general object of the Legislature was to restrict the allowance which could be made from the prime cost of the article, that is to say, that you were to be prevented from getting back by way of depreciation more than the total initial cost, and I think that the words were undoubtedly drafted by the draftsman and adopted by the Legislature, as one would expect they would be, with special reference to the words of Mr. Justice Walton, and expressed that the purchaser, whether he is the original purchaser who buys from the builder or whether he is a much later purchaser who buys second-hand, is, so to speak, dealt with separately, and it is the actual cost

(1) [1906] 1 K.B., at p. 317.

(Finlay, J.)

to that person which is not to be exceeded. Here the question arises as to what is the meaning of these words "actual cost to the "person," and the whole case turns, I think, upon the proper view which ought to be taken with regard to those words as applied to the rather special facts of this case.

It is proper, without going through the facts, that I should quite shortly state what they were. The first matter is this: on the 19th April, 1920, there was an agreement between the Corporation of Birmingham and the Dunlop Rubber Company and, in effect, it was an agreement that the Dunlop Rubber Company were desirous that a tramway service should be established between certain points in or near Birmingham and established to give facilities for their employees and, in these circumstances, it was agreed that the Corporation were, with all due diligence, to proceed with and to complete the laying down and construction of the tramway in order to enable the Corporation to commence and maintain the running of a regular reasonable service of trams. Then it was agreed that if, before the 1st June, 1920, the Corporation had sufficiently completed the laying down and construction of the tramway, and had commenced and maintained a regular reasonable service of cars to carry the employees of the company every morning, mid-day and evening, the company were to pay the Corporation the sum of £10,000. Then there was a further provision, an additional provision, designed, of course, to induce the Corporation to finish the work as early as possible, as the Dunlop Company obviously wished that the work should be finished as early as possible, the effect of the further provision being that if, before the 1st June, the thing was completed and was operating, then the company were to pay, in addition to the £10,000, £50 for every day on which that had happened. What happened was this: the Corporation did complete the work and had the trams in operation somewhat before the 1st June, and thereupon they became entitled to a sum somewhat over £10,000, namely, the £10,000 plus £50 a day for the days—I think about ten days, but nothing turns on the exact number—before the 1st June on which they had been operating.

The other matter is different, and it is this. At that period it was the policy of the Legislature to provide grants to local authorities for assistance in carrying out approved schemes of useful work to relieve unemployment. The Corporation of Birmingham had tram work in hand—it is not necessary that I should go through the various documents attached to the Case which make the matter clear—and they applied for and received a grant-in-aid, so to speak, in respect of the carrying out of some of their tramway extensions or tramway renewals, or whatever they were, within the area over which the Corporation of Birmingham have authority to lay down tramways. There were various conditions imposed but nothing much appears to me to turn upon them; the substance of the thing

**(Finlay, J.)**

is that the Corporation of Birmingham, by carrying out these works, qualified to receive this grant-in-aid, or this assistance, and did, in fact, receive considerable sums from the Unemployment Grants Committee, as it was called, the substance of the thing being, of course, that these were sums paid as an inducement to the Corporation of Birmingham to employ unemployed men whom they would not, at all events at that time, have been prepared to employ but for the existence of the grant. I need not go through it in more detail—it will be found, if anybody is concerned to look at it, fully set out in the documents of the Case—but that is the substance of the second point which arises.

Now, I think that the matter depends upon the view which ought to be taken of the application of the few words in dispute in the Section to that state of the facts. Although my attention was very properly called to several cases, I do not think that they afford any very great assistance. The observations of Lord Atkin in *Seaham Harbour Dock Company* v. *Crook*, 16 T.C. 333, at page 353, are, I think, of some assistance, although one ought, of course, to be careful in applying words of that sort to a state of facts which the learned Judge may not have had in contemplation. Subject to that, I have derived some assistance from those observations.

The two cases of *Dickson* v. *Hampstead Borough Council*, 11 T.C. 691, and *Corporation of Birmingham* v. *Commissioners of Inland Revenue*, 15 T.C. 172, do not appear to me to be of very great direct assistance. Those are cases which follow a long line of cases both familiar and difficult, the first *County Council* case(1), the second *County Council* case(2), and *Sugden* v. *Corporation of Leeds*(3), being perhaps the three outstanding cases. The substance of what seems to me to have been decided by Mr. Justice Rowlatt in the *Hampstead* case—and his view was adopted in the House of Lords in the *Corporation of Birmingham* case—seems to me to have been this: that this housing grant must be treated as being applicable to the housing scheme, and that you could not treat the whole property, or the whole income of a corporation, as being applicable to that scheme by reason merely of the general charge. It seems to me to be rather an application of a principle which was ultimately laid down in the case, no doubt a difficult case, of *Sugden* v. *Leeds Corporation*, and I do not doubt that in the case of the tramways grant here, as in the case of the housing grant in the two cases I have referred to, it is true to say that the Corporation receiving the grant would be under an obligation to apply it to the purposes for which, and for which alone, it was granted, that is to say, in paying the wages of men employed on

