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OF

THE HIGH COURT

AND OF

THE COURT OF APPEAL

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COURT OF APPEAL 1953

THE ASSESSMENT COMMITTEE v. KERR-JARRETT

CARBERRY, J.

out in that case (at page 296), the wear and tear allowance given for the first time in 1876 was "a deduction from profits which business men ordinarily make with a view of making good an essential capital asset which sooner or later will have to be replaced. As it was given in terms corresponding to Rule 6, ss. 1 and 2, it had obviously nothing to do with the question how or with what funds the business man acquired the plant. In any case he would make a deduction from profits: and the deduction would be based on the value of the plant and its expected life". Lord Atkin pointed out that difficulties might arise, where (as in the present case) the person carrying on the business had acquired the plant by gift. He said that, in such a case, it might be contended that "where there has been no cost there is no measure, no yardstick by which to restrict at all the allowance granted by Rule 6".

In such a case, in the absence of any statutory rule or yardstick "to restrict" the allowance, it would seem "reasonable" to apply the principle mentioned by Lord Atkin earlier in his opinion, and to base the deduction, as a businessman would base it, "on the value of the plant and its expected life". In the present case the scheduled values are admitted to be the actual values and those values should form the basis of the calculation.

In our view, in the absence of any statutory rule permitting such a procedure, the Assessment Committee has proceeded upon a wrong principle and the method of calculation adopted by them is not such as to lead to the allowance of "a reasonable amount".

We have indicated what we think would be a correct principle to apply in this case. It is now for the Assessment Committee, applying that principle, to allow a reasonable sum as a deduction from the income of the respondent.

In the result, the appeal must be dismissed with costs.

Solicitor for appellants: D. E. Grant;

Solicitors for respondent: Dunn, Cox & Orrett.

3 C.A.J.B. 226.

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March 16, 17, 27

BIGGS v. BARRETT

Landlord and tenant—Rent restriction—Standard rent—Apportionment—Rental of similar premises in same locality on prescribed date.

The appellant rented a shop from the respondent during the year 1950. The shop was a portion of a building comprised of two shops and four rooms above. The premises, as they then existed, were first let to one K in 1948, and on the determination of his tenancy, each shop and each room was let to a different person. The respondent did not apply to the Board, under section 10 (2) of the Rent Restriction Law (Law 17 of 1944), before the commencement of the tenancy to K to fix the standard rent of the premises.

HELD: (1) When the standard rent of the whole premises has once been fixed, if any portion of the premises is subsequently rented, or if the whole premises is sub-divided and all the smaller portions are rented, the proper method to adopt to ascertain the standard rent of each portion is by apportionment of the rent of the entire premises;

Capital and Provincial Property Trust, Ltd. v. Rice [1951] 2 A.E.R. 600,

Lindop and Others v. Quaife [1949] 1 A.E.R. 456, and

Upsons Ltd. v. Herne [1946] K.B. 591, followed.

(2) But the Board in arriving at the standard rent was wrong to have accepted the figure at which the premises were first let in 1948 and to have ignored the provisions of s. 11 (1) (a) of the Rent Restriction Law, as there was no relationship between that figure and a similar letting of similar premises in the same locality on the prescribed date, and the respondent could not take advantage of his own wrongful omission to apply under section 10 (2) so as to obtain a standard rent which might well be higher than the proper figure.

APPEAL from the decision of the Rent Assessment Board for the Corporate Area.

Appeal allowed. New hearing ordered.

Manley, Q.C., for the appellant:
Richard Ashenheim for the respondent.

Cur. adv. vult.

1953. March 27: The judgment of the Court (O'Connor, C.J., Cluer and MacGregor, JJ.) was read by MacGregor, J.

MACGREGOR, J.: The appellant Biggs is the tenant from the respondent of a shop at 185 Spanish Town Road. On October 31st, 1951, he applied to the Rent Assessment Board to fix the provisional standard rent of the premises. The respondent was summoned to attend a meeting of the Board, and at the same time was served with a notice under sec. 10 (4) of the Rent Restriction Law (Law 17 of 1944), requiring him to apply to the Board for the determination of the standard rent. It does not appear that he made any application. MACGREGOR, J.

