No. 539.—HIGH COURT OF JUSTICE (KING'S BENCH DIVISION).—
30TH JUNE, 1924.

COURT OF APPEAL.—12TH NOVEMBER, 1924.

HOUSE OF LORDS.—6TH AND 9TH NOVEMBER, 1925.

RICKETTS *v.* COLQUHOUN (H.M. INSPECTOR OF TAXES).(1)

Income Tax, Schedule E—Deduction—Expenses—Income Tax Act, 1918 (8 & 9 *Geo.* V, *c* 40), *Schedule E, Rule* 9.

The Appellant, a barrister residing and practising in London, held the Recordership of Portsmouth, and was assessed to Income Tax under Schedule E in respect of the emoluments of that office.

Held, *that he was not entitled, for Income Tax purposes, to deduct from the emoluments of his office as Recorder the cost of travelling between London and Portsmouth in order to attend the Quarter Sessions, his hotel expenses at Portsmouth, or the cost of the conveyance of his robes to the Court there.*

CASE

Stated by the Commissioners for the General Purposes of the Income Tax Acts for the Division of the Inner Temple pursuant to Section 149 of the Income Tax Act, 1918.

(1) Reported K.B.D., [1924] 2 K.B. 347, C.A., [1925] 1 K.B. 725, and H.L., [1926] A.C. 1.

1. At a meeting of the Commissioners for the General Purposes of the Income Tax Acts for the Division of the Inner Temple held at the Inner Temple on the 18th of December, 1923, Mr. G. W. Ricketts, Barrister-at-law, (hereinafter called the Appellant) appealed against an assessment to Income Tax made upon him for the year 1923–1924 under Schedule E of the Income Tax Act, 1918, in respect of his office as Recorder of Portsmouth as follows :—

Schedule E.
In respect of Profits of Offices, Employments or Pensions.

Amount of Assessment ... £250.

2. The Appellant gave evidence before us in support of his appeal and stated that he had been appointed to and held his said office as Recorder under the provisions of the Municipal Corporations Act, 1882, to which he referred.

3. The Appellant further stated that he was a practising member of the Bar residing in London and carrying on his profession at chambers in the Temple.

4. The Appellant stated that he was required under the provisions of the said Act to hold once in every quarter of a year a Court of Quarter Sessions in and for the said Borough. The Appellant gave evidence that it was necessary for him to travel to Portsmouth four times in every year in order to hold his Court there and he claimed to be entitled to deduct from the said assessment upon him of £250 the following sums on account of expenses incurred or to be incurred by him in the said year of assessment :—

	£	*s.*	*d.*
(*a*) in respect of travelling expenses from London to Portsmouth and from Portsmouth to London	8	5	0
(*b*) in respect of hotel expenses at Portsmouth	5	0	0
(*c*) in respect of expenses incurred in consequence of wear and tear to his gown and Court suit when sitting as Recorder ...		10	0
(*d*) in respect of the price of stamps and stationery used by the Appellant as Recorder		3	0
(*e*) the sum of 10*s.*, being the amount of four payments of 2*s.* 6*d.* each made by the Appellant in Portsmouth for the carriage of his tin box to the Court		10	0

5. It was stated on behalf of the Crown that it was not disputed that the said sums so claimed by the Appellant were reasonable in amount if the Appellant was entitled to deduct the same or any of them in arriving at the sum in which he should be assessed in respect of his said office.

6. The Appellant contended that the amounts claimed by him as deductions were all of them expenses which ought to be deducted under and in accordance with the Rules applicable to Schedule E, and he contended that they fell within and were authorised by Rule 9 of those Rules.

7. On behalf of the Inspector it was contended that none of the said deductions claimed by the Appellant were legally permissible, and that they did not fall within Rule 9, Schedule E. Reliance was placed upon the cases of *Cook* v. *Knott*, 2 Tax Cases 246, and *Revell* v. *Elworthy*, 3 Tax Cases 12, as shewing that the deductions claimed were not permissible. Reference was also made to Section 209 of the Income Tax Act, 1918.

8. We were of opinion, and we decided, that the Appellant was not entitled to any deduction in respect of the said sums of £8 5*s*. 0*d*. and £5 0*s*. 0*d*. or of either of them. In our view the cases of *Cook* v. *Knott* and *Revell* v. *Elworthy* were in point and we considered that we ought to follow them. Apart from these decisions we were of opinion that these items were not expenses which the Appellant was necessarily obliged to incur in the performance of the duties of his office of Recorder and were not moneys expended wholly exclusively and necessarily in the performance of the said duties.

9. As regards the item of 10*s*. claimed by the Appellant in respect of the carriage of his tin box we were not satisfied on the evidence before us that it was necessary for the Appellant to expend this amount or any of it and we disallowed the deduction of this item or of any part of it.

10. As regards the remaining items claimed by the Appellant of 10*s*. and 3*s*. we decided that the Appellant was entitled to deduct the same from the amount of the said assessment.

11. Thereupon immediately after our determination as aforesaid the Appellant declared his dissatisfaction with our determination so far as it disallowed the deductions claimed by the Appellant and required us to state and sign a Case for the opinion of the High Court which we have stated and do sign accordingly.

A. M. BREMNER,
JOHN F. P. RAWLINSON,
GERALD F. HOHLER.

The case came before Rowlatt, *J*., in the King's Bench Division on the 30th June, 1924, when judgment was given in favour of the Crown, with costs.