(1) Attorney-General *v.* London County Council, 4 T.C. 265.
(2) Attorney-General *v.* London County Council, 5 T.C. 242.
(3) 6 T.C. 211.

**(Finlay, J.)**

this work or, if they have paid the wages, in recouping themselves, of course, for what they have paid; but it does not seem to me to throw any great light upon the problem which I have here to consider, and that is, what is the actual cost to the person, that is, the Corporation, of the machinery or plant.

It seems to me that the proper view to take of that is this: one has got to look at the actual cost to the person; if the person is given the thing, there is no cost, and the question does not arise, but here it seems to me that the true view is that the Corporation did incur or did bear the entire cost of the tramways. It is not a subject which admits of much discussion, and I can only really state the way it strikes me, but taking first the case of the Dunlop Rubber Company, the position was, in effect, that the company, no doubt for good business reasons, were very anxious not only to get the tramway made, but to get it made in a great hurry, and it was worth their while to pay £10,000 to the Corporation of Birmingham if they would do that work by the 1st June. That is the case which, as I said, seems to me to be clearer, and I think it is extraordinary to see how one can possibly say that that affects the cost, the actual cost, of the plant. I can only say that it strikes me that it does not.

The other case, I think, admits of more argument, and is perhaps rather more difficult, but with regard to that also I have arrived at the conclusion that I do not think one ought to say that this grant-in-aid or subvention, or whatever you like to call it, designed to pay (that is the substance of it) or designed to recoup the Corporation for wages paid to unemployed men, affects the cost, the actual cost to the Corporation, of the plant. That is the way in which the thing strikes me. I have been greatly assisted by the argument, but I do not think that I can really myself say any more.

Looking at the matter as carefully as I can, I arrive—pretty clearly, I confess, in the case of the Dunlop Company, and less easily but definitely in the other case, the case of the grant-in-aid—at the conclusion that the view which the Special Commissioners took was erroneous, and that these matters ought not to be brought into account, either of them, in computing the actual cost.

For these reasons this appeal will be allowed.

**Mr. Latter.**—The appeal will be allowed with costs, my Lord?

**Finlay, J.**—Allowed with costs, Mr. Latter, yes.

The Crown 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 27th and 28th November, 1933, and on the latter date judgment was given in favour of the Crown, with costs (Lord Hanworth, *M.R.*, dissenting), reversing the decision of the Court below.

Mr. A. M. Latter, K.C., and Mr. G. R. Blanco White appeared as Counsel for the Corporation and the Attorney-General (Sir Thomas Inskip, K.C.) and Mr. Reginald P. Hills for the Crown.

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JUDGMENT

**Lord Hanworth, M.R.**—This appeal from a decision of Mr. Justice Finlay raises a point, by no means easy to decide, as to the meaning and the effect of Sub-rule (6) of Rule 6 of the Rules applicable to Cases I and II of Schedule D of the Income Tax Act of 1918. The Corporation are the owners of tramways and they have expended a sum in establishing and maintaining those tramways. The Corporation in the year ending the 31st March, 1922, spent £271,399 on renewals of their tramway tracks and in that year they received a sum, paid to them by the Government Unemployment Grants Committee, of £46,238. The purpose of that payment was in order to quicken the Corporation's zeal in laying and renewing their tramway tracks in order to supply work for the unemployed. In the year 1920 the Corporation entered into an agreement with the Dunlop Company under which, in return for a sum paid by the company, the Corporation laid a track, and maintained a service for the purpose of giving facilities which were of use and advantage to the rubber company.

The question that has arisen in the present case is at what figure the actual cost to the Corporation of the tramways is to be estimated for the purpose of calculating the sum to be allowed in respect of this wasting asset, the tramways, in computing the profits or gains of the Corporation's tramways for Income Tax purposes, having regard to the limit imposed by Sub-rule (6) of Rule 6. Ought the figure taken as the limit to be the actual sum expended by the Corporation, or ought there to be deducted from that sum the adventitious assets which came to their hands, consisting of the sum paid by the company for the particular advantage to be reaped by themselves in accordance with the agreement of 19th April, 1920, and the sum paid to the Corporation by the Unemployment Grants Committee? It is claimed by the Crown that what is referred to in Sub-rule (6) as the " actual cost " must mean the net cost after deduction of these two appropriations in aid. It is said by the Corporation that the actual cost to them is the sum which they have laid out, and that these adventitious assets ought not to be deducted in order to reach the actual cost to them.

