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UNIVERSITY OF LONDON  
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INSTITUTE OF ADVANCED  
LEGAL STUDIES

In the Privy Council.

No. 7 of 1954.

ON APPEAL FROM THE SUPREME COURT OF  
TRINIDAD AND TOBAGO  
(APPELLATE JURISDICTION.)

BETWEEN

PORT-OF-SPAIN CORPORATION ... .. *Appellants*

AND

GORDON, GRANT & CO. LIMITED ... .. *Respondents.*

CASE FOR THE RESPONDENTS

1.—This is an appeal by special leave from the judgment of the Full Court of the Supreme Court of Trinidad and Tobago pronounced on the 30th day of April, 1953, allowing the Respondents' appeal against a decision of the Acting Chief Magistrate of the County of St. George West dated the 15th day of August, 1952, whereby he assessed the annual rateable value for the triennial period 1951-53 of premises known and assessed as No. 78 South Quay in the City of Port-of-Spain at \$5,760.00 and substituting the figure of \$1,608.00 for the sum so fixed by the Magistrate.

RECORD

pp. 4-8

pp. 2-3

10 2.—The substantial question of law arising on this appeal is whether or not it is proper, in assessing the annual value for rating purposes of property in Port-of-Spain, to take into account the rent restriction legislation applicable to such property.

3.—The Appellants are the rating authority for the City of Port-of-Spain. Their power to levy rates is given by Part V (Sections 87 to 118) of the Port-of-Spain Corporation Ordinance (Cap. 39, No. 1 of the Revised Laws of Trinidad and Tobago 1950). The material sections of the said Ordinance run as follows:—

“ 87. In this part of this Ordinance ‘rateable hereditament’ means any dwelling house, warehouse, store, shop, counting house,

manufactory, factory, workshop, stable, shed and any other building whatsoever in the city . . . 'annual rateable value' means the gross annual rental value.

"88. (1) There shall be raised, levied and collected by and paid to the Corporation upon and in respect of every rateable hereditament an annual rate or tax of seven and a half per centum of the annual rateable value of such hereditament. . . .

(2) It shall be lawful for the Corporation from time to time . . . to prescribe that in respect of any specified year or years the rate or tax . . . shall be at a higher rate than seven and a half 10 per centum ; Provided that the rate so leviabie and payable shall in no case exceed ten per centum of the annual rateable value of any hereditament liable to such rate.

"89. (1) In determining the annual rateable value of any rateable hereditament for the purposes of this Ordinance, the Corporation shall, whether such hereditament be actually rented or not, consider in every case what amount of annual rent a tenant may be reasonably expected to pay for such hereditament, having regard to the purpose for which such hereditament is actually used or, in case it is not actually used or occupied, the purpose or purposes for 20 which it is reasonably suitable.

"93. In the year 1915, and in every subsequent third year, the Corporation shall cause new valuations to be made of all rateable hereditaments in the City in accordance with the provisions of this Part of this Ordinance. . . .

"99. (1) The Corporation shall, in the first year of every triennial period, as soon as may be after fixing the annual rateable value of every rateable hereditament, serve or cause to be served on the owner of every such hereditament a notice in writing specifying the annual rateable value of such hereditament as fixed by them, the amount 30 of the annual rate or tax to be paid in respect thereof, the time when such rate or tax is to be paid, the name of the owner or reputed owner of such hereditament, and such other matters as the Corporation may from time to time direct.

"101. The annual rate or tax to be paid in respect of every rateable hereditament under this Part of this Ordinance shall be borne and paid by the owner of such hereditament but the amount of such rate may be collected from and paid by the tenant or occupier of such hereditament or any part thereof, and such tenant or occupier may deduct the amount so paid from the rent payable by him in 40 respect of such hereditament : Provided that nothing herein contained shall affect any contract between landlord and tenant with respect to the payment of such rate."

4.—The rent restriction legislation applicable to the premises, No. 78 South Quay, City of Port-of-Spain, the rateable value of which is the subject of this appeal, is contained in the Rent Restriction Ordinance,

1941, as amended by later Ordinances, Chapter 27, No. 18, of the Revised Laws of Trinidad and Tobago, 1950. The following sections of the said Ordinance are material to this appeal :—

“ 1. (2) This Ordinance shall continue in force until the 23rd February, 1951, and may be continued in force for a further period of twelve months at a time by resolution of the Legislative Council.” (The said Ordinance has been so extended for successive periods.)

10 “ 2. (1) . . . ‘prescribed date’ means . . . 1st of January, 1940 . . . ‘standard rent’ . . . means the standard rent of . . . premises ascertained in accordance with this Ordinance. . . .

