

# A Short History of Rates 1601-2015

**Dan Kolinsky QC**

## 1601 and the early days

### **Poor Relief Act (Statute of Elizabeth) 1601:**

This Act created liability for poor rates in the following terms: “to raise weekly or otherwise by taxation of every inhabitant parson vicar and other, and of every occupier of lands, houses, tithes impropriate, or appropriations of tithes, coal mines or saleable underwoods in the said parish..... competent sums of money for .....the necessary relief of the...poor .....”.

Note – underlined words remained in force until they were repealed by s.117 and schedule 14 of the General Rate Act 1967.

## 1601 Act – ‘competent sums’

The first edition of Ryde on Rating (1901) at p.135-6 commented : **“The Statute of Elizabeth does not accurately define how the value of land is to be measured; it speaks of “taxation” of the occupiers and other persons “in such competent sums of money as they (the overseers) shall think fit” and of collecting a stock of goods “according to the ability of the parish.” It is, however, implied in the statute that the rate must be made with equality for many years decisions on questions of amount were little more than examples of attempts to ascertain how “equality” amongst the several ratepayers was to be arrived at”.**

Referred to by the Upper Tribunal in Hardman (VO) v British Gas Trading Limited [2015] UKUT 0053 (LC) at paragraph 125 (and it appears to have influenced their thinking as to the purpose of the statutory hypothesis; as a “yardstick to achieve equality” (paragraph 126)).

## Why is the history relevant?



**“The law of rating is statutory and ancient, going back even before the Poor Relief Act 1601. Apart from comparatively recent upheavals (in the form of community charge and council tax) in relation to residential property, the body of statute law has shown extraordinary stability..... This slow and steady process of evolution means that there is a large volume of case law, some of it quite old, which is still relevant to the understanding of the principles underlying the modern law”**

Williams (Valuation Officer) v Scottish & Newcastle Retail Ltd  
Allied Domecq Retailing Ltd [2001] R.A. 41; Robert Walker LJ at paragraph 17

## Relevance of history (2) but with health warning



“weighty volume of judge-made law which underlies the modern legislation.....

Rating law is not unique in that respect. ....bodies of law which, although in principle wholly statutory, owe much to judicial activity in building on fairly primitive statutory foundations, and (to alter the metaphor) still carry the “intellectual freight which was carried by words or phrases in earlier ... legislation” ..... in rating.. it is necessary to pay close attention to the way in which successive generations of judges have interpreted and applied the hallowed language of the statute ..... **However** respect for ‘intellectual freight’ from earlier centuries must not be carried too far. In particular, it is not helpful to fasten on isolated pronouncements by judges, however eminent, without regard to the context in which they were made and to seek to apply them to an issue which was not before the court. That is especially true of the Victorian cases about railways, docks and waterworks”.

Robert Walker LJ in Scottish & Newcastle [2001] R.A. 41 at paragraphs 54-56:

## Parochial Assessment Act 1836



Contains the first reference to “hereditament” within rating statute

Although note:-

- by this time the term “hereditament” had already been used in local rating provisions (see eg R v Shrewsbury Paving Trustees (1832) 3 B&Ad 216; East London Waterworks Co v Mile End Old Town (1851) 17 QB 512)
- “hereditament” was a generally understood term in property law as observed by Harman LJ in Crowe v Lloyd’s British Testing Co Ltd [1960] 1 QB 592 (CA) at 623

## Parochial Assessment Act 1836 (2)



This Act also sets out on a statutory basis a mechanism for determining the “net annual value” (s.1)

see commentary in Hardman (VO) v British Gas Trading Limited [2015] UKUT 0053 (LC) at paragraph 126

# More C19 Steps Towards the Modern Law of Rating



## **Poor Law Exemption Act 1840**

abolished taxation of inhabitants in respect of personal property. leaving rates as a tax levied in respect of the occupation of property.

## **Union Assessment Act 1862**

created assessment committees and provided for the making of a valuation list (s.17) and for persons aggrieved by their contents to object (s.18).

list required to show the gross estimated rental which was defined by s.15 as “the rent at which the hereditament might reasonably be expected to let from year to year....”. The recital states: “Whereas it is expedient that more effectual provision should be made for securing uniform and correct valuations of parishes...”



