Sir Sidney and Sir John: the Rowlatts and Tax

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Most tax professionals will have come across the name Sidney Rowlatt in their tax careers, but probably under the name of Mr Justice Rowlatt or Rowlatt J. Far fewer will have come across his third son, John Rowlatt. But John's contribution to tax law was also substantial—not as a judge but as a member of the Parliamentary Counsel's Office where he ended up as First Parliamentary Counsel. The object of this article is to briefly describe the lives and careers of father and son, to consider their legacy in today's tax world, and also to see if there is anything in common in their approaches to tax, albeit through very different routes, the judicial and the legislative.

Sidney Rowlatt

Sidney Arthur Taylor Rowlatt was born in 1862 in Alexandria in Egypt. We have some account of his early life there from a book[1] by Mary Rowlatt, Sidney's niece.

> "As the boys grew bigger, they were sent home to preparatory and public schools and, for the first years, returned from time to time for the holidays. My father told me how, the first time he came back as a small boy, he flung himself on the Ramleh sand, and taking up handfuls he kissed it passionately. They often took things to treasure back to school with them from Egypt. An uncle, who met one of the boys at Victoria Station on his return to school, records how amused he was to see his eleven-year-old nephew stagger up the platform with two immense Egyptian water melons suspended from his shoulders in a kind of home-made yoke which he had built for the purpose. 'That boy will go far,' he commented in a letter to his parents; and he did, ending on the Judicial Committee of the Privy Council."

The school he went to was Fettes in Edinburgh. From there he went, in 1880, to King's College Cambridge where he took a first in both parts of the classical tripos, in 1882 and 1884. For a short time after graduating he became an assistant master at Eton College; and in 1886 was made a fellow of King's, a post he held until 1892. He was called to the bar by the Inner Temple, and began his bar career practicing on the Oxford circuit. In 1890 he married Elizabeth Hemingway from a family in Macclesfield; in 1899 he published a textbook[2] on Principal and Surety and in 1900 he was appointed junior counsel to the Inland Revenue. In 1905 he was appointed junior

* Retired Inspector of Taxes and latterly Assistant Director, CT & VAT, HMRC. Currently Non-legal member of the First-tier Tribunal (Tax Chamber). A talk on which this article is based was given by the author at a meeting of the Tax History section of the Worshipful Company of Tax Advisers in 2009. The author is grateful to his co-speaker on that occasion, Dr John Avery-Jones, for his helpful comments and for his encouragement to turn the talk into an article.

[1] Mary Rowlatt, *A family in Egypt* (London: Robert Hale Ltd, 1956).

[2] Sidney Rowlatt, *The Law of Principal and Surety*, 1st edn, (London: Stevens & Haynes, 1899). The second edition was published in 1926 and was edited by John Rowlatt. The book is still in print and is now in its fifth revised edition as Gabriel Moss QC and David Marks QC, *Rowlatt on Principal and Surety*, 5th revised edn, (London: Sweet & Maxwell, 1999). It has been cited with approval in many cases.

counsel to the Treasury on the common law side, and in October 1912 he was made a judge of the King's Bench Division. He stayed there until 1932 and, on retirement from the bench, was made a member of the Judicial Committee of the Privy Council. This appointment apparently came about as a result of a deal with Sir Claud Schuster, Permanent Secretary to the Lord Chancellor. The entry for Sidney Rowlatt in the Dictionary of National Biography[3] relates the story—

> "In 1931 the judges were made subject to the National Recovery Act and had their salaries reduced. The situation was not well handled by the government, but the response of the judges—or at least some of them—was embarrassing. Rowlatt was among that latter group. Rowlatt said that he and five other judges would retire at once since they would earn more retired than on the bench. Sir Claud Schuster, the permanent secretary to the Lord Chancellor, became alarmed, fearing that he could not find six silks good enough to promote to the High Court. The judges were then bought off with a favourable tax ruling and Rowlatt, in particular, was promised a privy councillorship if he agreed to stay one more year."

He died in 1945.

This article is principally concerned with Sidney Rowlatt's activity as a High Court judge deciding tax cases between 1912 and 1932. It should not be thought, however, that during those years he was concerned solely with tax cases, or, indeed, solely with conventional judicial work.

As a judge of the King's Bench Division he tried civil cases of other kinds, mainly commercial. But he also travelled to courts elsewhere sitting as an Assize judge. We know that he was sitting thus on June 3, 1913 because in *Gray and another v Barr*, Lord Denning, in characteristic style, told us so in a note he attached to his judgment.[4] We also know that on February 2, 1922 he sentenced one Black to death at the Cornwall Assizes in Bodmin; and one of his murder trials, *R. v Sidney Harry Fox*, was so famous that not only were books written about it, but there was a television programme on August 21, 1981 in a series called *The Lady Killers* which had the actor Richard Mathews playing Sir Sidney.[5]

As well as performing conventional judicial duties there were occasions when he performed extra-judicial work chairing committees. The first of these was a committee on sedition in India, enquiring into criminal conspiracies connected with revolutionary movements in India.[6] The so-called Rowlatt Act that resulted from this committee's report is still notorious in India.[7] Mahatma Gandhi, among other Indian leaders, was extremely critical of the Act. He and others found that constitutional opposition to the measure was fruitless, so they organised a "hartal" where Indians would suspend all business and fast as a sign of their hatred for the legislation. This event is known as the Rowlatt satyagraha.[8]

In December 1922 Sidney Rowlatt was asked to chair an Inland Revenue Departmental Committee on Simplification of Tax Forms which reported in July 1923 and whose report was

[3] *Oxford Dictionary of National Biography* (Oxford: OUP, 2004), entry on Sidney Rowlatt.
[4] *Gray and another v Barr* [1971] 2 QB 554 (CA).
[5] See *http://www.imdb.com/title/tt0624344/* [Accessed February 23, 2011].
[6] Committee on Sedition in India, *Criminal conspiracies connected with revolutionary movements in India* (Calcutta: Superintendent Government Printing, 1918).
[7] Rowlatt J was awarded the KCSI (Knight Commander of the Order of the Star of India) in 1918 for this work.
[8] See *http://en.wikipedia.org/wiki/Rowlatt_Act* [Accessed February 23, 2011].

published in 1924.[9] After retiring from the High Court he chaired a Commission into Gambling & Lotteries in 1932–1933,[10] and, during the Second World War, was a chairman of the General Claims Tribunal constituted under section 8 of the Compensation (Defence) Act 1939.

But, turning to his record as a High Court judge, he did not take the Revenue Paper[11] nor any Revenue cases at all in the Michaelmas term of 1912, nor in the whole of 1913. In fact, taking the record from the tax cases recorded in the HMSO Volumes, he appears to have taken the Revenue Paper first in two weeks in both January and June 1915. Then he took it from April 1919 (following the presentation of his Committee Report on India) to October 1920, and then for 10 years from April 1923 to March 1932.[12]

By the author's reckoning, in this period Rowlatt J decided 416[13] cases reported in the HMSO Tax Cases (between volumes 6 and 16). Some figures on these cases[14]:

- 279 were decided in whole or part for the Crown;
- 128 were decided in whole or part for the taxpayer;
- 12 were remitted or deferred without deciding.

