HIGH COURT OF JUSTICE (CHANCERY DIVISION)—29TH AND 30TH JUNE, AND 4TH JULY, 1961

COURT OF APPEAL—1ST, 2ND, 5TH, 6TH AND 7TH MARCH, AND 17TH APRIL, 1962

HOUSE OF LORDS—9TH, 13TH, 14TH, 16TH AND 20TH MAY, AND 20TH JUNE, 1963

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de Voil (H.M. Inspector of Taxes)

v.

Welford Gravels, Ltd.[1]

Income Tax, Schedule A—Gravel pit—Whether a new property—Income Tax Act, 1952 (15 & 16 *Geo.* VI & 1 *Eliz.* II, *c.* 10), *Section* 82, *Schedule A, paragraph* 2 (*b*), *and Sections* 84 *and* 108.

In February, 1957, *B Ltd. bought* 23½ *acres of a farm of* 155 *acres, including a small gravel pit which had been worked commercially during the war of* 1914–18, *so that one of its associated companies could extract sand and gravel commercially. Thereupon the Respondent Company was let into occupation; it erected buildings and installed plant, which was in operation by* 31*st March,* 1957. *On* 31*st December,* 1957, *B Ltd. granted the Respondent Company a lease at an annual rent of* £60 *and a licence to extract sand, gravel, etc., at a royalty of* 4*s. per cubic yard. Some* 56,000 *cubic yards were extracted in* 1957 *and some* 60,000 *cubic yards in* 1958.

Before the Inspector of Taxes was informed of the sale to B Ltd. an assessment to Income Tax under Schedule A for the year 1957–58 *was made in respect of the whole original farm at the annual value of* £108 (*being the annual value adopted for the preceding year*). *Subsequently, an additional assessment under Schedule A for that year was made on the Respondent Company in respect of the gravel pit at the annual value of* £5,000. *On appeal, the General Commissioners found that no new property had been created and determined the annual value of the gravel pit by apportioning the original assessment on the farm.*

Held, (1) (*Lord Jenkins dissenting*) *that, where land is divided into separate occupations, the annual assessment must be apportioned;* (2) *that revaluation might nevertheless be justified on the ground of a change of character in the property;* (3) *that the inevitable inference from the facts of this case was that a new item of property had been created.*

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(1) Reported (C.A.) [1963] Ch. 95; [1962] 3 W.L.R. 489; 106 S.J. 370; [1962] 2 All E.R. 657; 233 L.T.Jo. 317; (H.L.) [1963] 3 W.L.R. 292; 107 S.J. 593; [1963] 2 All E.R. 1039; 234 L.T.Jo. 414.

CASE

Stated under the Income Tax Act, 1952, Section 64, by the Commissioners for the General Purposes of the Income Tax for the Division of Dengie in the County of Essex for the opinion of the High Court of Justice.

1. At a meeting of the said General Commissioners held at the County Court, Maldon, on 4th February, 1960, Welford Gravels, Ltd. (hereinafter called " the Appellant Company "), appealed against an assessment to Income Tax made upon it under Schedule A, Income Tax Act, 1952, for the year 1957–58 on an estimated annual value of £5,000 gross, £4,375 net, in respect of property described as " Gravel pit and premises, Stows Farm, Tillingham, Essex ".

2. The questions for our determination were, firstly, whether the annual value of the said property for Schedule A purposes should (*a*) represent the full annual value thereof as a gravel pit in the year 1957–58 or (*b*) be arrived at by apportionment of the annual value previously adopted for Stows Farm; and, secondly, if it should represent the full annual value as a gravel pit, what that value should be.

3. Evidence was given by Mr. R. L. Procter (a former owner of the land in question), by Mr. K. E. Partridge (secretary of the Appellant Company) and by Mr. P. W. de Voil, H.M. Inspector of Taxes, Witham District.

4. The following facts were admitted or proved:

(1) The assessment was in respect of about 23½ acres of land which previously had formed part of Stows Farm, Tillingham, Essex, belonging to Messrs. W. and R. L. Procter, who had farmed the land for many years. On part of the 23½ acres there was a small gravel pit, and sand and gravel had been taken from this pit by Messrs. Procter for commercial purposes in connection with the construction of airfields during the 1914–18 war. Since 1919 they had used it as required for making up farm roads and other farm purposes. When the pit was used commercially during the 1914–18 war machinery was not employed in the extraction of the sand and gravel, as there was no suitable mechanical plant available at that time. The area of this small sand and gravel pit, as it existed in 1956, is shown with reasonable accuracy on a plan of the area which is annexed hereto, marked " A ", and forms part of this Case(1). The pit is shown near the north-west corner of field no. 140.

(2) In 1956 there was a great demand for gravel in the district owing to the building of a nuclear power station at Bradwell-on-Sea, a few miles distant from Tillingham, and with a view to selling the land for sand and gravel production Messrs. Procter applied for development permission in respect of an area (which included the small pit referred to) for extraction of sand and gravel, such area comprising O.S. fields nos. 140 and 143 containing together 21·100 acres. A copy of the grant of development permission dated 14th December, 1958, is annexed hereto, marked " B ", and forms part of this Case(1).

(3) Development permission was given in respect of fields nos. 140 and 143 with a condition that all fixed plant or machinery, or structures or erections in the nature of plant or machinery, required in connection with the winning of the sand and gravel, or required in connection with its treatment or disposal, were to be erected in an adjoining enclosure, O.S. field no. 141. The reason for this direction was that the plant and machinery

(1) Not included in the present print.

were to be inconspicuous, field no. 141 being a wooded area. No extension of extraction workings beyond fields nos. 140 and 143 was envisaged in the grant of development permission, as the local planning authority endorsed the view of the Advisory Committee on Sand and Gravel that no new long-term workings should be introduced into this predominantly agricultural district.

(4) Messrs. Procter sold the land (i.e., the area of 23½ acres referred to above) to a company called Besbuilt, Ltd., of which company also Mr. K. E. Partridge is the secretary, and the sale was completed on 22nd February, 1957. Besbuilt is not itself engaged in farming nor in extracting sand and gravel. It bought the said land so that one of its associated companies could extract sand and gravel for commercial purposes.

(5) Immediately after the sale Besbuilt, Ltd., allowed the Appellant Company, which is an associated company, to enter into occupation of the land, and the Appellant Company immediately proceeded to prepare the site for the plant. A concrete apron was floated over half an acre, with steel stanchions for the plant to be attached to and from which the plant could easily be disconnected. The Company erected three small buildings, namely, a brick power-intake house, a brick pump-house and a nissen hut used as a workshop and office. These buildings were intended to be temporary and incidental to the workings. The cost of the buildings and the apron was put at approximately £1,000. The cost of the machinery was approximately £24,000. The machinery was conveyed to the site in parts, and erected on the site and bolted to the stanchions by means of bolts and nuts. The first attempt to win sand and gravel had been by non-mechanical means in order to get material for the apron, only excavators being used. It was the end of March, 1957, before the apron was down and the machinery in operation. The operations consisted of removing the grass and top soil, which was stored on the boundary of the site, and then removing the actual material by dragline. The sand and gravel was loaded into lorries on the site and taken to the ramp, where it was tipped into the hopper, which separated the sand from the gravel and graded the gravel into sizes—nothing was involved apart from the cleaning and sorting. It was intended that, when the workings were completed, all the machinery, plant and buildings should be removed and the top soil replaced.

(6) On 31st December, 1957, Besbuilt, Ltd., executed a lease of the whole of the land which it had bought from Messrs. Procter (comprising O.S. enclosures 140, 141, 141A and 143) to the Appellant Company. This document forms part of this Case and a copy is annexed hereto, marked "C"[1]. The main provisions in the lease are as follows—term: 21 years from 1st March, 1957; rent: £60 per annum. Tenant's covenants included covenants (*a*) to pay all existing and future rates, taxes, assessments, duties, impositions, outgoings and burdens whatsoever imposed or charged upon the demised premises or the produce thereof or any buildings machinery or works thereon; (*b*) to keep all dwellinghouses, buildings and water courses then standing and being, or which during the said term should be constructed, erected, built, placed or made in or upon the said land, in good and substantial repair and working order; (*c*) to make and keep in repair sufficient fences for the protection of man and beast round every quarry, pit or other open place made, or thereafter during the said term to be made, in the said lands, and also sufficiently to fence off all roads and fields from the adjoining lands; (*d*) at the determination of the tenancy to deliver up the demised premises with all buildings and other conveniences which shall then be upon or within the

[1] Not included in the present print.

said lands (save such articles in the nature of trade fixtures as the tenant may by law be allowed to remove) in good and substantial repair condition and working order. Nothing in the lease was to authorise the tenant to get or carry away sand, gravel, ballast or any other mineral from the said land (clause 5 (3)). The land the subject of the said lease and the licence hereafter mentioned is shown edged in red in the plan marked "A"(1).

(7) On the same day, viz., 31st December, 1957, Besbuilt, Ltd., granted a licence under seal to the Appellant Company in respect of the land comprised in the lease. This licence also forms part of this Case and a copy of same is annexed hereto, marked "D"(1). By the said licence Besbuilt, Ltd., licensed the Appellant Company, during the continuance in force of the said lease, to excavate for sand, gravel and ballast and all other minerals which might be found in the said land comprised in the lease and to carry away and dispose of the same for its own benefit, paying to Besbuilt, Ltd., during the continuance in force of the said lease on 1st January and 1st July in every year 4*s*. for every cubic yard of sand, gravel and ballast got by them in the half year ended on such day, and also to pay to Besbuilt, Ltd., during the continuance in force of the said lease one equal quarter part (or such other proportion as might from time to time be agreed) of the moneys for which any mineral got under the liberties thereby granted, other than sand, gravel or ballast, should be sold, the said share of such moneys to be paid within 21 days of sale and before the minerals sold were removed from the demised land. The said licence also authorised the Appellant Company to erect all necessary buildings on the said land. The licence also provided (clause 5) that Besbuilt, Ltd., should accept a surrender of the lease if the sand and gravel should be wholly exhausted or should become unworkable, and (clause 6) that if the Appellant Company should assign the said lease it should also assign the benefit of the licence to the assignee of the lease and should obtain the assumption by such assignee of the burden of the covenants therein on the part of the Appellant Company to be performed.

(8) In 1957 some 56,000 cubic yards of sand and gravel were extracted, and some 60,000 cubic yards in 1958, these being the only two years for which returns for the purposes of rating assessment valuations were available. The Appellant Company expected to be at Tillingham for some time, as its surveyor thought there would be a local demand for sand and gravel even after the nuclear power station was completed. The estimated potential of this pit was a quarter of a million cubic yards. Admittedly, this would not last long at the rate of 50,000 cubic yards a year, but the Company had an option of further land in the area. Although long-term development was not favoured by the planning authority in 1956, the Company was optimistic of obtaining further planning permission if it should be required in the future.

(9) Before the sale of the 23½ acres the Schedule A assessment on Stows Farm, containing 155 acres 3 roods, was £108 gross and £56 net. The Inland Revenue first became aware of the sale of the 23½ acres to Besbuilt, Ltd., after the 1957–58 assessment had been raised on the farm as a whole. When it did become so aware no action was taken in respect of the year 1956–57 as the sale had taken place so near the end of the fiscal year, but the net annual value of the farm assessment for 1957–58 was apportioned between the purchaser and the vendors. For 1958–59 an assessment was raised directly on Besbuilt, Ltd., in respect of the 23½ acres, the net annual value being £8 10*s*. and the assessment on the farm being reduced

(1) Not included in the present print.

by that amount. Later, when the Inspector of Taxes was informed by the Valuation Office that the land was being used for the extraction of sand and gravel by the Appellant Company, an additional Schedule A assessment was raised for 1957–58 on an annual value of £2,000 gross, £1,750 net, an estimated figure in the absence of any precise information as to value. The Inspector had, however, been informed by the Valuation Office that the land had been included in the rating assessment at a figure of £2,000 net annual value. This additional Schedule A assessment was made by mistake on Besbuilt, Ltd., and was subsequently discharged by agreement, since at the material time the land was in the occupation, not of Besbuilt, Ltd., but of the Appellant Company. A fresh additional assessment under Schedule A was raised for the year 1957–58 upon the Appellant Company on a revised estimated annual value of £5,000 gross, £4,375 net, in respect of "Gravel pit and premises, Stows Farm, Tillingham, Essex", and this assessment is the subject of the appeal by the Appellant Company.

5. It was contended on behalf of the Appellant Company:

(1) That the basis of a Schedule A assessment was a quinquennial valuation of specific property and this could only be departed from (*a*) where, in connection with the valuation of such property, a relevant and significant factor had been overlooked in the pre-quinquennial year (which was not so in this case); (*b*) where there might have been some significant alteration in the property (although it was doubtful whether this was legally valid), in which case an apportionment could be made; (*c*) where a new property had come into being, as distinct from a new use of property, e.g., a new house built on a bare piece of land.

(2) That the getting of sand and gravel from land was merely making use of the natural potentialities of the lands. There had been a continuous getting of sand and gravel from the land in question for many years, and the more intensive getting of sand and gravel from the land in the period relevant to the present appeal did not create a new property.

(3) That, if it was decided there was a new property, the basis of the Schedule A assessment was the rack rent of the property. The rack rent was evidenced by the lease, and for the purpose of Schedule A any payments under the ancillary agreement, which represented the measure of damages done to the freehold by waste and did not form part of the rent reserved, were not to be taken into account.