# More C19 Steps Towards the Modern Law of Rating (2)



## **Valuation (Metropolis) Act 1869**

This Act (providing for the “Uniformity of Assessment of Rateable Property in the Metropolis”) required valuation lists to be prepared every 5 years. (Note this requirement was eventually also applied to London by the Rating and Valuation Act 1925).

## **Rating Act 1874**

This Act extended the poor law rate to certain other classes of “hereditaments” (plantations, rights of shooting, tin, lead and copper mines) and introduced special valuation regime for them. (It ended debates about the application of the principle “expression unius exclusi est alterius” (the express mention excludes all others) to the terms of the Statute of Elizabeth).

# More C19 Steps Towards the Modern Law of Rating (3)



## **Agricultural Rates Act 1896**

introduced a lower rate for agricultural land and required (by s.5) the value of agricultural land to be stated separately from that of any building or other hereditament.

## **London Government Act 1899**

consolidated rates levied in London into single rate.

# Rating and Valuation Act 1925



## Rating and Valuation Act 1925

Sought to simplify and amend the law with respect to the making and collection of rates. It consolidated various rates and promoted “uniformity in the valuation of property for the purpose of rates”.

Section 21(1) provided that “subject to the provisions of this Act, there shall be inserted in the valuation list such particulars with respect to every hereditament in the rating area and the value thereof as may be prescribed”.

# Rating and Valuation (Apportionment) Act 1928



## Rating and Valuation (Apportionment) Act 1928

created relief in respect of certain types of hereditament (industrial, agricultural and freight transport).

Section 1 required industrial (and agricultural and freight transport) hereditaments to be distinguished in every valuation list to industrial hereditaments.

Section 3 defined the expression industrial hereditament for the purpose of the Act.

## Rating and Valuation (Apportionment) Act 1928 (2)



Section 3(3) stated:

“Where two or more properties within the same curtilage, or contiguous to one another, are in the same occupation and, though treated as two or more hereditaments for the purpose of rating and valuation by reason of being situate in different parishes or of having been valued at different times or for any other reason, are used as parts of a single mine, mineral railway, factory or workshop, then, for the purposes of determining whether the several hereditaments are industrial hereditaments they shall be treated as if they formed parts of a single hereditament comprising all such hereditaments”.

# Rating and Valuation (Apportionment) Act 1928 (3)



Some of the key cases on the identification of the hereditament - including Gilbert (VO) v Hickinbottom [1956] 2 QB 40 itself - raised de-rating issues.

In Glasgow Universities v Assessor for Glasgow (1952) DC 504 (at 509) Lord Keith differentiated such cases from “the ordinary case where derating issues are not involved”.

Watch this space as to whether (and how) the forthcoming judgment of the Supreme Court in Woolway will address this

## Local Government Act 1948

### Local Government Act 1948

Part III of this Act separated out:

functions of assessing rateable value and maintaining the list (to be undertaken by Inland Revenue Officers)

from

collecting rates (still undertaken by local authorities).

## Local Government Act 1966



Section 21 of the 1966 created liability to rates in respect of certain unoccupied property. The mechanism for achieving this was a statutory deeming provision (in s.21(1) applying the enactments in respect of rating and valuation “as if the hereditament were occupied during that period by the owner”).

Section 38 and schedule 4 of the Act of 1966 of the made certain changes to rating enactments in order to facilitate the forthcoming consolidation.



## General Rate Act 1967

consolidated “certain enactments relating to rating and valuation in England and Wales”.

described in Ryde on Rating (13<sup>th</sup> edition; 1976) :

“it consolidates practically the whole of statute law on rating in force at the date it was enacted, bringing into a single statute more than thirty statutes from the Poor Relief Act 1601 to the Local Government Act 1966”.

## Liability for occupied property under the GRA 67



Section 16 deals with liability in respect of occupation of property.

Occupiers of property of the type described (lands; houses; coal mines; other mines; sporting rights)

“shall be liable to be assessed to rates in respect of the hereditament or hereditaments comprising that property according to the rateable value or respective rateable values of that hereditament or those hereditaments determined in accordance with the provisions of this Act”.