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

As I have said, it is a difficult case, and I doubt if anyone can be quite sure of his ground, whichever view he takes; but, giving the best consideration that I can to the matter, I have come to the same conclusion as that reached by Mr. Justice Finlay, though not entirely for the same reasons. The matter, it appears to me, must be dealt with in this way. By Schedule D the annual profits or gains which arise or accrue to any person from any kind of property and from any trade, profession, employment or vocation are to be charged to tax, and the two Cases to which these Rules which we have to consider apply are the cases where a tax is imposed in respect of any trade not contained in any other Schedule—that exception, of course, refers to mines, canals and the like, which are taxed under a particular Schedule—and secondly, when a tax is imposed in respect of a profession, employment or vocation not contained in any other Schedule. In respect of those two Cases, certain Rules are made applicable particularizing the way in which the amounts of the profits or gains are to be computed. Rule 1 tells us that the tax is to " be charged without " any other deduction than is by this Act allowed." Rule 3 prohibits deductions in respect of various items and this provision is, no doubt, due to the past efforts of certain traders to make deductions in respect of the items which are there catalogued. Rule 4 deals with Excess Profits Duty. Rule 5 provides for the computation of the tax being made exclusive of the annual value of the land, and then we come to Rule 6.

Rule 6 sets out the collected relief which has been gradually allowed by the Crown in respect of a wasting asset. The rule now represented by Rule 6, Sub-rule (1), was first introduced in 1878. Gradually there has been a limited deduction allowed in respect of the losses due to the wasting assets of a particular concern, but those deductions or those allowances have been carefully circumscribed. Sub-rule (1) says this : " In charging the profits or gains " of a trade under this Schedule, such deduction may be allowed as " the commissioners having jurisdiction in the matter may consider " just and reasonable, as representing the diminished value by " reason of wear and tear during the year of any machinery or plant " used for the purposes of the trade and belonging to the person by " whom it is carried on." The terms of that Rule make it quite plain that what are being dealt with are the profits or gains of a trade, and the plant which belongs to the person who carries on the trade, and that Rule gives a power to the Commissioners to allow a deduction in any year by reason of the diminution in value owing to ordinary wear and tear. Indeed, what every prudent director would do in writing off a certain portion of the assets is now within limits allowed. The case of *Alianza* v. *Bell*, as decided in the Court of Appeal, [1905] 1 K.B. 184(1), shows the good sense of

(1) 5 T.C. 60 and 172.

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

making such an allowance. I refer to the case in the Court of Appeal, because in short speeches the House of Lords merely affirmed the decision of the Court of Appeal. I wish to make it plain that Sub-rule (1) is dealing with plant and machinery used in a trade which belongs to the person by whom the trade is carried on. Sub-rule (6), to my mind, must be read as supplementary to Sub-rule (1) and as intended to impose a limit to the benefits which are given by Sub-rule (1) in respect of the allowance for wear and tear of machinery belonging to the person by whom the trade is carried on; and it provides that the deduction is not to be such as " will make the aggregate amount of the deductions exceed " the actual cost to that person of the machinery or plant, including " in the actual cost any expenditure in the nature of capital " expenditure on the machinery or plant by way of renewal, " improvement, or re-instatement." It appears to me that there must be a correlation between the deduction allowed by Sub-rule (1) and the limit to that deduction imposed by Sub-rule (6).