Of the 279 successes by the Crown, Rowlatt J:

[9] Inland Revenue Departmental Committee, *Inland Revenue Committee on Simplification of Tax Forms*, (1923) Cmd. 2019. The notes of the meetings of the Committee, held most Fridays in early 1923—though not between January 12 and 23, as we know he was sitting on Assizes during this period—vividly show Sidney Rowlatt's knowledge of tax and his desire to make the forms simpler: they also show his frustration that, as with the now completed Tax Law Rewrite, changing the policy was not an option. He said at one stage: "The radical difficulty is that the Acts are so complicated and we cannot touch them". He clearly wrote the first draft of the Report himself and in doing so produced paragraphs 9 to 13 which are a masterly summary of the basis of the income tax (National Archives IR75/63).

[10] Lotteries 1932–1933, *To enquire into the existing law and the practice thereunder relating to lotteries, betting, gambling and cognate matters, and to report what changes, if any, are desirable and practicable*, June 1, 1933: 1932–1933, Treasury Royal Commission on Lotteries and Betting, Cmd.4341.

[11] For many years the Rules of The Supreme Court (the "*White Book*") provided for cases relating to taxes to be listed separately from other cases and to be heard by a particular judge of the King's (or Queen's) Bench Division, and subsequently the Chancery Division (from 1962). The last reference to the "Revenue Paper", as it was colloquially called, in the volumes of HMSO Tax Cases is in 1982. In recent years there has been little or no distinction between tax cases and any others, and any judge of the Chancery Division would hear a case, even if, as for example with Sir Andrew Park, there was a former member of the tax bar on the bench. See also John Avery-Jones, "The End of the Revenue Paper", [1982] BTR 325.

[12] It should not be thought that hearing tax cases and going on Circuit was all Rowlatt J did by way of judicial hearings. He heard his fair share of other King's Bench cases, mainly commercial cases and some criminal appeals, and some of his decisions in these cases are still cited with approval: see, for example, the citation of his decision in *RWJ Sutherland & Co v Hannevig Bros Ltd* [1921] 1 KB 336 in the Court of Appeal, in *Mutual Shipping Corp of New York v Bayshore Shipping Co of Monrovia (The Montan)* [1985] 1 All ER 520 (CA) and in *Food Corp of India v Marastro Cia Naviera SA (The Trade Fortitude) No.1* [1986] 2 All ER 500 (CA).

[13] There are difficulties in deciding exactly how many cases Rowlatt J heard. In some cases there were two appeals, one involving the Inspector of Taxes and dealing with income tax, and another with the Commissioners of Inland Revenue as party involving some other tax such as Excess Profits Duty (EPD), Corporation Profits Tax (CPT) or Super-tax, but where the point at issue was the same—these the author has regarded as one case. In other cases the point on income tax was different from the point on the other tax and these the author has regarded as two. Rowlatt J also heard many cases together which involved different taxpayers. Sometimes these taxpayers were completely separate but in other cases the taxpayers were members of the same family or their trustees, executors, etc. (e.g. the *Longford*/*Pakenham* cases reported at (1926) 13 TC 573). These the author has usually regarded as separate cases.

[14] The numbers in the lists below add up to more than the total being broken down, reflecting that in some cases each side won on at least one issue, or that in the same case Rowlatt J may have been upheld on one issue and overturned on another.

- upheld the General Commissioners in 50 cases;
- overturned the General Commissioners in 46 cases;
- upheld the Special Commissioners in 117 cases;
- overturned the Special Commissioners in 49 cases;
- upheld the Board of Referees[15] in 5 cases.

Of the 128 successes by the taxpayer, Rowlatt J:

- upheld the General Commissioners in 20 cases;
- overturned the General Commissioners in 16 cases;
- upheld the Special Commissioners in 53 cases;
- overturned the Special Commissioners in 35 cases;
- overturned the Board of Referees in 2 cases.

He also decided 8 originating motions in favour of the Crown and none in favour of the taxpayer.[16]

How did his decisions fare in the higher courts?

In 31 cases he was overturned by the Court of Appeal without the case going to the Lords. Of those cases Rowlatt J had decided 13 in favour of the Crown, 17 in favour of the taxpayer, and in one case the Appeal Court overturned Rowlatt J's decision to remit, but the outcome is not reported.

But in 69 cases he was upheld by the Court of Appeal without the case going to the Lords. Of those cases Rowlatt J had decided 53 in favour of the Crown, and 16 in favour of the taxpayer.

69 of his cases went to the Lords. In 49 cases his decision was upheld and in 20 cases his decision was overturned. Of the 49 cases where he was upheld by the Lords, the Lords overturned the Court of Appeal and restored Rowlatt J's decision in 9. Of the 20 cases where he was overturned, 6 involved overturning the Court of Appeal's endorsement of his decision.

His was the final word in the remaining 245 cases.

There are some very interesting features of Rowlatt J's tax cases. Of the 416 cases, only 128 are reported as being heard on more than one day, and of those only 5 were heard on three days. That masks the fact that frequently Rowlatt J heard or part heard more than one case a day, so a case shown in the reports as being heard on two days may only have lasted for one or less. For example, on March 10, 1925, Rowlatt heard *Brennan Minors' Trustees v Scanlan (HM Inspector Taxes)*,[17] *Butcher (HM Inspector of Taxes) v Rev W H Chitty*,[18] *Graham (HM Inspector of Taxes) v Green*[19] and started on *Cordy (HM Inspector of Taxes) v Gordon*.[20]

Having heard a case Rowlatt J rarely reserved judgment.[21] The author has traced 14 cases where he did so, in some cases to the next day only. A consequence of this not reserving is that

[15] The Board of Referees decided certain matters in relation to the Excess Profits Duty (EPD).
[16] The numbers add up to more than 416, reflecting that in some cases each side won on at least one issue.
[17] *Brennan Minors' Trustees v Scanlan (HM Inspector Taxes)* (1925) 9 TC 427.
[18] *Butcher (HM Inspector of Taxes) v Rev W H Chitty* (1925) 9 TC 301.
[19] *Graham (HM Inspector of Taxes) v Green* (1925) 9 TC 309 (Rowlatt J reserved his judgment until the next day).
[20] *Cordy (HM Inspector of Taxes) v Gordon* (1925) 9 TC 304 (Rowlatt J finished and gave judgment in this case the next day, when he heard two more cases).
[21] He explained his reasons for doing this in some cases. For example: "I must give my judgment in these three cases now although perhaps there would be the advantage of delivering it in a more polished form if I took time to consider,

he rarely wrote a judgment before delivering it—this explains the often fairly colloquial cast of phrase in them. It also explains their brevity.[22]

That he could do this is, of course, a testament to his knowledge of tax law. The 12 years he spent as Counsel to the Inland Revenue and Treasury were clearly very useful in gaining this knowledge: he is shown as counsel in over 30 Tax Cases (and was also doubtless in more, as in many the name of counsel is not shown). He was usually led by the Attorney-General or the Solicitor-General and in some cases both, so it would have been Rowlatt who would have had to dig into the detail of the tax law.