“ 3. (1) This Ordinance shall apply . . . to all dwelling-houses and public or commercial buildings whether in existence or let at the commencement of this Ordinance or erected or let thereafter and whether let furnished or unfurnished, being . . . dwelling-houses and public or commercial buildings situate in the areas described in the Schedule hereto :

Provided that this Ordinance shall not apply to

20 (a) a dwelling-house while let at a rent which *bona fide* includes payment for board or attendance ; or

(b) building land while let on a building lease . . . for a term of twenty-five years or more ; or

(c) a dwelling-house while let by the Planning and Housing Commission as constituted under the Slum Clearance and Housing Ordinance.

“ 5. (1) The Governor shall establish . . . Rent Assessment Boards. . . .

30 “ 7. Until the standard rent of any premises . . . has been determined by the Board . . . the standard rent . . . shall be the rent at which they were let . . . on the prescribed date. . . .

“ 8. (3) The landlord or the tenant of any premises . . . may . . . apply to the Board to determine the standard rent thereof.

“ 9. (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 7, modified as follows :—

40 (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 ;

(b) where the premises were let in the same category of letting on or before the prescribed date, and the standard rent ascertained in accordance with the provisions of Section 7 would, in the opinion of the Board, be substantially higher or lower than the standard rent ascertained on the principles of paragraph (a) of this section, the Board may determine the standard rent on the principles of that paragraph.

“ 10. (1) . . . where the rent of any premises . . . exceeds the standard rent . . . the amount of such excess shall . . . be irrecoverable from the tenant, and if it is paid by the tenant, shall be recoverable by him, . . . from the person to whom it was paid. . . . 10

“ 10. (3) If a landlord knowingly receives, or a tenant knowingly pays, any rent which is by this Ordinance made irrecoverable, he shall be guilty of an offence against this Ordinance. . . .

“ 11. (1) The amounts by which the rent of any premises to which this Ordinance applies may exceed the standard rent shall, subject to the provisions of this Ordinance, be :—

(a) the amount of any increase in rent which a landlord has made, or could lawfully have made, after the prescribed date by virtue of the statutory ten per centum increase permitted by ‘ (the original) ’ Section 5 of the Rent Restriction Ordinance : . . . ; 20

(b) the amount of any increase in rent which a landlord has made, or could lawfully have made after the prescribed date by virtue of an order of a Magistrate under ‘ (the original) ’ Section 8 of the Rent Restriction Ordinance ;

(c) an amount proportionate to any increase in the amount of the rates and taxes payable by the landlord since the date by reference to which the standard rent of the premises is determinable ; 30

(d) the amount of any percentage increase sanctioned under sub-section (2) of this section ;

(e) any amount sanctioned by the Board . . . where the landlord has incurred expenditure in effecting :

(i) substantial improvements or structural alterations in the premises . . .

(ii) substantial improvements to the amenities of the premises, or substantial improvements in the locality from which the tenant derives benefit. . . . 40

(2) The Governor in Council, with the sanction of the Legislative Council, may . . . sanction an increase of rents by such percentage of the standard rents as he may think fit. . . .”

## “ The Schedule ”

RECORD

## The City of Port-of-Spain.

5.—The material facts of this case were proved in evidence before the Acting Chief Magistrate during the proceedings before him and are summarised below :—

(I) The Respondents are the owners of the premises at 78, South Quay, Port-of-Spain.

10 (II) These premises have been continuously let to the Archer Coal Depot Co. Inc. or their predecessors since 1924 on a monthly tenancy.

(III) From 1st July 1931 until 30th June 1947, the Archer Coal Depot Co. Inc. paid a rent of \$120 per month which was increased with effect from 1st July, 1947, by \$12 per month by adding to the rent an increase of 10 per cent. permitted by the rent restriction legislation. With this addition, therefore, the total rent became \$132 per month.

(IV) For the triennial period 1945 to 1947, the premises were assessed by the Appellants at a rateable value of \$1,460.

20 (V) For the triennial period 1948 to 1950 the rateable value was increased by the Appellants to \$1,608.

(VI) Since the assessment in 1948 the Respondents have made no alterations to or improvements on these premises.

(VII) On 9th November, 1951, on the application of the Respondents, the Rent Assessment Board, after hearing evidence, determined the standard rent of the premises at \$132 per month.

(VIII) If there were no statutory restrictions as to rent, the Respondents could secure a higher figure than \$132 per month; the Respondents' Secretary gave evidence that an unrestricted rent might be as high as \$480 per month.

