No. 871.—HIGH COURT OF JUSTICE (KING'S BENCH DIVISION).—31ST MAY AND 1ST JUNE, 1932

COURT OF APPEAL—20TH AND 21ST JULY, 1932

HOUSE OF LORDS—24TH FEBRUARY, 1933

MONRO AND COBLEY v. BAILEY (H.M. INSPECTOR OF TAXES)[1]

Income Tax, Schedule B—Bulb farm—Whether occupied as nursery or garden for the sale of the produce—Income Tax Act, 1918 (8 & 9 *Geo.* V, *c.* 40), *Schedule B*, *Rule* 8.

The Appellants occupied about two hundred acres of land in Lincolnshire, consisting of open fields, which was utilised for the purpose of growing bulbs, potatoes and ordinary farm crops, and was worked as one farm by farm labourers using ordinary methods of husbandry. The cost of the labour employed on the bulbs far exceeded the cost of that employed on ordinary farming. During the year 1929–30 *sixty acres were used for bulb-growing and the remaining area for potatoes and general farm crops. A surplus over the acreage occupied by the bulbs was necessary in order to provide for transplanting the bulbs to fresh ground. The accounts for that year showed receipts from sales of blooms,* £8,332, *from sales of bulbs,* £5,415, *and from sales of general farm crops,* £1,623. *The Appellants stated that they grew bulbs for sale as bulbs and that the sale of blooms was a secondary matter.*

The Appellants were assessed to Income Tax for the year 1929–30 *under Rule* 8 *of Schedule B by reference to profits. They appealed to the General Commissioners, contending that their lands were not occupied as a nursery or a garden for the sale of the produce but were occupied solely or mainly for the purpose of husbandry and that the profits of occupation should be assessed upon the annual value. The General Commissioners found that the lands were occupied as nurseries or gardens for the sale of produce and confirmed the assessment.*

Held, *that there was evidence upon which the General Commissioners could arrive at their conclusion of fact, and that the assessment fell to be made under Rule* 8 *of Schedule B.*

[1] Reported (C.A.) 148 L.T. 50.

CASE

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

1. At a meeting of the Commissioners for General Purposes for the Spalding Division of the County of Lincoln for hearing and determining appeals against Income Tax, held at 11, Market Place, Spalding, on the 12th day of December, 1930, Messrs. G. Monro and R. S. Cobley (hereinafter called "the Appellants") appealed against an assessment to Income Tax of £636 14*s*. 0*d*. made on them for the year ended 5th day of April, 1930, under Rule 8 of Schedule B of the Income Tax Act, 1918, on the profits derived from the occupation of about 204 acres of land situate at Spalding Marsh, in the County of Lincoln.

2. The following facts were proved and admitted :—

(*a*) The Appellants were occupiers of 204·55 acres of farm land consisting of the following four farms :—

(1) Sharman's Farm	86·6	acres
(2) Saxton's Farm	72·2	,,
(3) Farmland rented from Mr. Barker ...	29·25	,,
(4) Farmland rented from Mr. Cotton ...	16·5	,,
Total	204·55	,,

Upon Saxton's Farm an area of one acre was covered by 13 glasshouses.

(*b*) For the year in question, the land was occupied for the purpose of growing the following crops :—

Potatoes	about 50	acres
Wheat, oats, beans, mangolds and general farm crops	94·55	,,
Bulbs	60	,,
Total	204·55	,,

(*c*) With regard to the 13 glasshouses covering one acre upon Saxton's Farm, separate accounts were kept, and the Appellants expressed their willingness to pay Income Tax upon profits earned therein.

(*d*) The figures in the accounts for the year in question showed :—

Sales of blooms	£8,332
Sales of bulbs	£5,415
Sales of general farm crops	£1,623
Labour charges	£5,454

(*e*) The whole acreage set out in paragraph (*b*) hereof consisted of open fields and was worked as one farm by farm labourers using ordinary methods of husbandry, horses, ploughs, tractors and other agricultural implements.

(*f*) The crops on the land were changed each year according to the usual agricultural principle of rotation of crops, and the land was not heavily manured.

(*g*) The cultivation of the flower bulbs was, in all respects, similar to that of potatoes, being ploughed into the ground and ploughed out of the ground and being cleaned by an Eglington potato riddle. The method of preparation of the soil for the growth of both crops was identical.

(*h*) No nursery work was done on the land, except as mentioned in sub-paragraph (*c*) above. The blooms of the bulbs were picked only if weather conditions permitted and if no harm would thereby result to the bulb. The blooms of many of the varieties were never picked for this reason. The bulbs were grown for the sale of the bulb rather than for the sale of the flower, and the Appellants were bulb growers rather than flower growers. The bulbs were sold by the ton.

(*i*) The bill-heads of the Appellants described the business as the " Spalding Bulb Farms ".