This knowledge shows in *Purdie v R. (Purdie)*,[23] his very first tax case as a judge in 1914 (and for some reason one not reported in the HMSO volumes). In this case Rowlatt J briefly but convincingly set out the way in which the taxation of companies and dividends worked under the pre-1965 income tax and slew a nineteenth-century myth that the company was merely an agent for the shareholders.[24]

And his expertise was clearly recognised not only by the appellate courts deciding cases from him, but also by all courts after his retirement. A few examples among many include:

> "The late Rowlatt, J., whose outstanding knowledge of this subject [tax] was coupled with a happy conciseness of phrase, said ……" (Lord Simon, a fellow pupil at Fettes.)[25]
>
> "Then I come to *Leigh v Inland Revenue Commissioners* in which Rowlatt J., whose experience and knowledge of the Income Tax Acts is quite unrivalled, says:" (Lord Hanworth MR.)[26]

but I cannot face the prospects of having successive problems of this kind waiting in my mind while I continue to deal with this Revenue Paper. I am afraid I cannot do it." *CIR v The Westleigh Estates Co, Ltd*; *CIR v The South Behar Railway Co, Ltd*; *CIR v The Eccentric Club, Ltd* (1923) 12 TC 657.

[22] It is not clear to the author whether Rowlatt J's reported judgments in Tax Cases or elsewhere were the subject of any editing or revision of a proof by him. There seems to be little attempt if any in the written judgments to make the words less colloquial or to iron out what in some cases appears to be a stream of consciousness which is sometimes hard, at least to modern minds, to follow (mainly because of Rowlatt J's obvious, all-encompassing knowledge of the Income Tax Acts of his day, the wording of which does often perplex a modern reader). See, for example, his judgment in *Adams v Musker (HM Inspector of Taxes)* (1931) 15 TC 413.

[23] *Purdie v R.* [1914] 3 KB 112.

[24] *Purdie*, above fn.23, at 116, "In the same way, with regard to a company, Sched. D charges income tax upon the profits of the company made on behalf of its shareholders; and s.54 of the Income Tax Act, 1842, provides that every company shall deliver a true statement of its annual profits before any dividend has been made to any persons and that such persons shall allow out of the dividends a proportionate deduction in respect of the duty charged. The company, therefore, is assessed and pays the tax. There is, strictly speaking, no tax upon the dividends at all; the company has to pay income tax upon its profits as a company, and, having paid the income tax, the effect is that there is less to divide among the shareholders. Sometimes a company declares what it calls a dividend 'free of income tax,' which means that having paid income tax the dividend paid is less because there is less to divide. Sometimes it declares a dividend which it does not call free of income tax, and then it deducts a certain percentage from the dividend, stating that it is for income tax. The real effect of the latter course is, not that the company has declared a dividend of the full amount and then deducted income tax from it, but that it has declared a dividend of the net amount and told the shareholders that it would have been so much more but for the fact that the profits of the company were charged with income tax before the dividend was made. Strictly speaking, therefore, the suppliant has not been charged with income tax at all in respect of her interest and dividends. The charge is imposed upon the agents who pay the interest and upon the company which pays the dividends, and the agents and the company have to pay the amount of the income tax to the Crown in respect of that charge."

[25] *Canadian Eagle Oil Company Ltd v R (Petition of Right-On Demurrer only)*; *Selection Trust Ltd v Devitt (Inspector of Taxes) & CIR* (1945) 27 TC 205.

[26] *Dewar v CIR* (1935) 19 TC 561.

"I should be slow to depart from a view expressed by so distinguished a Revenue Judge as Rowlatt J. over 50 years ago." (Goulding J.)[27]

"In so holding, I should be in good company, for Rowlatt, J., so regarded it in *Equitable Life Assurance Society of United States v Hills*, 8 TC 657."(Lord Denning.)[28]

What is his legacy? As a judge of the High Court he gave, in roughly equal numbers, unappealed decisions and those which were appealed to one or both of the levels superior to the High Court. It is tempting to look only at his unappealed judgments to see what may have become authoritative, but that would be a mistake. In the majority of his appealed judgments he was upheld by the House of Lords, but the textbooks and the citations of the cases in subsequent judgments are often from Rowlatt J's judgment, and commonly the House of Lords would go out of its way to commend Rowlatt J's judgment. This was due, in the author's view, both to the great authority which Rowlatt J's judgments had for higher court judges, for whom tax was much less an everyday issue, and the way in which Rowlatt J expressed himself, often in homely phrases or examples.

Of the enormous number of his judgments in tax cases, the author would pick out the following[29] as being among his most significant and best expressed contributions to the development of tax law.

Ryall (HM Inspector of Taxes) v Hoare; Ryall (HM Inspector of Taxes) v Honeywill[30]

In these cases Rowlatt J explains what "annual" means in the phrase "annual profits and gains" in the charging provisions for Case VI of Schedule D (miscellaneous receipts), distinguishing its use there from its use in "annual payment", and explaining that it does not require the activity giving rise to the profits to last a year, or to be recurring. It is equally relevant for Cases I and II of Schedule D in the context of one-off transactions.

Perrin v Dickson (HM Inspector of Taxes)[31]

An issue in UK tax law which bedevilled the courts for decades was the distinction between income (taxable) and capital (not taxable) in the context of a series of sums. Were the sums all capital, all income, or were they both so that a dissection should be made? What distinguishes Rowlatt J's contribution to this debate is not so much his actual decision (that there was, in relation to a policy with a company carrying on life assurance business, not an annuity in which all the receipts were (then) taxable as income, but a loan with interest and repayable principal),

[27] *Schaffer v Cattermole* (1979) 53 TC 499.

[28] *Ostime (HM Inspector of Taxes) v Australian Mutual Provident Society* (1958) 38 TC 492.

[29] There is always a tendency in this kind of exercise for the compiler to select the items with which he is familiar, rather than those which an objective look at subsequent cases, textbooks, etc. would suggest. The author pleads guilty here: some, but not all, of the choices may well reflect the cases which appeared on the training courses for HM Inspectors of Taxes in the early 1970s.

[30] *Ryall (HM Inspector of Taxes) v Hoare*; *Ryall (HM Inspector of Taxes) v Honeywill* 8 TC 521. The cases went no further.

[31] *Perrin v Dickson (HM Inspector of Taxes)* 14 TC 608. Rowlatt J's judgment was upheld by the Court of Appeal.

but the clarity of his exposition of the issues. Perhaps even clearer are similar expositions in the much less well known cases of *Stocker v CIR*[32] and *Jones v CIR*.[33]

Perrin v Dickson[34] is also one of the cases where Rowlatt J takes a robust attitude to the interpretation of documents, something which he considers further in *Dickenson v Gross (HM Inspector of Taxes)*.