## Liability for occupied property under GRA 67 (2)



### **Parliamentary Counsel (Mr J C Elliston) explained the approach in clause 16 (liability for occupied rates) in the following terms:**

“As nearly always happens when you are looking at a branch of law which has existed for a long time, the law tends to have proceeded from point A to point B round five sides of a hexagon blowing up the bridges behind it. When you come to consolidate, the ruins will no longer be there to pick your way through. The only way to consolidate is to build another bridge direct from point A to point B along the sixth side of the hexagon, and that is what the last five lines of clause 16 attempt to do. One has to build a bridge from the provisions of the Poor Relief Act 1601, which is still the foundation stone on which liability of the occupier for rating is built, which provided that the overseers of the poor should take orders from time to time to raise by taxation of every occupier of lands, houses and coal-mines competent sums of money for the necessary relief of the poor. One has got to build a bridge somehow from that to a modern system of rating of individual hereditaments according to their value in the valuation list”. (p.6 of the minutes of evidence on 25 January 1967)

## Hereditament under GRA 1967



Section.115 of the Act of 1967 provided that “hereditament” means property which is or may become liable to a rate, being a unit of such property which is or would fall to be, shown as a separate item in the valuation list”

Mr Elliston also referred to the definition of hereditament under s.68 of the 1925 Act as “unilluminating and unhelpful” and explained the changes proposed (in clause 115) in the following terms:

“When one looks at the context in which the expression is used, what it clearly means is the particular slice of rateable property which is, or would appear as a separate item in the valuation list”

## Judicial Observations on s.115 of the GRA 1967



Sedley LJ in Vtesse Networks Ltd v Bradford (VO) [2006] EWCA Civ 1339 at paragraph 40:

“The key to the apparently circular definition given by s.115(1) of the General Rate Act 1967 , which defines a hereditament by its liability to rating, is that it assumes and relies on an existing fund of knowledge of what is and is not capable of being shown as a separate item in the valuation list”.

## Judicial Observations on s.115 of the GRA 1967 (2)



Sir Alan Ward in Reeves (Listing Officer) v Northrop [2013] EWCA Civ 362 at paragraph 9:

“If prizes are to be offered for legislative gobbledegook then the foregoing would surely qualify. Having undertaken that trawl through these various statutes I confess to my shame I am no wiser nor would any ordinary citizen be without help from the Practice Note. That does at least make sense”:

## Unoccupied Rates under the GRA 1967



Section 17 provided that a rating authority may resolve that the provisions of schedule 1 apply.

Schedule 1 provided for liability where such a resolution had been passed to be conferred on “the owner” for the period of any vacancy subject to the provisions of the schedule “as if the hereditament were occupied during that relevant period of vacancy by the owner”.

# The Tearing up of Mr Elliston's Masterpiece (aka – The Local Government Finance Act 1988)



The 1988 Act repealed the whole of the General Rate Act with effect from 1 April 1990. Major changes which it introduced included:-

- the abolition of rating in respect of domestic property,
- the abolition of the local authority's role in setting the rate applicable to non-domestic property and its replacement with a uniform business rate set by the Secretary of State.



## LGFA 1988 – all power to the Secretary of State



The rating legislation was re-written in a way which conferred enabling powers on central government.

Section 43 deals with liability for occupied hereditaments.

Section 45 confers liability in respect of unoccupied hereditaments shown in rating list (subject to the prescribed conditions being met; this contrasts with the “as if occupied” approach of the Acts of 1966 and 1967 referred to above).

## But some things have not changed

Hereditament under LGFA 1988

Section 64(1) provides that:

“A hereditament is anything, which by virtue of the definition in section 115(1) of the 1967 Act, would have been a hereditament for the purposes of the Act had this Act not been passed”.

# Empty Rates Takes Centre Stage



## Rating (Empty Property) Act 2007

Expansion of unoccupied rates

- leads to the “reversal of usual roles” in the argument about whether occupation is taking place as observed by HHJ Jarman in Makro Properties Limited v Nuneaton & Bedworth Borough Council [2012] RA 285 at paragraph 4.

# Local Authority Interest in Rates is Re-awakened



## Local Government Finance Act 2012

- section 1 – authorises local rates retention
- turning point for re-igniting local billing authority interest in state of local rating list.



## The Future ?

Business Rates Review – terms of reference published 16/3/2015;

The government welcomes responses from a wide range of interested stakeholder to the questions and requests for evidence included in this paper by 12 June 2015. The review will report its findings by Budget 2016.

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