(Rowlatt, J.)

in companies outside corporate towns, this part of that Section being, as already explained, treated as unnecessary in view of the generality of Section 58 of the Act of 1918.

As regards Sub-rule (5) of Rule 18, the effect of this seems to me to operate only within the region covered by Rule 18, and gives power to assess persons within that Rule by reference to their residence or employment, whatever that may mean.

It seems to me, therefore, that there was, at all times, jurisdiction to assess in the present case quite independently of Sub-rule (5) of Rule 18 and that the second point taken on behalf of the subject fails, and that the Crown's cross-appeal, in respect of the years before the reference to the place of employment in Sub-rule (5) was added to the Statute, succeeds.

Therefore, the judgment must be for the Crown in both appeals, with costs.

[Solicitors :—Solicitor of Inland Revenue; Messrs. Clifford Turner, Hogston and Lawrence.]

No. 697.—HIGH COURT OF JUSTICE (KING'S BENCH DIVISION).—19TH MAY, 1927.

COURT OF APPEAL.—7TH NOVEMBER, 1927.

HOUSE OF LORDS.—22ND OCTOBER, 1928.

1. EASTMANS, LIMITED *v.* SHAW (H.M. INSPECTOR OF TAXES).[1]

2. EASTMANS, LIMITED *v.* THE COMMISSIONERS OF INLAND REVENUE.[1]

Income Tax, Schedule D—Corporation Profits Tax—Profits of trade—Capital expenditure.

The Appellant Company carried on business as butchers and meat retailers, the number of their shops varying between 1,447 *in* 1911 *and* 804 *in* 1922. *It was shown that it was the Company's policy to close shops or to open shops in accordance with the needs of their business as a whole, and that it was advantageous to dispose of the fixtures and fittings in a shop given up rather than to transfer them to a newly acquired*

[1] Reported (K.B.D.) 43 T.L.R. 549, (C.A.) 44 T.L.R. 42, and (H.L.) 45 T.L.R. 12.

shop. In such circumstances the Company debited in their trading account the difference between the cost of new fixtures and the price obtained for old fixtures, and these items had been added back in computing the Company's liability to Income Tax and Corporation Profits Tax.

Held, *that no deduction was admissible in computing the Company's profits in respect of the excess of the cost of new fixtures over the price obtained for the old fixtures.*

CASES.

1. *Eastmans, Limited* v. *Shaw* (*H.M. Inspector of Taxes*).

CASE

Stated under the Statute 8 & 9 Geo. V, cap. 40, Sect. 149, by the Commissioners for the General Purposes of the Income Tax Acts for the Division of Finsbury in the County of Middlesex for the opinion of the King's Bench Division of the High Court of Justice.

1. At a meeting of the Commissioners for the General Purposes of the Income Tax Acts for the Division of Finsbury in the County of Middlesex held at No. 21a Northampton Square in the said Division on the 27th day of January, 1926, for the purpose of hearing appeals, Eastmans, Limited (hereinafter called " the Appellants "), appealed against assessments made upon them under Schedule D of the Income Tax Acts for each of the years ending the 5th day of April 1922, 1923 and 1924 in the undermentioned amounts in respect of their profit as Butchers and Meat Retailers carried on by them at their registered office No. 91 Charterhouse Street in the said Division and at their various retail shops throughout the United Kingdom and Ireland, viz. :—

For the year ending the 5th April,	1922	...	£256,000
do.	1923	...	300,000
do.	1924	...	300,000

These assessments were made upon the Appellants in respect of their profits from the business as a whole and no allowance for wear and tear of machinery or plant had been claimed or made.

2. The following facts were admitted or proved :—

It was part of the policy of the Appellants in carrying on their business to open retail shops throughout the United Kingdom for the disposal of meat.

In selecting the places and positions in which such shops should be acquired, and in acquiring such shops, the Appellants had to bear in mind, not only the potentialities of such shops in themselves, but the probable effects of carrying on such shops in relation to their business as a whole, the shops being merely branches or departments of that business.

In these circumstances it became necessary to open and close shops as the bearing of the business done through them could be estimated in relation to their business as a whole.