Dickenson v Gross (HM Inspector of Taxes)[35]

In this case a farmer purported to enter into a partnership with his three sons, admittedly to avoid tax (by claiming several sets of personal allowances against the tax on the Schedule B assessment). The Inspector denied that there was a partnership for this purpose. Rowlatt J upheld the Inspector and did so in terms which established conclusively that signing a piece of paper is not enough, there has to be a putting into effect of the agreement signed. Rowlatt J also made the point that the tax avoidance motive of the transaction was not enough to invalidate it, but added:

> "when you find the deed is disregarded, and also that it was entered into for the purpose of obtaining relief from taxation one is apt, perhaps naturally and quite properly upon the question of fact, to pay a little more attention to those circumstances and those points in which it was disregarded."[36]

This seems to the author to be a realistic view of the transaction and a purposive construction of the statute,[37] and in particular the term "in the actual and joint occupation [of the land] in partnership".[38] The case is also notable for being one of the earliest judgments in a tax case in which the term "sham" is used (a previous one being Rowlatt J's own judgment in *CIR v Sansom*[39] in which he explains the difference between regarding a corporation as a "sham" and regarding it as real with the sham being that its purported business is not its own).

Great Western Railway Co on behalf of Mr W H Hall, Clerk to the Great Western Railway Company v Bater (HM Inspector of Taxes)[40]

In this case Rowlatt J established authoritatively the meaning of "office" as used in Schedule E (and was upheld in this by the House of Lords). The case is particularly interesting because of Rowlatt J's consideration of the history of the law, and in particular the implication of the move in 1922 of the taxation of "employment" from Schedule D to Schedule E.

[32] *Stocker v CIR* 7 TC 304. The case went no further.
[33] *Jones v CIR* 7 TC 310. The case went no further.
[34] *Perrin v Dickson*, above fn.31, 14 TC 608.
[35] *Dickenson v Gross (HM Inspector of Taxes)* 11 TC 614. The case went no further.
[36] *Dickenson v Gross*, above fn.35, 11 TC 614 at 620.
[37] See the approval in *Barclays Mercantile Business Finance Ltd v Mawson (HM Inspector of Taxes)* [2004] UKHL 51; [2005] STC 1 by the House of Lords of this approach to statutory construction expounded by Ribeiro PJ in *Collector of Stamp Revenue v Arrowtown Assets Ltd* [2003] HKCFA 46.
[38] Income Tax Act 1918 s.20(b).
[39] *CIR v Sansom* 8 TC 20.
[40] *Great Western Railway Co on behalf of Mr W H Hall Clerk to the Great Western Railway Company v Bater (HM Inspector of Taxes)* 8 TC 231.

Davies (HM Inspector of Taxes) v Braithwaite[41]

This is another case in which his analysis of the differences between Schedule D (profession) and Schedule E (employment) is illuminating, although the tests he employs in order to come to his decision have probably been superseded by developments in employment law.

Ricketts v Colquhoun (HM Inspector of Taxes) (Ricketts)[42] *and Nolder (HM Inspector of Taxes) v Walters (Nolder)*[43]

These are the two seminal cases on expenses under Schedule E. *Ricketts* is interesting, not only for the fact that, as in many of his cases, Rowlatt J did not need to hear the winning party, but also because in it he comments upon a matter with very contemporary resonances:

> "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."[44]

In *Ricketts*, Rowlatt J was upheld by the House of Lords. But a much fuller analysis by him of the position of expenses under Schedule E is contained in *Nolder*,[45] about an Imperial Airways pilot claiming expenses while he was away from his base at Croydon Aerodrome. Whatever may have been the effect on other employers, Rowlatt J's endorsement with reasons of the practice by the Revenue of allowing only the extra costs of meals incurred by an employee travelling away from their home or permanent workplace has formed the basis of the Revenue's own travelling and subsistence claims rules to this day.

The Rees Roturbo Development Syndicate Limited v Ducker (HM Inspector of Taxes) & CIR (Rees Roturbo)[46]

This case is chosen among several to represent those in which Rowlatt J considered the question of "one-off" transactions—are they trading (including being an adventure in the nature of trade) or are they simply a capital accretion. In *Leeming v Jones (HM Inspector of Taxes)*[47] Rowlatt J lay down the proposition, accepted ever since, that a single sale of goods or property cannot be within Case VI of Schedule D, the sweep-up case for miscellaneous items of income. *Martin v Lowry (HM Inspector of Taxes)*[48] shows that a single purchase when sold can give rise to a trade.

[41] *Davies (HM Inspector of Taxes) v Braithwaite* 18 TC 198.
[42] *Ricketts v Colquhoun (HM Inspector of Taxes)* 10 TC 118.
[43] *Nolder v Walters* 15 TC 380.
[44] *Ricketts*, above fn.42, 10 TC 118 at 121.
[45] *Nolder*, above fn.43, 15 TC 380.
[46] *The Rees Roturbo Development Syndicate Limited v Ducker (HM Inspector of Taxes) & CIR* 13 TC 366. Rowlatt J was upheld by the Court of Appeal.
[47] *Leeming v Jones (HM Inspector of Taxes)* 15 TC 333.
[48] *Martin v Lowry (HM Inspector of Taxes)* 11 TC 297.

But the clearest exposition of the differences between a trading transaction and a capital accretion is in the *Rees Roturbo* case.[49]

CIR v Blott & Greenwood[50]

The question in these cases was whether a share allotted fully paid in satisfaction of a bonus (dividend) awarded to a shareholder was income on which super-tax was chargeable. Rowlatt J's judgment in this case is notable for further explaining the basis of taxation of companies and shareholders under income tax,[51] and linking that to the facts and contentions, before he decided the case. This is one of several surtax cases where the fundamental principles of company/shareholder taxation were discussed by Rowlatt J. In *Gimson v CIR*[52] he explained why a dividend from a non-taxable profit is not liable to super-tax, and in *F H Hamilton v CIR (Hamilton)*[53] he found taxable to surtax a dividend exceeding the taxable statutory income of the paying company. He was upheld in *Hamilton* by the Court of Appeal in what was described by Lord Hanworth MR as "a very important point".[54]

Green (HM Inspector of Taxes) & CIR v J Gliksten & Son[55]

The question here was whether a timber merchant was required to treat as a trading receipt an insurance recovery paid following a fire destroying timber which formed part of the company's stock. Rowlatt J's judgment is characteristically short and to the point, and he was upheld by the Court of Appeal and the House of Lords.

Keren Kemayeth Le Jisroel v CIR (Keren Kemayeth)[56]

This organisation's main object:

> "was stated to be, 'to purchase, take on lease or to exchange or otherwise acquire any land, forests, rights of possession and other rights easements and other immovable property in Palestine, Syria, or other parts of Turkey in Asia and the Peninsula of Sinai for the purpose of settling Jews on such lands.'"[57]

Rowlatt J held that its objects were not charitable within the meaning of the Statute of Elizabeth[58] as interpreted in *Pemsel's*[59] case. He was upheld by the Court of Appeal, and his judgment has been cited with approval in a number of cases involving charity, not only in connection with the exemption.