Sir John Simon, K.C., M.P., Mr. Konstam, K.C., and Mr. W. Allen appeared as Counsel for the Appellant, and the Attorney-General (Sir Patrick Hastings, K.C., M.P.) and Mr. R. P. Hills for the Crown.

JUDGMENT.

Rowlatt, J.—I do not think I need trouble you Mr. Attorney. This case raises a question of hardship. I may go further and say the position really is unreasonable, because the expenses which are not allowed to be deducted sometimes more than eat up the emoluments. Nevertheless, I think upon the authorities I must decide for the Crown.

It is, of course, settled by the two cases which have been cited, *Cook* v. *Knott*, 2 T.C. 246, and *Revell* v. *Elworthy Bros.*, 3 T.C. 12, that a man cannot charge the expenses of travelling from his residence, which is in his own choice, to the place where he exercises his office, for reasons which I need not repeat; but it is said that this is not on the same footing. It is true that a Recorder must by Statute be a barrister of five years' standing, and that in practice means that in nine cases out of ten he has to travel from London to perform his duties, though it need not be so. The Statute, however, does not say he must be a practising barrister; still less does it say that he must be a barrister practising in London. In my opinion the place where he practices is really, in point of law, as much as the place where he resides, at his own discretion to select. In these circumstances it seems to me that I can only arrive at one conclusion. The matter has been complicated, in the view of many of us who are in the habit of thinking over these dry questions, by the case of Members of Parliament, who are allowed their travelling expenses as a deduction, but then that deduction is put upon the footing—and whether it is right or wrong it is not for me to say—that they have an office the duties of which are exercisable in two places, and involve in the performance of those duties passing from one place to the other, which, of course, makes all the difference, if that explanation is sound.

The only answer I can give to this case is that the appeal is dismissed with costs.

An appeal having been entered against the decision in the King's Bench Division, the case came before the Court of Appeal (Pollock, *M.R.*, and Warrington and Scrutton, *L.JJ.*) on the 12th November, 1924, when judgment was given in favour of the Crown, with costs (Warrington, *L.J.*, dissenting), confirming the decision of the Court below.

Sir John Simon, K.C., M.P., Mr. Konstam, K.C., and Mr. W. Allen appeared as Counsel for the Appellant, and the Attorney-General (Sir Patrick Hastings, K.C., M.P.) and Mr. R. P. Hills for the Crown.

JUDGMENT.

Pollock, M.R.—This is an appeal from a decision of Mr. Justice Rowlatt given on the 30th June, 1924, when he dismissed an appeal by way of Case Stated from a decision

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reached by the Commissioners for the General Purposes of the Income Tax Acts for the Division of the Inner Temple. The Commissioners had decided that certain allowances and deductions which it was sought should be made in the particular case before them were not to be allowed, and Mr. Justice Rowlatt has taken the same view.

Now the facts can be very briefly stated. Mr. G. W. Ricketts is a member of the Bar, and holds the honourable and responsible position of Recorder of Portsmouth, and, being a member of the Bar engaged in practice in the Temple and in the Courts, he resides in London, and he finds it necessary, therefore, for the purpose of holding his courts as Recorder at Portsmouth, to incur certain items of expenditure. They are catalogued by the Commissioners in the fourth paragraph of their Case. They may be summarised in this way :—

(*a*) Certain travelling expenses from London to Portsmouth, and back from Portsmouth to London;

(*b*) Certain hotel expenses incurred in staying at Portsmouth when it is necessary to stay;

(*c*) Certain expenses incurred in respect of the actual robe and gown that he has to wear in Court;

(*d*) Costs of postage; and

(*e*) Sums paid necessary to convey his robes or his books, or whatever is necessary, to and from the Court.

The two items (*c*) and (*d*) have been allowed by the Commissioners. They may be regarded as incidental expenses. They come to a very small and trifling amount, and there is no question that a consideration of those items was not the main purpose, or, indeed, any purpose of the appeal. They are set out very faithfully, but I do not think any objection would have been taken by the Commissioners before whom the case had come if they had been set out as incidental expenses reaching the total sum of 13s. 0d., because in addition to the cost of the travelling and of the hotel expenses there must be what is commonly described with sufficient accuracy as a sum for incidental expenses.

The appeal is one which is brought in order to have a decision upon a matter which is, if not of general, at any rate of somewhat wide application, that is to say, where a Recorder or other officer of the Law, or it may be of other professions, holds an office which involves him in travelling and hotel expenses, are those travelling and hotel expenses deductions which can be made from the salary in ascertaining the amount on which the holder of the office is to be taxed for Income Tax? No doubt the point is of importance. It is not without some authority, though the authority may not be very recent, but at any rate the point is now raised, and this Court has to decide it. Now I wish to make it quite plain at the outset of my judgment that