30 6.—At the triennial valuation for 1951 to 1953 the Appellants fixed the rateable value at \$6,600 and the Respondents thereupon appealed to the Magistrate against that valuation in accordance with the provisions of Section 104 of the said Port-of-Spain Corporation Ordinance. p. 1

7.—The said appeal was heard by the acting Chief Magistrate of the County of Saint George West aforesaid during the period 7th May to 15th August 1952, and on the latter date the acting Chief Magistrate gave his decision upon the appeal and reduced the assessment to \$5,760. pp. 2-3  
 40 The learned Magistrate made his decision by reference to the figure of \$480 per month which the Respondents could have obtained for the premises if there were no statutory restrictions as to rent. He stated the legal issues before him as being :—

(a) whether the Rent Restriction Ordinance, 1941, in its application to these premises, was to be taken into account in arriving at the valuation of the premises for rating purposes and p. 2, ll. 18-30

## RECORD

(b) whether the highest gross value which could be assigned to and placed upon the premises for the purpose of assessment was the "standard rent" ascertained in accordance with the Rent Restriction Ordinance.

The learned Magistrate decided that in view of the decision of the House of Lords in *Assessment Committee of the Metropolitan Borough of Poplar v. Roberts* (1922) 2 A.C. 93, he was bound to decide both of these points against the Respondents (the then Appellants). He did not accept the suggestion that that decision could be distinguished from the case before him and he pointed out that Section 11 (1) (c) of the Rent Restriction Ordinance 1941 enables a landlord to pass on to a tenant an enhanced burden of rates falling on himself, without discriminating between an enhancement due to increased rateable value and one due only to increased poundage. 10

8.—It is submitted that the learned Magistrate's reference to Section 11 (1) (c) of the Rent Restriction Ordinance does not affect the question at issue. That provision contemplates an increase in rateable value subsequent to the determination of the standard rent of premises but Section 11 itself specifies four sets of facts which would permit the payment of a rent for premises in excess of the amount of the standard rent and which might therefore, consistently with the Respondents' own contentions in this appeal, justify a corresponding increase in the rateable value of the premises. 20

9.—The Respondents appealed to the Full Court of the Supreme Court of Trinidad and Tobago against the decision of the acting Chief Magistrate. The Full Court (Mathieu-Perez, C.J. and Ward, J.), on the 30th April, 1953, allowed the appeal with costs and reduced the rateable value of the premises from \$5,760 to \$1,608. The Judgment of the Court mentioned the facts of the case and observed that the method of fixing the annual rateable value of any rateable hereditament in Port-of-Spain is set out in Section 89 (1) of the Port-of-Spain Corporation Ordinance. The Court compared this provision with Section 4 of the Valuation (Metropolis) Act, 1869, which deals with the rateable value of hereditaments in England and concluded that, though there are minor differences, the method of fixing the annual rateable value is substantially the same under both enactments; both systems presuppose a hypothetical landlord and a hypothetical tenant and the thing or *res* in respect of which these hypothetical persons fix a hypothetical rent is the occupation value of the hereditament. In determining this hypothetical rent the Court adopted the words of Lord Buckmaster in *Port of London Authority v. Assessment Committee of Orsett Union and Others* (1920) A.C. 273 at p. 305 that the actual hereditament "must be the particular hereditament as it stands, with all its privileges, opportunities and disabilities created or imposed either by its natural position or by the artificial conditions of an Act 30

of Parliament.” The Court said that if some statutory restriction limits the occupational value of the premises, this limitation must in its view be considered in fixing the annual rateable value. RECORD  
p. 6, ll. 6-9

The Court rejected a submission made on behalf of the Respondents that there is a difference between the occupation value of premises to a tenant and to a landlord and that, inasmuch as the incidence of tax falls on the owner in the Colony and not, as in England, on the occupier, the rating authority must consider the occupational value of the hereditament to the owner ; the Court remarked that the rateable value is set by reference to an objective standard based on the nature of the hereditament itself. It appeared to the Court that the question to be answered remained the same whether the incidence of the rate falls on the owner or on the occupier. p. 6, ll. 16-27  
p. 6, ll. 28-34  
p. 6, ll. 35-37

The Court then considered the second point submitted on behalf of the Respondents (the then Appellants), namely that the Rent Restriction Ordinance No. 13 of 1941, by making it a statutory offence for a landlord to receive or for a tenant to pay more than the permitted rent, had fixed the rent which a tenant might reasonably be expected to pay. In this connection the Court distinguished the decision of the House of Lords in *Assessment Committee of the Metropolitan Borough of Poplar v. Roberts* (1922) 2 A.C. 93 ; the Court held that the Rent Restriction Ordinance 1941 differed materially in its terms from the Mortgage and Rent Restriction Act 1920, which was the statute considered by the House of Lords in the *Poplar* case. The Court decided that the 1941 Ordinance, unlike the 1920 Act, could not be regarded as a temporary measure, that the Ordinance, unlike the Act, was not limited in the range of its application but applied to hereditaments of all kinds, that the Ordinance established a standard rent for all premises and was designed to secure a uniform and equitable standard of rents and that the Ordinance differed from the Act in that it included a penal sanction for enforcing its provisions. The Court held that the effect of these differences was to make the reasoning and conclusion reached in the *Poplar* case inapplicable to the circumstances of this case. p. 6, ll. 38-42  
p. 6, l. 43—  
p. 7, l. 17  
p. 7, ll. 18-28  
p. 7, ll. 29-32