[49] *Rees Roturbo*, above fn.46, 13 TC 366.
[50] *CIR v Blott*; *CIR v Greenwood* 8 TC 101. Rowlatt J was upheld by the Court of Appeal and the House of Lords.
[51] Expanding on what he said in his first tax case, *Purdie*, above fn.23, [1914] 3 KB 112.
[52] *Gimson v CIR* 13 TC 595.
[53] *F H Hamilton v CIR* 16 TC 213.
[54] *F H Hamilton*, above fn.53, 16 TC 213 at 225.
[55] *Green (HM Inspector of Taxes) & CIR v J Gliksten & Son* 14 TC 364.
[56] *Keren Kemayeth Le Jisroel v CIR* 17 TC 27.
[57] *Keren Kemayeth*, above fn.56, 17 TC 27 at 36.
[58] The Act referred to is 43 Eliz. c.4.
[59] *Special Commissioners of Income Tax v Pemsel* (1891) 3 TC 53.

Wigmore (HM Inspector of Taxes) v Thos. Summerson (Thos. Summerson)[60] *and Leigh v CIR*[61]

These cases explained comprehensively the basis of taxation of interest. *Thos. Summerson*[62] shows that a sale of a security-cum-dividend does not give rise to taxable interest, as the interest, although accruing from day-to-day, has not become due for payment, while in *Leigh*[63] the interest had become due but had not been paid so was still not taxable. In this case there is one of Rowlatt J's most memorable pronouncements: "Receivability without receipt is nothing",[64] which is still true in those few areas left where a receipts rather than accruals basis applies to interest.

Mitchell v BW Noble Ltd[65]

In this case Rowlatt J tackled the intractable issue of the capital/revenue distinction in relation to trading expenses, and the extent to which the one-off nature of a payment is significant. In finding that a one-off payment was deductible, he carefully distinguishes the case from *Atherton (HM Inspector of Taxes) v British Insulated and Helsby Cables Ltd*.[66] What makes this judgment stand out is the homely and vivid language he uses in giving examples and drawing analogies.

Cape Brandy Syndicate v CIR[67] *(Cape Brandy)*

This is the case in which Rowlatt J's best known dictum appears, namely:

> "Now of course it is said and urged by Sir William Finlay that in a taxing Act clear words are necessary to tax the subject ……. in taxation you have to look simply at what is clearly said. There is no room for any intendment; there is no equity about a tax: there is no presumption as to a tax; you read nothing in; you imply nothing, but you look fairly at what is said and at what is said clearly and that is the tax."[68]

This dictum has been a source of comfort and a refuge for any subsequent judge urged by counsel for either side to adopt a strictly literal interpretation contrary to the merits or purpose of the legislation, though it has now been comprehensively sidelined, notably by Lord Steyn in *McGuckian v CIR*.[69]

[60] *Wigmore (HM Inspector of Taxes) v Thos. Summerson* 9 TC 577.
[61] *Leigh v CIR* 11 TC 590.
[62] *Thos. Summerson*, above fn.60, 9 TC 577.
[63] *Leigh*, above fn.61, 11 TC 590.
[64] *Leigh*, above fn.61, 11 TC 590 at 595.
[65] *Mitchell v BW Noble Ltd* 11 TC 372.
[66] *Atherton (HM Inspector of Taxes) v British Insulated and Helsby Cables Ltd* 10 TC 155.
[67] *Cape Brandy Syndicate v CIR (Cape Brandy)* 12 TC 358.
[68] *Cape Brandy*, above fn.67, 12 TC 358 at 367.
[69] *McGuckian v IRR* [1997] STC 908 (HL), 916: "During the last 30 years there has been a shift away from literalist to purposive methods of construction. Where there is no obvious meaning of a statutory provision the modern emphasis is on a contextual approach designed to identify the purpose of a statute and to give effect to it. But under the influence of the narrow *Duke of Westminster* doctrine: *IRC v Duke of Westminster* [1936] AC 1, 19 tax law remained remarkably resistant to the new non-formalist methods of interpretation. It was said that the taxpayer was entitled to stand on a literal construction of the words used regardless of the purpose of the statute: *Pryce v Monmouthshire Canal and Railway Cos.* (1879) 4 App. Cas. 197, 202–203; *Cape Brandy Syndicate v. Inland Revenue Commissioners* [1921] 1 KB 64, 71; *Inland Revenue Commissioners v. Plummer* [1980] AC 896. Tax law was by and large left behind as some island of literal interpretation. On both fronts the intellectual breakthrough came in 1981 in the *Ramsay* case, and notably in Lord Wilberforce's seminal speech which carried the agreement of Lord Russell of Killowen, Lord Roskill

But it is worth looking a little more closely at what Rowlatt J said in *Cape Brandy*, because it is by no means clear from the judgment that he applied his own maxim in the way that it has been read. Most people know that *Cape Brandy* was about whether or not certain persons had engaged in an adventure in the nature of trade. That was a matter of fact for the Commissioners in which Rowlatt J did not feel able to interfere. That caused him a bit of anguish as it meant he was forced to decide "another point which I think is an extremely troublesome one."[70]

It is this other point which is the really interesting one. The Cape Brandy Syndicate started business in March 1916. They were charged to Excess Profits Duty (EPD). That, as its name implies, was a tax on excess profits, i.e. profits which exceeded some benchmark. The benchmark used in the EPD legislation in Finance (No. 2) Act 1915 was the "pre-war standard".[71] That was defined by looking at profits over a period of three years before the start of the First World War. There were special rules for cases in which, before the war, the business had been going for at least two but fewer than three years, for at least one but fewer than two years and for less than one year respectively.[72]

In relation to this rule the company argued that the tax did not apply because it was not possible to tax a company which was not in business before the war. The Inland Revenue argued that "less than one year" included both, say, six months and a case where the business was not carried on for even a single day (so not at all).

Faced with what in his view was this "artificial" construction, Rowlatt J made his famous statement quoted above.[73] But after that he went on to say:

> "But it is often endeavoured to give to that maxim a wide and fanciful construction. It does not mean that words are to be unduly restricted against the Crown or that there is to be any discrimination against the Crown in such Acts."[74]

Then he applied his own maxim:

> "Applying those principles I am bound to say it is quite impossible for me to hold, and I cannot believe that any Court would hold, that a tax had been imposed by this Act upon the subject who had no pre-war business at all."[75]

But then he continues:

> "But the matter does not rest there, because I am now sent to what is a still more difficult question. By the next Act, the Act of 1916, Excess Profits Duty was imposed for the following year, and that Act is to be read with the Finance (No. 2) Act, 1915, which I have

and Lord Bridge of Harwich. Lord Wilberforce restated the principle of statutory construction that a subject is only to be taxed upon clear words *Ramsay (W T) Ltd v IRC* [1982] AC 300, 323C-D. To the question 'What are clear words?' he gave answer that the court is not confined to a literal interpretation. He added 'There may, indeed should, be considered the context and scheme of the relevant Act as a whole, and its purpose may, indeed should, be regarded.' This sentence was critical. It marked the rejection by the House of pure literalism in the interpretation of tax statutes."