The Appellants found it less expensive and generally advantageous to dispose of the fixtures, fittings, etc., in shops given up and to acquire other such fixtures, fittings, etc., for new shops acquired by them rather than to transfer the fixtures, fittings, etc., from one shop to another.

Where a new shop was opened in place of a shop that had been given up and the fixtures, etc., installed in the new shop were equivalent to the old fixtures, the excess of the cost of the new fixtures over the price obtained for the old fixtures was treated as revenue expenditure and was debited in the trading account. The sole question before the Court arises in respect of such excess expenditure.

The following statement shews the number of shops employed in the Appellants' business in each of the years 1911–22 :—

In the year	1911	1447
	1912	1404
	1913	1291
	1914	1148
	1915	910
	1916	860
	1917	787
	1918	750
	1919	749
	1920	756
	1921	766
	1922	804

For the three years ending the 31st December, 1922, the number of shops actually closed and the number of shops opened were

During the year	1920	Closed	23	Opened	30
,, ,,	1921	,,	7	,,	17
,, ,,	1922	,,	6	,,	44

The expenditure incurred in providing utensils for and in fitting up the new shops for the purpose of carrying on their trade therein and the amounts received from the sale of the fittings of the shops closed during the same years were :—

For the year 1920 :—

Expenditure	£833
Receipts	393
	£440

For the year 1921 :—

Expenditure	£4808
Receipts	434
	£4374

For the year 1922 :—

Expenditure	£8067
Receipts	757
	£7310

3. It was contended on behalf of the Appellants (*inter alia*) :—

(i) That in determining whether expenditure is revenue or capital expenditure it is necessary to look at the nature scope and policy of the trade assessed and

(ii) that on the facts and in the circumstances of this case the excess expenditure referred to in paragraph 2 of the Case was revenue expenditure and on Income Tax principles an admissible deduction from profits.

The following cases amongst others were referred to :—

Smith v. *The Incorporated Council of Law Reporting*, [1914] 3 K.B. 674 ; 6 T.C. 477.

Gresham Life Assurance Socy. v. *Styles*, [1892] A.C. 309 ; 3 T.C. 185.

Usher's Wiltshire Brewery, Ltd. v. *Bruce*, 31 T.L.R. 104 ; 6 T.C. 399.

St. Andrew's Hospital v. *Shearsmith*, 19 Q.B.D. 624 ; 2 T.C. 219.

Smith v. *Westinghouse Brake Co.*, 2 T.C. 357.

Granite Supply Assn., Ltd. v. *Kitton*, 43 S.L.R. 65 ; 5 T.C. 168.

Southwell v. *Savill Brothers, Ltd.*, [1901] 2 K.B. 349 ; 4 T.C. 430.

4. The Inspector of Taxes contended (*inter alia*) :—

(1) That the deduction claimed by the Appellants in respect of the expenditure incurred by them in fitting up and opening

new shops was not authorised by Rule 3 (*d*) of the Rules applicable to Cases I and II of Schedule D of the Income Tax Act, 1918, or otherwise.

(2) That the said expenditure was capital expenditure and was not a proper debit item to be charged against the incomings of the trade when computing the balance of the profits of it for the purpose of assessment to Income Tax.

It was agreed between the parties hereto that in the event of the Commissioners giving their decision in favour of the Appellants the profits liable to assessment to Income Tax as disclosed by the accounts should be taken to be

For the year ending

the 5th April,	1922, £236,781	less Wear and Tear	£3,132
do.	1923, £300,777	do.	£30,915
do.	1924, £298,660	do.	£31,332

but that if the decision be adverse to the Appellants the amounts assessable to Income Tax should be taken to be

For the year ending

the 5th April,	1922, £236,921	less Wear and Tear	£3,132
do.	1923, £302,301	do.	£30,915
do.	1924, £302,499	do.	£31,332

5. We the Commissioners having heard and considered the appeal and the evidence and contentions were of opinion :—

(1) That it was part of the policy of the Appellants to open and to close shops whenever the state of trade made it desirable.

(2) That the question as to whether the expenditure incurred in opening new shops was or was not of a capital nature was not affected by the fact that the Appellants owned a large number of shops.