Special attention was called to the use of the word " actual " in Sub-rule (6). That word is used perhaps without great precision in some other Rules, for instance, in Rule 8, Sub-rules (1) and (2), of this same series of Rules. Now, let me test the meaning in this way. It is suggested that if a man is carrying on a trade and owing to a gift from a relative has received a sum which has enabled him to pay for his machinery, and has thus been relieved of the necessity of depleting his own bankers' balance for the purpose of meeting the cost of the machinery, then the actual cost to him is nil. I cannot so read the words of Sub-rule (6). I cannot at all agree that this Sub-rule would have one operation if the machinery had originally been a present to the trader and a different operation if he had paid for it himself. To my mind, you must read Sub-rule (6) and Sub-rule (1) as correlative and construe Sub-rule (6) in the sense that the trader cannot say that the actual cost of machinery to him is its original cost when new when he has bought it second-hand. The actual cost to him is the cost at which an ordinary trader would show the machinery in his books, although the machinery was originally a gift or although a portion of it was paid for by some other means. Perhaps I cannot put my point more clearly than by using the language commonly used by the Treasury in these matters in preparing their own accounts. It appears to me that the sums which have been received in the present case from the Dunlop Rubber Company and from the Unemployment Grants Committee would be treated as appropriations in aid; and, to my mind, these two sums are merely two adventitious appropriations in aid. They are entirely extrinsic to the carrying on of the business. They are what I have called adventitious assets, and to say that the actual cost can only be ascertained by going behind the ordinary bookkeeping of the

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company or trader to see whether the original cost bulked at large to the trader himself, or whether he received some assistance from his relatives, seems to me to misread the whole purpose of Rule 6 as a whole. Sub-rule (6) is to be read in relation to Sub-rule (1), and the whole Rule 6 must be given its appropriate place and purpose, which was to establish a proper system of computing the amounts of the profits or gains of a trader in his business in respect of the trade carried on by him with machinery which belonged to him.

Under these circumstances, although I do not accept the reasoning of Mr. Justice Finlay to the full, I have come to the conclusion that, in the result, he was right, and, for the reasons I have given, it is not right to deduct these adventitious sums from the actual cost which ought to be taken to be the outlay made by the Corporation. In my view, therefore, I should be in favour of dismissing the appeal.

**Slesser, L.J.**—In this case, I regret that I have come to a conclusion different from that expressed by the learned Master of the Rolls. In my opinion, this appeal should be allowed and the decision of the Commissioners affirmed.

I am not unmindful of the difficulties which arise in the construction of Rule 6 of Cases I and II from the fact that the basis on which the deductions are to be made under Sub-rule (1) appears to be different from the basis contemplated under Sub-rule (6) when the maximum amount of deduction is to be ascertained. As my Lord has pointed out, Sub-rule (1) of Rule 6 is a counterpart of the older Act of 1878, Section 12, which provided—as the present Section, in substance, provides—that the Commissioners, in assessing the profits or gains for the purposes of Schedule D, may allow such deduction as they may think just and reasonable as representing the diminished value by reason of wear and tear of machinery. It is clear that according to Sub-rule (1) what the Commissioners must have regard to is the diminished value, and that value has no necessary relation to the cost to which the acquirer of the property has been put. As regards that particular Rule, it came up for consideration in the year 1906 in the case of *John Hall, Junior and Company* v. *Rickman*, [1906] 1 K.B. 311, by Mr. Justice Walton, and the problem which there arose was whether under Section 12 of the Act of 1878, to which I have referred, the Commissioners were bound to consider to what extent there had been a diminution of value of plant and machinery in any year at the request of the subject, irrespective of the fact that the total amount of deductions might exceed in the aggregate their entire cost. That case is referred to by Mr. Justice Finlay in his judgment, and he says this[1]: " the actual point which was there

[1] See page 202 *ante*.

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" decided by the learned Judge was that where depreciation was " claimed in respect of a ship in a particular year, and where it was " shown that the ship was, in fact, in that particular year depre- " ciated, it was no answer to the claimant to say that he had, " in fact, received in previous years the whole cost to him of the " ship back in depreciation." The effect of that judgment, Mr. Justice Finlay says, and it may well be, caused the passage of Sub-rule (6) of Rule 6 of Cases I and II, which we have here to construe. It may well be, as he says, that the object of that Sub-rule (6) was to nullify the effect of that decision and to provide that in no case should such a conclusion be reached. Mr. Justice Finlay says this[1] : " I think that the words were undoubtedly drafted by " the draftsman, and adopted by the Legislature, as one would " expect they would be, with special reference to the words of " Mr. Justice Walton, and expressed that the purchaser, whether " he is the original purchaser who buys from the builder, or " whether he is a much later purchaser who buys second-hand, is, " so to speak, dealt with separately, and it is the actual cost to that " person which is not to be exceeded." I am not very clear from the judgment of the learned Judge how far he limited his interpretation of the meaning of the words " actual cost to that person " in Sub-rule (6) by reason of the view which he had formed of the mischief against which the Sub-rule was directed; but, however that may be, I have come to the conclusion that the language of the Sub-rule is compelling upon me and that there is no sufficient ambiguity to justify me in interpreting this Rule by references to its history or the mischief against which it was directed. I will only read a passage from the Rule declared by the Judges in advising the House of Lords in the *Sussex Peerage* claim, the well-known words in 11 Clarke and Finelly[2] (which were accepted by the Judicial Committee of the Privy Council in *Cargo ex "Argos "* in 5 P.C. 134, at page 153) to this effect : " If the words of the statute are in them- " selves precise and unambiguous, then no more can be necessary " than to expound those words in their natural and ordinary sense. " The words themselves alone do, in such case, best declare the " intention of the lawgiver." I do not think Mr. Justice Finlay should have allowed himself to suffer his interpretation of these words to be influenced, if, as appears from his judgment, it was so influenced, by a consideration of the purposes which brought this Rule into being. That being so, and regarding the Rule solely on its actual language, what do we find? We find that the word " value ", which appears in Sub-rule (1), is omitted, and in its place is substituted, " the actual cost to that person of the " machinery or plant." The learned Judge has taken a view which, I gather, did not commend itself to my Lord and does not commend itself to me. He has come to the conclusion, apparently,