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what we have to determine here is the right interpretation of the words of a Statute, because the Rule is equivalent to a section of a Statute—the narrow words of a Statute, in contradistinction to a general and loose, though not inaccurate, description of the purpose of this expenditure. Mr. Ricketts and other Recorders might well say that it costs them so much—in this present case £13 5s. 0d.—for travelling and hotel expenses as a Recorder, and certainly if in any summary of accounts £13 5s. 0d. was put down as expenses of Recordership no one would complain that there was inaccuracy in such a description. But we have not to consider whether or not in common parlance these sums expended in that way are properly described; we have to determine whether this particular expenditure comes within the limits allowed by the Statute. Next, we have not to determine or to consider this case as if it fell under Schedule D of the Income Tax Acts. Everyone knows that Schedule D is the Schedule under which the profits and gains of a profession or trade fall to be taxed, and in the case of a profession or trade, in ascertaining the profits or gains to be charged, it is laid down in the third Rule of Schedule D, Cases I and II, that there is no right to deduct any sum "in respect of "any disbursements or expenses, not being money wholly and "exclusively laid out or expended for the purposes of the "trade, profession, employment, or vocation." In other words, putting that affirmatively, it is quite clear that in order to justify a deduction when you are ascertaining the profits of a trade, profession, employment or vocation, it is necessary to show that the money which has been laid out was laid out and expended wholly and exclusively for the purposes of the trade or profession. But, as I have said, we are not discussing the matter under Schedule D, which, although it includes those words "wholly "and exclusively," may broadly be taken to allow a wider range of deductions than the particular case that is before us.

Now Mr. Ricketts is a Recorder. He is therefore the holder of an office, and he receives as Recorder a salary. The Income Tax Act provides that the holders of public offices, which are defined in the Act, shall be taxed, not under Schedule D, but under Schedule E, and the Rules applicable to Schedule E are severable, but the tax is in respect of all salaries, fees, wages, perquisites and profits received from the offices, and the tax is to be paid in respect of all public offices. The Recordership falls within that, and therefore under the charging section there is to be paid, prima facie in respect of the salary received, a tax upon that salary. But now Rule 9 comes into play, and it begins: "If the holder of an office or employment of profit is "necessarily obliged to incur and defray out of the emoluments "thereof"—and then follow other words to which I need not refer—"there may be deducted from the emoluments to be

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"assessed the expenses so necessarily incurred and defrayed." Now Mr. Ricketts holds, as I have said, an important Recordership. The qualifications for a Recorder are now contained in Sections 162 to 166 inclusive of the Municipal Corporations Act, 1882, and it is laid down in those Sections that a Recorder must be a barrister, and a barrister of five years standing, and I agree with the learned Judge who made this observation, that the probability is that in nine cases out of ten you will find that the barrister who holds the position of Recorder does live in London in order that he may engage in his profession as a barrister, and has to travel from London to perform his duties. But for the purposes of Income Tax the matter comes before us at a later stage. It only comes before us if and when a barrister is the holder of an office, and whether or not the barrister thought fit to accept the office, whether he was under particular disabilities which he would have to overcome if he were to discharge the duties of the office, and to hold it—all those matters are for him to determine if and when the offer is made to him, and, more than that, the Home Secretary may, before he advises His Majesty to appoint him, no doubt take into consideration any difficulties of distance from his residence and the like; but, as I say, the matter comes before us at a time when this particular person is the holder of an office. Next, it is of importance to remember that this Rule applies not merely to Recorders, but it applies also to all holders of any office of employment which falls to be estimated for Income Tax under Schedule E. It is very easy by a general description of the facts to suppose that a hard case has arisen, but it is the duty of this Court to adhere closely and accurately to the actual words of Rule 9, which are of general application to all holders of offices which come within its ambit. Now the first thing is this, that at the outset you have to find that the holder is necessarily obliged to incur and defray expenses out of his emoluments, and I attach importance to those words "necessarily obliged," because I think they are to be read as meaning this, that where an obligation is imposed upon the holder of the office which *ex necessitate* of the office compels him to make outlays, it is in those cases, and after you have fulfilled that condition, that you first begin to consider what is the possible expenditure which may be deducted.

Then the Rule goes on, and Sir John Simon has pointed out to us, and rightly, too, I think, that it contains certainly two limbs, if not three. The first expenditure that is dealt with is that relating to the expenses of travelling in the performance of the duties of the office or employment. Now I think that means that where the office is of such a nature that in order to execute its duties its holder has to travel from place to place, has, in other words, itinerant duties, there the expenses of such travelling necessary to and involved in the

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work attached to the office are and may be allowed as an expense, the obligation of which is necessarily incurred by the holder of the office. Now, upon consideration, the travelling which is in question in this case is not of that nature. The duties of a Recorder are to sit and to hear the cases that come before him. A Recorder has, so far as I know, in this case if not in all cases, no duties which would take him from one Court to another in the capacity of the particular Recordership which he holds. One man may hold two Recorderships, but so far as I know there is no Recordership which *per se* involves sitting in two places consecutively. Unless that were so I do not think it would be possible to say that there were any expenses of travelling from place to place involved in the performance of the duties of the office, but I want to speak quite generally. I think the first travelling expenses which are thought of in the Rule are those which are necessarily incurred because the performance of the duties of the office compels the holder to travel from place to place. Next, or perhaps a part of this first limb, is the cost of keeping and maintaining a horse to enable him to perform the same. No doubt that is a survival from the days when a very ordinary method of passing from place to place in the country was upon a horse, but the purpose for which the horse is kept and maintained seems to me for the purpose of performing the same duties incidental to the office as are indicated by the earlier words, "expenses of travelling." I think the maintenance of the horse is only referred to in order that the Rule may not overlook a particular method of travelling more common in 1842 than at the present time, but at the same time making it quite clear that mechanical traffic even at the present day is not to exclude a method of travelling which obtained in the days of our fathers or grandfathers much more generally than it does to-day. Now that seems to be the first limb—travelling necessitated for the purpose of the fulfilment of the duty of the office.