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On March 26th, 1952, the Board commenced the hearing of the application, when it appeared that the shop was only part of the building and that there were other tenants of parts of the building. The hearing was, therefore, adjourned for the respondent to make application in relation to the entire premises. This was done on July 26th, 1952, the application disclosing that on the premises there are two buildings consisting in all of twelve rooms and two shops. The application was heard on November 12th, 1952, when the Board fixed the standard rent of each of the two buildings, and apportioned the rent among the respective tenants. This appeal relates only to the standard rent of the building containing the two shops, and four rooms upstairs above the shops.

The facts disclose that the respondent purchased the premises from one Kates, in 1948. At that time there were three buildings on the land, the shop building and two out-buildings each containing two rooms. The respondent said that he rented the premises to Kates, at a rental of £30 per month. He proceeded to enlarge the shop building at a cost of £400, and he pulled down two old buildings, and erected a new building at a cost of £2,000. Kates remained his tenant for nearly two years and, when he left, the respondent got new tenants for the separate shops and rooms.

It was suggested to the respondent that the figure at which he rented to Kates was £22 per month and not £30, and he produced the counterfoils of his receipts. These showed several for £22 but none for £30. The respondent explained that the rent of the two old buildings had been calculated at £8, and the rent of the front building at £22, that he reduced the rental from £30 to £22 when he was going to take down the old building, that he started that work a year after he purchased, and that his agent had the receipt books showing £30 rent received from Kates. These receipt books were not produced to the Board.

Evidence was given by the appellant that in 1945 he knew the premises and that the shop building was then divided into three shops, two of which were rented to tenants by Kates at rentals of £2 8/- and 15/6 each per month. Presumably Kates occupied the third shop. But Kates in 1948 altered the three shops into two.

The Chairman of the Board in giving judgment stated:—

> "..... We do have a figure of the whole of this upstairs building being rented at £22 and we propose to start from there and to say that that is the standard rental of the first building. That rental was accepted after certain alterations and/or improvements had been made so it is a question of how we are going to apportion that £22....."

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The Board then proceeded to apportion the rent and fixed the standard rent of the shop occupied by the appellant at £8 per month.

The grounds of appeal filed were three: that the decision was contrary to the weight of the evidence: that the Board rejected the evidence of the appellant which was supported by the receipts showing the rentals paid to Kates in 1945: and that there was no evidence to support the respondent's claim that he spent £400 on the shop premises after he purchased.

As the argument progressed, it was admitted by Counsel for the appellant that the standard rent of the whole premises would not be the sum of the rents of the component parts, and that the rent paid by Kates, whether £22 or £30 for the whole premises was paid after the repairs had been effected. He did not, therefore, support the second and third grounds of appeal. He, however, urged on us that the finding of the Board, that £22 was the rental paid by Kates for the shop premises alone, was unreasonable, and that the proper figure should be £14, that is, £22 less £8, the rental of the two old buildings which were pulled down. We need say no more than that this was a question of fact for the Board, and that there was evidence on which they could come to the conclusion which they reached.

Counsel then applied to amend the grounds of appeal by adding two further grounds:

(4) The Board was wrong in taking £22 as the standard rent for the building at the front of the premises (the shop premises), because that rental, if it ever did take place, was a breach of section 10 (2), and the standard rent fell to be determined under section 11.

(5) In any event, the Board could not arrive at the standard rent of the portion of the premises let to the appellant, by finding the standard rent of the whole building and apportioning same.

The Court granted leave to Counsel to argue these grounds of appeal.

Dealing with the latter ground first, it is clear that when the standard rent of the whole premises has once been fixed, if any portion of the premises is subsequently rented, or if the whole premises is sub-divided and all the smaller portions are rented, the proper method to adopt to ascertain the standard rent of each portion is by apportionment of the rent of the entire premises. (*Capital and Provincial Property Trust, Ltd. v. Rice* [1951] 2 A.E.R. 600; *Lindop and Others v. Quaife*, [1949] 1 A.E.R. 456; *Upsons Ltd. v. Herne* [1946] K.B. 591).