[70] *Cape Brandy* above fn 67, 365.
[71] Finance (No. 2) Act 1915 s.38(1).
[72] Finance (No. 2) Act 1915, Sch 4, Part 11, Rule 4.
[73] *Cape Brandy*, above fn.67, 12 TC 358 at 367.
[74] *Cape Brandy*, above fn.67, 12 TC 358 at 367.
[75] *Cape Brandy*, above fn.67, 12 TC 358 at 367.

just been examining, and it says this in Section 45 (2) 'In the case of trades or businesses commencing after the 4th day of August, 1914, the rate shall be 60 per cent' and so on …..

Now the Solicitor-General cited several cases and cited also from Maxwell, and in particular he cited a judgment of Sir Francis Jeune in the *Attorney-General v Clarkson* which makes it quite clear to my mind that if I had been construing the Finance Act, 1916, I should have been bound, having regard to the fact that I have to read these Acts together, indeed they say they are to be read together - I should have been bound to say that clearly Parliament in 1916 had imposed by necessity, *not in direct words*, but imposed by saying the thing was to be done *which involved the necessary law*, there being necessary authority to do it; it imposed a rate of tax on trades or businesses commencing after the 4th day of August."[76] [author's italics]

This is certainly not the only case in which Rowlatt J was prepared to consider an implication:

"It seems to me that when one considers the taxation that is imposed by the other Schedules and Cases, the principle that the duty is imposed in respect only of an existing source is really *no more than an implication* which arises from the terms of its imposition in each case (land, a business, an office, a permanent investment, a foreign security or possession) and from the machinery erected for its collection. There is no general enactment which expresses it."[77] [author's italics]

What emerges from all of Rowlatt J's cases is that he was very quick to grasp a point, often not requiring the winning party to address him. His style in his mostly extempore judgments has already been commented upon, and much enjoyment can be gained from reading the conversations at the end of his judgments on the form of his order and on costs, as well as from the judgments themselves. He was not afraid to include literary references, whether classical or English. He was also prepared to trenchantly criticise the delays in getting cases before him[78] and the complexity of the income tax legislation. For example in *Himley Estates & Humble Investments Ltd v CIR*[79] he said:

[76] *Cape Brandy*, above fn.67, 12 TC 358 at 367 and 368.

[77] *National Provident Institution v Brown (HM Inspector of Taxes)* 8 TC 70.

[78] *Machon v McLoughlin* (1926) 11 TC 83, at 92 and 93. Rowlatt J: "I shall not deprive you of costs in this case, because it may be that the fault is not yours in the least, but I do think these delays ought not to take place."

The Solicitor-General: "Your Lordship's observations will be noted."

Rowlatt J: "No, they will not be taken the slightest notice of."

The Solicitor-General: "I should not like to say that, my Lord."

Rowlatt J:- "Some of these delays are perfectly shocking. Your side came before me the other day and said that somebody would not deliver points of argument. I said, put it down without points of argument if they do not deliver them within a week. If you do not put it down it ought to be struck out; there ought to be a time limit. It is a scandal that these things are held up for years. … I cannot go further into the matter. I doubt whether there is good reason for depriving them of costs but I should have liked to have some tangible peg to hang my complaint on. I think an appeal ought to be struck out altogether if it is not brought within a month on either side. A man's Income Tax may fall to be litigated in the time of his grandchild at this rate; the poor man dies and after he is dead and buried his executors are called upon five years afterwards and told: 'There is an Income Tax appeal pending in your case'."

[79] *Himley Estates & Humble Investments Ltd v CIR* (1932) 17 TC 367. Lord Hanworth MR associated himself with Rowlatt J's remarks in his judgment in the Court of Appeal.

> "I cannot leave the consideration of this Clause without pointing out that it calls loudly for re-drafting in the interests of precision. I venture to give one illustration of many that have occurred to me, of its defects. Suppose a majority of the shares are in the hands of six brothers. The control would appear, within the meaning of the first part of the Clause, to be deemed to be in the hands of those persons. But the Revenue, I understand, deny this, contending that it is deemed to be in the hands of any five, or any smaller number, because the others are relatives. Why stop here? The brothers may have parents who may, it is true, have nothing to do with the company, but why is the company not under the control of the parents? The majority of the shares are in the hands of their relatives within the very words of the enactment. This was not meant and is, of course, ridiculous, but the truth is that the draftsman has not observed what he has been writing, and has construed the words in accordance with some ill-defined conception floating in his own brain. Really this important clause ought not to be allowed to remain in this unscholarly and bewildering form."

He had previously said[80] of similar legislation:

> "There is another way of putting this point. Reference was made to the Act of 1927, Section 31, Sub-section (4), which omits the words 'within reasonable time'. I think it is in cases where there has been a winding-up in the interval. But whatever it is, I do not think it throws any light on the present construction. This Section 31 is a Section which in five pages introduces piece-meal amendments into Section 21 with the result that the latter Section is made perfectly unintelligible to any layman or any lawyer who has not made a prolonged study with all his law books at his elbow, and it is a crying scandal that legislation by which the subject is taxed should appear in the Statute Book in that utterly unintelligible form. I am told, and rightly told, by the Attorney-General - he understands it as much as anybody - that it is only in this form that legislation can be carried through at all. Then all I have to say is that the price of getting his legislation through is that the people of this country are taxed by laws which they cannot possibly understand, and I must say I think that this is the worst possible example that has ever been put on the Statute Book."

His judgments were praised by Norman S. Marsh in his entry on Sidney Rowlatt in the *Dictionary of National Biography* as, "…. responsible and neutral, and showed none of the irresponsibility and partiality the judiciary was later to show in *I.R.C. v. Duke of Westminster* (1935) and later cases."[81]

Sir John Rowlatt KCIE KCB

The bare facts of his life are these.

- He was born in 1898, the third son of Sidney.
- He was educated at Eton and Christ Church, Oxford.
- He joined the Coldstream Guards in 1917, lost a leg in the First World War, and was awarded the Military Cross.

[80] In *Lionel Sutcliffe Ltd v CIR* (1928) 14 TC 171, at 188.
[81] *Oxford Dictionary of National Biography*, above fn.3.

- He was called to the bar in 1922.
- He contributed to revised editions of his father's work on *Principal & Surety* (and was cited as an author) and published works on commercial law.
- He married in 1928 and had two sons and three daughters.
- He became a Parliamentary Counsel in 1937, Second Parliamentary Counsel from 1947 to 1953 and First Parliamentary Counsel in 1953. He was awarded the KCIE[82] in 1947 (for his work on drafting the Indian Independence Act 1947) and the KCB in 1954.
- He died in 1956 of a heart attack near Westminster Underground station.