Then we come to the second limb, which is of a wider nature. It does not relate wholly or exclusively to travelling, nor does it relate wholly or exclusively to anything; what it does say is this: "If the holder of an office . . . is necessarily obliged to incur "and defray out of his emoluments . . . or otherwise to expend "money wholly, exclusively and necessarily in the performance of "the said duties," then such expenses so necessarily incurred and defrayed may be deducted. Now I have already said that I think the first two lines of the Rule must be first of all fulfilled: there must be something in respect of which there is an obligation, and a necessary obligation, which causes expense. Then in this last line we have "wholly, exclusively and necessarily in the per-"formance of the said duties." There are a great number of things which loosely may be said to be necessary, which may be

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said to be for the purpose of the performance of the duties, but it appears to me that these three adverbs have been introduced in order to cut down and limit in the most stringent way the application of this Rule. I will now deal with the items which are open from this point of view. It is possible that there might be travelling which might fall within this. There might be hotel expenses possibly in certain particular cases, but can it be said of this travelling that it was carried out wholly, exclusively and necessarily in the performance of the said duties? It seems to me that this particular travelling from London to Portsmouth and from Portsmouth to London depends on the Recorder's own volition. It is for the purpose of his getting to the place where he has to perform his duties. It is not incurred in the course of the performance of his duties; it is because of the fact that as the holder of an office he has preferred to live where he does, and his particular residence will not make any difference upon the performance of his duties or the nature of his office or anything else; he will live where he pleases, and he will perform the duties of Recorder according to his ability, whatever place he resides at, and from or to whatever place of residence he may at the time hold.

Then I come to the hotel expenses, which I confess have given me more exercise of thought. It may be said, and I think loosely would be said, that when Mr. Ricketts stays at Portsmouth he stays there for the purpose of his Recordership, but that, as I have pointed out, does not determine the question. Can it be said that you can properly and accurately attribute to that expenditure that it is money which has been exclusively expended in the performance of his duties, and not for the purpose of, as everybody has, the necessity which is laid upon us all of rest and sleep? Can it be said with regard to some portion of it that you might attribute it towards the extra cost of being at Portsmouth—what of that? There you get up against the word "wholly," and next you have the word "necessarily," and I cannot think that the hotel expenditure can properly be held to be wholly, exclusively and necessarily expended in the performance, which I should have thought meant in the course of the performance, of his duties.

There are two cases which have been referred to, or rather one, because *Cook* v. *Knott*[1] was followed in the second case, but there is good sense in *Cook* v. *Knott*, and at least it is shown what may be the danger of giving a wide or loose interpretation to this Rule. There is another case of *Bowers* v. *Harding*[2] which also illustrates what may be the difficulties which may arise if a loose interpretation is given to the Rule. I will not refer to the exact words or passage in the judgment. They are all illustrations of what it has from time to time been attempted

(1) 2 T.C. 246. (2) 3 T.C. 22.

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unsuccessfully to bring within the ambit of the words of this Rule. It appears to me that, bearing in mind the number of different offices to which this Rule applies, its terms have been drawn with the utmost care to cut down any deductions within the narrowest limits and to confine them to something which is incurred, and necessarily incurred, in the performance of the duties.

For the reasons which I have given, interpreting the Rule as I do in the narrow sense, I do not think it is possible to say that either the travelling or the hotel expenses fulfil what are really the fine qualifications which are laid down in the Rule which must be fulfilled if the deduction is to be allowed. The intention of the Legislature was, I am sure, to make the deductions narrow, and, inasmuch as this emolument of an office falls to be taxed under Schedule E, unless Rule 9 applies it is of no moment to say that had it been taxable under Schedule D something else might have been deducted.

For the reasons that I have given I have come to the conclusion that Mr. Justice Rowlatt was right in supporting the view of the Commissioners of Income Tax, and that the appeal must be dismissed, and dismissed with costs.

Warrington, L.J.—I regret that I cannot take the same view as my two brethren. The appeal is from a decision of the Commissioners, affirmed by a judgment of Mr. Justice Rowlatt, and the ground of the Commissioners' decision and that of Mr. Justice Rowlatt in reference to the only two items which are really in question is that they are items which, to use the expression used by Baron Pollock in the case of *Cook* v. *Knott*(1), which I will refer to presently, are not expenses incurred in the performance of the Appellant's duties, and that under no circumstances can such expenses, expenses of that nature, therefore be allowed under Rule 9 of Schedule E of the Income Tax Act, which is the Rule in question. Now with all respect I take a different view. It seems to me that both the travelling expenses to and from, and the expenses of living incurred at, the place where the duties have to be performed may be expenses necessarily incurred in the performance of the duties.

Now the facts are these: The Appellant is the Recorder of Portsmouth. It is his duty under the Statute under which he was appointed to hold Quarter Sessions once a quarter, or oftener if necessary, in the Borough of Portsmouth. He therefore cannot perform his duty unless he is at the time in question in the Borough. At the time he was appointed he was, and he is now, a barrister practising in London. He cannot perform his duties under the existing circumstances without travelling from London to Portsmouth. He cannot travel from London to Portsmouth without incurring expense. So with regard to the hotel

(1) 2 T.C. 246.