(*k*) The whole acreage was worked as one entire holding, but the cost of the labour employed on the bulbs amounted to £27 per acre, a sum far in excess of the price of ordinary farming, which, it was not disputed, averaged, in the locality, £8 per acre.

(*l*) The quantity of land under bulbs for the year in question was 60 acres and the residue of the holding was under ordinary farming cropping customary in the district.

(*m*) The receipts from the land used for ordinary agricultural cropping were £11 per acre.

(*n*) The bulbs were grown, according to the contention of the Appellants, for sale as bulbs, and the sale of the flowers was a purely secondary matter. The sales of the latter, however, in the particular year in question, on commission, amounted to £8,332, the sales of bulbs to £5,415, and the sales of the ordinary agricultural produce to £1,623.

3. Counsel for the Appellants contended :

(1) that the said lands were not occupied as a nursery or a garden for the sale of produce ;

(2) that the lands in question were occupied wholly or mainly for the purpose of husbandry ;

(3) that the growing of flower bulbs in open fields, 60 acres in extent, using the methods of ordinary farming, is husbandry;

(4) that 140 acres of the said lands which were used for growing general farm crops were occupied for purposes of husbandry;

(5) that 203·5 acres of farmland, worked by farm labourers, using ploughs, tractors and horses does not constitute a garden;

(6) that the profits of occupation of the lands in question were improperly assessed under Rule 8 of the Rules applicable to Schedule B;

(7) that the profits of occupation of the said lands should be assessed upon the annual value according to the General Rules of Schedule B.

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

(1) that the land in question was occupied as a nursery or garden for the sale of the produce;

(2) that the primary purpose for which the land as a whole was occupied was the growth of bulbs;

(3) that the growth of other crops on portions of the land not used for bulbs in any year was only ancillary to the occupation of the whole of the land for the production of bulbs;

(4) that the existing assessment under Rule 8 of the Rules applicable to Schedule B was correct and should be confirmed.

5. We, the Commissioners who heard the appeal, having considered the facts and the contentions of both parties, and especially (1) the well-known necessity for transplanting bulbs to effect their preservation, which accounted for the surplus acreage of the Appellants over that under bulbs; and (2) the sales of bulbs and flowers being eight times that of the sales of the ordinary agricultural produce, came to the conclusion that the main business of the Appellants was the production of bulbs, that the land was used for gardening, that is, the production of bulbs on a more or less small scale, as distinguished from agricultural use on a large scale, so that the activities of the Appellants were not those of ordinary husbandry; and we accordingly found, as a fact, that the land in the occupation of the Appellants was mainly devoted to the growth of bulbs; that it was used in part as a nursery, and in part as a garden for the growth and sale of bulbs; and that the farming operations carried on by the Appellants were ancillary to the bulb business; and decided that the assessment should be confirmed.

6. The Appellants, immediately upon the determination of the appeal, declared to us their dissatisfaction therewith, as being erroneous in point of law, and in due course required us to state a

Case for the opinion of the High Court pursuant to the Income Tax Act, 1918, Section 149, which Case we have stated and do sign accordingly.

J. H. BUNTING,
GEO. MASSEY.

The case came before Finlay, *J.*, in the King's Bench Division on the 31st May and the 1st June, 1932, and on the latter date judgment was given against the Crown, with costs.

Mr. A. M. Latter, K.C., and Mr. L. C. Graham-Dixon appeared as Counsel for the Appellants and the Solicitor-General (Sir Boyd Merriman, K.C.) and Mr. R. P. Hills for the Crown.

JUDGMENT.

Finlay, J.—This, like most cases in this List, is rather troublesome, but I have come to the conclusion that the appeal ought to succeed. It is necessary to examine the Case with some little care. It is a Case stated by General Commissioners for the Spalding Division of the County of Lincoln. It has reference to the method of assessing what I may conveniently call, without prejudice to the contention either on the one side or the other, a bulb farm. The matter arises under Schedule B. It will be necessary for me to examine the Case with a little care, but it is convenient perhaps first to state that Schedule B, commonly called, or often called, the farmers' tax, is a tax on the occupation of land; and speaking generally, the matter to be considered is the value of the land. Now, there is a Rule, Rule 5(1), which gives a particular sort of person an option; the particular sort of person is a person who occupies for the purpose of husbandry only, and there is a considerable amount of authority about what the meaning of "occupying for "the purpose of husbandry only" is, but it is not necessary to go into those authorities in detail; it is sufficient to say that "husbandry" has been given what I think one may call a liberal construction, so that land occupied for the purpose of chicken farming, even the modern system of chicken farming, has been held to be occupied for the purpose of husbandry. Now we come to Rule 8(1), which is the Rule immediately in point: "The profits "arising from lands occupied as nurseries or gardens for the sale "of the produce (other than lands used for the growth of hops) "shall be estimated according to the provisions and rules applicable "to Schedule D, but shall be assessed and charged under this "Schedule as profits arising from the occupation of lands;" and the real point in this case is whether here there were lands occupied as nurseries or gardens for the sale of the produce. I shall have

(1) Rules applicable to Schedule B, Income Tax Act, 1918.