(1) See page 202.*ante*. (2) 11 C. & F., at p. 143.

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that if the whole of the property were a gift it could not be said that there was any actual cost. That seems to me to be a conclusion which was logical and acceptable if the same principle were applied, as I seek to apply it, when part of the property was the result of a gift, as regards the actual cost to the donee of that part; but, with every respect to the learned Judge, I cannot understand the principle whereby it is decided by him, apparently—although by way of *obiter dictum* only—that, if the whole machinery were given to the donee as a gift, there would be no actual cost to the trader, although the value would be the same as if he had purchased it, while at the same time he decided that, where a part is given to the donee, that part is to be regarded as a part of the actual cost. In my view, " actual cost " means that expense to which the person sought to be charged to tax is put in the acquisition of the property.

As regards the unemployment grants, it is stated in the Case that the Government, acting through the Ministry of Labour and the Unemployment Grants Committee, on receiving estimates of the expenditure, the average number of men, and so on, gave a sum of money in respect of the cost of labour, which was one of the elements in the total cost of making the tramway. It was a direct assistance solely for that purpose and " earmarked for that " object." It was a direct payment of part of the labour; just as direct, it seems to me on the finding of fact in this case, as if it had been for the purchase of rails or any other material; in other words, a part of the cost of renewals was paid for by someone other than the Birmingham Corporation.

It is said in the Case, in paragraph 11, that " Neither party " sought to draw any distinction in principle between the payment ' received from the Dunlop Rubber Company, Ltd., and the grants " received from the Unemployment Grants Committee." It might be said otherwise, that it was by no means so clear that the money given by the Dunlop Rubber Company for facilities for a tramway service to their works was so directly contributed to cost as in the case of the Unemployment Grants Committee, but here we are testing a question of principle. The parties have agreed that the cases should be treated alike and, so far as the question is one of fact, the Commissioners have decided that the actual cost of the tracks to the Corporation was the net cost in both cases. I am unable to distinguish the words " net cost ", as found by them, from the words " actual cost ". I think they mean, and I think the Rule means, that it is the actual financial cost to the Birmingham Corporation, that is to say, the expenditure incurred in providing the tramway, less so much of that expenditure as is directly paid for by someone other than the person sought to be taxed. I agree respectfully with my Lord that the result is a

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difficult and, in many respects, a confusing one, because, as I said at the outset of my judgment, it means that the limitation of the deduction proceeds upon a different basis from the deduction itself, but my answer is that the Legislature thought fit to use different language; it has used the word "value" in Sub-rule (1); it has used the words "actual cost" in Sub-rule (6); and though I read the Sub-rules together in the sense that the one is a rider upon the other, yet I feel I am not justified in doing such violence to the language as I think would be necessary to support Mr. Justice Finlay's judgment. It would mean, I think, taking out the word "cost" from Sub-rule (6) and inserting the word "value" from Sub-rule (1). The two words are being used apparently in contradistinction and, for those reasons, I have come to the conclusion that the net cost is the limit of the total amount to be allowed for deductions under Rule 6, and that, therefore, as I have said, the Commissioners were right, and this appeal should be allowed.

**Romer, L.J.**—I, too, have come to the conclusion that this appeal should be allowed and, as my reasons for arriving at that conclusion are substantially those which Lord Justice Slesser has just expressed, it is not necessary for me to add more than a very few words.