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expenses, if the performance of his duties as Recorder require him to stay overnight at Portsmouth he cannot properly perform those duties without obtaining board and lodging for the night, and unless he be in some exceptional circumstances he cannot obtain his board and lodging for the night without incurring expense which he would not otherwise incur. Now I think, and I understand on this the Attorney-General agrees, that the words "necessarily" and "necessary" in the Rule do not mean necessary or necessarily in the abstract, but they mean necessary in regard to the circumstances of the individual concerned, the holder of the office, and in regard to the ordinary usages of mankind at this time in the history of the world. Now if that is so, and if he is unable to enter upon the performance of his duties without incurring, under the circumstances in which he is properly situated, the expense of travelling from his home to the Borough, and if in the same way there is cast upon him, in order efficiently to perform his duties, extra expense by going to a hotel in Portsmouth, it seems to me that those are expenses incurred in the performance of his duties. He cannot perform his duty without incurring them, and in principle I cannot see the difference between an expense incurred while he is actually performing his duties and one incurred for the purpose of enabling him to perform his duties. It seems to me, therefore, that if the case were without authority—Mr. Justice Rowlatt has rested it upon authority—I should be prepared to say that the travelling expenses may be—I do not say that the particular travelling expenses are to be allowed (that is for the Commissioners to determine), but that there is nothing in the Rule which excludes the allowance of the expenses of travelling from the place where the holder of the office in question either performs his ordinary duties or in which he resides. And, in the same way, if there are other expenses—in this case there are the hotel expenses—if they are necessarily, wholly and exclusively incurred by reason of the fact that without incurring them he cannot perform his duties, then it seems to me a deduction ought to be allowed in respect of them. I must say just a word in addition about the hotel expenses, because it may be, and I think the Commissioners could quite properly come to the conclusion, that the whole of the hotel expenses could not be said to have been incurred wholly, exclusively and necessarily in the performance of his duty, but some part of it, which would have to be reasonably ascertained by reasonable men acting with reasonable knowledge of the ordinary affairs of mankind, could easily have been said to have been wholly and exclusively and necessarily incurred in the performance of his duty.

Now just one word about the cases. There is really only one case which applies to the present case and which can be referred to as an authority, and that is the decision of the Court of Queen's Bench in the case of *Cook* v. *Knott*, 2 T.C. 246. The

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other case of *Revell* v. *Elworthy Bros.*(1) simply followed upon *Cook* v. *Knott*. The ground of the decision in *Cook* v. *Knott* was that the travelling expenses there claimed, which were substantially travelling expenses such as are claimed here, were not incurred in the performance of the duty then in question. Now with all respect to the learned Judges who decided that case, I cannot agree, and if the decision rested with me I should say that that case should be overruled. *Revell* v. *Elworthy Bros.* simply depended upon that. The other case of *Bowers* v. *Harding*(2) was in my opinion a totally different case. In that case the schoolmaster tried to get allowed as a deduction from his salary the expense of employing a maid to take the place in the house of his wife, and it was decided that that could not be said to be an expense incurred necessarily, wholly and exclusively in the performance of his duties. It might enable the wife to perform hers, but even then it would not necessarily be incurred, but it could not in any way enable him to perform his, or be an expense incurred therefore in the performance of his duties. With all respect, that case seems to me to have nothing to do with the case before us.

For these reasons I cannot agree with my learned brethren or with Mr. Justice Rowlatt, and if the matter rested with me alone I should say the appeal ought to be allowed and the matter sent back to the Commissioners to examine into the case and determine whether any of these items or what part of them ought to be allowed.

Scrutton, L.J.—This appeal is brought in the interests of a large and important class of judicial officers, the Recorders of Boroughs, and it is desired by the appeal to establish that they have a right to deduct from the salaries that they receive from the Corporations of their Boroughs their expenses of travelling to and from the Boroughs in which they exercise judicial functions, and hotel expenses, if any, incurred while they are in their Boroughs. But while that is the particular class that are appealing to us, it must be borne in mind that the principle that they ask us to apply affects a very much larger class of persons; it applies to all directors and secretaries of companies; it applies to all servants of Corporations holding offices, and the principles that Sir John Simon and Mr. Konstam have invited us to apply will look quite different if they are put in the form of application to the individual who happens to hold an office of a director, or an individual who happens to hold the office of secretary, or the individual who happens to hold the office of clerk or engineer to a Borough Corporation. I desire to divest my mind of the glamour that may spread over it if I think only of the august dignity of Recorders; and further I desire to say that the question is not what I should like to do, or what I think would be reasonable to do, or what amendment Parliament might well

(1) 3 T.C. 12. (2) 3 T.C. 22.

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make in the existing legislation, but the question is simply the interpretation of a Statute at present passed to regulate the deductions which may be made from the salaries of offices, on which Statute there have been two decisions against the contentions of the Appellants, now standing for forty years, which Parliament, on the innumerable occasions on which it has amended the Income Tax Acts, has not thought right to modify.