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to refer again to the Section, but it may perhaps be convenient to get rid of the words which the Solicitor-General did not stress, and I am satisfied rightly did not stress: "other than lands used for "the growth of hops." At first sight it looks as though those words might have afforded an argument in favour of the Crown. It would not be a very weighty argument, for a comment was made in a well-known case about the fact that not much weight attaches to exemptions or exceptions of that sort; but when the history of the thing from 1806 is looked at, I am satisfied that no argument can really be derived from these words "other than lands used for the "growth of hops;" and the question is whether these are lands "occupied as nurseries or gardens for the sale of the produce."

With that reference to the position of the statute law, it becomes necessary to look a little closely at the Case. The Case sets out that this was an assessment made on these two gentlemen under Rule 8 of Schedule B (that is the Rule to which I have just referred) on the profits derived from the occupation of about 204 acres of land situate at Spalding Marsh in the County of Lincoln. Then they set out the facts proved or admitted, and the first fact is that the Appellants were the occupiers of over 204 acres, and the description and the acreage are set out in detail in a table which is to be found on the second page of the Case. It is added that: "Upon Saxton's Farm"—one of the four farms—"an area of one "acre was covered by 13 glasshouses." Then the Case goes on to say what the land was used for. The position with regard to that is that 50 acres were used for growing potatoes, about 94 acres were used for growing wheat, oats, beans and other farm crops, and about 60 acres were used for growing bulbs. Then the Commissioners deal with the 13 glasshouses covering an acre and they say that separate accounts were kept, and the Appellants expressed their willingness to pay Income Tax upon the profits earned therein. I presume that that means that these glasshouses were to be assessed—and no doubt properly were to be assessed—as nurseries. Having regard to the way the Commissioners treated the matter (and I am going to refer to the other finding with regard to this in its place), I do not think that the circumstance that the glasshouses were treated as nurseries throws any light upon the question which I conceive to be the real question in this case—whether all the rest, apart from the glasshouses, can be regarded as occupied as "gardens for the sale of produce." Then there are figures taken from the accounts, and the sales of blooms amounted to £8,332. I was told, though I do not think anything really turns upon it, that that was a figure which, by itself, might be misleading, because it did not allow for the commission, but was a gross figure; I think if the commission were taken into account, it would be reduced by a sum of something like £3,000, but nothing really turns on that. Then the sales of the bulbs were £5,415; the sales of the general

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farm crops were £1,623 and the labour charges on the farm, or bulb farm, whatever you like to call it, were £5,454. Then (*e*) is this : " The whole acreage set out in paragraph (*b*) hereof consisted " of open fields and was worked as one farm by farm labourers " using ordinary methods of husbandry, horses, ploughs, tractors " and other agricultural implements. (*f*) The crops on the land " were changed each year according to the usual agricultural " principle of rotation of crops, and the land was not heavily " manured. (*g*) The cultivation of the flower bulbs was in all " respects similar to that of potatoes, being ploughed into the " ground and ploughed out of the ground and being cleaned by " an Eglington potato riddle. The method of preparation of the " soil for the growth of both crops was identical. (*h*) No nursery " work was done on the land, except as mentioned in sub-para- " graph (*c*) above." That has reference to the 13 glasshouses, and what I understand the Commissioners to find, and it seems a perfectly proper view to take, was that as separate accounts were kept with regard to them, as they could properly be regarded as nurseries, they, anyhow, fell to be assessed, and the Appellants were willing that they should be assessed, under Rule 8. Then the paragraph goes on : " The blooms of the bulbs were picked only " if weather conditions permitted and if no harm would thereby " result to the bulb. The blooms of many of the varieties were " never picked for this reason. The bulbs were grown for the sale " of the bulb rather than for the sale of the flower, and the Appel- " lants were bulb growers rather than flower growers. The bulbs " were sold by the ton. (*i*) The bill-heads of the Appellants " described the business as the ' Spalding Bulb Farms '. (*k*) The " whole acreage was worked as one entire holding, but the cost " of the labour employed on the bulbs amounted to £27 per acre, " a sum far in excess of the price of ordinary farming, which, it was " not disputed, averaged, in the locality, £8 per acre. (*l*) The " quantity of land under bulbs for the year in question was 60 acres, " and the residue of the holding was under ordinary farming " cropping customary in the district."

