

Wednesday, June 19.

FIRST DIVISION.

[Exchequer Cause.

INLAND REVENUE v. GUTHRIE,
 CRAIG, PETER, & COMPANY,
 LIMITED.

Revenue—Excess Profits Duty—Deductions—Increase in Profits Due to Change in Title to Heritable Subjects—Finance (No. 2) Act 1915 (5 and 6 Geo. V, cap. 85), secs. 38 to 45, and Fourth Schedule.

A company held heritable subjects on lease at a net rent of £584 up to November 1914. Thereafter they obtained a feu of the same subjects at a net feu-duty of £148. This caused their profits to be increased by the difference between the feu-duty and the rent. Held that they were liable to excess profits duty upon the increase in their profits attributable to the change in their title to the heritable subjects.

The Finance (No. 2) Act 1915 (5 and 6 Geo. V, cap. 89) enacts—Section 38—“(1) There shall be charged, levied, and paid on the amount by which the profits arising from any trade or business to which this part of this Act applies in any accounting period which ended after the fourth day of August Nineteen hundred and fourteen, and before the first day of July Nineteen hundred and fifteen, exceeded by more than two hundred pounds the pre-war standard of profits as defined for the purposes of this part of this Act, a duty (in this Act referred to as ‘excess profits duty’) of an amount equal to fifty per cent. of that excess. . . .” Section 40—“(1) The profits arising from any trade or business to which this part of the Act applies shall be separately determined for the purpose of this part of this Act, but shall be so determined on the same principles as the profits and gains of the trade or business are or would be determined for the purpose of income tax, subject to the modifications set out in the First Part of the Fourth Schedule to this Act and to any other provisions of this Act. (2) The pre-war standard of profits for the purposes of this part of this Act shall, subject to the provisions of this Act, be taken to be the amount of the profits arising from the trade or business on the average of any two of the three last pre-war trade years to be selected by the taxpayer (in this part of this Act referred to as the profits standard).”

Fourth Schedule, Part I—“(1) The profits shall be taken to be the actual profits arising in the accounting period, and the principle of computing profits by reference to any other year or an average of years shall not be followed.” Part II—“(1) The profits of any pre-war trade year shall be computed on the same principles and subject to the same provisions as the profits of the accounting period are computed.”

The Finance Act 1916 (6 and 7 Geo. V, cap. 24), by section 45 (1), continues the excess profits duty for the accounting period from 1st July 1915 to 1st August 1917, and by sec-

tion 45 (2) raises the amount of the excess profits duty from fifty per cent. to sixty per cent. for any accounting period beginning after the expiration of a year from the commencement of the first accounting period.

Niel George Macinnes, Surveyor of Taxes, appellant, being dissatisfied with an assessment made upon Guthrie, Craig, Peter, & Company, Limited, respondents, in respect of excess profits duty for the accounting periods (1) from 16th May 1915 to 13th November 1915, and (2) from 14th November 1915 to 15th May 1916, by the Commissioners for the General Purposes of the Income Tax Acts for the district of Brechin, took a Case.

The assessment appealed against was:—

Net Amount of Excess Profits (after deduction of £200 or proportionate part thereof).	Rate at which Assessed.	Set off (if any) in respect of deficiencies under Section 38 (3) of Finance (No. 2) Act 1915, as amended.		Payable.
		£	s.	
(1) £1482 0 0	60 per cent.	£340 10 0		£548 14 0
(2) £9848 0 0	60 per cent.			£5908 16 0

The Case set forth—“1. The following facts were admitted or proved:—1. The [respondents were] incorporated under the Companies Acts 1862 to 1888 for the purpose of carrying on business as paper makers, and [have their] registered office in Brechin. 2. From the term of Martinmas 1876 down to Martinmas 1914 the [respondents] held the premises, comprising the paper mill and the Inch Bleachfield under a tack between the Town Council of Brechin on the one part, and Charles Oswald, tobacconist in Brechin, and others on the second part, dated 30th September and 1st and 14th October 1874, the premises being let thereunder for the period of thirty-eight years from Martinmas 1876 at the yearly rent of £880. 3. By a sub-lease between the said Charles Oswald and others on the one part, and David Lamb and others, all manufacturers in Brechin, on the other part, dated 22nd, 24th, 28th, 30th, and 31st October, and registered in the Burgh Court Books of Brechin 2nd December 1874, the said Charles Oswald and others sub-let to the said David Lamb and others the ground and buildings then occupied by the Inch Bleaching Company for the period of thirty-eight years from and after the term of Martinmas 1876 at the yearly rent of £379, 6s. 4. By a feu-charter granted by the Provost, Magistrates, and Councillors of the Royal Burgh of Brechin in favour of the [respondents], dated 13th September 1915, the said Burgh of Brechin sold and in feu-farm disposed as from Martinmas 1914 to and in favour of the [respondents], for a yearly feu-duty of £200 sterling, (1) the lands lying at the Inch of Brechin, comprising (a) the subjects known as the Paper Mill of Brechin, with the whole buildings and premises connected therewith, all as occupied by the [respondents] prior to the date of entry; (b) the subjects known as the Inch Bleachfield, with the whole buildings and premises connected therewith, occupied by the Inch Bleaching Company prior to the date of entry; and (c) the ground and buildings lately used as a public washing-house and drying green; and (2) the subjects situated at the junction of Witchden Road and River Street,