(3) That the expenses of fitting up new shops less the sums received for the fittings of shops that had been closed were expenses incurred anterior to the carrying on of the trade and were of a capital nature and not allowable as an expense of running the business from the Income Tax assessments.

(4) That the assessments to Income Tax made upon the Appellants ought to be adjusted

For the year ending

the 5th April,	1922, to £236,921	less Wear and Tear	£3,132
do.	1923, £302,301	do.	£30,915
do.	1924, £302,499	do.	£31,332

and we adjusted the said assessments accordingly.

Dissatisfaction with our determination was expressed on behalf of the Appellants as being erroneous in point of law and in due course we were required to state a Case for the opinion of the High Court which Case we have stated and sign accordingly.

Dated this 2nd day of March, 1927.

FRED. L. DOVE,
CHAS. BAXTER,
R. MORELAND,
W. CROSIER HAYNE,
} Commissioners for the General Purposes of the Income Tax Acts for the Division of Finsbury in the County of Middlesex.

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2. *Eastmans, Limited* v. *The Commissioners of Inland Revenue.*

This case related to assessments to Corporation Profits Tax made upon Eastmans, Limited, for the three accounting periods ended 31st December, 1920, 1921 and 1922. The assessments were in respect of the profits of the same business as the Income Tax assessments, and the Case was stated in similar terms, *mutatis mutandis*.

The cases came before Rowlatt, *J.*, in the King's Bench Division on the 19th May, 1927, when judgment was given in favour of the Crown, with costs.

Mr. R. W. Needham appeared as Counsel for the Company, and the Solicitor-General (Sir T. Inskip, K.C.) and Mr. R. P. Hills for the Crown.

JUDGMENT.

Rowlatt, J.—In this case the figures which are given with respect to the years 1920 to 1922 reveal that many more shops, and increasingly many more as the three years went past, were opened than were closed, which shows, of course, an increasing difference in the expenditure in fitting up the new shops and the receipts from the dismantling of the old shops. Now if it is a question as to whether the subject is entitled to bring into revenue account the excess of money caused by the excess of the number of shops, that is to say, if he seeks to bring in any part of what it has cost him to add to the number of his shops, I should have thought that was wholly unarguable. I cannot believe that is the point. Looking at one of the sub-paragraphs of paragraph 2, before the paragraph in which the figures of the numbers of years are stated, I understand that the question for the Court arises in respect of the excess described in that sub-paragraph, and that excess is the excess of the cost of equivalent fittings

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and utensils—not the cost of renewing or keeping up the utensils at all—but the excess of the cost of equivalent fixtures due to this circumstance, that they have scrapped those which they had, or sold them for what they could get, and bought new ones for new places where they wanted them to go. That is the question which I understand is put to me.

I think this is not disputed : if a trader has one shop, and he gives up that shop and takes another shop somewhere else and sells the fittings at his old shop, and buys fittings for the new shop and loses money because he has done so, money which he might have saved and spent in another form if he moved them, but which he spent in changing his utensils—if he does that, quite clearly he could not deduct that difference. So far as he lost money by selling his old utensils, that is loss of capital ; so far as he has expended money by new expenses, that is expenditure of capital. If he has made some salvage out of the sale of the old utensils, then he has not to spend so much capital on the new utensils ; that is all there is in it. I think that quite clearly appears from the *Westinghouse* case(1) and the *Granite Supply* case(2) which have been cited.

Now does it make any difference if a man has twenty shops and moves twenty of them in the same way ? He is merely multiplying the problem which I have just stated (and solved, in my opinion) by twenty times. I do not think it could be argued that that could make any difference. I do not think it is involved in Mr. Needham's argument that that does make any difference, but what Mr. Needham does say is this : In this business there is another element, because in the first place this business was not the aggregate of these businesses merely, it is not merely that these people had 1, 2, 3, 4 or 800 businesses ; they had one business in London, and these various shops were all merely parts of their business, and they have not moved the whole of the business. With respect, I do not see how that circumstance can make any difference. So far the fact remains that they have moved a shop and they have made the expense which is involved in moving a shop several times, and the fact that they conduct all their shops from London, and bring all the businesses into one, I do not see can possibly make any difference. But now I come to what the point really boils down to, and it is this : Mr. Needham says, and it is found by the Commissioners, that it was the essence of this business that they should keep their shops moving. I think that is not an unfair way of stating it. The Commissioners say it was part of the policy of this Company to open and close shops and so on. Then Mr. Needham says, and this is the point : Their

(1) Smith *v.* Westinghouse Brake Co., 2 T.C. 357.