Those are the facts. The contentions I do not think it is necessary to read, but it is important to read what it was that the Commissioners found; and a very serious difficulty (this was really admitted) on any possible view of their finding arises with regard to it. What they say is this : " We, the Commissioners who heard " the appeal, having considered the facts and the contentions of " both parties, and especially : (1) the well-known necessity of " transplanting bulbs to effect their preservation, which accounted " for the surplus acreage of the Appellants over that under bulbs; " and (2) the sales of bulbs and flowers being eight times that of " the sales of the ordinary agricultural produce, came to the con- " clusion that the main business of the Appellants was the

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" production of bulbs, that the land was used for gardening, that " is, the production of bulbs on a more or less small scale, as dis- " tinguished from agricultural use on a large scale, so that the " activities of the Appellants were not those of ordinary husbandry; " and we accordingly found, as a fact, that the land in the occupation " of the Appellants was mainly devoted to the growth of bulbs; " that it was used in part as a nursery and in part as a garden for the " growth and sale of bulbs; and that the farming operations carried " on by the Appellants were ancillary to the bulb business, and " decided that the assessment should be confirmed." In so far as that is a finding that the land in the occupation of the Appellants was mainly devoted to the growth of bulbs, it is a finding of fact which most assuredly there was evidence to support, and which I do not think could be challenged; but a very serious difficulty arises with regard to that part of this finding which has reference, not to any question as to the main business of the Appellants being the production of bulbs, but the finding that the land was, as the Commissioners express it, used for gardening; and they define " gardening " as " the production of bulbs on a more or less small " scale, as distinguished from agricultural use on a large scale, so " that the activities of the Appellants were not those of ordinary " husbandry." I have read that a good many times, and I have been assisted by arguments on both sides at the Bar about its meaning, and I am bound to say I think that it is really susceptible to only one meaning and that, applying the one meaning to it which one can put, it is impossible to support it. The meaning, and the only meaning, as I think, is this: if there is production of bulbs on a more or less small scale, that is, or at all events may be, a garden; if, on the other hand, there is production of bulbs on a large scale—" agricultural use on a large scale "—I quote their very words—then the activities are those of ordinary husbandry. If that means what I think it must mean, I am bound to say —and I do not think this was denied—that it is impossible to support it. It seems to me to be clear that this could not possibly be said to be the production of bulbs " on a more or less small " scale;" that phrase is got from an expression used by Mr. Justice Day in a case which has some bearing, though not very great, on the present, the case of *Purser* v. *The Local Board of Health for Worthing*, in 18 Q.B.D. 818. That related to a section under the Public Health Act, whereby " The occupier of any land used as " . . . . market gardens or nursery grounds . . . . shall be " assessed in respect of the same in the proportion of one-fourth " part only of the net annual value thereof." The appellant was a market gardener and nurseryman, and on the piece of land he had built 16 greenhouses which practically covered the whole surface of the land, and it was held that the land, with the greenhouses upon it, constituted a market garden or nursery ground within the meaning of that Act. In giving judgment, Mr. Justice Day, who

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delivered the leading judgment in the Divisional Court (and their judgment was quite shortly affirmed in the Court of Appeal) said this: "I cannot entertain a doubt that this ground is within the "exemption created by the Act, and that it ought to be assessed at "one-fourth of its net annual value; it is used for gardening, that "is, for the production of fruit and vegetables on a more or less "small scale, as distinguished from agricultural use on a large scale; "and in my judgment it is a market garden." The only thing that it is necessary to say about that is this: I do not think it really has very much bearing; it is extremely unfortunate, no doubt, from every point of view, that the Commissioners should have introduced into that finding, in the way they have introduced, those words of Mr. Justice Day in quite a different sort of case and made them their finding in the present case. All that one need say about the case before Mr. Justice Day is this, that I am perfectly certain Mr. Justice Day would not have said that it was production on a more or less small scale if he had been dealing not with 2 acres, but with either 200 acres or 60 acres, it matters not which. That is all it is necessary to say about that case, but, in my opinion, this is important, that that finding of the Commissioners, expressed as they have expressed it, is one which anyhow could not be supported. If it is of importance that the production should be on a more or less small scale (and I express no opinion about it) it is, in my opinion, impossible to say that there was evidence here which would justify them in making the finding which Mr. Justice Day, in the very different circumstances of that case, made with regard to the greenhouses in *Purser's* case. Therefore it comes to this, that, as regards what I conceive to be really the vital point of the finding, it cannot be supported. I feel that one part of the finding, that the land was mainly devoted to the growth of bulbs, is a finding of fact which may quite properly be supported, and which indeed I do not doubt was right.