The work of the Parliamentary Counsel's Office in John Rowlatt's day was not divided into specialised compartments, perhaps not surprising given that there were no more than half a dozen draftsmen[83] in the office. But John Rowlatt was the drafter of every Finance Bill between 1943 and 1952, and in addition he drafted the Income Tax Act 1945 (introducing the modern system of capital allowances) and the Income Tax Act 1952, the second consolidating Act for income taxation.

There is no doubt that his father was a very influential source of knowledge about tax. In his memoir[84] the former Parliamentary Counsel and Treasury Solicitor, Sir Harold Kent, mentions that:

> "John used to lunch with his father occasionally in the club. …It was a very pleasant father and son relationship and behind the casual family talk was a true meeting of minds."

He adds:

> "Walking across the park on our way to lunch, I recounted this gratifying incident to Rowlatt. He delivered himself of one of his famous dicta, comparable with Parkinson's law.
>
> 'The intelligibility of a Bill is in inverse proportion to its chance of being right.'
>
> "Like his father, he had a slightly eccentric style, which I hope I haven't exaggerated, masking a fund of common sense and good judgment; and, as I have indicated, a mind of rare quality and strength and a quite astonishing memory. He would sometimes burst into a long quotation from Aristotle, which I made no pretence of following. During the war he belonged to a little group, of whom one was a classical don at New College, who used to meet in the evening and read Greek. Each of them prepared a passage and then, if there was time, they had a go at the next bit unseen. The convener of the group, Nicholas de Villiers, told me that Rowlatt was the star, excelling even the don. Combined with this virtuoso talent was a happy knack of polishing off *The Times* crossword between Golders Green and Charing Cross."

[82] Knight Commander of the Order of the Indian Empire.
[83] They were all men then.
[84] Sir Harold S. Kent, GCB, QC, DCL, *In on the Act: Memoirs of a Lawmaker* (London: Macmillan, 1979).

But the more vivid picture is in a brief memoir by Francis Bennion. In Journal 1953–58[85] he says:

> "On 27 March [1953] five lawyers sat round a table in the House of Lords. They were Ellis [1st PC], Rowlatt, Napier, Brass and me. Subject: how to satisfy Welsh nationalist clamour to have a capital (probably Cardiff).
>
> Rowlatt had studied the question (I had only read the file) and led forth. He is the antithesis of Ellis — small, badly-shaved, excitable. His hair seems always awry, and he sat through this meeting with the collar and one lapel of his coat turned inside. Clearly he has ability though, and he ably poured scorn on Welsh pretensions by showing that 'capital' is not a title you confer like 'Regis' but a general recognition that a city is the seat of government, the justiciary etc. You could not pass an Act saying it shall be an offence not to call Cardiff the capital of Wales.
>
> Afterwards I walked back with Rowlatt (Ellis had got tired of the discussion and slipped away). He observed that the sense of a subject was always in inverse ratio to total salaries of men engaged on discussing it."
>
> "I will get on to more interesting ground with some scraps about Rowlatt. He is always talking about the Judge, whom he invariably refers to as 'my old father'.
>
> *"Hardships of a draftsman* — Rowlatt's comment on joke by Mr Justice Pearce at Royal Academy dinner (I am only going to make a short speech — if you want to know what that means I refer you to the Finance Act 1940, s.13(1): 'short lease' means a lease which is not a long lease): 'This was drafted just when things were getting difficult in the war and there seemed (in the time) no better way of saying it. *Punch* took it up immediately but I little thought it would provide a witticism at a Royal Academy banquet 15 years later'.""

And in "Legislative technique"[86] Bennion says:

> "The hapless statute user supposes that the convoluted phrases he strives to understand have at least been planned with deliberation and composed with utmost care. Kent shows this not to be so. Off the cuff is the normal routine; off the eyebrow the far from rare emergency response. Sir John Rowlatt often said 'We'll have to take a flying fuck at this one'."

The National Archives files on the tax Bills that John Rowlatt drafted reveal both the tax knowledge of the man and his occasionally vivid turns of phrase. His comments to his instructing officials[87] include (on the Income Tax Bill 1945):

> "I am aware that clause 9 looks silly, but that is because it is silly."

[85] Francis Bennion, The Westminster Parliamentary Counsel Office in the 1950s: Francis Bennion's Journal 1953–58 available at *http://www.francisbennion.com/pdfs/fb/1958/1958-001-pco-in-the-1950s-fb-journal.pdf* [Accessed January 10, 2011].

[86] Francis Bennion, "Legislative technique" (130 NLJ (6 Mar 1980) pp 243–244 . Available at: *http://www.francisbennion.com/pdfs/fb/1980/1980-004-technique-2.pdf* [Accessed January 10, 2011].

[87] The Inland Revenue (and now the direct tax parts of HMRC) is the only Government Department where, by long established custom (Finance Bill 1915 was, to the author's knowledge, instructed upon on this basis) Parliamentary Counsel is instructed directly by the specialist officials (who included for 18 consecutive Finance Bills the author) and not Departmental solicitors.

> "In any event I think it cannot possibly be put into the definition of 'industrial building or structure' without considerable danger of the consequences which are apt to ensue when an Act of Parliament not merely defines a cat as including a kitten or even a tiger, but also includes a dog or an elephant."
>
> "The whole basis of the Income Tax Acts, *not often expressed but always implied*[88], is that things which are capital are not income for any purposes." [author's italics]
>
> "The Courts would, I think, say that in order to impose a charge on the subject … *reasonably plain words*[89] must be found"[author's italics]

And on the Income Tax Act 1952:

> "I think we can omit [Clause 202]. This a case for the application of the 'no pedantry' rule."
>
> "It is a disgrace to the statute book." (section 208 of the Income Tax Act 1918.)
>
> "It seems to me that the paragraph [cl. 216(b)] is bunk anyway and that the *Alexandria Water case* said as much."[author's italics]

And lest it be thought that Parliamentary Counsel in the 1940s were unapproachable except by going to their offices for a formal meeting, John Rowlatt wrote to an Inland Revenue official in 1945:

> "My telephone number is Speedwell 6650. Do not, however, dial it before 8.15 in the morning [Saturday]."

Clearly the Income Tax Act 1952 was his magnum opus in the tax field. It was probably the biggest Act there had ever been up to then, but size does not necessarily tell all. The Income Tax Act 1918 (the first consolidating Act on income tax) was another vast achievement, as it consolidated all relevant Acts so far as relating to income tax from the Income Tax Act 1842 onwards. But, with the exception of the introduction of Super-tax in the Finance (1909–1910) Act and the changes to the remittance basis in the First World War, there had not been a lot of development in the law. But in consolidating the Acts relating to income tax from 1918 to 1952, John Rowlatt had to deal with the major changes to the Schedules A/D and D/E interfaces; the abolition of the three-year average; the wholly post-1918 concept of anti-avoidance legislation in Finance Act1922 (FA 1922) (and later) on closely held companies; in FA 1922 (and later) on settlements; in various others Acts such as the "transfers of assets abroad" legislation in FA 1936 (and later); and the contiguous provisions in FA 1951 introducing transfer pricing legislation and what became section 765 of the Income and Corporation Taxes Act 1988 with its unusual criminal sanctions. He had PAYE to cover (he would have been in charge of the Income Tax (Employments) Act 1943 introducing it) and the new system of capital allowances in his own Income Tax Act 1945. This was also a time when the legislature was becoming more reactive to case law. It was not surprising that precedent was broken in the proceedings on the Bill when a number of speakers referred by name to John Rowlatt. One of them was Lord Schuster, who as Sir Claud Schuster had had unhappy dealings with Sidney.[90] Of John he said:

[88] See discussion on *Cape Brandy*, above fn 67.
[89] See discussion on *Cape Brandy*, above fn 67.
[90] See text before and after fn.3.