Now the Rule that I have to consider is this: "If the holder "of an office . . . is necessarily obliged to incur and defray out "of the emoluments thereof the expenses of travelling in the "performance of the duties of the office." Now I read that, and can only read it myself, as relating to travelling in performing the duties of an office, and I am quite unable to understand how a Recorder is performing the duties of his office when he travels to the place at which alone he can exercise the duties of his office, or away from the place at which he has exercised those duties. He may live 5, or 10, or 50, or 100, or 400 miles from the Borough in which he is Recorder, and I personally cannot understand how it is suggested that when, in the case of residence 400 miles away, he sets out on his journey of 400 miles he is performing the duties of Recorder. He is travelling to a place where he has to exercise the duties of Recorder, and he is travelling to that place because of personal conditions of his own which have nothing to do with the duties of Recorder, but are personal matters which he alone controls, and as to which his Corporation have nothing whatever to say, so long as he holds his Sessions. That seems to me to be the matter which shuts out these expenses from the first part of Rule 9. In addition there are the words to which I attach equal importance, though the first words seem to me to be sufficient to shut out the matter —"is necessarily obliged to incur the expenses of travelling." Now I read this Rule as applying to the duties of the office, and not to any circumstances peculiar to the person who is appointed to the office, which circumstances are entirely within his own control. The same remark seems to me to apply to the last part of the Rule: "money wholly, exclusively, or necessarily expended "in the performance of the said duties." Again it appears to me that the money spent on travelling, feeding, and sleeping is not wholly and exclusively expended in the performance of the duties of Recorder. Travelling expenses I have no doubt whatever about. The expenses of food and of sleeping stand in a slightly different category. Take, in the case of food, the simplest case of the lunch of the Recorder during the sitting. Whether Counsel are quite wise in selecting as an example the lunch of the Recorder of London is a questionable matter; I was not able myself to picture the Recorder of London going out to lunch from the Old Bailey under the circumstances which we

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know prevail. But the expenses of lunch of a Recorder are simply those of having his meal; it may be that his meal costs more because he is sitting as Recorder instead of lunching in his Inn of Court, but to say that the sum he expends is wholly expended in the performance of his duty appears to me to be an impossible reading of the Rule. If it is said, " Oh, but you " need not allow him the whole of his lunch; find out what " lunch he would have if he was not sitting as Recorder; find " out what he does spend on the lunch he does have while " sitting as Recorder, and allow the margin," it appears to me you are getting into the difficulty that Baron Pollock pointed out in *Bowers'*(1) case when he said : " If we were to go into " these questions with great nicety, we should have to consider " the district in which the person lives, . . . the price of meat, " and the character of the clothing that he would require, in " many places indeed the character of the services and the wages " paid to particular servants, and the style in which each person " lives, before we could come to any conclusion." That seems to me to be a matter which Parliament did not intend the Commissioners to go into when it used the words " wholly, " exclusively and necessarily." The question of the hotel accommodation is perhaps rather stronger, because it is said, " You would sleep at home; there is your home accommodation " available for you; this is entirely separate hotel accommoda- " tion." But again it seems to me the question is " wholly, " exclusively and necessarily," and there is nothing in the appointment of Recorder or its duties which necessarily requires the person to live away from the town, and therefore which necessarily involves his having a waste bed, so to speak, and a waste expense.

For these reasons it appears to me that if any change is to be made in the deductions allowed from salaries of offices it is Parliament that must do it, and not the Court. The words of the Rule appear to me personally to be clear, whatever I might have liked to do if I had a free hand, and I therefore agree with the Master of the Rolls that the appeal should be dismissed.

An appeal having been entered against the decision of the Court of Appeal, the case came on for hearing in the House of Lords before Viscount Cave, *L.C.*, and Lords Atkinson, Buckmaster, Carson and Blanesburgh on the 6th and 9th November, 1925, when Mr. Macmillan, K.C., Mr. Konstam, K.C., and Mr. W. Allen appeared as Counsel for the Appellant, and the Attorney-General (Sir Douglas Hogg, K.C., M.P.) and Mr. R. P. Hills for the Crown.

Judgment was delivered on the latter day unanimously in favour of the Crown, with costs, confirming the decision of the Court below.

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(1) Bowers v. Harding, 3 T.C. 22, at p. 26.

JUDGMENT.

Viscount Cave, L.C.—My Lords, the facts of this case lie within a small compass. The Appellant, a well-known member of the Bar who resides and practices in London, holds the office of Recorder of Portsmouth at a salary of £250 a year; and, in respect of the tax year 1923–24, he was assessed under Schedule E of the Income Tax Act at that amount. He appealed against this assessment to the General Commissioners for the Division of the Inner Temple, and, on the hearing of the appeal before those Commissioners, he gave evidence that it was necessary for him to travel to Portsmouth four times a year in order to hold his Court there, and he claimed to be entitled to deduct from his assessment certain expenses so incurred, of which the following items are now material, namely, " (*a*) in respect of travelling " expenses from London to Portsmouth and from Portsmouth " to London, £8 5*s*.; (*b*) in respect of hotel expenses at Ports- " mouth, £5; . . . . (*e*) the sum of 10*s*., being the amount " of four payments of 2*s*. 6*d*. each made by the Appellant in " Portsmouth for carriage of his tin box to the Court,"—these three items making together a total of £13 15*s*. It was admitted on behalf of the Crown that the deductions claimed were reasonable in amount, but it was contended that they were not of such a nature that the Appellant was entitled to deduct them; and the Commissioners so held, subject to a Case which they stated for the opinion of the High Court. On the argument of the Case, Mr. Justice Rowlatt confirmed the decision of the Commissioners, and an appeal from his judgment was dismissed by the Court of Appeal, Lord Justice Warrington dissenting, and it is from that decision that the present appeal is brought.