(4) If, however, account had to be taken of the amount payable under the licence, which is obviously a fluctuating amount, then an average should be taken over the period of the lease and licence, which in this case would be 21 years.

The following Sections of the Income Tax Act, 1952, and decided cases were referred to in support of the contentions on behalf of the Appellant Company:

Sections 1, 41, 82, 84, 88 and 108.

Turner v. *Carlton*, 5 T.C. 395.

Thornley v. *Brown*, 15 T.C. 459.

Gwyther v. *Boslymon Quarries, Ltd.*, [1950] 2 K.B. 59.

Walker v. *Brisley*, 4 T.C. 254.

Gundry v. *Dunham*, 7 T.C. 12.

Grinter v. *Fleming*, 4 T.C. 239.

Elias v. *Snowden Slate Quarries Co.* (1879), 4 App. Cas. 454.

Commissioners of Inland Revenue v. *Dickson's Executors*, 14 T.C. 69.

Tollemache Settled Estates Trustees v. *Coughtrie*, 39 T.C. 454; [1959] 1 W.L.R. 900; [1959] 2 All E.R. 582.

Duke of Westminster v. *Store Properties, Ltd.*, [1944] Ch. 129.

Reference was also made to the Scottish case of *Moray Estates Development Co.* v. *Commissioners of Inland Revenue*, 32 T.C. 317, which, it was contended on behalf of the Appellant Company, had no bearing on the case under appeal.

6. It was contended on behalf of H.M. Inspector of Taxes:

(1) that in the year 1957–58 the area of 23½ acres no longer formed part of Stows Farm, but was a separate piece of property in respect of which tax under Schedule A could only be charged by an assessment on the new occupiers: Section 105, Income Tax Act, 1952;

(2) that no annual value had been adopted for that property for any previous year of assessment and Section 84(3) of the Income Tax Act, 1952, did not apply;

(3) that, under Section 82, Schedule A, paragraph 2(*b*), of the said Act, the annual value of the said property must be understood to be the rack rent at which it was worth to be let by the year for use as a gravel pit;

(4) that the said rack rent must be determined, with the assistance of expert evidence, by reference to the estimated duration of working and the terms agreed between the parties, for which purpose the lease and licence dated 31st December, 1957, must be read together as constituting one transaction and in effect one document.

The following cases were referred to on behalf of the Inspector:

Smith v. *Chadwick* (1882), 20 Ch. D. 27.

Moray Estate Development Co. v. *Commissioners of Inland Revenue*, 32 T.C. 317.

7. The Commissioners were asked by the representative for the Appellant Company to come to a decision on the preliminary points raised by him (reserving the evidence of the valuers for later if in fact it was needed), the preliminary points being: (1) whether there must be a new property, that is, a property significantly different from the 23 acres of land plus the sand-pit which existed prior to February, 1957, before an additional Schedule A assessment could be raised; (2) whether there was such a property here and, if so, what was it and how did it differ from the property that had been there previously; and (3) if there was a new property, how should the annual value be determined—in particular, whether it should be limited to the amount of the rent reserved by the lease.

8. We, the Commissioners who heard the appeal, agreed to adopt this course, and after consideration decided (1) that there must be a new property before an additional Schedule A assessment could be raised, and (2) that there was no new property in this case. The third point did not therefore arise.

We accordingly reduced the assessment of £5,000 gross, £4,375 net, upon the Appellant Company for the year 1957–58 to £16 gross, £8 10*s.* net,

being the proportion of the original farm assessment under Schedule A. (We were informed that the original assessment raised on Besbuilt, Ltd., for 1957–58 by apportionment of the Stows Farm assessment would be discharged by agreement.)

9. Immediately after the determination of the appeal, H.M. Inspector of Taxes expressed his dissatisfaction with our decision as being erroneous in point of law, and in due course required us to state and sign a Case for the opinion of the High Court of Justice pursuant to Section 64 of the Income Tax Act, 1952, which Case is stated and signed accordingly.

10. The question of law for the opinion of the Court is whether our decision was, on the facts, sound in law.

C. C. Booth
W. W. McKellar
S. G. Robinson
L. R. Firman
Arthur F. Ratcliff
} Commissioners for the General Purposes of the Income Tax Acts for the Division of Dengie in the County of Essex.

1st May, 1961.

The case came before Plowman, J., in the Chancery Division on 29th and 30th June, and 4th July, 1961, when judgment was given against the Crown, with costs.

Mr. H. H. Monroe, Q.C., and Mr. Alan Orr appeared as Counsel for the Crown, and Mr. P. J. Brennan and Mr. H. F. Williams for the Company.

Plowman, J.—This case relates to a Schedule A assessment for the year 1957–58 in respect of property described as " Gravel pit and premises, Stows Farm, Tillingham, Essex ". Prior to 1957, Stows Farm, which comprises some 155 acres, was owned and farmed by Messrs. W. and R. L. Procter. The farm unit included the gravel pit area, and the farm as a whole, including that area, was assessed to tax under Schedule A at £108 gross and £80 10*s.* net. The gravel pit had been used for such in the past to a comparatively small degree. In 1956 there was a great local demand for gravel owing to the construction of a nuclear power station in the vicinity, and Messrs. Procter applied for and obtained development permission in respect of an area of about 21 acres, being the major part of the gravel pit and premises to which I have already referred. It was a condition of the development permission that any necessary plant, machinery or structures should be erected on a small adjacent wooded area. Accordingly, after obtaining development permission, Messrs. Procter sold the 21 acres and the wooded area, making 23½ acres in all, to a company called Besbuilt, Ltd.; the sale was completed on 22nd February, 1957.

The Respondent Company, Welford Gravels, Ltd., is associated with Besbuilt, Ltd., and the latter bought the land so that the Respondent Company could exploit the sand and gravel in it. Immediately after the sale Besbuilt let the Respondent Company into occupation, and they proceeded to prepare the site for the necessary plant. By the end of March, 1957, the machinery was working, and the Respondent Company started its operations.

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On 31st December, 1957, Besbuilt, Ltd., granted a lease for 21 years of the site to the Respondent Company with effect from 1st March, 1957, at a yearly rent of £60. The only clause to which I need refer is clause 5 (3), which, bearing in mind the reason why Besbuilt bought the land, is at first sight a somewhat surprising provision. It is in these terms :

> " Nothing in this Lease shall be taken to authorize the Tenant to get or carry away sand gravel ballast or any other mineral from the said land whether or not from a pit or quarry which is now or was at the commencement of the term hereby granted already open ".

This surprise is, however, somewhat tempered when one looks at another document of the same date, made between the same parties, which is described as a licence. That recites the lease to which I have already referred ; it recites :

> " The demised land contains sand gravel and ballast and may contain other minerals which Welford is desirous of working and carrying away but the said Lease grants to Welford no right to do so . . . Besbuilt is desirous of granting such right in manner and subject to the provisions hereinafter contained ".

Then it is witnessed in the first place :

> " 1. Welford shall during the continuance in force of the said Lease have the following liberties ",

and a number of them are set out. The first of them is :

> " To search for dig work and obtain by excavations and quarryings open to the daylight and not by underground workings in and from the demised land sand gravel ballast and all other minerals which may be found therein and to carry away and dispose of the same for Welford's own benefit ".

Then clause 2 of the licence provides :

> " Welford shall during the continuance in force of the said Lease pay to Besbuilt on the first day of January and the first day of July in every year four shillings for every cubic yard of sand gravel or ballast got by them in the half year ending on such day ".

Then clause 4 (1) is in these terms :

> " Welford shall during the continuance in force of the said Lease :—(1) Work the quarries sand and gravel and other minerals in the demised land in a proper and efficient manner and according to the best and most approved method practised in similar undertakings in the district ".

Then in clause 5 there is a provision :

> " Besbuilt shall accept a surrender of the Lease aforesaid on the fulfilment of all of the following conditions ",

and the first of those conditions is this :

> " During the term thereby granted the sand and gravel pits thereby demised and gettable to profit shall be wholly exhausted or shall become unworkable by reason of incursion of water or other inevitable accident not due to any improper working or any default of Welford ".

In the year 1957 some 56,000 cubic yards of sand and gravel were extracted from the site, and in 1958 60,000 cubic yards. The royalties payable under the licence for those quantities were £11,200 and £12,000 respectively.

The Revenue did not become aware of the sale to Besbuilt of the 23½ acres until after the 1957–58 assessment had been raised on Stows Farm as a whole, at the figures I have already mentioned. Then the net annual value was apportioned between Messrs. Procter and Besbuilt, Ltd. ; but later, when the Inspector learnt that the land was being used for the extraction of sand and gravel by the Respondent Company, an additional assessment under Schedule A was raised on the Respondent Company on an estimated annual value of

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£5,000 gross and £4,375 net in respect of the gravel pit and premises. From that assessment the Respondent Company appealed to the General Commissioners, and the first question they had to consider was whether the annual value of the 23½ acres for Schedule A purposes should be arrived at by an apportionment of the annual value previously adopted for Stows Farm or whether the full annual value of 23½ acres as a gravel pit in 1957–58 should be taken. Expressed in figures, the question was, £4,375 or £8 10*s*.? The Crown naturally contended for the former and the Company for the latter.

It was submitted by Mr. Monroe, for the Crown, that the scheme of the Schedule A legislation embodied in the Income Tax Act, 1952, is to assess under Schedule A each unit of land in a separate occupation, and it is that which constitutes a unit of assessment. On this footing he submitted that, when the 23½ acres passed out of the occupation of Messrs. Procter and into the occupation of the Respondent Company, it became a new unit of assessment, and it therefore followed that it was right and proper to assess it as such, and that this involved finding out what its then annual value was : see Section 82 of the Income Tax Act, 1952.

In answer to this argument—which, up to a point, seems to me to be unexceptionable—the Respondent Company relies on Section 84 of the Act, dealing with quinquennial valuations. That Section is as follows :

> "(1) For such year of assessment as Parliament may hereafter determine and for each fifth year of assessment succeeding the year so determined, there shall be a revaluation of all properties in Great Britain in respect of which income tax is chargeable under Schedules A and B, and accordingly the annual values of all such properties shall be determined afresh for the purpose of assessment for the year so determined and for each fifth succeeding year of assessment. (2) A year of assessment for which a revaluation of properties is directed by this section to be made is in this Act referred to as 'a year of revaluation'. (3) The annual value of any property which has been adopted for the purpose of income tax under Schedules A and B for any year of assessment shall be taken as being the annual value of that property for the same purpose for the next year of assessment, unless that year is a year of revaluation: Provided that any occupier of any property, or any owner or other person in receipt of the rent of any property, who is aggrieved by the amount so to be taken as the annual value of the property for any year shall be entitled to appeal to the General Commissioners against an assessment to income tax under Schedule A or under Schedule B in respect of that property for that year, and the General Commissioners shall hear and determine the appeal and confirm or amend the assessment, as the case may require, in the same manner, and within the same time, as if the annual value of the property so to be taken were the annual value determined for that year as it would have been but for the provisions of this section."

From that it appears that the Schedule A value of property is to be determined, not every year, but every five years, and that the value adopted for Schedule A for any year of assessment is to be taken for the following year unless that year is a year of revaluation. In fact, there has not been a year of revaluation since 1936–37. In 1940 revaluation was indefinitely postponed by the Finance Act of that year. However, that Act introduced the system of taxing excess rents under Schedule D, which is now embodied in Section 175 of the Income Tax Act, 1952. It will also be seen that Section 84 gives a right of appeal to the owner or occupier who is aggrieved by the operation of the Section, as he might be if the value went down, but that no corresponding right of appeal is given to the Crown, which might be equally aggrieved if the value went up.

Relying on this Section, and particularly on Sub-section (3), the Respondent Company says that the annual value adopted for 1956–57 in respect of Stows Farm must be taken for 1957–58, and that the fact that the

23½ acres were then in a different occupation is neither here nor there. The Crown counter this by saying that Section 84 (3) is irrelevant because in the previous year no annual value of the 23½ acres as a unit of assessment had been adopted for the purposes of Income Tax under Schedule A, and that therefore the Sub-section could not operate. Which of these arguments is right is the question I have to determine. I approach the matter bearing in mind the principle that the subject is not to be taxed unless the words of the taxing Statute unambiguously impose the tax upon him.

The argument of the Crown, I think, comes to this, that Section 84 (3) refers to only one property which is envisaged as being the same property in two consecutive years, and if, as a result of the change of circumstances, the property in the second year is a different property from the property in the previous year, then Section 84 (3) cannot apply. To some extent this is, I think, conceded by the Respondent Company. For example, it is common ground that, if in year 1 the property is a piece of vacant land which in year 2 has a house built on it, then in year 2 the property is a different property and could properly be re-assessed.

At this point I must refer to what is admittedly a finding of fact by the Commissioners, namely, that there was no new property in this case. It was contended before them by the Respondents that the basis of the Schedule A assessment was a quinquennial valuation of specific property and that this could only be departed from, among other instances, where a new property had come into being as distinct from a new use of property—for example, a new house built on a piece of bare land. The Commissioners were asked by the representative of the Respondent Company to come to a decision on the preliminary points raised by him, the first of these points being:

> "whether there must be a new property, that is, a property significantly different from the 23 acres of land plus the sand pit which existed prior to February, 1957, before an additional Schedule A assessment could be raised".

The second was:

> "whether there was such a property here and, if so, what was it and how did it differ from the property that had been there previously?"

Paragraph 8 of the Case Stated says this:

> "We, the Commissioners who heard the appeal, agreed to adopt this course, and after consideration decided (1) that there must be a new property before an additional Schedule A assessment could be raised, and (2) that there was no new property in this case."