Now I come to consider whether, apart from this special difficulty and the special criticism to which the finding lays itself open, the case affords material upon which it could properly be found that these were profits arising from lands occupied as gardens for the sale of the produce. It is no doubt quite true that it is extremely difficult to define a garden; it is probably true that it is not very useful to look at the ordinary dictionary, and a number of people have said so—I rather think I said something about it myself in the case before—but much higher authority has referred to the fact that, speaking generally, ordinary dictionaries are not very useful in these cases; none the less, it is, I think, perhaps just worth referring to what Mr. Justice Collins said in a case (the point was no doubt quite different) which did relate to words not very unlike these. The words there were: "Cultivated as a garden." That is not the same as, but may not be so very different from "occupied

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" as a garden for the sale of the produce." In discussing that subject, Mr. Justice Collins, as he then was, said this : " Taking " the definition of ' garden ' found in a standard dictionary, it is, " ' A piece of ground enclosed and cultivated for herbs or fruits " ' for food or laid out for pleasure '. Is the appellants' piece of " land a place where fruit and vegetables are grown for food, or a " place laid out for pleasure? " Then he goes on to discuss what would happen if the question were tried by a jury, and he says, " If the question were tried by a Jury it would be necessary for " the Judge to give them a direction as to what constituted an " allotment within the Statute. I think the proper direction in this " case would be that if the piece of land was cultivated as a garden " in the ordinary sense of being cultivated for food or for pleasure, " then it was an allotment within the meaning of the Act." I do not desire to press it too far, but as far as it goes, that expression of opinion by that very eminent judge, I think, favours the view that one has got to construe words in a Section of this sort in the sense in which ordinary people (whether a jury or otherwise) would construe them ; and I see nothing the least inconsistent with that view, or with the view I am taking, in the criminal case in Moody & Malkin(1), to which the learned Solicitor-General called my attention. All that there happened was that a question arose as to whether a criminal offence had been committed in a garden, and the jury (there being evidence which might lead them to the conclusion it was a garden) were asked to find whether it was or was not a garden. I think, applying what I conceive to be the proper test to the thing, it is impossible to say that this bulb farm (which is the best way of expressing it, because it is neutral) was a garden. I do not think that the 204 acres can be regarded as a garden. I do not think, if that is the point, that these 60 acres can be regarded as a garden, but I am also impressed by a narrower point which Mr. Latter took on behalf of the Appellants. He says : " This has got to be not merely a garden, but it has got to be " occupied as a garden for the sale of the produce." He pointed out to me that that expression came down from the first Income Tax Act, from the Act of 1806, and he said—and I think there was force in his contention—even if this could be regarded as a garden, it is not occupied as a garden for the sale of the produce ; and he said that that pointed to a state of affairs quite common, it may be, in 1806, not uncommon within living memory, and no doubt existing still, though less prominent : the case where there was a garden and the produce of the garden was actually sold there. Numerous references might be made to it, one might refer to Miss Edgeworth's stories and numerous other places where such things are discussed, but it not necessary to go into any of that. Construing this, which is what one has got to do,

(1) Rex *v.* Hodges (Moody and Malkin, 341).

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" occupied as a garden for the sale of the produce ", I think that this was not occupied as a garden for the sale of the produce. The truth of the matter, of course, is that what this was occupied for was the growth and the sale of bulbs, and the bulbs, of course, were not sold by being bought at the place; they were sold, as is pointed out somewhere in the Case, by the ton.

Though most properly my attention was called to every authority which could be of any help, I do not think that I am much assisted by the authorities; I have been referred to one or two of them, and I mention them to show that I have not failed to consider them—the *Salisbury House* case(1), *Malcolm* v. *Lockhart*(2), the case about a stallion, the *Hammond*(3) case under the Bankruptcy Act, where Lord Justice Knight Bruce gave a decision that a man, although he sold fruit and vegetables, I think for Covent Garden, was none the less a farmer, and *Stewart* v. *Hunter*(4), the case in 1927 S.C. in Scotland where there was a garden attached to the house that was used for the purpose—those cases I am bound to say when they are looked at, seem to me to have nothing to do really with the present case. One has got, I think, to decide the case on the particular Case as it stands. It is inevitably a good deal a question of degree and of fact, and if I thought there was any evidence to support the finding of the Commissioners, I should not reverse them. I think there was evidence to support the finding of the Commissioners that the primary thing this was used for was the growing of bulbs, but with regard to the crucial finding, the finding, namely, that this is occupied as a garden for the sale of the produce, I think it is reasonably clear that the finding, in the form in which it is put, cannot possibly be supported; and, on any view, I have arrived at the conclusion that there was no evidence which would justify a finding of fact that would bring this case within Rule 8 of Schedule B. Upon these grounds, therefore, I think that this appeal succeeds, and the appeal will accordingly be allowed with costs.

The Crown having appealed against the decision in the King's Bench Division, the case came before the Court of Appeal (Lord Hanworth, *M.R.*, and Slesser and Romer, *L.JJ.*) on the 20th and 21st July, 1932, and on the latter date judgment was given unanimously in favour of the Crown, with costs, reversing the decision of the Court below.

The Solicitor-General (Sir Boyd Merriman, K.C.) and Mr. R. P. Hills appeared as Counsel for the Crown and Mr. A. M. Latter, K.C., and Mr. L. C. Graham-Dixon for the Respondents.

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(1) Salisbury House Estate, Ltd. *v.* Fry, 15 T.C. 266. (2) 7 T.C. 99.
(3) *re* Hammond (*ex parte* Hammond), 14 L. J. Bcy. 14.
(4) Stewart (or Watters) *v.* Hunter, 1927 S.C. 310.