> "Sir John Rowlatt—my noble and learned friend has already outraged our Parliamentary convention, and rightly so, by mentioning his name—brought great courage to the task, besides the high intelligence, the industry and the learning which we expect always to find in the office of Parliamentary Counsel. He brought also an impetuous ferocity of approach which is unusual in that State Department; and he presented the Bill to us and explained it to us in a manner which cannot be sufficiently commended."

The two men compared

What can we say about the similarities (and differences) between the two men? They were both formidably energetic, and they both inspired respect and affection from those who worked with them.

They were both hugely knowledgeable about tax: of Sir Sidney it hardly needs to be said again, and in relation to Sir John—it is rare (at least in the author's experience) for a member of the Parliamentary Counsel's Office to tell his instructing official in the Inland Revenue what the existing tax law says in the way in which Sir John referred to the *Alexandria Water* case, but then, given that his father may well have played as a boy in the grounds of those very waterworks,[91] perhaps it is not too surprising.

A personal communication to the author from Richard Rowlatt (son of Sir John and grandson of Sir Sidney) gives a vivid portrait of the two men's intellects generally:

> "The two men had in common powerful intellects, by which I mean an extraordinary memory of detail and a relentlessly analytical habit of mind. They were both formidable classical scholars[92], which trained them in the precise use of language, gave them a broad historical perspective and imbued them with respect for long-established principles of law. Both were also very hard-working.
>
> My father was superior to his father in intellectual ability. My recently deceased cousin, James Rowlatt said of Sidney Rowlatt, in his inimitable Old Etonian drawl 'Our grandfather, Richard, had a mind as sharp as a razor-blade and just as broad.' A little harsh, perhaps. Not that Sidney Rowlatt was narrow minded in the sense of small-minded, or pompous. In court he was famous for his informality and his common touch. He was brought up in a privileged Victorian household (albeit as part of the expatriate British community in Egypt), and shared the prejudices of his time. But I do have to say that in his letters to his wife he occasionally betrays a laxity of thought which my father would have never allowed himself to express.
>
> Whereas during his trip to India Sir Sidney never once mentions reading a book, my father read no less than four one tedious Sunday in Simla. John's mind was never at rest. When walking to the underground station on his way to work he would perform mathematical exercises on car registration numbers. On the train he would knock off the Times crossword between Golders Green and Charing Cross - unless he was reading some weighty tome on the French revolution in the original French, or on the origins of the First World War in the

[91] See fn.3.

[92] John more so than his father, as the passage from Kent, *In on the Act: Memoirs of a Lawmaker*, above fn.84, shows.

> original German. Or perhaps he would spend the journey embarrassing some acquaintance by expounding his opinion of some well-known public figure in a loud voice for all to hear."

Richard Rowlatt also mentions other differences:

> "… they were as different as father and son could be. Whereas Sidney was tall, neat and handsome, and not a little vain and self-confident, John was the opposite in every respect. Sidney was the epitome of effortless superiority. John should have been, but despite his outstanding scholastic and athletic record at Eton, and a decoration for bravery in the First World War he was in some ways curiously diffident, in unnecessary awe of his overbearing father."

And there were yet other differences. Sidney was clearly well off. He owned more than one yacht and a large house in Cornwall on the bay from which he sailed them, and his address at his death was a manor house in Berkshire. John, on the other hand, lived more modestly in a semi-detached house in Golders Green.

As lawyers they share some characteristics. John's classical background probably reveals itself in his drafting style. He would not get top marks from the Tax Law Rewrite but his drafting is clear and precise.[93] Lord Simon's statement about Sidney[94] sums up everything about his style as a judge—clear and concise.

The last words go to two eminent lawyers who were members of the House of Lords during the passage of the Income Tax Bill in 1952:

> "Lord Radcliffe May I take a few moments of your Lordships' time to say something about those persons who are really responsible for the massive Bill which is now reported to your Lordships' House? … Let me say at once to your Lordships that, in a matter of this great complexity, we were by ourselves rather like children paddling on the shores of a great ocean. It was a vastly complex subject, and if left to ourselves we should not have completed our task because we should not have known how to begin it. The fact that this Bill has assumed the shapely structure that it has is due, primarily, to the work of the Parliamentary Counsel who were responsible for its drafting, and a Committee of officials from the Inland Revenue Department. …. I will not depart from precedent by mentioning the names of any of the Inland Revenue officials, but I will for once, if I may, refer to the Parliamentary Counsel of whose work I am speaking, Sir John Rowlatt, because it is a pleasant thing to be able to associate his name as the true author of this Bill with that of his father, Sir Sidney

[93] An Act which shows him at his best is the Indian Independence Act 1947. Section 1(1) is straightforward and direct: "1.-(1) As from the fifteenth day of August, nineteen hundred and forty-seven, two independent Dominions shall be set up in India, to be known respectively as India and Pakistan."

Section 2 defines the two dominions, and only a slight acquaintance with the history of the sub-continent will suggest that that task was not easy, especially in relation to the territories still disputed. Section 2(2)(c) would not win friends in the Plain Words movement, but seems to the author to be utterly clear. Pakistan is to include, among others "if, whether before or after the passing of this Act but before the appointed day, the Governor-General declares that the majority of the valid votes cast in the referendum which, at the date of the passing of this Act, is being or has recently been held in that behalf under his authority in the North West Frontier Province are in favour of representatives of that Province taking part in the Constituent Assembly of Pakistan, the territories which, at the date of the passing of this Act, are included in that Province."

[94] See fn.23.

Rowlatt, a Judge who, I think all lawyers would say, did more than any other single Judge to elucidate and to rationalise the complex with the works of these gentlemen."[95]

"The Lord Chancellor (Lord Simonds) … I think I should be failing in my duty to the Committee if I did not add my testimony to his, and to that of other noble Lords who have spoken, and say a word concerning the debt we owe to the draftsmen of this Bill. It is an admirable rule that we, and in particular a Minister, should not mention any civil servant by name, but I propose to break that admirable rule by mentioning the name of Sir John Rowlatt, who has done such an excellent job in drafting this Bill. I should like to associate myself with the testimony of Lord Radcliffe. Sir John Rowlatt is a true son of his father, who was one of the wisest and best Judges before whom I have ever pleaded." [96]

[95] *Hansard*, HL, Vol 174, cols 1061–1062 (February 5, 1952).

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[96] *Hansard*, HL, Vol 174, col 1064 (February 5, 1952).