Their decision that the gravel pit operations in 1957–58 did not make the 23½ acres a new property—that is to say, a significantly different property from the property as it existed in the previous year—is, as I have said, admittedly a finding of fact. It is suggested that it was a perverse finding and that I should accordingly review it and come to a contrary conclusion, but I am not prepared to do so. In my judgment, the matter being one of degree, it was eminently one for the Commissioners, and I therefore accept their finding.

Mr. Monroe, however, puts his case in another way, submitting that a change in the area of occupation of property necessarily brings into being a different property—or rather, I suppose, two different properties—so that the mere fact that the 23½ acres was in a different occupation in 1957–58 from its occupation in 1956–57 makes it a different property, irrespective of any gravel digging operations on it. Now, I cannot accept that argument. It is clear that, if Messrs. Procter had worked the gravel themselves instead of selling off the gravel pit, the former assessment would have continued to apply; and it is equally clear that, if they had sold the whole of Stows Farm

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and the purchaser had worked the gravel pit, the position would have been the same, for a change in the occupation of the unit of assessment as a whole does not occasion a new assessment: see Sections 105 and 106; and I see no compelling reason for reading into the Act a provision that a change in the occupation of part of such a unit does so. Section 84 (3) appears to me to make good sense as it stands without reading into it, as I think Mr. Monroe's argument would involve doing, some such proviso as: "unless the property has ceased to be in one occupation". As I see it, the property, the annual value of which was adopted for the purpose of Income Tax under Schedule A for the year 1956–57, remained the same property in the following year, even though Messrs. Procter's rights in relation to a part of that property may have been transferred to Besbuilt and then split up between that company and the Respondent Company. Section 84, in my judgment, is concerned with property as a physical thing, and not with rights in property. These observations do not apply to the division of a house, which is specifically dealt with in Section 113, although the silence of the Act in regard to separate assessments on the division of property other than houses is at least consistent with the conclusion I have reached.

Mr. Monroe's last argument was that the proper case was really concluded in his favour by *Moray Estates Development Co.* v. *Commissioners of Inland Revenue*, 32 T.C. 317, a decision of the Court of Session (First Division). The facts of that case, which also concerned a gravel pit, so far as relevant, were these. Before 1942, the gravel pit was comprised in a larger unit of assessment for the purposes of Schedule A. In 1942 it was let to a company on what was, in effect, a monthly tenancy at a royalty rent. From 1942–43 to 1947–48, the lessors were assessed under Schedule D on the amount of the royalties paid in the preceding year of assessment, it being then thought that the case fell within what is now proviso (*c*) to Paragraph 1 of Schedule A in Section 82 of the Act of 1952. During those years the gravel pit was not assessed under Schedule A. In 1948, the decision of the House of Lords in *Scott* v. *Russell*[1] established that a gravel pit was not within the proviso; and, therefore, for 1948–49 a Schedule A assessment was made in respect of the gravel pit, and it was held to have been properly made. The argument was put forward that the gravel pit was not a proper unit of assessment, and that the proper unit of assessment was the pre-1942 unit. At page 322 of the report, the Lord President (Cooper) said this:

> "The Appellants further maintained that *Russell* v. *Scott* implied that in a case like this the fact that the gravel has been commercially worked on a substantial scale for some nine years ought to be ignored and that the proper basis of assessment under Schedule A is to treat the deposit as if it were still *in situ* and either to value the whole estate as an *unum quid* on the basis that the gravel is still unworked or else to revert to the *status quo ante* 1942 by restoring the old assessment on the 'woodlands' plus unworked gravel. I have failed to understand why a tax should be imposed on any such fictional basis contradictory of the plain facts of the case and if such was the intention of the House of Lords it does not appear from the reports of their decision in *Russell* v. *Scott*. No. I of Schedule A relates to all lands capable of actual occupation, of whatever nature, and for whatever purpose occupied or enjoyed, and the annual value for Income Tax purposes is understood to be the 'rack-rent at which they are worth to be let by the year.' In 1942 the Appellants elevated this gravel-pit into a distinct and separate subject of occupation as the terms of the lease show and I should have thought that for Income Tax purposes (as unquestionably for rating purposes) it then became a suitable subject for separate assessment from the woodlands which surrounded it or the estates of which it formed a small part."

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(1) 30 T.C. 394.

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In that passage the Lord President was, I think, addressing himself to the question whether the gravel pit was a suitable subject for separate assessment rather than to the question whether, in the year 1942, the Revenue authorities had any power to make any fresh assessment at all; and it must be remembered that the fresh assessment which they then in fact made was one under Schedule D and not under Schedule A. The question which I have to consider is not whether the 23½ acres are a suitable subject for separate assessment, but whether the Revenue had any right to re-assess them merely by reason of the fact that in 1957–58 they were in a different occupation from the occupation in the previous year. That is a point which was not, as far as one can tell from the report, canvassed in the *Moray Estates* case(1), and Section 27 (3) of the Finance Act, 1930, which was the provision then corresponding to Section 84 (3) of the Income Tax Act, 1952, does not appear even to have been referred to. Accordingly, I do not regard that case as standing in the way of my decision in the present case.

In conclusion, I should add that the fact that, on the view which I take of the matter, the claim of the Crown cannot be sustained does not mean that the Exchequer will necessarily lose tax on the money made by the exploitation of this land. It may be that the Crown will have their remedy under Section 175 of the Act, dealing with the taxation of excess rents; but that is an aspect of the matter with which I am not concerned, and on which I express no opinion. In the result, I dismiss this appeal.

Now, Mr. Brennan, is that the proper Order, simply to dismiss the appeal?

Mr. P. J. Brennan.—The appeal will be dismissed with costs, my Lord?

Plowman, J.—That would be right, Mr. Monroe?

Mr. H. H. Monroe.—That would be right, my Lord.

Plowman, J.—So be it.

The Crown having appealed against the above decision, the case came before the Court of Appeal (Lord Evershed, M.R., and Upjohn and Diplock, L.JJ.) on 1st, 2nd, 5th, 6th and 7th March, 1962, when judgment was reserved. On 17th April, 1962, judgment was given in favour of the Crown, with costs (Upjohn, L.J., dissenting).

Mr. H. H. Monroe, Q.C., and Mr. Alan Orr appeared as Counsel for the Crown, and Mr. P. J. Brennan and Mr. H. F. Williams for the Company.

Lord Evershed, M.R.—The question raised in this appeal is a novel one of considerable difficulty. It has arisen as one of the consequences of the decision of the House of Lords in *Scott* v. *Russell*, 30 T.C. 394, that a sand and gravel pit is not among the "other concerns of the like nature" within the meaning of what is now paragraph (*c*) of the proviso to Paragraph 1 of

(1) 32 T.C. 317.

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Schedule A in Section 82 of the Income Tax Act, 1952. The facts are fully recited in the Case Stated, but for the purposes of this judgment they may be summarised as follows.

The case is concerned with certain farm lands, amounting in area to 155 acres or thereabouts, and known as Stows Farm, Tillingham, in Essex. This farm had been owned and occupied for many years by Messrs. W. and R. L. Procter. On part of the land was a sand and gravel pit, from which Messrs. Procter had in fact extracted gravel in connection with the building of airfields during the first world war; and since that war they had from time to time made some use of the sand and gravel for farm roads and other farm purposes.

In the year 1956 there arose a great demand for gravel in connection with the building at Bradwell-on-Sea, in the neighbourhood of the farm lands, of a nuclear power station. Messrs. Procter accordingly applied for development permission in connection with a total area, which included the gravel and sand pit above mentioned, of some 23½ acres. Permission was granted, but upon terms (1) limiting the total area from which sand and gravel could be extracted, and (2) also requiring that all necessary plant and machinery should be placed inconspicuously in a wood inside, and part of, the 23½ acres. Thereupon Messrs. Procter sold the 23½ acres above mentioned, and in respect of which the planning permission had been obtained, to Besbuilt, Ltd., completion of the sale taking place on 22nd February, 1957. Besbuilt, Ltd., allowed Welford Gravels, Ltd., which is an associated company of Besbuilt, Ltd., and is the Respondent to this appeal, to enter upon the area in question, and Welford Gravels, Ltd., proceeded to prepare the site. This work included the laying of a concrete apron of some half an acre in extent, and also the erection of several buildings. According to the Case Stated, the cost of the buildings and the apron amounted to about £1,000, and of the requisite machinery to £24,000.

On 31st December, 1957, Besbuilt, Ltd., entered into a lease with Welford Gravels, Ltd., of the 23½ acres for the term of 21 years at a rent of £60 per annum. As was observed forcibly by the learned Judge, it was a striking feature of the lease that it contained a clause expressly providing that no power was thereby given to Welford Gravels, Ltd., to work or get any gravel from the site. As the Judge also observed, this apparently surprising feature of the lease was to be explained by the circumstance that on the same date—namely, 31st December, 1957—Besbuilt, Ltd., also executed a licence in favour of Welford Gravels, Ltd., the terms of which are fully recited in the judgment. For present purposes it is sufficient to state that the licence empowered the gravel company to extract sand and gravel from the site, paying by way of royalty to Besbuilt, Ltd., in respect of such extractions the sum of 4*s*. per cubic yard. The licence also provided that Welford Gravels, Ltd., should be entitled by surrender to put an end to the lease if for any reason further extraction of gravel became impracticable, or if and when the gravel was wholly worked out. It appears that during the two years since the operations began 56,000 and 60,000 cubic yards of gravel respectively have been extracted from the site under the licence, the royalties for those years amounting accordingly to £11,200 and £12,000 respectively.

As regards Income Tax under Schedule A, the whole area of the farm—namely, 155 acres—had been valued in the year 1936–37 at the figure of £108 gross or £80 10*s*. net, and had since been assessed on that basis until the making of the assessment which is the subject of the present proceedings. The Revenue authorities became aware of the sale by Messrs. Procter to Besbuilt,

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Ltd., after the Income Tax assessment in respect of the farm under Schedule A had been made for the year 1957–58. No action was, however, taken in respect of the Income Tax year 1956–57, since the sale to Besbuilt, Ltd., had taken place so near to the end of that financial year. In respect of the two ensuing years, 1957–58 and 1958–59, the Revenue authorities proceeded to apportion the valuation above mentioned (and, accordingly, the Schedule A assessment), with the result that for the 23½ acres the appropriate assessment amounted to £8 10*s*. When, however, the Revenue authorities later became aware of the extent of the business which had been carried on by Welford Gravels, Ltd., they proceeded, first, to raise the assessment in respect of the 23½ acres for the year 1957–58 from £8 10*s*. to a figure, based on a new valuation of that area, of £2,000 gross or £1,750 net, and later made a re-assessment in respect of the same year on an enhanced value of £5,000 gross or £4,375 net, the assessment being made (eventually) on Welford Gravels, Ltd. It will therefore be seen that there is a great deal involved in the present question, which is, putting it quite briefly, whether the Revenue are, in the circumstances, entitled to make a revaluation of the 23½ acres, the subject of the sale to Besbuilt, Ltd., or whether they are bound under the provisions of the Income Tax legislation to adhere to the valuation made in 1936–37 and to limit the assessment upon Welford Gravels, Ltd., to one based on an apportionment of that valuation. If the latter is the correct answer, then the assessment will remain at £8 10*s*., whereas if the former view is sustained the assessment is of a very substantially larger figure.

It is not, I think, in doubt that, were it not for the somewhat unusual form of the two documents executed on 31st December, 1957, the assessment in respect of the gravel pit would almost certainly have been made under Schedule D on the "excess rents" received by the landlords, as was done in the recent case of *Tollemache Trustees* v. *Coughtrie*(1), [1961] A.C. 880. It is clear, however, that the form of the documents of December, 1957, is such that it may (at the least) be doubtful whether what is received by Besbuilt, Ltd., can rightly be called "rents" within the meaning of Section 175 of the Income Tax Act, 1952.

It is in these circumstances that the claim is now put forward on behalf of the Crown; and, expressed very briefly, it is to this effect. True it is, say learned Counsel for the Crown, that the general form of the Income Tax legislation proceeded upon the view that there would be periodical revaluations of all land, and the Schedule A tax would therefore be based from time to time on such revaluations. As is well known, however, there have in fact been no revaluations for a very long period of time. Nonetheless, it is the case for the Crown that where, as here, a piece of property which was formerly owned and occupied by a single person or corporation is then divided both as regards ownership and occupation, there arises at once some new item of property which the Revenue must be entitled separately to value under the terms of Schedule A in Section 82 of the Act. The case for the Crown goes to the length of saying that such a right of revaluation arises where an owner who has previously let a substantial area to a single tenant then proceeds to subdivide his land and then to grant, in lieu of the single tenancy, two distinct tenancies of particular parts of his land. Similarly, and indeed more forcibly, it is submitted, the same result arises where a common owner or owner-occupier sells outright part of what was formerly a singly-occupied piece of property. Finally, it is said that in any event,

(1) 39 T.C. 454.

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and whether the two previous propositions can or cannot be sustained, if on any part of a piece of land work is done—for example, by way of the erection of buildings or otherwise—which, in the language of the learned Counsel for Welford Gravels, Ltd., " relevantly and significantly " transforms the nature of that piece of property, then such a right of revaluation arises.