JUDGMENT

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

This is an appeal from Mr. Justice Finlay, who set aside the decision of the Commissioners on the ground that the decision they had reached was one which they could not reach, there being no sufficient evidence on which they could come to the conclusion that they did.

We always have to remember in these cases that the questions of fact are for the Commissioners, and that is happily so, particularly in a case of this class. It is an appeal from a place in the Holland Division of Lincolnshire, the Holland Division, so-called, because of the characteristics of that area—an area which is entirely *sui generis*, and where the alluvial soil offers facilities for the cultivation of crops in a manner which is distinct from all other parts of England, and, I believe, is only parallelled in a certain part of Scotland.

The facts here have been set out by the Commissioners favourably to the Appellants. It appears that there is an area in the holding of the Appellants which totals 204 acres, or, we may call it, 204½ acres, and the land is used, as to some 60 acres, for the cultivation of bulbs, some 50 acres are used for potatoes, and about 95 acres for the more ordinary crops, such as wheat, cereals and green crops, beans and mangolds. There is the ordinary rotation of these crops, and the Commissioners referred, according to their knowledge, to the well-known necessity of transplanting bulbs to effect their preservation, which accounted for the surplus acreage of the Appellants over that under bulbs. In other words, the Commissioners, who were familiar with the district, know that if you have a bulb farm, you must have other land as well, because you must relieve the land of the burden of constantly and consistently growing bulbs; that is to say, you must grow your bulbs in rotation to other crops upon the total area which is in your cultivation.

The only question that we have to determine is this: whether the occupiers of this land, the 204 acres, should be taxed under Schedule B as occupiers and husbandmen (as I call them) or whether or not the Commissioners are right in saying that Rule 8(1) applies to this land. The relevant part of Rule 8 that applies to the land is this: "The profits arising from lands occupied as . . . . "gardens for the sale of the produce . . . . shall be estimated "according to the provisions and rules applicable to Schedule D, "but shall be assessed and charged under this Schedule as profits "arising from the occupation of lands." Does that Rule apply, or does it not? What is said is that this holding of 204 acres was a holding occupied for the purpose of husbandry (I use a large and embracing word on purpose). Or is it occupied as gardens for the sale of the produce?

(1) Rules applicable to Schedule B, Income Tax Act, 1918.

(Lord Hanworth, M.R.)

Let me get rid of one small point which was taken; that is the question about the sale of the produce. Those words " sale of the "produce" seem to me to have been inserted in this Rule as conveying an antithesis between a garden used for pleasure and a garden used for the purpose of profit by sale of the produce, and no question arises as to whether or not the system of sale of the produce takes place, as in old days, at the garden gate, or as now, when at the present time one sees a number of persons setting out for sale either flowers or fruit to those who are passing along some of the main roads. That sort of individual practice or custom is not intended or connoted by these words. " Gardens for the sale of " the produce " are the alternative or antithesis of " gardens used " for pleasure."

The Commissioners have set out the facts, and, as I say, they have set out the facts favourably to the Appellants, because they find in paragraph (*e*): " The whole acreage set out in para- " graph (*b*) hereof consisted of open fields and was worked as one " farm by farm labourers using ordinary methods of husbandry, " horses, ploughs, tractors and other agricultural implements; " in other words, they find that they were lands such as are referred to in Rule 8. It is to be noted that Rule 8 refers to " lands ", and in using that word I think it intends to imply an area which is not necessarily enclosed, but which may be of a larger or smaller extent, in which there may be a garden on a larger or smaller scale, according as the means or the capital employed upon it enables you to cultivate it and use its produce for sale.

I need not go through the other facts to which attention has been rightly called in the course of the argument, but there are two facts to which I must call attention. There is a statement at (*k*) that: " the cost of the " labour employed on the bulbs amounted to £27 per acre, a sum " far in excess of the price or ordinary farming, which, it was not " disputed, averaged, in the locality, £8 per acre." Now, one asks the question, Why was an additional £19 worth of labour per acre put upon this land? Was it for the purpose simply of husbandry or not, and who shall answer the question? Perhaps the first persons who are qualified to answer are those persons who are familiar with the district and know the system of husbandry and of gardening and of occupying lands for the sale of produce according to the custom of the country. Next, there is a fact stated which is certainly not, as a rule, one to be found in the course of husbandry, namely, that there is a large sale of blooms, amounting in gross to £8,332, but in net to £5,332. It is quite true that the blooms are only picked as stated in paragraph (*h*), and that it is said that the Appellants are bulb growers rather than flower growers; but they had incidentally—I might call it a catch crop—an opportunity, if the weather was favourable and the market was favourable, of turning to account the blooms which came from

(Lord Hanworth, M.R.)

the bulbs, which perhaps were the main object of cultivation, but still, that is a fact which must be taken, in its proper perspective, into account by the Commissioners.