The Court concluded that in the final analysis rent, for the purposes of fixing the annual rateable value of a hereditament, is the sum which a tenant may reasonably be expected to pay for the beneficial occupation and that the hypothetical tenant must be supposed to occupy under the same statutory restrictions as the actual tenant. The hypothetical tenant could not offer, nor the landlord accept, more for the beneficial occupation than was permitted by the Ordinance and a rating authority has no power to imagine a notional tenant above the law and not amenable to the command of the legislative sovereign. p. 7, l. 33—  
p. 8, l. 2

Accordingly, the Court allowed the appeal and varied the order of the Magistrate by substituting \$1,608 for \$5,760 as the annual rateable value of the premises for the triennial period 1951 to 1953. p. 8, ll. 3-7

10.—The Appellants applied to the Full Court for leave to appeal to Her Majesty in Council which application was dismissed on the 13th of p. 8  
pp. 12-14

June, 1953. The Appellants thereupon petitioned to Her Majesty in Council for special leave to appeal which leave was granted by an Order in Council dated the 28th October, 1953.

11.—The Respondents, while desiring to support the Judgment of the Full Court, desire also to maintain the submission made on their behalf and rejected by the Full Court, as to the effect of the different incidence of liability to rating in the Colony and in England. In the Colony, the person charged is the owner of the premises and not, as in England, the occupier. The Respondents submit that this difference provides a further and substantial ground for distinguishing the *Poplar* decision and affords support to their contention that the provisions of the Rent Restriction Ordinance must be taken into account in determining the annual rateable value under Section 89 of the Port-of-Spain Corporation Ordinance. It is essential to the reasoning and decision of their Lordships in the *Poplar* case that the person chargeable under the English rating legislation is the occupier and that the annual rent which a tenant might reasonably be expected to pay is no more than a statutory measure of the *occupational value*. In the Respondents' submission, rating legislation which charges an owner of premises in respect of the annual value of those premises is not applying a statutory measure but is taxing a real, as distinct from a notional, value, viz. the *ownership* value of the rated premises. 10

12.—The Respondents humbly submit that the Judgment of the Full Court is right and ought to be affirmed for the following among other 20

### REASONS

- (1) BECAUSE the House Rate imposed by Part V of the Port-of-Spain Corporation Ordinance is imposed upon the owners of property so that the principles applicable to rating in the City are wholly different from those applicable in England.
- (2) BECAUSE the decision of the House of Lords in *Assessment Committee of the Metropolitan Borough of Poplar v. Roberts* (1922) 2 A.C. 93 is distinguishable from this case and much of the reasoning in the *Poplar* case is in favour of the Respondents. 30
- (3) BECAUSE the words "the annual rent which a tenant may *reasonably* be expected to pay" in Section 89 (1) of the Port-of-Spain Corporation Ordinance refer to the annual rent which the owner could obtain having regard to all the relevant circumstances, including the effect of legislation currently in force in the Colony. 40



- (4) BECAUSE the provisions of the Rent Restriction Ordinance, 1941, form part of such current legislation and must, therefore, be taken into account.
- (5) BECAUSE the Judgment of the Full Court was right in attaching importance to the facts that the said Ordinance had been in force for twelve years and did not deal only with one class of hereditament.
- (6) BECAUSE when the provisions of the Rent Restriction Ordinance, 1941, are so taken into account the annual rent which could in fact be obtained for the premises here in question would not exceed the maximum rent lawfully payable under the provisions of the Ordinance.
- (7) BECAUSE the Judgment of the Full Court was right.

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JOHN SENTER.

RODERICK WATSON.

**In the Privy Council**

No. 7 of 1954.

ON APPEAL FROM THE SUPREME COURT OF  
TRINIDAD AND TOBAGO.  
(APPELLATE JURISDICTION.)

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BETWEEN  
PORT-OF-SPAIN CORPORATION  
*Appellants*  
AND  
GORDON, GRANT & CO. LIMITED  
*Respondents.*

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CASE FOR THE RESPONDENTS

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J. N. MASON & CO.,  
41/44, Temple Chambers,  
Temple Avenue, E.C.4,  
*Respondents' Solicitors.*