Brechin, and occupied by the [respondents] prior to the date of entry as stores, stables, and yard. No capital sum was paid by the [respondents] for the buildings acquired under the feu-charter as these were of little worth. There was therefore no increase in the [respondents'] capital due to the acquisition of the mill, &c. 5. On 8th October 1914 the [respondents] let to the Inch Bleaching Company the works and premises then occupied by the latter, for one year from the term of Martinmas 1914 to Martinmas 1915, for the sum of £52 sterling. 6. The amount of the deduction claimed by the [respondents] is brought out as follows:—

“A. Rent of Subjects payable prior to November 1914.

(a) Inch and Paper Mill - - -	£880	0	0
(b) New Bag Houses - - -	30	16	0
(c) Chimney Stalk - - -	28	15	6
(d) Warehouse, Stables - - -	24	13	4
	£964	4	10
Deduct rent payable by the Inch Bleaching Company under their sub-lease - - -	379	6	0
Net amount of rent payable by [respondents] - - -	£584	18	10

“B. Feu-duty payable subsequent to November 1914.

(a) Subjects feued - - -	£200	0	0
Deduct rent payable by the Inch Bleach- ing Company under let to them - - -	52	0	0
Net amount of feu-duty pay- able by [respondents] - - -	£148	0	0
Amount of difference for the year - - - - -	£437	0	0
Difference for half year - - -	£218	0	0

7. For the accounting period ended 14th November 1914 (six months) there was a deficiency of £46, the duty on which, at the rate of 50 per cent., calculated for the purposes of set-off, was £23. For the accounting period ended 15th May 1915 (six months) there was a deficiency of £635, the duty on which, at the rate of 50 per cent., calculated for the purposes of set-off, was £317, 10s. For the accounting period ended 13th November 1915 (six months) there was an excess of £1482, the duty on which, at the rate of 60 per cent., was £889, 4s., from which fell to be deducted the total duty applicable to the deficiency for prior periods, viz., £340, 10s., leaving a net amount of excess profits duty payable of £548 14s. For the accounting period ended 15th May 1916 (six months) there was an excess of £9848, the duty on which, at the rate of 60 per cent., was £5908, 16s. The duties as assessed have been paid.

“IV. The Commissioners, on a consideration of the evidence and arguments submitted to them, were of opinion that an allowance should be made in respect of the fact that prior to November 1914 the [respondents] held the premises on a tack rent of £584 (net) per annum, while from that date they held the premises subject to a feu-duty of £148 (net). The Commissioners accordingly increased the deficiency for the accounting period ended 15th May 1915 by

£218 (duty £109), and reduced the profits of the accounting period ended 13th November 1915 by £218 (duty at 60 per cent. being £130, 16s.), and also the profits of the accounting period ended 15th May 1916 by the like amount, reducing the duty payable by £130, 16s., which together with the increase in the deficiency for the accounting period ended 15th May 1915, and the reduction in the excess to 13th November 1915, gives a total reduction of £370, 12s. in the duty payable up to the accounting period ended 15th May 1916.”

Argued for the appellant—It was admitted that the increase in the profits of the respondents in question was due to their acquisition as feuars, for a feu-duty of £148 net, subjects for which prior to November 1916 they paid a net rent of £584, 18s. 10d; that that profit would have fallen in though there had been no war; that it arose solely upon a change in the title upon which the respondents held the subjects and was not the result of papermaking. It was nevertheless a profit of the company and was taxable with excess profits duty, which was chargeable no matter how the profit was made. If the principle of adjustment followed by the Commissioners were sanctioned, excess profit duty could never be recovered. There was no warrant in the Finance (No. 2) Act 1915 (5 and 6 Geo. V, cap. 89) for the principle adopted by the Commissioners. The Finance (No. 2) Act 1915, sections 38 (1), 40 (1) and (3), and 41, and Schedule iv, Part i, (1) (2) (3) (4) and (5), was referred to.

Argued for the respondents—The object of the Finance (No. 2) Act 1915 (*cit.*) was to tax profits due to the war. It necessarily followed that in comparing the profits in the accounting period with the pre-war profits, such things as rent which was unaffected by the war must be taken at the same figure. That was shown to be the principle of the Act by section 43, where the rise in the royalties alone were considered and not the diminution of output. The principle of the comparison of like with like was justified by Schedule iv, Part ii (1). Further, if the respondents had purchased the subjects out and out, they would have been entitled to a deduction in respect of increase of capital. Schedule iv, Part iii, (1) (a) and (c), was referred to.