I need not go through the other facts. With a knowledge of the district, and with those facts before them, bearing in mind the fact that the whole acreage was worked as one farm, and by farm labourers, bearing in mind the fact of the excessive labour put into this 60 acres, and bearing in mind the production of the produce that is sold, the value of which is given under paragraph (*d*) of the Case, these were matters which, as I say, the Commissioners, familiar with the system of farming, of husbandry, of gardening, were qualified to take into account and form an estimate of, and give a concluded judgment upon, and they have come to the conclusion that in this case Rule 8 did apply, because the profits which arose to the Appellants were profits arising from lands occupied as gardens for the sale of the produce.

I am not going to attempt for a single moment to lay down definitions. I do not think that is possible. I reject anything, certainly against the Appellants, from the words which have been lifted out of the case of *Purser*(1) and put into the findings; but on the broad principle that the facts are for the Commissioners, I hold that there was evidence upon the facts before them upon which they could come to the conclusion which they have reached, and under those circumstances this Court has no right to interfere with that conclusion.

For these reasons the appeal must be allowed with costs here and below, and the assessment as made by the Commissioners must be confirmed.

Slesser, L.J.—I agree. As we are, unfortunately, differing from the learned Judge, I find it necessary to add a few words, which I should otherwise not have added.

The learned Judge has allowed the appeal from the Commissioners on two grounds. First, he has found that they could not properly come to the conclusion that this was land occupied as " a garden for the sale of produce " within the meaning of Rule 8 of Schedule B; and, secondly, he has found that, in any event, the language of that Rule, " garden for the sale of produce," is limited to sales of bulbs being bought at the place.

In my view, as regards the first point, there was ample evidence on which the Commissioners could come to the conclusion that they did, that these lands were occupied as nurseries or gardens for the sale of the produce. I agree with my Lord that the words " for " the sale of the produce " indicate what sort of garden is contemplated by the Rule. One does not wish, even if one could, to

(1) Purser *v.* The Local Board of Health for Worthing, 18 Q.B.D. 818.

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define the meaning of the word " garden ". One has to have regard to the fact that the Rule is dealing with profits arising from lands occupied as nurseries or gardens for the sale of the produce, and that indicates that, whatever the word " garden " may mean at large, this Rule is primarily concerned with gardens where profits arise from the sale of produce, and one has to have regard to that fact when considering whether a particular piece of land is or is not a garden. Therefore I think from that point of view, despite the suggestion of Mr. Dixon, that the Commissioners were entitled, among other matters, as questions of fact, to consider the accounts and the financing and the general business of this undertaking and the use of lands which were not immediately used at the particular time for the production of bulbs, but which were, as they find, ancillary to the business. I think all those matters were properly within their cognisance.

Now, the learned Judge has said this(1) : " I do not think that " the 204 acres "—that is the whole area of the land—" can be " regarded as a garden." I do not think, if that is the point, that the 60 acres can be regarded as a garden. I find it a little difficult to understand why the learned Judge should have come to the conclusion that the Commissioners could not properly so regard it, because he does not appear in terms to accept the definition or limitation of " garden " which undoubtedly does appear in the finding of the Commissioners, that it is for the production of bulbs on a more or less small scale, as distinguished from agricultural use on a large scale. The learned Judge says in terms that he expresses no opinion about that matter. But for myself, the only defect I find in the Case here is that the Commissioners have burdened themselves with that consideration. I am not saying that the extent of its area is not a matter of fact which they may take into consideration in deciding whether a particular land is or is not a garden; but to give it any higher authority than that, and to say, as they seem to say, to use their language, " accordingly we found " that the land was so devoted," it seems to me to make a wrong use of an observation contained in a case which is really on a different subject matter, not necessary, I think, to the decision even of that case itself, and which has been distorted from its context when it is used, as the Commissioners seem to have used it here, as a kind of principle to determine on what ground it should be decided whether this be a garden or not. It is to be observed that Mr. Justice Day in the case referred to, *Purser* v. *The Local Board of Health for Worthing*, in 18 Q.B.D., at page 820, is really speaking of the particular place under consideration there, and he says : " I cannot entertain a doubt that this ground is within the exemp- " tion created by the Act, and that it ought to be assessed at " one-fourth of its net annual value; it is used for gardening, that

(1) See page 616 *ante*.

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" is, for the production of fruit and vegetables on a more or less " small scale, as distinguished from agricultural use on a large " scale; and in my judgment it is a market garden "—I read that as no more than descriptive of the particular subject matter in that case, and the real issue in that case, whether this was or was not a market garden there to be free from assessment for the purpose of the Public Health Acts, or whether it was or was not a market garden by reason of the fact that it was covered with glass and consisted of greenhouses. I think that it would be unfortunate in the future, in construing this Rule, therefore, if this case were again to be used as any authority either limiting or guiding the Commissioners in coming to the conclusion as to whether a particular place was or was not a garden. As I say, they are entitled to consider the whole subject matter, and among it, I think, the area, not that that raises any particular question of law, but is one of the facts which they are entitled to take into consideration. It may be that an area that they may find to be a garden is of considerable size; it may be not. It is all a matter of fact and of degree.

