

The King - - - - - *Appellant*

*v.*

The Anderson Logging Company, Limited - - - - - *Respondents*

FROM

THE SUPREME COURT OF CANADA.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL DELIVERED THE 24TH NOVEMBER, 1925.

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*Present at the Hearing :*

LORD DUNEDIN.

LORD SUMNER.

LORD WRENBURY.

LORD DARLING.

LORD SALVESEN.

[*Delivered by* LORD DUNEDIN.]

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The respondent Company were incorporated in 1907. In 1910 they purchased certain timber limits at the price of \$87,500, which was calculated on the probable yield of timber at \$1 per 1,000 feet. In 1917 they sub-sold part of the timber on a bargain which need not be particularly specified, as it was afterwards superseded by another bargain in 1920. The only relevancy of the matter is that a certain amount of timber was cut and payments made under the agreement of 1917. In 1920 the final bargain was made by which the whole of the timber limits belonging to the Company were sold at the rate of \$4 per 1,000 feet. A minimum payment of \$180,000 was guaranteed, and when \$180,000 had been paid a clear title to the whole was to be given to the purchaser. The \$180,000 was to be paid as follows :—\$80,000 on the date of contract. On the 15th January, 1921, at least \$50,000, or such greater sum as was represented by the \$4 rate of timber by then cut, and the remaining \$50,000 not later than the 15th January, 1922. The purchaser entered upon the limits and

proceeded to cut. No dividends were paid by the Company in the earlier years as the expenses of the Company more than swallowed up the comparatively small payments made under the earlier agreement of 1917.

On the 31st December, 1917, the Company published a balance sheet and profit and loss account. The profit and loss account showed a loss on that year of \$2,317.82. The balance sheet showed a balance of \$26,560.48. In that year a small dividend had been paid.

In 1918 there was another balance sheet. It seems to have occurred to the Company that, as timber was rising in value, they were really in a good position and should show that in their balance sheet. Accordingly, in the balance sheet, starting with the old balance of \$26,560.48, they added a sum of \$131,250 as increase in value of timber between 1910 and 1913. This was a purely estimated sum because, at that time, the rest of the timber had not been sold and the sum realised on the contracts of 1917 had been only just enough to meet the current expenses and the dividend paid in 1917. In the profit and loss account this sum of \$131,250 was dealt with as a cross-entry. This method of calculation disappeared in the balance sheets and profit and loss accounts of the next years, but in 1921 a change occurred. No further dividend had been paid and, as it was evident that, under the contract of 1920, there was going to be a substantial profit, it was thought that it was time that something should be paid. Accordingly instructions were given to the auditor that he should remodel the balance sheet and, taking the original cost price of \$1 per 1,000 feet and the sale price of \$4 per 1,000 feet, should endeavour to show how matters really stood. He accordingly remodelled the accounts and, taking what had been paid, he made out that two sums (corresponding to the two great divisions of the timber limits) of \$15,564.92 and \$34,434.00 respectively calculated on the original cost, still remained unpaid. Assuming this to be finally paid off he calculated profit on the whole transactions when finished at \$130,001.08, and he drew up a document called "undivided profits account" in which he showed that figure. Upon that a dividend was declared of \$25,000.

Now the Company had to fill up the usual form to declare their income for the year 1921. This was done in February, 1922, in obedience to an Act which was passed in December, 1921. The Company took the view that the whole profit on the transactions was merely an enhancement of capital and not a profit liable to income tax at all, and consequently that no return fell to be made. The taxing authorities resisted this view and contended that the Company fell to be taxed on the sum of \$130,001.08 above mentioned. The Commissioner made a supplementary assessment to that effect. This question was decided adversely to the Company by the Revision Judge of the Vancouver Assessment District. His judgment was affirmed by the Court of Appeal of British Columbia. Appeal being taken to the Supreme Court of Canada,

that Court affirmed on the main question in a long and careful judgment, but, at the end of that judgment, they added the following sentence :—

“ For these reasons, the profits now in question were assessable in the years in which they were realised ; but the statute of 1921, having obviously no retrospective operation, gave no authority to the Assessor to make any assessment in respect of money received before the enactment was passed, and the assessment must be reduced accordingly to \$66,269·28. As the appellant company achieves a substantial success, it is entitled to its costs throughout.”