My Lords, the Rule which must govern the case is No. 9 of the Rules applicable to Schedule E, which is in the following terms: " If the holder of an office or employment of profit is " necessarily obliged to incur and defray out of the emoluments " thereof the expenses of travelling in the performance of the " duties of the office or employment, or of keeping and maintaining " a horse to enable him to perform the same, or otherwise to " expend money wholly, exclusively and necessarily in the " performance of the said duties, there may be deducted from the " emoluments to be assessed the expenses so necessarily incurred " and defrayed."

As regards the Appellant's travelling expenses to and from Portsmouth, with which may be linked the small payment for the carriage to the Court of the tin box containing his robes and wig, the material words of the Rule are those which provide that, if the holder of an office is " necessarily obliged " to incur the expenses of travelling " in the performance of the duties of his " office," the expenses so " necessarily incurred " may be deducted from the emoluments to be assessed. The question is whether the travelling expenses in question fall within that

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description. Having given the best consideration that I can to the question, I agree with the Commissioners and with the Courts below in holding that they do not. In order that travelling expenses may be deductible under this Rule from an assessment under Schedule E, they must be expenses which the holder of an office is necessarily obliged to incur,—that is to say, obliged by the very fact that he holds the office, and has to perform its duties, —and they must be incurred in, that is, in the course of, the performance of those duties. The expenses in question in this case do not appear to me to satisfy either test. They are incurred, not because the Appellant holds the office of Recorder of Portsmouth, but because, living and practising away from Portsmouth, he must travel to that place before he can begin to perform his duties as Recorder, and, having concluded those duties, desires to return to his home. They are incurred, not in the course of performing those duties, but partly before he enters upon them, and partly after he has fulfilled them. No doubt the Rule contemplates that the holder of an office may have to travel in the performance of his duties, and there are offices of which the duties have to be performed in several places in succession, so that the holder of them must necessarily travel from one place to another. That was no doubt the case of the minister whose expenses were in question in the case of *Jardine* v. *Gillespie*, 5 T.C. 263. But it rarely, if ever, happens that a Recorder is in that position, and there is no suggestion that any such necessity existed in the case of the present Appellant. It is said that a barrister normally lives in London, or in some great city where there is a local bar, and that the Legislature, in enacting in the Municipal Corporations Act that only a barrister shall be appointed a Recorder, must have contemplated that he would usually incur some expenses in travelling to and from his Court. That may be so, but the question is, not what expenses a Recorder or the holder of some other office may be expected to incur, but what expenses he may deduct from his assessment, and upon this point Rule 9 appears to be conclusive.

I may add that in the case of *Cook* v. *Knott*, 2 T.C. 246, decided in the year 1887, it was held by Baron Pollock and Mr. Justice Hawkins, sitting as Judges of the Queen's Bench Division, that travelling expenses of this character could not be deducted under a similar Rule contained in Section 51 of the Income Tax Act of 1853. Since that decision the Rule has been re-enacted in the same terms, and I should hesitate long before overruling a decision which has stood for 38 years, and upon which subsequent legislation may have been based.

Passing now to the claim to deduct the hotel expenses at Portsmouth, this claim must depend upon the latter part of Rule 9, which allows the deduction of money, other than travelling expenses, expended " wholly, exclusively and necessarily in the

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"performance of the said duties." In considering the meaning of those words it is to be remembered that a decision in favour of the Appellant under this head would operate in favour, not only of Recorders, but of any holder of an office or employment of profit who is liable to be assessed under Schedule E, and would or might enable every holder of such a position to deduct his living expenses while away from his home. It seems to me that the words quoted, which are confined to expenses incurred in the performance of the duties of the office, and are further limited in operation by the emphatic qualification that they must be wholly, exclusively and necessarily so incurred, do not cover such a claim. A man must eat and sleep somewhere, whether he has or has not been engaged in the administration of justice. Normally he performs those operations in his own home, and if he elects to live away from his work so that he must find board and lodging away from home, that is by his own choice, and not by reason of any necessity arising out of his employment; nor does he, as a rule, eat or sleep in the course of performing his duties, but either before or after their performance.

I permit myself one further observation. Your Lordships may think that it would not be unreasonable that a barrister who accepts the honourable position of Recorder, often at a pecuniary loss to himself, should be credited in his assessment with the amount expended by him in going to and from the place of his employment, and possibly also—though as to this there may be more doubt—with his reasonable living expenses while he is detained there, or, in the alternative, that the responsible authorities should fix the salary attaching to the office at a sum sufficient to cover those expenses; but, however that may be, no such opinion can affect the present appeal. This House has only to construe the Rule as it stands and, for the reasons which I have given, the Rule does not avail the Appellant.

It follows that in my opinion this appeal fails, and must be dismissed with costs, and I move your Lordships accordingly.

Lord Atkinson.—My Lords, I concur.

Lord Buckmaster.—My Lords, I agree. The difficulty in arriving at a decision in this case is in my opinion entirely due to considering what is a fair and reasonable allowance for the expenses incidental to performing the duties of a Recorder, and not what it is that the Statute says may be allowed for the purposes of the tax. The words of the Statute are perfectly rigid, and in my judgment quite plain. They prohibit by Section 209 any deductions excepting those that are expressly authorised, and Rule 9 provides that the money to be deducted is only money that is expended wholly, exclusively, and necessarily in the performance of the duties. I cannot think that any of the items

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in dispute, which are no doubt typical items affecting not merely this case but others as well, can come within the meaning of that phrase.