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The sections of the Rent Restriction Law, (Law 17 of 1944) dealing with the standard rent are sections 9, 10 and 11. Section 10 sub-sections (1) and (2) provide:

> (1) Where any premises are intended to be let.....it shall be lawful for any person proposing to let the same to apply to the Board to fix, provisionally, the rent which will be the standard rent of the premises when they are so let and the Board may fix such provisional standard rent accordingly. The applicant shall disclose to the Board the terms and conditions of the proposed letting and all circumstances which will affect the standard rent of the premises.....
>
> (2) Where any premises are intended to be let..... without having previously been let in the same category of letting, it shall be the duty of the person proposing to let the same to apply to the Board under the preceding sub-section, before the commencement of the tenancy, to fix the provisional standard rent. If any person shall fail to comply with the provisions of this sub-section, he shall be guilty of an offence against this Law.

Section 11 provides:

> (1) When the standard rent of any premises in relation to any category of letting is determined by the Board, it shall be determined on the principles of section 9 of this Law, modified as follows—
>
> (a) where the premises were not let in the same category of letting on or before the prescribed date, the standard rent shall be the rent which, in the opinion of the Board, might reasonably have been expected in respect of a similar letting of similar premises in the same locality on the prescribed date (regard being had when practicable to the rents actually obtained from any such similar lettings) with an addition, in the case of a dwelling house or public or commercial building erected after the prescribed date, of such amount as the Board may think reasonable on account of increased amenities of the locality, or increased cost of building, between the prescribed date and the date of completion of the building.

Section 9 provides:

> Until the standard rent of any premises in relation to any category of letting has been determined by the Board under section 11 of this Law, the standard rent of the premises in relation to that category of letting shall be the rent at which they were let in the same category of letting on the prescribed date or, where the premises were not so let on that date, the rent at which they were last so let before that date, or, in the case of premises first so let after the prescribed date, the rent at which they were, or are hereafter first so let.

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It was admitted by counsel for the parties, during the argument, that the alteration of the premises by Kates and by the respondent, was to make them new premises for the purpose of the Law, and that the letting to Kates by the respondent was the first letting of them after alteration. They were, therefore, not only premises which had not previously been let, but also premises which had not previously been let in the same category of letting. It, therefore, became the duty of the respondent, who was proposing to let them under section 10 (2) to apply to the Board under section 10 (1) to fix the provisional standard rent. Had that application been made, the Board would have had to consider first, the provisions of section 9. But as there would have been no previous letting the Board could not have applied section 9. It would then have had to apply the principles set out in section 11 (1) (a), and the standard rent would have been the rent "which, in the opinion of the Board, might reasonably have been expected in respect of a similar letting of similar premises in the same locality on the prescribed date."

But the respondent did not make the application that he should have made, and, therefore, committed a breach of section 10 (2). The Board, in arriving at its decision, completely ignored the provisions of section 11 (1) (a) and fixed as the standard rent, the figure at which the premises were first rented in 1948. We are of opinion that it was wrong for the Board to have accepted this figure as the standard rent, as it had no relationship to "a similar letting of similar premises in the same locality on the prescribed date". The respondent cannot take advantage of his own wrongful omission, so as to obtain a standard rent which may well be higher than the proper figure.

For this reason we are of opinion that that portion of the order of the Board dealing with Building No. 1, and in particular with the tenancies of the applicant and of Agatha O'Connor, Adassa Clarke, Rupert Grant and R. McNeil should be set aside and a new hearing ordered. The question of costs is reserved for further consideration.

Solicitor for the appellant: Cawley.

Solicitors for the respondent: Brandon and Bolton.

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3 C.A.J.B. 232.

COURT OF APPEAL 1953

March 9, 10, 27

COUCH v. MORRISON

Landlord and tenant—Rent restriction—Standard rent—Permitted increases—Statutory percentage—Improvements—Reduced amenities.

On an application to fix the standard rent of controlled premises, the Rent