(2) Granite Supply Association, Ltd. *v.* Kitton, 5 T.C. 168.

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business was really that of travelling butchers. He said, for instance, like a circus. I think that is the point. Let us take a travelling butcher who has his stall in one town to-day, and his stall in another town to-morrow, and whose business it is to sell here to-day and to sell there to-morrow. He may very well, I should think, charge his moving expenses (and these expenses come to that) as an expense of his travelling business. But I think where Mr. Needham's argument fails is that this is not a travelling business. It is, if I may borrow the expression from the *Granite* case, a " flitting " business, and their policy is to flit continually and not to travel. They substitute one shop, which, for however short a time it lasts, is permanent in its nature, for another shop, which for however short a time it has lasted, has also been in its nature of a permanent character. They are substituting shops for shops, and are not, I think, in any reasonable sense of the word travelling their business from place to place.

On those facts, when one thinks it out, whatever difficulty one might have felt when the facts were first opened, I do not myself feel that there is any doubt about it, and my decision must be in favour of the Crown with costs.

Mr. Reginald Hills.—Will that apply to the other case, my Lord ?

Rowlatt, J.—Is it the same ?

Mr. Reginald Hills.—Yes.

Rowlatt, J.—Very well.

The Company having appealed against the decision in the King's Bench Division, the cases came before the Court of Appeal (Lord Hanworth, *M.R.*, Atkin and Lawrence, *L.JJ.*) on the 7th November,, 1927, when judgment was given unanimously in favour of the Crown with costs, confirming the decision of the Court below.

Mr. R. W. Needham appeared as Counsel for the Company, and the Solicitor-General (Sir T. Inskip, K.C.) and Mr. R. P. Hills for the Crown.

JUDGMENT.

Lord Hanworth, M.R.—We need not trouble you, Mr. Solicitor.

This case involves a short though important point under the Income Tax Act, and what we have to consider is whether or not this Company are entitled to make a certain deduction in the course of

(Lord Hanworth, M.R.)

estimating their profits or gains. They are entitled to deduct money which is wholly and exclusively laid out in the course of seeking that profit. In the present case we have a Company which has a very large number of butcher's shops. In the year 1911 they had about 1,450, and the number was reduced, and in 1918 and 1919 they had only 750. Now the number is going up, and we are told that the policy of the Company is to open shops or to close shops according as there may be potentialities of profits at such shops in themselves, and also considering the shops that they do open or shut in relation to their business as a whole. I can well conceive that it may be possible to increase the number of shops in a particular area where it is possible to get a good supply of meat into those shops at a smaller cost, while it may be found that to open a shop in another area involving greater cost of transit and of distribution would make the shop itself unprofitable ; but at any rate what they do is, they are opening their shops for, at the time, the permanent exercise of their trade. In the course of opening and closing their shops they have to make an outlay for fitting up the shops. If they close they have to sell, or they do sell, the fittings of the shop and realise, more often I suppose at a loss than not, and it is said that they are entitled to bring in the losses which they have incurred in the course of opening and shutting their shops. The Commissioners have found that it is part of the policy of the Appellants to open and close shops whenever the state of trade makes it desirable. That, as Lord Justice Atkin has pointed out, is merely to say that this Company applies business principles to the trade which it carries on. Then they say that they do not think that the mere multiplication of shops alters the nature and character of this outlay. Finally, the third finding is " That the " expenses of fitting up new shops less the sums received for the fit- " tings of shops that had been closed were expenses incurred anterior to " the carrying on of the trade and were of a capital nature ". Now I do not think it is found by the Commissioners—and the facts were before them—that the business of this Company was the business of fitting up shops and selling them to various persons who might require the shops that they fitted up. What they did do was, for the purpose of their own business they fitted up shops and sometimes they changed those shops and closed them. Upon the facts found it appears to me that the principle of law is clear, and has been rightly applied by the Commissioners and by Mr. Justice Rowlatt, that these expenses were incurred anterior to the business or trade which was carried on by this Company, that it was in the nature of a capital outlay and a capital loss, and was not to be treated as money wholly and exclusively laid out for the purpose of profit. For these reasons, and for the reasons given by Mr. Justice Rowlatt, I agree that the decision of the Commissioners was right and must be affirmed. The result is that the appeal will be dismissed with costs.