I therefore agree that this appeal should be dismissed with costs.

Lord Carson.—My Lords, I agree.

Lord Blanesburgh.—My Lords, I am of the same opinion. This Rule 9 deals with the permissibly deductible expenses of officers so diverse in character that the performance of their different duties calls for every form of activity and repose. To particularise quite at random, the Rule is concerned with the expenses, amongst a multitude of other persons, of Admirals, Generals, Officers of the Air Force, Clerks in the Treasury, Surveyors of Highways, and Recorders, and in language it makes no discrimination between them. Undoubtedly its most striking characteristic is its jealously restricted language, some of it repeated apparently to heighten its effect. But I am also struck by this, that, as it seems to me, although undoubtedly less obtrusively, the language of the Rule points to the expenses with which it is concerned as being confined to those which each and every occupant of the particular office is necessarily obliged to incur in the performance of its duties, to expenses imposed upon each holder *ex necessitate* of his office and to such expenses only. It says :—" If the holder of an office "—the words be it observed are not " if any holder of an office "—" is obliged to incur " expenses in the performance of the duties of the office "—the duties again are not the duties of *his* office; in other words, the terms employed are strictly, and, I cannot doubt, purposely, not personal but objective. The deductible expenses do not extend to those which the holder has to incur mainly and, it may be, only because of circumstances in relation to his office which are personal to himself or are the result of his own volition. This I think is the conclusion of the Master of the Rolls and Lord Justice Scrutton, and it is only because Lord Justice Warrington takes a different view of the Rule in this particular aspect of it that he has reached a conclusion differing from that of his learned colleagues. " The words ' necessarily ' and ' necessary ' " in the Rule," he says, " do not mean necessary or necessarily " in the abstract but they mean necessary in regard to the " circumstances of the individual concerned, the holder of the " office, and in regard to the ordinary usages of mankind at this " time in the history of the world." With great respect to the Lord Justice I cannot myself so read the Rule, and, read as I think it must be, a conclusion differing from his is, I think, reached almost as of course.

The travelling expenses of the Appellant from London to Portsmouth and back are, in my judgment, excluded from the

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benefit of the Rule both by the application of the test I have indicated as relevant and also for another reason quite separate. The expenses covered by the words "the expenses of travelling "in the performance of the duties of the office," are, I think, limited to those which the Master of the Rolls has well termed "itinerant expenses." There are none such here, and the limitation so put by the Rule upon travelling expenses makes it difficult as a matter of construction to bring other expenses of travelling under the general words in the later part of the Rule. I will, however, assume that the Appellant can overcome this difficulty. Even so, these general words are not, as I think, apt to include the travelling expenses now in question. That the Appellant travelled from London to hold his Courts at Portsmouth and returned to London at the close of the Sessions was, in my judgment, a course prescribed for him by his own convenience as a practising London barrister and by nothing else. But his position and activities as such had nothing to do with the performance of his duties as Recorder of Portsmouth. Although he might not have been chosen at all, he would have been eligible for that office even if he had never so practised, and even if he was not at the time of his appointment so practising. More relevant still, he was, I apprehend, under no obligation express or implied or even conventional to continue so to practise while holding his office. Accordingly, as it seems to me, expenses incurred by him in going from and returning to his London professional chambers cannot in any true sense be described as money expended "wholly, exclusively, and necessarily" in the performance of his judicial duties. Rather are they expenses incurred by him because, for his own purposes, he chose to live in London; in other words they are purely personal to himself.

The expense of carrying the Appellant's tin box from the station at Portsmouth to the Court, which is merely illustrative, and of which, of course, little was said, falls, I think, with the Recorder's personal claim. If the Appellant is not to be allowed as a deduction the expense incurred in himself reaching the Court where he must needs be in order to discharge his judicial functions at all, he cannot be permitted the carriage of his tin box which has only to be brought to the Court that he may discharge those functions with more appropriate circumstance.

Nor of the Appellant's hotel expenses at Portsmouth can it, in my judgment, be said that they were incurred "wholly, "exclusively, and necessarily in the performance" of the duties of the office of Recorder of Portsmouth. So far as these expenses are charges for food or refreshment—if they may in any way be severed—they are clearly, I think, inadmissible. The cost of the Appellant's breakfast, lunch, or dinner cannot be wholly, exclusively, and necessarily attributable to the performance of the duties of the office of Recorder merely because these meals

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were taken at Portsmouth and not elsewhere. And, so far as this item of charge represents a charge for the Recorder's room at the Portsmouth hotel—and I am willing to treat the item as being exclusively so—the same conclusion, if less clearly, follows. I cannot myself see why the appropriate expenditure by a Recorder living at Portsmouth in his own home during Sessions is not as much wholly, exclusively, and necessarily expended in the performance of the duties as is the cost of the Appellant's room at a hotel. The truth is that these expenses cannot in either case be properly so described; they are personal in each case to the Recorder—expenses to be defrayed out of his stipend but in no way essential to be incurred that he may earn it.

For the reasons given by the Lord Chancellor, I regret this decision of your Lordships, but, as the law stands, I think it is inevitable.

Questions put:—

That the Order appealed from be reversed.

The Not Contents have it.

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

The Contents have it.