As I have said at the beginning of this judgment, the point raised in the case is a novel one, and—certainly if the Crown's submissions are well founded to the full extent—an extensive change may well be thereby introduced into the basis of the assessment of many items of property under Schedule A. In the circumstances, when the matter was before the General Commissioners they were invited to express their opinion on what were called three " preliminary points "—namely, (1) whether in the circumstances there must, as regards the 23½ acres, have arisen a " new property ", distinct from that which had existed prior to February, 1957, before an additional Schedule A assessment could be raised in respect of it; (2) whether there was such a " new property " here as regards the 23½ acres; and (3) if so, how the annual value of such new property should be determined. The Commissioners answered the first such question affirmatively but the second negatively, so that no opinion was expressed by them upon the third question. The Commissioners' view was sustained by the learned Judge, Plowman, J., and the questions now before this Court concern the validity of the answers given to the preliminary questions—it being one of the points made by Welford Gravels, Ltd., that the problem raised by the second question was one of fact which the Court ought not in any event to disturb.

I have referred to the form of the questions submitted to and answered by the Commissioners for this among other reasons. Part of Mr. Brennan's argument for Welford Gravels, Ltd., rested upon the distinction in the Income Tax Act between the powers and functions of the General Commissioners on the one hand and the Additional Commissioners on the other; and it was said by him that only the former could make a valuation or revaluation of any property, and that there was no provision anywhere in the Act for the making of any revaluation by the General Commissioners of any property for the purposes of Schedule A save upon the occasions (including quinquennial revaluations) contemplated by Section 84. It was, however, conceded by Mr. Brennan that if, as a result of " relevant and significant " changes in the nature of any property—for example, by the building of a house on what had been vacant land—a new item of property came into existence, then a power and a right to make a revaluation for Schedule A purposes did unquestionably arise; and, having regard to the various mechanical provisions in the Act relating to General and Additional Commissioners and, as they are now called, Inspectors (see, for example, Sections 6, 24 and 32), it seemed to me that the absence of express provisions empowering revaluation (otherwise than under Section 84) by General or Additional Commissioners could hardly of itself provide an answer in this Court to the Crown's claim; and we were indeed of opinion that in the circumstances the argument was not, before us, open to Mr. Brennan, though it may be that if the appeal is allowed consideration will have to be given to the point taken, particularly as regards the form of Order proper to be made.

In the light, however, of Mr. Brennan's concession, I should myself be prepared to hold that the transformation of the 23½ acres with which we are concerned from its previous use as part of Stows Farm, albeit a certain

amount of sand and gravel had been extracted therefrom for farm purposes, to its present industrial use supported by buildings and machinery of a total cost of £25,000, had produced a change in the character of the property no less relevant and significant than the change that would have been produced by the erection upon it of a dwellinghouse or dwellinghouses. I appreciate that the question was dealt with as a matter of fact and that, as the learned Judge said, such matters are apt to be in the end of all questions of degree. But, upon the authority of *Edwards* v. *Bairstow*(1), [1956] A.C. 14, I would hold that the true and indeed the inevitable inference from all the facts, including the sale to Besbuilt, Ltd., and the fact that planning permission was required for what was done, is the creation for present purposes of a new item of property. In my judgment, it is not a sufficient answer to the Crown's contention under this head to say that what has been done is no more than an intensified use of the natural resources of the land, any more than would be the sale of part of a farm for the purposes of an open-cast coalmine—still less if there were sunk a pit shaft for coalmining under the area sold.

If, however, I am not entitled so to reverse the Commissioners' finding, and since the whole case was exhaustively argued, then I would also hold that the sale of the 23½ acres to Besbuilt, Ltd., and its occupation by Welford Gravel, Ltd., gave rise to a new property which justified and required separate valuation for the purposes of Schedule A in accordance with the provisions of Paragraph 2 of Schedule A in Section 82 of the Act. Upon this matter I have had the advantage of reading the judgment to be delivered by my brother Diplock and I agree with his conclusion and his reasons therefor. As my brother observes, one of the main difficulties for the Court lies in the absence in the relevant Sections of any clear definition of the essential terms used. Thus, though the word " property " is used in Paragraph 1 of Schedule A to mean the sum of proprietary rights in land, it is no less clear that in other Sections of the Act, including Section 84, the word is used to mean an identifiable piece of property in the ordinary sense of that term. Further, though the tax (generally known as the " landlord's property tax ") is charged " in respect of " the sum of the proprietary rights, the general scheme of the levy is to assess it by charging a particular person, normally the occupier—that is, the occupier of the identifiable item of property: see, especially, Section 105. It is no less unfortunate that the " unit of assessment ", the identification of which is essential to the scheme of the tax, is hardly at all defined. Though a definition of the phrase is found in Section 172 (1) for the purposes of that and the six following Sections as meaning " any land which forms a unit of assessment for the purposes of Schedule A ", the phrase is in fact only thereafter found in Section 175. It must equally be conceded that, if the view favoured by the learned Judge is correct—namely, that in such a case as the present, or indeed in any case in which an item of land formerly in the occupation of one person is then occupied distinctly by two or more persons, the appropriate course is to apportion the existing valuation of the whole among the parts and assess the occupiers of the parts accordingly—such a result is nowhere expressed, so far as I can see, in the relevant Sections ; for I have felt compelled to agree with Diplock, L.J., with all respect to the contrary view of Upjohn, L.J., that the word " assessment " in Section 108 can only

(1) 36 T.C. 207.

(Lord Evershed, M.R.)

in its context mean the assessment or levy of the tax, and not assessment in the sense of valuation, notwithstanding the use of the word in that sense, for example, in Parts I and II of the Fifth Schedule.

In the simple case of a unit of land owned by A and formerly occupied by B which then becomes the subject of separate occupations by parts by C and D, I should for my part be prepared to accept the result according to what I understand to have been the established previous practice—that is to say, to apportion, for assessment purposes, the existing valuation ; for in that case the proprietary rights in respect of which the tax is charged remain in the owner A and the apportionment is the mechanical means for distributing the charge. Upon this point, therefore, I would not disturb as unjustified the previous practice. But in my view the situation is different when A, the previous owner of the valued unit, altogether disposes of his proprietary rights in part of the unit ; for then, as it seems to me, there comes into being a new unit or item of land the distinct proprietary rights in which require for the first time to be valued according to the principles of Paragraph 2 of Schedule A.

I add only a reference to the Scottish case of *Moray Estates Development Co.* v. *Commissioners of Inland Revenue,* 32 T.C. 317. As the learned Judge pointed out, that was a case in which part of an owner's land had been for many years let to a company for the purposes of gravel extraction at a royalty, and had for all that time been assessed under Schedule D upon the supposition, proved erroneous by the *Scott* v. *Russell* decision(1), that it fell within what is now paragraph (*c*) of the proviso to Paragraph 1 of Schedule A. The Inner House rejected the taxpayer's submission that in the circumstances it was necessary to revert to the assessment appropriate to the entire unit of land before the letting to the gravel company, and held that, upon such letting, the site of the gravel pit had been " elevated . . . into a distinct and separate subject of occupation ". It is no doubt true that the point raised in the present appeal—namely, that there was no power to make a separate valuation of the gravel pit—does not strictly seem to have been taken. Nevertheless, the view which I have formed would appear to have the desirable result that the administration of the Income Tax law in cases such as the present will be the same in England and in Scotland. As Mr. Monroe observed, the *Moray* case is in any event authority for the view that if a property used commercially as a gravel pit has to be valued for Schedule A purposes, then its " rack rent " value under Schedule A will be determined by reference to its productivity as a gravel pit ; as it is also, as I think, some authority for the view that its transformed use as such is sufficiently " relevant and significant " sensibly to give rise to a new item of property for Schedule A purposes.

I would therefore allow the appeal and hold that the answer to the second preliminary question formulated by the General Commissioners should have been in the affirmative.

Upjohn, L.J.—The main point in this appeal raises a short but difficult question on the right of the Crown to make a new and up-to-date measurement of " annual value " for the purposes of assessing tax under Schedule A on a sub-division of land formerly in one occupation. A subsidiary question is whether the Commissioners came to a correct finding of fact on the evidence before them.

(1) 30 T.C. 394.

(Upjohn, L.J.)

The facts relevant to the first point may be stated quite briefly. Messrs. Procter were for many years the owners and occupiers of Stows Farm, Tillingham, in the county of Essex. This farm comprised 155 acres, and was at the material time assessed for the purposes of Schedule A tax at £108 gross and £80 10*s*. net (the figure of £56 net mentioned in the Case Stated is a mistake). On 22nd February, 1957, the Proctors sold 23½ acres, which contained a sand and gravel pit, to Besbuilt, Ltd. I shall refer to this land as "the sand pit". This company permitted the Respondent Company (an associated company) to enter into occupation of the sand pit and to work sand therein, and in due course they entered into a lease and licence for this purpose, but these documents do not require detailed notice here. The working of the sand was an extremely profitable operation, for nearby the Bradwell nuclear power station was in course of erection. The Crown sensibly treated the date of sale as so close to the end of the fiscal year 1956–57 as to be *de minimis*, but for the year 1957–58 made a new assessment, when the figure of £80 10*s*. above mentioned was apportioned as to £8 10*s*. upon the sand pit and the balance upon the rest of Stows Farm. No objection has been taken to this. Later, when the Inspector of Taxes learned that sand was being extracted by the Respondent Company, he raised an additional assessment upon it for that year of £5,000 gross and £4,375 net on the sand pit. That additional assessment is the subject of this appeal. Mr. Brennan, on behalf of the Respondent Company, took the point in this Court (but not in the Court below) that this procedure by way of additional assessment by the Additional Commissioners was wrong, but we ruled that this point was not open to him in this Court. We decided, however, that he should be permitted to take the point before the General Commissioners if the matter was remitted to them for further determination.

The point in issue can now be stated. Upon the severance by sale of part of the Procters' farm in February, 1957, were the Crown entitled to make a new assessment upon the sand pit and upon the remaining part of Stows Farm based on a new gross annual value, valued as of the date of the severance, or were they only entitled to make an apportionment of the existing gross assessment of £108 between the severed portions of Stows Farm? This point appears to be a novel one, now taken for the first time after more than 120 years of taxation of land by Schedule A. However, it is fair to say that for many years the working of sand was thought to be assessable on the profits of the previous year under Rule 3 of No. III of Schedule A of the Income Tax Act, 1918 (transferred to Schedule D by the Finance Act, 1926), until the decision of the House of Lords in *Scott* v. *Russell*(1), [1948] A.C. 422, showed this method of assessment to be wrong. The point now before us, however, could have been taken by the Crown, but was not, in *Tollemache Trustees* v. *Coughtrie*(2), [1961] A.C. 880.

Elementary and well known though the relevant law may be, it is necessary to say a few words on the scheme of taxation of land, instituted as a regular feature of our taxation code as long ago as the Income Tax Act, 1842. The matter is now of course governed by the Income Tax Act, 1952 (to which I shall refer as "the Act"). Parliament regards all land capable of occupation as being, for the purposes of Income Tax, capable of producing income. Schedule A is devised to tax the owner in respect of his right to exploit his proprietary rights as owner of the land. Parliament, however, regards the

(1) 30 T.C. 394. (2) 39 T.C. 454.

(Upjohn, L.J.)

income-producing rights arising from occupation as separate from a right of ownership, and this is taxed upon the occupier under Schedule B. The general principle of the Act is that the Schedule A tax is collected in the first place from the occupier of the land (Section 105 of the Act). This is no doubt done for ease of collection, but the occupier (if not the owner), though compelled to pay Schedule B tax out of his own pocket, is, generally speaking, entitled to deduct the Schedule A tax from the rent that he pays to his landlord (Section 173 of the Act). In essence, therefore, Schedule A tax is a tax upon owners, and for that reason is frequently described in leases and other documents as "landlord's property tax". This liability to tax is, by the charging words of Schedule A, Paragraph 1 (Section 82 of the Act), charged upon the "annual value" of the property in the lands. By Paragraph 2, the "annual value" for the purposes of the tax is to be understood to be the rack rent at which the premises are let if the lease was granted within seven years preceding the 5th April next before which the assessment is made, or, if there is no such lease, then the rack rent at which they were worth to be let by the year. In such last-mentioned case, it is therefore a matter for estimation.

Pausing there, had the Income Tax Acts made no further provision for valuation, it is perfectly true that the scheme of the Act might have proceeded upon the basis that the annual value is to be ascertained each year by looking to see the actual state of affairs—for example, if a new lease of the land had come into existence there might be a revaluation under Paragraph 2 (*a*), or if an earlier lease had expired then there might be a revaluation under Paragraph 2 (*b*). The Crown, however, concedes that this is not so. This is because of Section 84 (3) of the Act, to which I shall refer in detail later. As Lord Greene, M.R., said in *Croft* v. *Sywell Aerodrome, Ltd.*(1), [1942] 1 K.B. 317, at pages 325–6, unlike the other Schedules, the annual value for the purposes of Schedule A is not assessed by reference to income actually received, and, as he there pointed out and as is well known, owners of land may make large profits out of the land by letting at vastly increased rents; but until the law was altered in 1940 (now Section 175 of the Act) and excess rents became taxable under Schedule D, the owner, having been assessed to tax under Schedule A or B, was not further liable to tax in respect of his ownership and occupation of the property. Thus tax under Schedule A has never been newly assessed upon a mere change of occupation (Section 106 of the Act) or, as the Crown concedes, on a mere change of user of the land.