As to the second point, I have already indicated that, in my view, the words " for the sale of the produce " are in no sense limited to a sale where there is delivery or an immediate sale in the ordinary sense of the word, as my Lord has said, at the garden gate. Those words appear to me to have been placed there to indicate to some extent the kind of garden which is contemplated by the Rule, namely, a garden carried on for commercial purposes. Were a garden not carried on for commercial purposes, the question of profits or gains would not arise under Section 1 of the Income Tax Acts, and the Schedule B question would not arise, and the Rule would not arise.

Romer, L.J.—I agree. The question whether the land in the occupation of the Respondents was or was not occupied by them as a garden seems to me to be a question of fact for the Commissioners to decide, and I am not prepared to hold that there was no evidence upon which the Commissioners might properly answer that question as they did, in the affirmative. Upon the second point, as to the meaning of the words " for the sale of the produce," I can only say for myself that I can find no justification at all for limiting, as the learned Judge did, those words to a sale of the produce on the land itself. For these reasons I agree that this appeal should be allowed, with the consequences that have been indicated.

An appeal having been entered against the decision in the Court of Appeal, the case came before the House of Lords (Viscount Buckmaster and Lords Tomlin, Russell of Killowen and Wright)

on the 24th February, 1933, when judgment was given unanimously in favour of the Crown, with costs, confirming the decision of the Court below.

Mr. A. M. Latter, K.C., and Mr. L. C. Graham-Dixon appeared as Counsel for the Appellants and the Solicitor-General (Sir Boyd Merriman, K.C.) and Mr. R. P. Hills for the Crown.

JUDGMENT

Viscount Buckmaster.—My Lords, the question for your Lordships' consideration is whether certain lands in the occupation of the Appellants are occupied by them as nurseries or gardens for the sale of the produce in accordance with the provisions of Rule 8, Schedule B, in the Income Tax Act, or whether they are entitled to be taxed under the first paragraph of the Schedule, which simply taxes them in respect of the occupation for every twenty shillings of the assessable value. The Commissioners have held that the lands in question are occupied as nurseries or gardens for the sale of produce and, consequently, the profits that arise from that occupation have to be estimated in accordance with the provisions applicable to Schedule D and are subject to tax accordingly.

The facts of the case are these : the Appellants have a holding of about 204 acres in Lincolnshire, 60 acres of which are annually devoted to the growth of bulbs, which bulbs are obviously intended to be used, when sold, for the purpose of producing flowers and not for the purpose of consumption. They use 60 acres for that purpose alone because it is necessary, for change of soil and other reasons, that they should use no more. The Commissioners have, however, found that the main purpose for which the whole of the 204 acres are concerned is the growth of bulbs. The flowers which these bulbs produce are sold to a substantial extent, but, none the less, it is stated that they are never cut at times when their cutting would do injury to the bulbs themselves and that the real purpose of the business is the cultivation and the growth of bulbs. The methods of agriculture which are described are those which are in common use for the ordinary purposes of husbandry. The land is worked by ploughs, horse tractors and other agricultural implements. None the less, upon the facts, the Commissioners have held that this land is occupied as a garden for the sale of the produce—these bulbs. The question, and the only question, before this House is whether it is possible to say that there was not material upon which that conclusion could be reached. Mr. Justice Finlay thought that there was no material that could justify it. The Court of Appeal have overruled his judgment and the present appeal is from that decision. It is plain that in all such cases the distinction is a matter of degree; no general principle can be made to govern them, and I agree with the judgment of Lord Justice Romer, which I think has put the whole matter in a nutshell; he

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said(1): "The question whether the land in the occupation of the "Respondents was or was not occupied by them as a garden seems "to me to be a question of fact for the Commissioners to decide, "and I am not prepared to hold that there was no evidence upon "which the Commissioners might properly answer that question as "they did, in the affirmative."

The other point raised in the appeal was a question as to whether the sale of the produce ought not to be on, or absolutely close to, the land that was being used. My Lords, I can find nothing which leads me so to associate the condition of sale in the Act of Parliament, and upon that point I think it is also clear that the appeal must fail.

My Lords, for both these reasons, therefore, I think the judgment appealed from is correct.

Lord Tomlin.—My Lords, I agree, and have nothing to add.

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

Lord Wright.—My Lords, I agree.

Questions put:

That the judgment appealed from be reversed.

The Not Contents have it.

That this appeal be dismissed with costs.

The Contents have it.

[Solicitors:—Ellis and Fairbairn; Solicitor of Inland Revenue.]

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(1) See page 622 *ante*.