When the provisions of Sub-rule (1) of Rule 6 were in operation free from the qualifications subsequently introduced by Sub-rule (6), it cannot, I think, be doubted but that the deduction permitted by the Sub-rule could be made irrespective of the question of the source from which the trader in question had obtained his plant and machinery. All that was necessary was to ascertain the value of the plant and machinery at the beginning of the year in question, and then find out to what extent that value had been diminished during the year owing to wear and tear. Even if the plant and machinery had been obtained by the trader as a gift, he was still entitled to make a deduction to the extent to which the value of the plant and machinery at the beginning of the year had been diminished during the year by wear and tear. The object, of course, with which the trader himself makes the deduction is clear. It is to ensure that when the machinery and plant are worn out and no longer useful he will be in possession of a fund, derived by these deductions from his profits, which will be equivalent to the value of the plant and machinery at the time that he started trading with them. That Rule without any qualification led, as has been pointed out by Lord Justice Slesser, to a somewhat strange result in the case of *John Hall, Junior* v. *Rickman*[1]. In that case, owing, no doubt, to the depreciation having been over-estimated in certain years, a time arrived when the deductions made from the profits

(1) [1906] 1 K.B. 311.

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were in excess of the value of the plant and machinery at the time that the trader started operations with them. Had the introduction of Sub-rule (6) been intended merely to correct that anomalous state of affairs, nothing would or could have been easier than for the Legislature to say so. On the contrary, so far from the Sub-rule making any reference to the value, we find a reference to cost, and not to cost only, but to the " actual cost " to the trader of the plant and machinery in question.

Is it possible to say that, in view of those words, when a trader has had given to him as a present his plant and machinery, there has been any " actual cost " to him in respect of that plant and machinery? The question to be put to the trader is this: " What " did the plant and machinery actually cost you?" Supposing, in this case, that the Dunlop Rubber Company, for their own purposes, had constructed a tramway at a cost of £54,752 and had then presented it to the Birmingham Corporation, is it possible that the Birmingham Corporation could say that the tramway had cost them anything? Surely not. Instead of themselves constructing the tramway and then presenting it to the Corporation, the gift might have been effected in another way. The Dunlop Company might have said to the Corporation: " You construct the tramway and " then we will repay to you the cost to which you have been put." What would be the answer of the Corporation to the question: " What did that tramway cost you in the end? " I should have thought the Corporation might conceivably have said: " Well, the " tramway cost us £54,752, but, having regard to the fact that that " was repaid to us by the Dunlop Rubber Company, the actual " cost to us was nil." I find, like Lord Justice Slesser, the words in Sub-rule (6) too strong to enable me to say that the only object and effect of the Section is to correct the anomaly that was pointed out in *Rickman's* case[1]. For these reasons, I think the appeal should be allowed and the decision of the Commissioners restored.

**The Attorney-General.**—The appeal will be allowed with costs, my Lord?

**Lord Hanworth, M.R.**—Yes, the appeal will be allowed with costs and the decision of the Commissioners restored.

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

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An appeal having been entered against the decision in the Court of Appeal, the case came before the House of Lords (Lords Atkin, Tomlin, Russell of Killowen, Macmillan and Wright) on the 22nd and 25th February, 1935, when judgment was reserved. On the 8th March, 1935, judgment was given unanimously against the Crown, with costs, reversing the decision of the Court below.

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[1] [1906] 1 K.B. 311.

Mr. A. M. Latter, K.C., Mr. Wilfrid Greene, K.C., and Mr. G. R. Blanco White appeared as Counsel for the Corporation and the Attorney-General (Sir Thomas Inskip, K.C.) and Mr. Reginald P. Hills for the Crown.

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JUDGMENT

**Lord Atkin.**—My Lords, the question in this case arises on the construction of a few words in one of the Rules relating to the computation of Income Tax under Schedule D. It has evoked so far an equal division of judicial opinion, and no one therefore would be inclined to express his opinion as not admitting a doubt; but I have come to a conclusion which leads me to invite your Lordships to allow the appeal. The facts can be shortly stated. In 1920 the Birmingham Corporation laid a new tramway track between Salford Bridge, Erdington, and the works of the Dunlop Rubber Company. They laid the track by direct employment of labour and it cost for labour and materials £54,752. By agreement in writing between the Dunlop Company and the Corporation, dated 19th April, 1920, the Corporation agreed to construct the tramway; and the Company agreed that if the Corporation had completed the tramway and commenced a reasonable service on or before 1st June, 1920, the Company would pay the Corporation £10,000, and a further sum of £50 a day for each day saved before 1st June. £5,000 was paid on 30th March, while the work was in progress; the balance, including £806 further despatch money, was paid after the work was completed. There was no stipulation as to any express use to which the £10,000 was to be put and, so far as I can see, the Corporation were free to use it as they pleased. In fact, as was natural, they treated it as a receipt of the tramway undertaking, and their amount of expenditure on permanent way in the year 1920 shows a sum of £43,945 as being the total sum expended, being the actual sum less the payment made by the Dunlop Company.