The reason for this is that the basic scheme for measuring the value of the owner's proprietary rights for the purposes of Schedules A and B from the time of the permanent institution of the tax in 1842 is that Parliament in Finance Acts has regularly provided for a general revaluation of all lands, tenements and hereditaments throughout England and Wales in accordance with Paragraph 2 of Schedule A. We were told that originally Finance Acts made such provision annually or every two or three years. Later, in the twentieth century, this practice of making statutory provision for revaluation became quinquennial; and finally, by the Finance Act, 1930, it was enacted that there should be a revaluation every five years. Following this Act, the first year of revaluation was 1931–32, and it was therefore followed with another revaluation in 1936–37; but that due in 1941–42 was, for war reasons, indefinitely postponed by the Finance Act, 1940.

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(1) 24 T.C. 126, at pages 135–6.

(Upjohn, L.J.)

By Section 84 (1) of the Act, it was enacted that, from such a date as Parliament should thereinafter determine, for each fifth year of assessment there should be a revaluation of all properties in Great Britain in respect of which tax is chargeable under Schedules A and B, and the annual values are to be determined afresh. Section 84 (3) deals with valuations for the purpose of making the necessary annual assessments in between years of revaluation, and provides as follows:

> "The annual value of any property which has been adopted for the purpose of income tax under Schedules A and B for any year of assessment shall be taken as being the annual value of that property for the same purpose for the next year of assessment, unless that year is a year of revaluation".

The taxpayer, but not the Crown, is by the proviso to this Sub-section given a right of appeal. Section 84, in my judgment, is a most important Section, and provides the fundamental basis of the whole scheme of valuation for the purposes of Schedule A tax. Elaborate provisions are set out in the Fifth Schedule to the Act for the revaluing by the General Commissioners in a year of revaluation. It follows that between years of revaluation the Crown cannot make a revaluation because of a change of user or a change of occupation in the sense that Blackacre, regarded as one holding, has changed hands on a sale or new tenancy.

The Crown so far agrees that this is so, but contends that all this is changed if there is some severance or division in the ownership or even occupation of the land. If, the Crown submits, during a quinquennium A sells or lets not the whole but part only of the land formerly in the occupation of B to C, then at once there arises upon the occasion of such transaction a right in the Crown to revalue, not only that part of Blackacre which is sold or let to C, but also as a necessary corollary that part which remains in the occupation of B. This seems a startling result out of accord with the general scheme of Schedule A valuation, and in an inflationary age (though, possibly, that is taxwise irrelevant) would give rise to the most unjust results. Startling, anomalous and possibly unjust results are, however, no true guide to the construction of an Income Tax Act; but such a proposition requires the most critical examination. Parliament can certainly achieve this curious result, but the taxpayer is entitled to claim that it must do so in clear terms.

The only Section dealing expressly with the division of occupied lands is Section 108, which is in these terms:

> "If, after the making of an assessment under Schedule A, the lands are divided into two or more distinct occupations, the General Commissioners, on the application of the persons respectively interested, shall determine what proportion of the tax shall be paid or borne by each occupier, and the amount apportioned shall be collected and levied in like manner as if it had been an original assessment."

Mr. Monroe is driven to admit that, if this Section is of general application whenever (that is, at any time of the year) there is a severance of occupation, that is fatal to his case. He contends, however, that the Section has a very limited ambit of operation. He submits that it applies only when there is a severance of occupation after an annual assessment has been made upon the occupier by the Additional Commissioners, usually in the autumn. Thus, if an assessment is made upon the occupier in, say, early December, and the occupier is going to deliver up possession of part of his land on, say, 25th December, the duty of the General Commissioners under the Section will be to apportion the assessment (not, be it noted, to make a

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new valuation) between the outgoing and incoming occupiers, having regard to the value of the land in their respective occupations and, of course, to the period of new occupation from 25th December to the next 5th April.

The Crown, therefore does not rely on this Section. It submits that for the next year of assessment it may make a new valuation of each part of the property which has been severed by sale of occupation. This depends on no words in the Act but, submits the Crown, it is the necessary legal consequence of the general structure of Schedule A tax that this result must follow. I must now deal with this argument, but let me, before doing so, again point out that we are concerned solely with the question of the right to revalue. The Respondent in this case does not for one moment seek to avoid the payment of Schedule A tax upon his property. His case is that upon the severance in February, 1957, the Crown rightly made an apportionment of the then existing gross value of £108, but they had no right, as they now claim, to make a new valuation for the immediately following years.

The Crown's case is this. The basis of Schedule A taxation is one assessment on property in one occupation. It is convenient to use the phrase " unit of assessment " as denoting an assessment upon one occupier in respect of one property, though it was first introduced into tax legislation as recently as the Finance Act, 1938, merely in relation to the building of air-raid shelters. This, however, let me point out, necessarily follows from the system of collecting the tax in the first place from the occupier. It has no significance whatever, in my view, upon the question of valuation, which is designed basically to tax the owner. This is well illustrated by Section 116 (2) of the Act, which requires the occupier of lands held by more than one owner to make a return giving a separate estimation of the lands belonging to the different owners. The argument proceeds that, as a result of Section 1 and Section 3 of the Act, tax must be charged for each year on the property comprised in the Schedules. Under the relevant Schedule A, tax is charged in respect of the property in all lands, tenements, hereditaments and heritages in the United Kingdom capable of actual occupation. The Crown submits, and the Respondent does not dispute, that in the opening and charging words of Schedule A " property " means the proprietary rights of the owner—that is to say, the bundle of rights connoted by ownership except the right of occupation, which is taxed under Schedule B. I may conveniently note here that it is quite plain, as Mr. Brennan illustrated by reference to a number of other Sections, that the word " property " or " properties " is sometimes, however, merely used as the equivalent of lands, tenements and hereditaments. That, I think, cannot be, nor is, disputed : it depends upon the construction of each particular Section. I shall refer later to the meaning of this word in Paragraph 2 of Schedule A in Section 82 and in Section 84.

Then, says the Crown, whenever there is a division of one unit of assessment into two—and it matters not whether this severance is upon severance of the ownership or occupation—a new property comes into existence for the purpose of assessment. It has never been assessed before as a unit of assessment, and therefore the Crown is under a duty forthwith to assess it as a new property. So, it is said, the owner of Blackacre now has two new sets of rights. Formerly he had one set of rights against B, the occupier of Blackacre ; now he has two sets of rights, one against the occupier, B, of Blackacre less, for example, 10 acres, and another set of

rights as against the new occupier, C, of the 10 acres divided from Blackacre. Let it be said at once that if this argument is correct then Mr. Brennan does not, as I understand his argument, dispute at all that the purely machinery Sections of the Act are sufficient to entitle the Crown to make a new assessment based on a new valuation on new properties between quinquennia.

I am, however, unable to accept this argument. While "property" in the charging words in Schedule A means the proprietary rights in land, as I have already said, it seems to me clear that the annual value of such proprietary rights is to be ascertained by reference to the value of the physical lands, tenements and hereditaments (which I shall shorten to "lands"). This is perfectly clear from Paragraph 2 of Schedule A; and in the proviso, which is the only place where the word "property" is used, it is clear it means "lands". Paragraph 2 forms a perfectly sensible, though artificial, method of valuing "lands"; it is a method of valuation only. It is to me equally clear that in the basic Section 84 "properties" or "property" mean "lands". The Crown in making a valuation is concerned, and concerned only, with "lands", that being the basis of assessing the proprietor's interest. The Crown is not in the least degree concerned with proprietary rights in the broader sense for which it contends—that is, that new proprietary rights come into existence on a subdivision of Blackacre into two occupancies, as of course in a literal sense they do. That is irrelevant for valuation based only on the value of "lands". The division into new occupations seems to me to be irrelevant to valuation of "lands": it is relevant only to collection. It is, of course, true that a division into new occupations may alter the rent; but in principle, by virtue of Section 84 (3), that cannot alter the valuation between quinquennia. For myself, I do not understand the argument that the property is a "new" property if it has never been assessed before as a unit of assessment. Every acre in England and Wales (subject only to erosion or accretion by natural causes) has been valued at intervals ever since 1842 by reference to Paragraph 2, and for the purposes of valuation it cannot make any difference that a piece of land is sometimes in one unit of valuation and sometimes in another, and sometimes is itself a unit of assessment: that only goes to quantum in a year of revaluation. Section 84 duly recognises that it will be valued "afresh".

That brings me to the key Section 108. I cannot accept Mr. Monroe's argument as to its limited ambit. As Mr. Brennan pointed out, the duty of apportionment is entrusted to the General Commissioners, who have the duty of making the quinquennial revaluation (see Section 6). If the duty imposed by Section 108 is as limited as Mr. Monroe suggests, it would surely have been entrusted to the Additional Commissioners. While the practical difference between the General Commissioners and the Additional Commissioners is today minimal, it is important in the construction of an Income Tax Act. I do not underestimate certain difficulties of construction of Section 108, which I am proposing to adopt, but in my view this Section was aimed at a division of lands at any time, and the duty of the General Commissioners on division is to apportion the tax between the new occupiers. It is true they are not directed expressly to apportion the annual value, but this is surely practical, for to apportion the tax involves a time element as well as a quantum and quality of land element. The apportionment of tax necessarily involves the apportionment of the annual value of the land in

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future to be held under two occupations. This does not involve, contrary to Mr. Monroe's argument; a revaluation, though no doubt it may involve a new inspection and estimation of the value as at the last date of revaluation of the respective severed parts, but this is part of the operation of apportionment, not of revaluation. For future years, until the next year of revaluation, Section 84 (3) then necessarily operates on the values so apportioned. That is what the Crown has always done until this case, and in my judgment they have done so correctly.

Before concluding this part of my judgment, let me point out the extraordinary result if the Crown's contention is right. A lets Blackacre to B with no clause prohibiting subletting. B lawfully sublets part of Blackacre to C and part to D. If they are right, the Crown revalues at enhanced rates, in accordance with Paragraph 2, these two new units of assessment. B's lease expires, and A, when he re-enters into occupation, naturally expects to find his Schedule A assessment is as it was at the time of letting to B, for he knows nothing of any subletting and B has not been entitled to deduct more from his rent than the tax on the original Schedule A value. As the Crown agrees, the letting of Blackacre to B gave no right to a revaluation, and the real taxpayer, A, was no party to the division of the property. But if the Crown is right, when A re-enters into possession of Blackacre he finds that he owns two new units of assessment with a much higher tax liability: yet, if he appeals, it is by no means clear to me that he would succeed merely because a few years earlier he paid less Schedule A tax on Blackacre.

I reject the Crown's claim to be entitled to revalue upon a division of lands whether on a change of occupation or on a sale, for the basic reason that the whole scheme of valuation depends on a general revaluation in a year of revaluation. A change of occupation of the whole of a holding between years of revaluation is admittedly irrelevant; and so, in my judgment, is a division of a holding. Valuation depends not upon units of assessment but upon physical valuations in years of revaluation.

I find it unnecessary to deal with the case of *Moray Estates Development Co.* v. *Commissioners of Inland Revenue,* 32 T.C. 317, for the reason that I agree with the observations of Plowman, J., with respect to that case, and it is unnecessary to repeat them here.

I turn, then, to the distinct subsidiary point: that is the question whether, when the Respondent Company entered into possession of the sand pit and made substantial physical alterations to the land, the Crown was entitled to make a new valuation because the property was a new property. This point depends not upon any division of the property or change in title: it depends entirely upon a change in the physical state of the land. Now Mr. Brennan, rightly or wrongly, concedes that if you have a property which between quinquennia has been subject to what he described as a " significant and relevant change ", then the Crown is entitled to make a new valuation. I accept the concession, of course, but in the view I hold of the law I doubt its correctness and question its wisdom. It was difficult to understand exactly what was meant by the phrase " significant and relevant change " ; but I gather that Mr. Brennan concedes that if, for example, you have a field upon which you then build a dozen houses to the acre, then the Crown is entitled to make a new valuation because it is a " new property ".

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It is, indeed, curious that there is virtually no authority upon this proposition. Two cases were read to us where the recitals of the facts showed that the subject had submitted to a new valuation when he had made a change obviously of great substance physically and made no complaint on that score. The cases themselves dealt with entirely different points. We were referred to the judgment of Channell, J., in *Turner* v. *Carlton,* 5 T.C. 395, and, as revised, [1909] 1 K.B. 932, but that gives us no real help upon the matter. Upon the basis of the concession, the Commissioners dealt with this matter in the Case Stated, and they set out the relevant facts in detail with regard to the physical alteration to the land in paragraph 4 (5) thereof. I do not propose to recapitulate those facts. During the argument before us my mind has fluctuated very considerably as to whether or not the Commissioners came to a right conclusion. Apparently they accepted the test propounded by the Respondent Company and considered in effect (see paragraph 7 of the Case Stated) whether there was here a new property—that is, a property significantly different from 23 acres of land plus the sand pit which existed prior to February, 1957. They have answered that in the negative. Though my mind has fluctuated, I have not been able to persuade myself that the finding of the Commissioners was clearly wrong, because I do not quite understand what is really meant by the terms of the test, employing as it does completely non-statutory language. But, assuming I am entitled to make up my mind as a jury whether this test has or has not been satisfied, I still feel much difficulty. Whatever I might have decided myself, I have felt unable to follow in the steps of the Master of the Rolls and to reach the conclusion that the only true and reasonable conclusion was that a new property came into being by reason of the physical alterations to the land.

For these reasons I would dismiss this appeal.