Atkin, L.J.—The points raised by Mr. Needham appear to me to be fully covered by the judgment of Mr. Justice Rowlatt and by the judgment of my Lord, with both of which I entirely agree. I think therefore this appeal should be dismissed with costs.

Lawrence, L.J.—I agree, and have nothing to add.

The Solicitor-General.—Your Lordships dismiss the other appeal also as my friend agrees the points are the same ?

Lord Hanworth, M.R.—Yes.

The Solicitor-General.—With costs ?

Lord Hanworth, M.R.—Both appeals will be dismissed with costs.

The Solicitor-General.—If your Lordship pleases.

The Company having appealed against the decision in the Court of Appeal, the case came before the House of Lords (Lord Hailsham, *L.C.*, Viscount Sumner, and Lords Buckmaster, Carson and Warrington of Clyffe) on the 22nd October, 1928, when judgment was given unanimously in favour of the Crown, with costs, confirming the decision of the Court below.

Mr. R. W. Needham, K.C., and Mr. J. S. Scrimgeour appeared as Counsel for the Company and the Attorney-General (Sir T. Inskip, K.C.) and Mr. R. P. Hills for the Crown.

JUDGMENT.

Lord Hailsham, L.C.—My Lords, in my opinion this appeal fails. It appears from the Case Stated that the Appellants carry on business as butchers and meat retailers, and that they have a number of retail shops scattered throughout the United Kingdom and Ireland. From time to time in the course of their business they open fresh shops, and from time to time they close shops when they think it desirable so to do. The claim is that the difference between the amounts realised for the sale of fixtures and fittings in shops closed and the cost of new fixtures and fittings in shops opened should be allowed as a revenue expenditure. In my opinion the Courts below and the Commissioners were quite right in saying that it is, in fact, a capital expenditure and cannot be allowed.

My Lords, Counsel for the Appellants conceded that in the ordinary case of a multiple shop or of a bank having branches open throughout the United Kingdom, the cost of fixtures and

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fittings in new shops or branches would be a capital expenditure, but he sought to distinguish that case from the present by saying that it was the design of the Appellants to open new shops and to close old ones where it was desirable in relation to their business as a whole. In my view the fact that it is their design to open shops where it is likely to be profitable and to close shops which turn out to be unprofitable makes no difference at all. It is only saying in terms what should be the design and object of every trader—to find the most profitable places in which to carry on his business. I think that the Commissioners are quite right when they find, as they do, " That the expenses of fitting up new shops " less the sums received for the fittings of shops that had been " closed were expenses incurred anterior to the carrying on of the " trade and were of a capital nature and not allowable as an expense " of running the business from the Income Tax assessments."

My Lords, on these grounds, which I think are the same as those which are held by both the Courts below, I move your Lordships that this appeal be dismissed.

Viscount Sumner.—My Lords, I agree.

Lord Buckmaster.—My Lords, I agree.

Lord Carson.—My Lords, I also agree.

Lord Warrington of Clyffe.—My Lords, I also agree.

Questions put :—

In *Eastmans Limited* v. *Shaw* (*H.M. Inspector of Taxes*).

That the judgment appealed from be reversed.

The Not Contents have it.

That the judgment appealed from be affirmed and this appeal dismissed with costs.

The Contents have it.

In *Eastmans Limited* v. *The Commissioners of Inland Revenue.*

That the judgment appealed from be reversed.

The Not Contents have it.

That the judgment appealed from be affirmed and this appeal dismissed with costs.

The Contents have it.

[Solicitors :—Mr. Charles H. Wright ; The Solicitor of Inland Revenue.]