Appeal against that reduction has now been taken by the taxing authority to the King in Council. No cross-appeal was taken by the Company. It may here be as well to say that their Lordships have not the slightest doubt that the judgment of the Supreme Court on the main question was right, being indeed entirely in conformity with the case of *Taxes Commissioner (Victoria) v. Melbourne Trust Ltd.* [1914] A.C. 1001, decided by this Board.

Now, the section of the Statute on which the assessment was made is Section 65 (1) and is as follows :—

“ Where subsequent to the completion of any assessment roll, the Assessor finds that any personal property or income or bank was liable or has become liable to taxation for the current year or any previous year, but has not been assessed on the roll or on any assessment roll for that previous year, he shall assess and tax the same on a supplementary assessment roll, or further supplementary assessment roll, for the current year, to be prepared by him from time to time : or where, subsequent to the completion of any assessment roll, the Assessor finds that any personal property or income or bank has been assessed and taxed for less than the amount for which it was liable to assessment and taxation, he shall assess and tax the same on a supplementary roll, or further supplementary roll, for the balance of the tax, and in each case the assessment shall be made at the rates of taxation and subject to the conditions of assessment governing the roll on which the same should have been assessed.”

The figure of \$66,269·28 to which the amount was reduced is not apparent in any of the balance sheets, but seems to have been matter of admission. In the factum for the present respondents, then appellants, which was before the Supreme Court it is set out that \$80,000 was paid on the date of the contract, that \$40,000 was paid in 1921, and that \$26,269·28 was paid in 1922. It thus became apparent that it was matter of admission that these two sums had been paid in the period embraced in the assessment laid on in 1922 and it was admitted by the respondents' Counsel that, the main point being decided against him, they represented profit, or, in other words, that the expenses of purchase and other expenses of working the Company had been wiped off before these sums were paid. Now on the figures thus brought out their Lordships consider it unnecessary to decide the question argued before them as to whether the statute is in every sense retrospective or not, because on the merits and apart from any such question, their Lordships think that the decree of the Supreme Court was clearly right. The \$66,269·28 is taxable because it is now, the

main question being decided, admitted to be profit. The \$130,001·08 is not taxable because it was merely an estimate conditional on the eventual payment of the whole sums that would become due under the agreement of 1920. Their Lordships would here refer to what was said by this Board in the case already cited :—

“As regards the question of when a profit is earned, their Lordships’ view is that a profit can be said to be earned when it is dealt with as a profit. In ordinary cases this synchronises with the realisation of the sums which swell the assets of the person or company, and entering the account (whether on the creditor or debtor side will depend on the particular account in view), go to bring out the balance which is deemed profit. But for the reasons already given their Lordships think that in a case like this the Company are entitled to hold at least a part of their realisation in suspense—as indeed they have done in their accounts—and that it is only when finally the same is given to the shareholders that the final impress of profit is, so to speak, stamped upon it, and therefore, for the purposes of the Act, that is the time at which it is earned.”

The emphasis in this passage is on the word “realisation.” Each case depends on its own circumstances. But here their Lordships consider that the sum of \$130,001·08 was only a mere estimate necessarily contingent on the sums due by the purchaser being eventually paid. These sums have not yet been all paid. The mere expression that the profit will go to the shareholders cannot be and is not enough. It is like the part kept back, referred to in the quotation just made. The \$25,000 dividend was a realised profit and would have been taxable as such were it not that the admission made carries more than \$25,000. It is further to be noticed that the Crown are not in any way really prejudiced, for when the sums as yet unpaid come to be paid, they will, on the admission made, be reckoned as assessable income.

Their Lordships will, therefore, humbly advise His Majesty that the appeal should be dismissed with costs.



In the Privy Council.

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THE KING

*v.*

THE ANDERSON LOGGING COMPANY, LIMITED.

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DELIVERED BY LORD DUNEDIN.

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