Diplock, L. J.—This appeal turns upon the answers to three questions: (1) whether, upon the sale and consequent change of occupier in February, 1957, of 23½ acres of gravel-bearing land which previously formed part of, and were occupied together with, the remainder of Stows Farm, Tillingham, there came into existence a new " property " for the purposes of Schedule A of the Income Tax Act, 1952 ; (2) if so, whether the Revenue became entitled, in a year which was not " a year of revaluation ", to determine the annual value of that new property for the purposes of assessment to tax under Schedule A ; and (3) if so, whether it was entitled to determine such annual value otherwise than by apportioning the annual value of Stows Farm as determined in the last year of revaluation between the 23½ acres and the remainder of Stows Farm. In my opinion, the answer to each of these questions is " Yes ".

Income Tax is charged

> " in respect of all property, profits or gains respectively described or comprised in "

Schedules A to E of the Income Tax Act, 1952, and is assessed and charged for each financial year. Income Tax under Schedule A is charged

> " in respect of the property in all lands [etc.] in the United Kingdom capable of actual occupation, for every twenty shillings of the annual value thereof ",

" annual value " for this purpose being the actual or notional rack rent of the land. The expression " property " is not always used in the same sense in those Sections of the Income Tax Act, 1952, and the annual Finance Acts relating to tax under Schedule A ; but in the context of Paragraph 1

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of Schedule A in Section 82, when it is used in conjunction with " all lands ", in the plural, it clearly means the sum of the proprietary rights which would vest in the owner of the unencumbered fee simple of a particular parcel of land subject to tax ; and the profits falling under Schedule A are those annual profits which an owner makes or could make by granting or limiting part of his rights in favour of an occupier: see *Croft* v. *Sywell Aerodrome, Ltd.*(1), [1942] 1 K.B. 317, at page 327.

The Income Tax Act, 1952, nowhere states expressly what is the " unit of assessment " of land for the purposes of the charge to tax under Schedule A. It uses the expression in Section 172, and in that and other Sections tacitly assumes that a particular identifiable area of land forms a unit of assessment, but it leaves it to be gathered from the scheme of the Act as a whole what area of land does form a unit of assessment in any particular case. The key to the solution of the problem of what area of land is comprised in any unit of assessment is to be found in the fact that Income Tax, although charged " in respect of " property, profits and gains, is charged " on " and paid by persons. It creates a debt due to the Crown by the person charged ; and, since the amount of tax charged and payable is the amount specified in an assessment to tax, the unit of assessment in respect of the property in any lands cannot be greater (although it may be less) than the area of land in respect of which tax is charged on and payable by one person. The general rule, which applies to the present case, is that tax under Schedule A is charged on, and paid by, the occupier of the land. The unit of assessment, therefore, in a case which falls under that general rule, cannot be greater than the area of land occupied by a single occupier or joint occupiers.

This is sufficient to answer the first of the questions posed, for the 23½ acres are now in a separate occupation from that of the remainder of Stows Farm. In fact, however, an examination of statutory machinery for charge and payment of tax under Schedule A shows that, leaving aside the exceptional cases dealt with in Section 109, the unit of assessment in the case of land occupied by a lessee must be the area of land occupied by a single occupier or joint occupiers and held by him or them under a single lessor or joint lessors. This is implicit in the provisions of Section 173, which entitle a tenant of any land to deduct tax from his rent but impose as a maximum the amount of tax " charged in respect of such property "—that is, the land of which he is tenant. The amount of the maximum deduction could not be ascertained unless the land occupied by the tenant under a single lessor or joint lessors were the subject of a separate assessment. In the present case, the 23½ acres are in separate ownership as well as in a separate occupation from the remainder of Stows Farm, and for this reason also constitute a separate unit of assessment.

So far I have used the expression " unit of assessment " to denote the subject-matter of a separate assessment to tax under Schedule A rather than the ambiguous expression " property ". It is, however, evident from the proviso to Section 173, which I have already cited, that the word " property " is there used in the sense of a unit of assessment in respect of which tax under Schedule A is charged ; and it is, in my view, equally plain that in any context in which the word " property " appears also in the plural—that is, " properties "—it is in this sense that the word is

(1) 24 T.C. 126, at p. 136.

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employed. Thus Sections 84 and 85 and the Fifth Schedule, which deal with the determination of the annual value of " all properties " in a year of revaluation and of " any property " in a year which is not a year of revaluation, use the expression " property " in the sense of " unit of assessment ", as is exemplified by the reference in Section 84 (3) and in Paragraph 2 of Part II of the Fifth Schedule to

> " any occupier of any property, or any owner or other person in receipt of the rent of any property ".

For the purposes of Section 84, therefore, the 23½ acres became in 1957 a new " property " distinct from the remainder of Stows Farm, and also distinct from the previously existing " property " which comprised the whole of Stows Farm.

Turning now to the second question, the answer to this depends upon the true construction of Section 84 of the Income Tax Act, 1952. Section 84 qualifies the general provision laid down in Paragraph 2 of Schedule A, that for the purposes of Schedule A the annual value of all lands shall be the actual or notional rack rent for the year of assessment. Section 84 (1) contemplates a quinquennial revaluation, for which provision is made in Section 84 and the Fifth Schedule, but which for various reasons has not in fact taken place since 1936–37 ; and Section 84 (3) provides that:

> " The annual value of any property which has been adopted for the purposes of income tax under Schedules A and B for any year of assessment shall be taken as being the annual value of that property for the same purpose for the next year of assessment, unless that year is a year of revaluation ".

There follows a proviso giving to the taxpayer the right to have the assessment to tax based on such previous year's annual value amended

> " as if the annual value of the property so to be taken were the annual value determined for that year [that is, the year of assessment] as it would have been but for the provisions of this section."

Section 84 (3) can only apply to the case of a " property " of which there is an annual value which has been adopted for the previous year. It cannot apply to the case of a new " property " in respect of which no annual value has been previously adopted. It cannot, therefore, apply to the 23½ acres of Stows Farm, which did not exist as a separate property before February, 1957. The annual value of these 23½ acres would accordingly, but for the provisions of Section 108, to which I refer later, fall to be determined for the year of assessment in which it first came into existence under the general provisions of Schedule A, Paragraph 2 ; and since that year—that is, 1956–57—was not a year of revaluation, its annual value for that year would have to be determined under the ordinary machinery of the Act for making assessments to tax in a year other than one of revaluation.

The third question—namely, whether the annual value of the 23½ acres can be determined otherwise than by apportioning the annual value of Stows Farm, as determined in the last year of revaluation, between the 23½ acres and the remainder of Stows Farm—depends upon the effect of Section 108 of the Income Tax Act, 1952. That Section, which comes in a chapter of the Act dealing with " Persons Chargeable ", provides as follows:

> " If, after the making of an assessment under Schedule A, the lands are divided into two or more distinct occupations, the General Commissioners, on the application of the persons respectively interested, shall determine what proportion of the tax shall be paid or borne by each occupier, and the amount apportioned shall be collected and levied in like manner as if it had been an original assessment."

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This Section, in my view, deals only with the liability for tax under Schedule A in the year in which land comprised in a single unit of assessment has been split into distinct occupations after the assessment to tax has been made—that is, in the present case, the Income Tax year 1956–57. Mr. Brennan has argued strenuously that " an assessment under Schedule A " in this Section means a determination of annual value for the purposes of Schedule A made in a year of revaluation, and he points out that in the Fifth Schedule, Part I, Paragraphs 1 and 2, and Part II, Paragraphs 1 (*a*) and 2, reference is made to " assessments " of annual values. This, however, does not seem to me to be a permissible construction of the Section. The Section is dealing with the collection and levying of " the tax "—that is, the amount of tax specified in the assessment—and provides that the amount apportioned to be paid by each occupier shall be collected as if it (that is, the amount apportioned) had been " an original assessment ". The expression " assessment " at the end of the Section can only mean a yearly assessment to tax specifying the amount of tax payable for that year of assessment, and the expression " assessment under Schedule A " at the beginning of the Section must bear the same meaning—a meaning which the same expression clearly also bears in the comparable Section dealing with change of occupiers of a whole unit of assessment, Section 106.

But for Section 108, the persons assessed as being in occupation of the whole property at the time of the assessment would be liable for the full tax charged for the year of assessment, notwithstanding any splitting of the occupation after the date of the assessment. The Section merely provides machinery, which can be brought into operation only upon the application of the persons interested, for apportioning the liability for the tax so assessed between the persons in actual occupation of the different parts of the land after the date of the assessment. It does not deal with the assessment of annual values. That is dealt with in Sections 82, 84 and 85. The determination of the " annual value " of any property is a necessary step in the charge to tax under Schedule A of that property ; and in the case of a new " property ", to which Section 84 (3) cannot apply, the amount of the annual value falls to be determined in accordance with the general rule laid down in Schedule A, Paragraph 2, and is the actual or notional rack rent of that property in the year of assessment in which the new property is first separately assessed—in the present case, the Income Tax year 1957–58. That the Act provides machinery which enables the annual value of any property to be estimated and determined in a year which is not a year of revaluation is not contested.

The view which I have formed as to the true construction and effect of the relevant Sections of the Act may in particular cases have what may appear to be somewhat arbitrary consequences, for it follows that, upon any division into two distinct occupations or ownerships of an area of land which was previously in a single occupation and ownership, the annual value of each part falls to be newly determined at the actual or notional rack rent which it commands or would command at the time of the first separate assessment to tax under Schedule A ; and, having regard to the general change in the annual value of land since 1936–37, the last year of revaluation, the sum of the annual values of the two parts is likely to exceed considerably the previous annual value of the whole. But the apparent arbitrariness of this is largely due to the fact that, although the Act provides for quinquennial valuations, none has in fact been made for 25 years, a period during which the value of money has greatly depreciated.

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Where land has been relet at increased rents since 1936–37, the Revenue exacts the tax corresponding to the increased annual value under the excess rents provisions of Sections 175 and 176 of the Income Tax Act, 1952, and I shall feel no regret if the present decision prevents the Respondents and their associated company which is their landlord from deriving any benefit from an ingenious arrangement of lease and licence designed to escape the excess rent provisions of those Sections. Apart from devices such as this—as to the success of which, had the excess rent provisions become relevant, I express no view—it is only owner-occupiers who benefit from the long postponement of any general revaluation of the annual values of properties. Upon the true construction of the Act, it seems to me that they too lose that benefit when any such property is divided into two distinct ownerships and two distinct occupations.

The conclusion which I have reached makes it unnecessary for me to express any view on the Crown's alternative contention that, quite apart from any change of occupation or ownership, the physical alterations and change in use of the 23½ acres were in themselves sufficient to bring into existence a new " property " for the purposes of assessment to tax under Schedule A. I would allow the appeal.

Lord Evershed, M.R.—Mr. Monroe, it will be a reference back, I take it?

Mr. H. H. Monroe.—A reference back to the General Commissioners, my Lord, with a direction perhaps, to determine the annual value in accordance with the terms on which the Respondents have the use of the land and with the benefit of expert evidence, if necessary. Because the problem now for the General Commissioners is to say what is the rack rent at which this land is worth to be let by the year.

Lord Evershed, M.R.—Do you agree, Mr. Brennan?

Mr. P. J. Brennan.—My Lord, I agree with that Order.

Lord Evershed, M.R.—You may have this point of yours about the Additional and General Commissioners, but that you can deal with on that occasion.

Mr. Brennan.—Yes, my Lord.

Lord Evershed, M.R.—Very well, Mr. Monroe.

Mr. Monroe.—Also costs, my Lord, here and below?

Lord Evershed, M.R.—What about costs?

Mr. Monroe.—The Crown would ask for its costs here and below.

Lord Evershed, M.R.—What happened below?

Mr. Monroe.—Below, costs were awarded against us.

Lord Evershed, M.R.—I think that must follow too, Mr. Brennan.

Mr. Brennan.—I would accept that, my Lord.

Lord Evershed, M.R.—Very well.

Mr. Brennan.—My Lord, I am instructed to ask your Lordships for leave to appeal to the House of Lords.

(The Court conferred.)

Lord Evershed, M.R.—The Crown, I take it, has no comment to make on that?

Mr. Monroe.—We have no comment to offer, my Lord.

Lord Evershed, M.R.—Then I think we should give leave.

Mr. Brennan.—If your Lordship pleases.

The Company having appealed against the above decision, the case came before the House of Lords (Lords Jenkins, Hodson, Guest and Pearce) on 9th, 13th, 14th, 16th and 20th May, 1963, when judgment was reserved. On 20th June, 1963, judgment was given unanimously in favour of the Crown, with costs.

Mr. John Foster, Q.C., and Mr. H. F. Williams appeared as Counsel for the Company, and Mr. H. H. Monroe, Q.C., Mr. Alan Orr, Q.C., and Mr. J. Raymond Phillips for the Crown.

Lord Jenkins.—My Lords, this case concerns an assessment to Income Tax, Schedule A, made on the Appellant Company, Welford Gravels, Ltd., for the year 1957–58 on an estimated annual value of £5,000 gross, £4,375 net, in respect of property described as " Gravel pit and premises, Stows Farm, Tillingham, Essex ".

The circumstances in which the disputed assessment came to be made are fully set out in the Case Stated, and I need not repeat them at unnecessary length in this judgment. The property in question comprised farm lands extending to 155 acres or thereabouts, and included a very valuable feature in the shape of a sand and gravel pit of some 23½ acres in extent. The farm had for many years been in the ownership of Messrs. W. & R. L. Procter, who had extracted gravel from the pit for use in connection with the building of airfields during the first world war, and since that war had from time to time also made some use of gravel so extracted for farm roads and other farming purposes. An important development took place in 1956, in the shape of a great demand for gravel in connection with the construction at Bradwell-on-Sea (in the neighbourhood of Stows Farm) of a nuclear power station. In these circumstances Messrs. Procter applied for and obtained from the appropriate authority the development permission required for the extraction of sand or gravel from the 23½ acres already mentioned.