In 1921 the Corporation embarked on the reconstruction of certain tramway tracks, upon which they expended £271,399. In December, 1920, the Unemployment Grants Committee had intimated that the Government had decided to provide a grant of £3,000,000 to assist local authorities to carry out works at which unemployed men could be engaged. The Corporation applied for a grant in respect of the work on the tramway tracks just mentioned. The work began on 8th February, 1921; the application was made on 10th February. On 21st February, 1921, the Unemployment Grants Committee intimated that they were prepared to make a grant of £30,000 on certain conditions mentioned. From time to time further grants were applied for and were acceded to. Applications for payment of the promised grant were made on the appropriate forms, the substance of the matter being that the Corporation certified that the stipulated number of unemployed

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men had been employed and that wages had been paid up to or in excess of the amount of the promised grant. Payments were made by the Committee on these applications in respect of these tramway tracks to the amount of £46,238, thus reducing the amount actually borne by the Corporation to £225,161.

The question that arises on these figures is as to the amount which the Corporation is entitled to claim as an allowance for wear and tear in respect of these tramway tracks under Rule 6 of the Rules applicable to Cases I and II of Schedule D of the Income Tax Act, 1918. I will not read the Rules, but will premise that it is common ground that the Corporation were entitled to an allowance for these tracks on the footing that they were new tracks. The allowance is claimed in computing the profits of the Corporation in respect of their tramway undertaking.

In pursuance of Rule 6 (1) an allowance has been made to the Corporation year by year in accordance with a scheme adopted by the Board of Inland Revenue in 1922 by agreement with representatives of the various Local Authorities possessing tramway undertakings. By this scheme allowances were granted " on the basis of the sum " actually expended and of the agreed life " with a proviso that the allowances were to continue until the " full cost " had been allowed. The latter proviso was no doubt intended to give effect to Sub-rule (6) of Rule 6. It is not contended that this agreement can alter the true meaning of the Rules : but it serves to illustrate the possible use of words the true construction of which has to be sought in the Section. The life of the tramways under the agreement was computed at twelve years and each year the Corporation received an allowance of £4,563, or one-twelfth of £54,752, in the case of the first tramway, and of £22,617, one-twelfth of £271,399, in the case of the second tramway. Apparently a question had arisen in 1926 before the Commissioners as to the amount upon which an allowance should be made in the case of another Local Authority which had also received a grant. The Commissioners then decided that the grant must be based upon the total expenditure, leaving the question as to the limit of the aggregate to be determined when that question arose under Sub-rule (6).

In the present case it arose in the case of the first tramway for the year 1930–31 : in the case of the second tramway for the year 1931–32. The Inspector of Taxes claimed that " the actual " cost to the Corporation " must be measured by deducting from the total expenditure in the first case the amount paid to the Corporation by the Dunlop Company, in the second case the amount of the Government grant. Added to the previous allowances the full allowances would make up for the years in question an aggregate in excess of the " actual cost " so ascertained. The question now is whether this meaning of " actual cost to the person " is correct. My Lords, in my opinion the words " the actual cost to the person

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" by whom the trade is carried on " used in this context have no relation to the source from which that person has received the money which he has expended on the plant. One is assisted in the construction by the history of the legislation. In 1876 for the first time statutory authority was given for making an allowance to persons carrying on a trade in respect of diminution in value of their plant by reason of wear and tear. It was a deduction from profits which business men ordinarily make with a view to making good an essential capital asset which sooner or later will have to be replaced. As it was given, in terms corresponding to Sub-rules (1) and (2), it had obviously nothing to do with the question of how or with what funds the business man acquired the plant. In any case he would make a deduction from profits; and the deduction would be based on the value of the plant and its expected life. In the year 1906, however, there arose a case before Mr. Justice Walton of *John Hall, Junior and Co.* v. *Rickman*, [1906] 1 K.B. 311, in which a shipowner claimed depreciation allowance in respect of a ship which, being used as a hulk, was held to be plant. The allowances had continued so long in respect of this ship that if granted for the tax year in question they would have exceeded 100 per cent. of the cost of the ship to the shipowner. The Inland Revenue Authorities objected, but the Judge, though thinking the objection reasonable, could find in the Income Tax Act no restriction on the aggregate of the allowances to be granted. He pointed out, as is conceded, that if the plant were sold the allowances would begin again on the value of the plant to the new owner. After this decision and undoubtedly in consequence of it there was passed in 1907 a Section in the terms of the present Sub-rule (6). I entirely agree with the submission of the Attorney-General that you must not restrict the plain words of a remedial section so as to apply them only to the mischief which occasioned the enactment. But you may look at the mischief as one of the elements assisting you to construe the words of the remedy. You may also look at the use of the same words in relation to the same subject matter in the same enactment.