LORD PRESIDENT—The Commissioners appear to me to have entered in this case not only on a hopeless task but on a task which is wholly without statutory warrant in their endeavour to reach an assimilation of the conditions of the pre-war period of this business with the conditions obtaining in the accounting period. They have, in short, given effect to the contention which I see was advanced by the managing director of this company—“That one of the underlying principles of the excess profits duty was that the conditions obtaining in the accounting period and in the years on which the pre-war standard is based should be as closely alike as possible in order to secure a fair comparison of like with like.” The statute makes no such provision. The statute only says that the profits in the

pre-war period will be computed on the same basis and be subject to the same conditions as in the accounting period. That rule has been strictly followed in the present case.

It appears that the appellant company paid for their ground in the pre-war period a yearly sum of £584. In the accounting period they paid only £148. The Commissioners do not propose to treat them in both periods as paying £584, nor in both periods as paying £148. They have adopted a different method, which is not only unintelligible but has no statutory foundation. Deducting the one figure from the other they reach a burden on the trader of £437, a figure which does not exist in reality.

I think their decision, being entirely without statutory warrant, ought to be recalled and that we should remit the case back to them.

LORD MACKENZIE—I concur.

LORD SKERRINGTON—I agree with your Lordship that the Commissioners' decision cannot stand, but I do so exclusively upon the admissions made by the respondents in this case.

LORD SANDS—I concur.

LORD JOHNSTON was absent.

The Court reversed the determination of the Commissioners and remitted to them to refuse the appeal and sustain the assessment.

Counsel for the Inland Revenue, Appellants—The Lord Advocate (Clyde, K.C.)—R. C. Henderson. Agent—Sir Philip J. Hamilton Grierson, Solicitor of Inland Revenue.

Counsel for the Respondents—Blackburn, K.C.—Scott. Agents—Dundas & Wilson, C.S.

Wednesday, June 19.

FIRST DIVISION.

[Exchequer Cause.]

BOYD & SONS v. INLAND REVENUE.

Revenue—Income Tax—Average Profits and Gains—Deductions—Patent—Royalty for User of Patent—Finance Act 1907 (7 Edw. VII, cap. 13), sec. 25.

The Finance Act 1907, section 25, enacts—“(1) In estimating, under any schedule of the Income Tax Acts, the amount of the profits and gains arising from any trade, manufacture, adventure, concern, profession, or vocation, no deduction shall be made on account of any royalty or other sum paid in respect of the user of a patent, but the person paying the royalty or sum shall be authorised, on making the payment, to deduct and retain thereout the amount of the rate of the income tax chargeable during the period through which the royalty or sum was accruing due.”

In 1914, 1915, and 1916 a firm paid a royalty of £400 for the user of a patent. That sum was not deducted in returning

their profits for each of those years. After 1916 they ceased to pay the royalty and for the year 1917 they were assessed upon the average of the profits of the three preceding years including therein the £400 paid in each of those years for the use of the patent. Held that the £400 had been rightly included, and that the assessment was correct.

Langston Monotype Corporation, Limited v. Anderson, 1911, 2 K.B. 1019, distinguished.

The Finance Act 1907 (7 Edw. VII, cap. 13), section 25, is quoted *supra in rubric*.

James Boyd & Sons, appellants, being dissatisfied with a decision of the Commissioners for the Special Purposes of the Income Tax Acts at Glasgow, took a Case in which A. H. Havelock, surveyor of taxes, was the respondent.

The Case set forth—“I. The following facts were admitted or proved:—(1) During a period of five years, namely, in the years 1912, 1913, 1914, 1915, and 1916, the appellants were liable to pay and did pay a fixed sum of £400 royalty to Messrs G. N. Haden & Sons of Trowbridge, Wiltshire, heating engineers, in respect of the user of a patent. The said payment appeared as a debit in the trading accounts of the appellants for each of those five years. The last of such payments (namely, for the year 1916) was made on 1st January 1916. The appellants, pursuant to section 25 of the Finance Act 1907, deducted and retained out of each sum of £400, so paid as royalty as aforesaid, the amount of the rate of income tax chargeable under the Income Tax Acts. By such deduction and retention the appellants have recouped themselves to the full for the Income Tax which had been charged upon, and in the first instance paid over to the Crown by the appellants in respect of such royalties (amounting in the aggregate to £2000), such charge to income tax having formed a part of the duty paid by the appellants to the Crown in satisfaction of the assessment on the profits and gains of the appellants under Schedule D of the Income Tax Acts, made upon the appellants year by year during the currency of the royalty, that is to say, up to and including the assessment for the year ended the 5th April 1917. (2) The profits and gains of the appellants, without allowing for the deduction, as an expense, of the £400 royalty so paid and debited as aforesaid in each year were—

For the year ended 31st Dec. 1914	- £2971
For the year ended 31st Dec. 1915	- 1155
For the year ended 31st Dec. 1916	- 4419

3) £8545

representing an average of £2848
(as assessed 1917-18)

“II. Mr John MacRobert, solicitor, Glasgow, on behalf of the appellants, contended—(a) That inasmuch as the royalty of £400 ceased to be payable after the year 1916, and thenceforth the appellants were not able to recoup themselves by deduction of income tax in respect of such royalty, the actual sums paid as royalty should be deducted before arriving at the profits for the years on the average of which the said