In February, 1957, Messrs. Procter sold the 23½ acres to a company called Besbuilt, Ltd., which bought the land in order that one of its associate companies could extract sand and gravel for commercial purposes. The sale was completed on 22nd February, 1957, and immediately thereafter Besbuilt allowed the Appellant Company to go into occupation of the land and prepare the site for the plant. The apparatus required seems to have been fairly elaborate, and for details of it reference should be made to the Stated Case. There was a concrete apron half an acre in extent, with stanchions for the plant to be attached to, and from which it could easily be detached. There were also three small buildings

described as a brick power-house, a brick pump-house and a nissen hut. These buildings cost some £1,000, and were intended to be temporary and incidental to the workings. Machinery was installed on the site at a cost of some £24,000. It was the end of March, 1957, before the apron was down and the machinery was in operation. It was intended that when the pit had been worked to the extent proposed all the machinery, plant and buildings would be removed and the top-soil replaced.

On 31st December, 1957, Besbuilt, Ltd., executed a lease to the Appellant Company of the whole of the land which it had bought from Messrs. Procter for 21 years from 1st March, 1957, at the rent of £60 per annum. This document forms part of the Case Stated and need not be repeated here. A curious feature of the transaction was that the lease provided that nothing it contained was to authorise the tenant to get or carry away sand, gravel, ballast or any other mineral from the said land. However, on the same date, viz., 31st December, 1957, Besbuilt, Ltd., granted a licence under seal to the Appellant Company in respect of the land comprised in the lease. This licence likewise forms part of the Stated Case and, to put it shortly, permits the extraction for sale of sand, gravel, ballast and other minerals from the land comprised in the lease at 4s. per cubic yard. Some 56,000 cubic yards were extracted in 1957 and some 60,000 in 1958, these being in effect the latest available figures. The estimated potential of this pit was only 250,000 cubic yards, but the Company had an option over further land in the area.

Before the sale of the 23½ acres the Schedule A assessment on Stows Farm, containing 155 acres, was £108 gross and £56 net. The Revenue first became aware of the sale of the 23½ acres to Besbuilt, Ltd., after the 1957–58 assessment had been raised on the farm as a whole. Then there seems to have been a good deal of confusion as to the true position, but I do not think it necessary to say more about that than what has been said in this passage at the end of paragraph 4 (9) of the Case:

> "A fresh additional assessment under Schedule A was raised for the year 1957–58 upon the Appellant Company on a revised estimated annual value of £5,000 gross, £4,375 net, in respect of 'gravel pit and premises, Stows Farm, Tillingham, Essex', and this assessment is the subject of the appeal by the Appellant Company."

At the hearing before the Commissioners the following points, amongst others, were made on behalf of the Appellant Company:

> "(1) That the basis of a Schedule A assesment was a quinquennial valuation of specific property and this could only be departed from (*a*) where, in connection with the valuation of such property, a relevant and significant factor had been overlooked in the pre-quinquennial year (which was not so in this case); (*b*) where there might have been some significant alteration in the property (although it was doubtful whether this was legally valid), in which case an apportionment could be made; (*c*) where a new property had come into being, as distinct from a new use of property, e.g., a new house built on a bare piece of land. (2) That the getting of sand and gravel from land was merely making use of the natural potentialities of the lands. There had been a continuous getting of sand and gravel from the land in question for many years, and the more intensive getting of sand and gravel from the land in the period relevant to the present appeal did not create a new property. (3) That, if it was decided there was a new property, the basis of the Schedule A assessment was the rack rent of the property. The rack rent was evidenced by the lease, and for the purpose of Schedule A any payments under the ancillary agreement, which represented the measure of damages done to the freehold by waste and did not form part of the rent reserved, were not to be taken into account. (4) If, however, account had to be taken of the amount payable under the licence, which is obviously a fluctuating amount, then an average should be taken over the period of the lease and licence, which in this case would be 21 years."

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On the Crown's side points taken included the following:

> "(1) That in the year 1957–58 the area of 23½ acres no longer formed part of Stows Farm, but was a separate piece of property in respect of which tax under Schedule A could only be charged by an assessment on the new occupiers: Section 105, Income Tax Act, 1952; (2) that no annual value had been adopted for that property for any previous year of assessment and Section 84 (3) of the Income Tax Act, 1952, did not apply; (3) that under Section 82, Schedule A, paragraph 2 (*b*), of the said Act, the annual value of the said property must be understood to be the rack rent at which it was worth to be let by the year for use as a gravel pit".

The Commissioners were

> "asked by the representative for the Appellant Company to come to a decision on the preliminary points raised by him (reserving the evidence of the valuers for later if in fact it was needed), the preliminary points being: (1) whether there must be a new property, that is, a property significantly different from the 23 acres of land plus the sandpit which existed prior to February, 1957, before an additional Schedule A assessment could be raised; (2) whether there was such a property here and, if so, what was it and how did it differ from the property that had been there previously; and (3) if there was a new property, how should the annual value be determined—in particular, whether it should be limited to the amount of the rent reserved by the lease."

The Commissioners

> "agreed to adopt this course, and after consideration decided (1) that there must be a new property before an additional Schedule A assessment could be raised, and (2) that there was no new property in this case. The third point did not therefore arise."

The Commissioners

> "accordingly reduced the assessment of £5,000 gross, £4,375 net, upon the Appellant Company for the year 1957–58 to £16 gross, £8 10s. net, being the proportion of the original farm assessment under Schedule A."

Perhaps I should make some further reference to the preliminary points raised by the Appellant Company. These preliminary points were duly incorporated in the Case Stated, the first of them being as follows:

> "whether there must be a new property, that is, a property significantly different from the 23 acres of land plus the sandpit which existed prior to February, 1957, before an additional Schedule A assessment could be raised",

and the second of such points being as follows:

> "whether there was such a property here and, if so, what was it and how did it differ from the property that had been there previously".

Paragraph 8 of the Case says this:

> "We, the Commissioners who heard the appeal, agreed to adopt this course, and . . . decided (1) that there must be a new property before an additional Schedule A assessment could be raised, and (2) that there was no new property in this case."

The Crown having appealed to the High Court, Plowman, J., by an Order dated 4th July, 1961, dismissed the appeal, the learned Judge being of opinion that the Commissioners' finding of fact ought not to be disturbed. From that Order of Plowman, J., the Crown appealed to the Court of Appeal (Lord Evershed, M.R., and Upjohn and Diplock, L.JJ.), and that Court by an Order dated 17th April, 1962 (Upjohn, L.J., dissenting) allowed the appeal, leave being given to the Appellant Company to appeal to your Lordships' House.

Lord Evershed, M.R., in his judgment in the Court of Appeal has described the question raised in this appeal as a novel one of considerable

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difficulty, and I certainly would not dissent from that description of it. The substantial point at issue, as I understand it, is how land previously assessed as a single unit for the purposes of Income Tax under Schedule A ought to be treated with respect to such tax if part only, but not the whole, of such land is disposed of to some third party. As Lord Evershed put it, [1963] Ch. 95, at page 114 (1):

> " As is well known, however, there have in fact been no revaluations for a very long period of time. Nonetheless, it is the case for the Crown that where, as here, a piece of property which was formerly owned and occupied by a single person or corporation is then divided both as regards ownership and occupation, there arises at once some new item of property which the Revenue must be entitled separately to value under the terms of section 82 of the Act. The case for the Crown goes to the length of saying that such a right of revaluation arises where an owner who has previously let a substantial area to a single tenant proceeds to sub-divide his land and then to grant, in lieu of the single tenancy, two distinct tenancies of particular parts of his land. Similarly, and indeed more forcibly (it is submitted), the same result arises where a common owner or owner-occupier sells outright part of what was formerly a singly-occupied piece of property. Finally, it is said that in any event, and whether the two previous propositions can, or cannot, be sustained, if on any part of a piece of land work is done—for example, by way of the erection of buildings or otherwise—which, in the language of counsel for Welford Gravels, Ltd., ' relevantly and significantly ' transforms the nature of that piece of property, then such a right of revaluation arises."

Reference should also be made to the " concession " by Mr. Brennan (Counsel for Welford Gravels, Ltd.), who conceded that (2):

> " if, as a result of ' relevant and significant ' changes in the nature of any property —for example, by the building of a house on what had been vacant land—a new item of property came into existence, then a power and a right to make a revaluation for Schedule A purposes did unquestionably arise ".

At page 117 (3), Lord Evershed, M.R., said:

> " In the light, however, of Mr. Brennan's concession, I should myself be prepared to hold that the transformation of the 23½ acres with which we are concerned from its previous use as part of Stows Farm, albeit that a certain amount of sand and gravel had been extracted therefrom for farm purposes, to its present industrial use supported by buildings and machinery to a total cost of £25,000, had produced a change in the character of the property no less relevant and significant than the change that would have been produced by the erection upon it of a dwelling-house or dwelling-houses. I appreciate that the question was dealt with as a matter of fact and that, as the judge said, such matters are apt to be in the end of all questions of degree. But upon the authority of *Edwards* v. *Bairstow* (4), I would hold that the true and indeed the inevitable inference from all the facts, including the sale to Besbuilt, Ltd., and the fact that planning permission was required for what was done, is the creation for present purposes of a new item of property."

A little later, at page 118 (5), Lord Evershed, M.R. said:

> " If, however, I am not entitled so to reverse the commissioners' finding, and since the whole case was exhaustively argued, then I would also hold that the sale of the 23½ acres to Besbuilt, Ltd. and its occupation by Welford Gravels, Ltd. gave rise to a new property which justified and required separate valuation for the purposes of Schedule A in accordance with the provisions of section 82 (2) of the Act. Upon this matter I have had the advantage of reading the judgment to be delivered by my brother Diplock, and I agree with his conclusion and his reasons therefor."

Lord Evershed, M.R., went on to refer to the Scottish case of *Moray Estates Development Co.* v. *Commissioners of Inland Revenue*, 32 T.C. 317 (6):

> " As the judge pointed out, that was a case in which part of an owner's land has been for many years let to a company for the purposes of gravel extraction at a royalty, and had for all that time been assessed under Schedule D upon the

(1) *See* page 185, *ante*. (2) [1963] Ch., at p. 117 (*see* page 186, *ante*). (3) *See* page 186, *ante*. (4) 36 T.C. 207. (5) *See page* 187, *ante*. (6) [1963] Ch., at p. 119 (*see* page 188, *ante*).

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> supposition, proved erroneous by the *Russell* v. *Scott* decision [1], that it fell within what is now paragraph (*c*) of the proviso to section 82 (1). The Inner House rejected the taxpayer's submission that in the circumstances it was necessary to revert to the assessment appropriate to the entire unit of land before the letting to the gravel company, and held that, upon such letting, the site of the gravel pit had been 'elevated into a distinct and separate subject of occupation. [2]' "

Lord Evershed, M.R., accordingly expressed himself in favour of allowing the appeal and holding that the answer to the second preliminary question formulated by the General Commissioners should have been in the affirmative.

As already mentioned, Upjohn, L.J., dissented, giving his reasons in these words [3]:

> " I reject the Crown's claim to be entitled to revalue upon a division of lands whether on a change of occupation or on a sale for the basic reason that the whole scheme of valuation depends on a general revaluation in a year of revaluation. A change of occupation of the whole of a holding between years of revaluation is admittedly irrelevant; and so, in my judgment, is a division of a holding. Valuation depends not upon units of assessment but upon physical valuations in years of revaluation."

As has already appeared, Lord Evershed, M.R., expressed his agreement with Diplock, L.J.'s conclusions and his reasons therefor. It has been suggested that, to be strictly accurate, the Master of the Rolls and Diplock, L.J. might at some points have been described as reaching the same conclusion by a different route; but I do not think anything turns upon this. Diplock, L.J., began his judgment thus [4]:

> " This appeal turns upon the answers to three questions: (1) whether upon the sale and consequent change of occupier in February, 1957, of 23½ acres of gravel-bearing land which previously formed part of, and were occupied together with, the remainder of Stows Farm, Tillingham, there came into existence a new 'property' for the purposes of Schedule A of the Income Tax Act, 1952; (2) if so, whether the Crown became entitled in a year which was not 'a year of revaluation' to determine the annual value of that new property for the purposes of assessment to tax under Schedule A; and (3) if so, whether it was entitled to determine such annual value otherwise than by apportioning the annual value of Stows Farm as determined in the last year of revaluation between the 23½ acres and the remainder of Stows Farm. In my opinion, the answer to each of these questions is 'Yes.' "

He went on to make good his three affirmative answers, and to my mind did so satisfactorily. His reasoning involved a somewhat detailed discussion of various provisions of the Income Tax Act, 1952 (including in particular Sections 82, 84, 85 and 108), into which I need not enter, inasmuch as it is fully set out in the judgment of Diplock, L.J., of which I have expressed my approval.

I would dismiss this appeal.

Lord Hodson.—My Lords, I agree with the opinion of my noble and learned friend Lord Guest.

Lord Guest (read by Lord Hodson).—My Lords, the Appellant appeals against an assessment under Schedule A of the Income Tax Act, 1952, on a gross annual value of £5,000 for the year 1957-58 in respect of a " Gravel pit and premises, Stows Farm, Tillingham, Essex ". The Commissioners reduced the assessment to £16, and their decision was affirmed by Plowman, J. The Court of Appeal by a majority (Upjohn, L.J., dissenting) restored the original assessment of £5,000.