The word " actual " itself gives me no assistance. It serves, as Mr. Latter suggested, to give emphasis to the word following. It is to be the cost, the whole cost, and nothing but the cost. It removes any question of estimate, and in cases where the plant has been purchased for a lump sum together with factory premises it may give rise to a difficult question of fact. The word " actual " is used in the same emphatic sense in Rules 2 and 3 of the Rules applicable to Cases I and II of Schedule D in respect of actual wages, actual expenditure and actual loss. I do not read " actual " cost " to mean anything more than cost accurately ascertained.

But it is said that the words " to that person " in the phrase " actual cost to that person " plainly indicate that the Section

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is intending to confine the relief to an aggregate equal to the sum of money which the person has defrayed out of his own resources, the cost of the burden which has ultimately fallen upon him. My Lords, I confess I do not think that this is the natural meaning of the words. What a man pays for construction or for the purchase of a work seems to me to be the cost to him; and that whether someone has given him the money to construct or purchase for himself, or before the event has promised to give him the money after he has paid for the work, or after the event has promised or given the money which recoups him what he has spent. In the present case the Corporation paid the whole of the cost of the tramways out of their funds unless the first half of the Dunlop contribution was so applied: as to which there is no evidence, nor is it material. I myself should not have thought the answer of Birmingham Corporation to the question put by Lord Justice Romer would have been what he suggests. On the hypothesis that the Dunlop Company had recouped the Corporation the whole of the cost of the first tramway I should have thought the answer to "What did it cost "you?" or "What did it actually cost you?" would have been "It actually cost us £54,752 but none of the burden of that cost "will fall on the Corporation, for the Dunlop Company have paid "us the full amount." I think the same result is arrived at by saying "actual cost to that person" is the same thing as the amount expended by the person. One is assisted in this construction by consideration of the words at the end of Sub-rule (6) which, as pointed out by Mr. Blanco White, include in that actual cost any expenditure in the nature of capital expenditure. Here there are no qualifying words and I think the phrase guides one to the conclusion that expenditure on capital improvements by the person regardless of source will be the same as actual cost to the person also regardless of source. No doubt you must give the whole phrase its full meaning. But I find the reference "to that person" fully satisfied when I remember that, as pointed out by Mr. Justice Walton in the case that gave rise to the new limitation(1), the person claiming a reduction may vary from time to time and that with each successive purchaser you are to begin again. The words also serve to make it clear that the cost is the cost to the person carrying on the business, and will include a profit paid by him to a contractor if one has been employed.

I do not think that it is necessary for the purpose of this case to discuss the question which may arise where the person carrying on the business has acquired the plant by gift, a question that will arise probably, if at all, in respect of a gift under a will. Various problems arise involving, amongst others, the possible contention that where there has been no cost there is no measure, no yardstick, by which

(1) *i.e.* John Hall, Junior and Co. *v.* Rickman, [1906] 1 K.B. 311.

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to restrict at all the allowance granted by Sub-rule (1). I prefer, therefore, to say nothing on this topic. I find myself in the result in agreement with the Master of the Rolls and Mr. Justice Finlay, and I move your Lordships that this appeal be allowed and the order of Mr. Justice Finlay restored, and that the Appellants have the costs here and in the Court of Appeal.

**Lord Tomlin.**—My Lords, I agree in all respects with the opinion which has just been delivered, and I have nothing to add.

**Lord Russell of Killowen.**—My Lords, I also agree.

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

**Lord Wright.**—My Lords, I agree.

*Questions put:*

That the Order appealed from be reversed.

*The Contents have it.*

That the Order of Mr. Justice Finlay be restored, and that the Respondent do pay to the Appellants their costs here and in the Court of Appeal.

*The Contents have it.*

[Solicitors:—Sharpe, Pritchard & Co. for F. H. C. Wiltshire, Town Clerk, Birmingham; Solicitor of Inland Revenue.]