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[1] 30 T.C. 394. [2] 32 T.C., at p. 322. [3] [1963] Ch., at pp. 127–8 (*see* page 194, *ante*). [4] *Ibid.*, at p. 129 (*see* page 195, *ante*).

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The ground upon whch the gravel pit was situated, some 23½ acres, was originally part of a larger area known as Stows Farm belonging to Messrs. Procter, who had farmed the land for many years. Some sand and gravel had been taken from the pit for commercial purposes during the 1914-18 war, but no machinery was employed in the extraction. Since 1919 the owners had used the sand and gravel for farm purposes only. In 1956 there was a great demand for gravel in the district, and following upon the grant of development permission for the extraction of sand and gravel, Procters sold the 23½ acres to Besbuilt, Ltd. Immediately after the sale Besbuilt allowed the Appellant to enter into occupation of the land. Substantial plant and buildings were erected on the land with a view to the extraction of sand and gravel, at a total cost of £25,000. On 31st December, 1957, Besbuilt executed a lease of the whole of the 23½ acres to the Appellant, and this was accompanied on the same day by a licence from Besbuilt to the Appellant for the extraction of sand and gravel at a royalty of 4*s.* per cubic yard. In 1957 some 56,000 cubic yards of sand and gravel were extracted, and some 60,000 cubic yards in 1958. The estimated potential of the pit was a quarter of a million cubic yards.

Before the sale the Schedule A assessment on Stows Farm, of approximately 155 acres, was £108. When the Revenue became aware of the sale, the net annual value of the farm assessment for 1957-58 was apportioned between the purchaser and the vendors. For 1958-59 an assessment of £8 10*s.* in respect of the 23½ acres was raised directly on Besbuilt, and the assessment on the farm was reduced by that amount. Later, when the Inspector of Taxes was informed that the land was being used for the extraction of sand and gravel, an additional assessment was raised for 1957-58 on a gross annual value of £2,000. This assessment was made by mistake on Besbuilt. Subsequently a fresh additional assessment under Schedule A was raised for the year 1957-58 upon the Appellant on a revised estimated gross annual value of £5,000.

The contentions on behalf of the Appellant before the Commissioners were, so far as relevant to the present appeal, as follows:

> "(1) That the basis of a Schedule A assessment was a quinquennial valuation of specific property and this could only be departed from (*a*) where in connection with the valuation of such property a relevant and significant factor had been overlooked in the pre-quinquennial year (which was not so in this case); (*b*) where there might have been some significant alteration in the property (although it was doubtful whether this was legally valid), in which case an apportionment could be made; (*c*) where a new property had come into being, as distinct from a new use of property, e.g., a new house built on a bare piece of land. (2) That the getting of sand and gravel from land was merely making use of the natural potentialities of the lands. There had been a continuous getting of sand and gravel from the land in question for many years, and the more intensive getting of sand and gravel from the land in the period relevant to the present appeal did not create a new property."

The Commissioners' decision was in the Case stated as follows:

> "7. The Commissioners were asked by the representative for the Appellant Company to come to a decision on the preliminary points raised by him (reserving the evidence of the valuers for later if in fact it was needed), the preliminary points being: (1) whether there must be a new property, that is, a property significantly different from the 23 acres of land plus the sandpit which existed prior to February, 1957, before an additional Schedule A assessment could be raised; (2) whether there was such a property here and, if so, what was it and how did it differ from the property that had been there previously; and (3) if there was a new property, how should the annual value be determined—in particular, whether it should be limited to the amount of the rent reserved by the lease. 8. We, the

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> Commissioners who heard the appeal, agreed to adopt this course, and after consideration decided (1) that there must be a new property before an additional Schedule A assessment could be raised, and (2) that there was no new property in this case. The third point did not therefore arise."

Plowman, J., accepted the finding of the Commissioners and dismissed the Crown's appeal. In the Court of Appeal Lord Evershed, M.R., decided that the transformation of the 23½ acres to its present industrial use produced a relevant and significant change in the character of the property which justified an assessment of the gravel pit upon a revaluation. Diplock, L.J., did not deal with this aspect of the case, but based his judgment on the reasoning that the division of the land previously in a single occupation into two separate ownerships or occupations resulted in two new properties, which justified revaluation. Lord Evershed, M.R., was prepared to follow Diplock L.J., only to the extent that he would hold the division of the land into two separate ownerships would have resulted in two units justifying a revaluation. He thought that where the division was into separate occupations apportionment was the correct procedure. It will thus be seen that upon this point the majority of the Court of Appeal reached the same result but for different reasons. Upjohn, L.J., held that the Crown were not entitled to revalue upon a division of the lands, whether on a change of occupation or on a sale, for the basic reason that the whole scheme of valuation depended on a general revaluation in a year of revaluation.

Two questions arise for decision: (1) whether the division of the lands into separate occupations justified a revaluation, and (2) whether the use of the land as a gravel pit justified a separate entity of the gravel pit at a value arrived at upon a revaluation. It may be convenient to deal with the first contention of the Crown, that the division of the land by the sale of one part necessitated a fresh assessment and a revaluation. The Appellant contended that, in view of the terms of Section 84 of the Income Tax Act, 1952, which provided for quinquennial valuations, the gross annual value of the farm which was prior to 1957 the subject of a Schedule A assessment could not be varied, and that the only method whereby the annual valuation could in the circumstances be altered was by an apportionment under Section 108 of the 1952 Act.

Section 108 is in the following terms:

> " If, after the making of an assessment under Schedule A, the lands are divided into two or more distinct occupations, the General Commissioners, on the application of the persons respectively interested, shall determine what proportion of the tax shall be paid or borne by each occupier, and the amount apportioned shall be collected and levied in like manner as if it had been an original assessment."

It will be seen that the Section covers the case of a division into two or more distinct occupations. There was considerable discussion as to the meaning of the two expressions " after the making of an assessment under Schedule A " and " the amount [of tax] apportioned shall be collected and levied in like manner as if it had been an original assessment." The rival contentions on the first expression were, for the Crown, that it referred to the annual assessment and, for the Appellant, that it referred to the first assessment in the year of revaluation under Section 84 of the 1952 Act. Having regard to the scheme of the Act, which provides for an annual valuation of properties for Schedule A purposes, I incline to the view that the Crown's contention is correct. But it does not appear to me to matter, from the point of view of the construction of the Section, which view is correct. Secondly, the Crown contended that the concluding words of Section 108 already referred

to indicated that it was the tax, and not the annual value as contended for by the Appellant, which was to be apportioned. Again, it appears to me to be of no consequence which interpretation is followed. If it is the tax which is being apportioned, as the Crown contended, this can only be done by an apportionment of the gross annual value. If the apportionment has been made, the tax will be collected and levied by a certificate in terms of Section 34, which will state the annual value as apportioned.

The extreme contention for the Appellant was that, as the Commissioners had apportioned the annual value in 1957–58 and 1958–59, this was an end of the matter and the Commissioners were not upon any view entitled to revalue the 23½ acres as a gravel pit upon a fresh valuation. I recognise the force of this contention in relation to the question of division of the lands, and in my view the correct procedure in the circumstances is for the Revenue to apportion as provided for under Section 108, but if revaluation is justified on the ground of a change of character in the property, a point later dealt with in this opinion, I see no reason why the apportionment under Section 108 should act as a barrier to the separate assessment of the gravel pit.

If it be the case, as argued for the Crown, that there is a duty on the Inspector, when the land has been divided into separate occupations, to revalue each separate unit under Schedule A at current values, it is difficult to see the necessity for Section 108, because once the Inspector becomes aware of the division the Commissioners must make separate entries which will render apportionment unnecessary. The Crown were unable to suggest any valid reason for the retention of Section 108 in the 1952 Act. In rejecting the argument for the Crown I adopt the reasoning of Upjohn, L.J., upon this point, which I find entirely satisfactory. In particular, I am impressed by the extraordinary results which he says would follow if the Crown's contention were sound ([1963] Ch. 95, at page 127[1]). These results were accepted by the Crown as accurate, but they denied that they were extraordinary.

Finally, the practice of the Revenue has for the last 120 years been, where there has been division into separate occupations, to apportion, and the only justification for this practice that I can find is in Section 108. The Crown conceded that, where the lands were not divided but a new occupier entered into possession, there could not be a fresh valuation: see Section 106 of the 1952 Act. I am unable to see the distinction between such a case and a case where the land is divided into two separate occupations. I see no reason to disturb the existing practice, and I reject the Crown's contention upon this point.

I pass now to the second point taken by the Crown, that, where there is a relevant and significant change in the character of the land, a new property comes into existence which has not been previously valued and which must be revalued. I observe from the contentions of the Appellant before the Commissioners and the Commissioners' findings previously referred to that the Appellant at that stage was conceding that, if there was a relevant and significant change in the character of the property, a new property came into existence which necessitated a revaluation: see also Upjohn, L.J., [1963] Ch., at page 128[2]. It was on this basis that the case proceeded before the Commissioners, and it was upon this basis that Lord Evershed, M.R., decided the case. Apart, however, from any

(1) *See* page 194, *ante*.
(2) *See* page 194, *ante*.

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question of a concession, I am satisfied upon a review of the relevant provisions of the Income Tax Act, 1952, which have already been fully dealt with by your Lordships, that where a subject substantially different in character comes into existence during a year which is not a year of revaluation a fresh entry is justified under Schedule A which necessitates a revaluation. Plowman, J., and Upjohn, L.J., were not prepared to disturb the finding of the Commissioners that no new property came into existence. I feel no such reluctance. Lord Evershed, M.R., in my view, correctly stated the position when he said, after referring to *Edwards* v. *Bairstow*[1], [1956] A.C.14, that the true and inevitable inference from all the facts was the creation of a new item of property. The land had not since 1936 (the last year of the quinquennial revaluation) been used commercially as a gravel pit. The extensive machinery and buildings, at a total cost of £25,000, constituted a significant change in the character of the land, so that it is a different subject from the gravel pit which formerly formed part of the farm land of Stows Farm.

In *Moray Estates Development Co.* v. *Commissioners of Inland Revenue* (1951), 32 T.C. 317; 1951 S.C. 754, the Court of Session were faced with a somewhat similar problem. Proprietors of woodlands which contained a gravel pit leased the gravel pit for less than a year upon a royalty basis for gravel removed. The Court affirmed an assessment under Schedule A based on the gross annual value as entered in the valuation roll. The facts in that case would appear to be not far removed from the present. The woodlands, which presumably had included the gravel pit, had previously been assessed under Schedule A, and the gravel pit was opened in 1942. There was a slight complication that after 1942 the company had been assessed on the royalties of the gravel pit under Schedule D, a course which was subsequently held to be inadmissible in *Russell* v. *Scott*[2], [1948] A.C. 422. But there is nothing to show that the gravel pit was excised from the remaining subjects. Thereafter a separate Schedule A assessment was raised on the gravel pit. The arguments for the company before the Commissioners and the Court of Session were to the effect that the gravel pit was not a proper unit of assessment and that the whole estate, consisting of area and gravel pit, should be treated as a *unum quid* and assessed as such. This is, in effect, the argument which the Appellant put forward in the present case, though expressed in a slightly different form. In the result the Court disposed of that argument as follows: see Lord President Cooper, 32 T.C., at page 322:

> "No. I of Schedule A relates to all lands capable of actual occupation, of whatever nature, and for whatever purpose occupied or enjoyed, and the annual value for Income Tax purposes is understood to be the 'rack-rent at which they are worth to be let by the year.' In 1942 the Appellants elevated this gravel-pit into a distinct and separate subject of occupation as the terms of the lease show and I should have thought that for Income Tax purposes (as unquestionably for rating purposes) it then became a suitable subject for separate assessment from the woodlands which surrounded it or the estates of which it formed a small part. It was quite properly entered under a separate entry in the Valuation Roll at a gross annual value based on the royalties for the previous year. If the assessor for Inverness-shire had been an Inland Revenue official this valuation would have been binding upon the Crown (Section 3 of the Lands Valuation (Scotland) Act, 1857; *Menzies*, 5 R.531). Even where the assessor is independently appointed it has long been the practice in Scotland to adopt the Valuation Roll as the basis of Income Tax assessments and I have never known of a case

(1) 36 T.C. 207. (2) 30 T.C. 394.

where this has not been done. In my view there is a heavy onus upon the Appellants to show what is wrong with the unit and *quantum* of valuation which they have accepted for rating purposes and why some different unit and value should be substituted for the purposes of Schedule A. If common sense plays any part in Income Tax matters it is difficult to see why a gravel-pit which for nine years has been worked commercially to an extent showing royalty profits of the order of nearly £1,200 *per annum* should be treated as incapable of being let for more than prairie value."

The company did not advance the argument that a separate entry could not be made in view of the provisions of Section 84, and it may be that on the facts such an argument was not open. But whether the point was in issue or not, I regard the result of the decision as correct. It would be satisfactory if, as a result of the decision in this case, the administration of Income Tax law in cases such as the present will be the same in England and in Scotland.

I would dismiss the appeal.

Lord Hodson.—My Lords, my noble and learned friend **Lord Pearce,** who is also unable to be present today, has asked me to say that he agrees with the opinion of my noble and learned friend Lord Guest, which I have just read.

Questions put:

That the Order appealed from be reversed.

The Not Contents have it.

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

The Contents have it.

[Solicitors:—Solicitor of Inland Revenue; Field, Roscoe & Co., for Dixon, Martell & Batchelor, Bedford.]