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In the Privy Council

ON APPEAL FROM THE SUPREME COURT OF CANADA

UNIVERSITY OF LONDON  
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INSTITUTE OF ADVANCED  
LEGAL STUDIES

IN RE THE TREASURY DEPARTMENT ACT, 1938,

AND

INTERNATIONAL HARVESTER COMPANY OF CANADA, LIMITED,  
an Ontario corporation doing business in the Province of Saskatchewan,

(Appellant) *Appellant*,

AND

THE PROVINCIAL TAX COMMISSION,  
THE COMMISSIONER OF INCOME TAX,  
THE PROVINCIAL TREASURER, and  
THE ATTORNEY GENERAL FOR SASKATCHEWAN

(Respondents) *Respondents*.

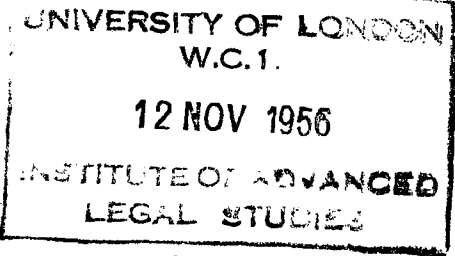
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## RECORD OF PROCEEDINGS

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GARD, LYELL & CO.,  
Leith House,  
47, Gresham Street,  
London E.C. 2,  
*Solicitors for Appellant.*

BLAKE & REDDEN,  
17 Victoria Street,  
London S.W. 1,  
*Solicitors for Respondents.*



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## PART I—ADMISSION OF FACTS.

BEFORE THE BOARD OF REVENUE COMMISSIONERS:

IN THE MATTER OF *The Income Tax Acts 1932 and 1936* and IN THE MATTER OF appeals by the International Harvester Company of Canada Limited (herein called the appellant) from the following assessments dated the 23rd day of August, A.D. 1938, made by the Commissioner of Income Tax, namely:—

- (a) An assessment in the sum of \$4,382.07 in respect of the income of the appellant for the taxation year A.D. 1934;
- 10 (b) An assessment in the sum of \$11,341.07 in respect of the income of the appellant for the taxation year A.D. 1935;
- (c) An assessment in the sum of \$10,136.60 in respect of the income of the appellant for the period of ten months ending the 31st day of October, A.D. 1936.

The following facts are admitted, in relation to the said appeals, by the appellant and the Commissioner of Income Tax, namely:—

1. The appellant is a company incorporated under the Companies Act of the Province of Ontario, having its head office at the City of Hamilton in the Province of Ontario. The appellant is registered under  
20 the provisions of the (Saskatchewan) Companies Act.

2. The business of the appellant is the manufacture and sale of agricultural implements and parts thereof and business incidental thereto. The manufacture of the said implements and parts is carried on by the appellant entirely outside the Province of Saskatchewan. The sale thereof is carried on partly in the Province of Saskatchewan and partly in other provinces and countries.

3. The appellant carries on in the Province of Saskatchewan the business of selling farm implements and parts thereof, which business is carried on at the following branch offices, namely:—

- 30 North Battleford, Sask.—164 Railway Avenue.  
Regina, Sask.—1810 Dewdney Ave.  
Regina, Sask.—1155 Broad Street.  
Saskatoon, Sask.—25-22nd St. West.  
Saskatoon, Sask.—Avenue A. on 22nd Street.  
Yorkton, Sask.—West Broadway.

During the years in question the business of the appellant was also carried on at branch offices at Swift Current and Weyburn in the Province of Saskatchewan, but the said branch offices were closed on the 20th day of August, 1937, and are still closed.

- 40 4. All sales made in Saskatchewan of the appellant's goods are made by the agents of the appellant at its various branch offices in Saskatchewan, and the sale contracts in respect of such goods are made and executed in Saskatchewan.

5. All moneys received by the appellant in Saskatchewan either in respect of sales or as payments on debts owing to the appellant, are

deposited in separate bank accounts and remitted in full to the head office of the appellant in Hamilton, Ontario, and the said office in turn sends to its branches in Saskatchewan such moneys as are required by them for operating and incidental expenses.

6. There are no directors of the appellant resident in Saskatchewan and no meetings of the Board of Directors of the appellant are held in Saskatchewan. The central management and control of the appellant abide at the head office of the appellant in Hamilton, Ontario. The appellant keeps no separate profit and loss account in respect of the business it carries on in the Province of Saskatchewan, but does keep at its head office in Hamilton, Ontario, a profit and loss account of its entire business carried on in the Dominion of Canada and elsewhere.

7. On the 28th day of May, 1935, the appellant filed with the Commissioner of Income Tax its return of income for the taxation year 1934. The said return or a true copy thereof is marked Schedule A1 hereto. On the 23rd day of August, 1938, the Commissioner of Income Tax assessed the appellant the sum of \$4,382.07, claiming that he has determined the same to be the tax on its income in Saskatchewan for the taxation year 1934, and that the said income has been determined by him pursuant to the Regulations made by the Lieutenant Governor in Council pursuant to subsection (4) of Section 7, Chapter 9 of the Statutes of Saskatchewan, 1932, intituled the *Income Tax Act, 1932*. The said assessment or a true copy thereof is marked Schedule A2 hereto. A true copy of the said Regulations is attached hereto and is marked Schedule A3. Notice of the said assessment was given to the appellant on the 23rd day of August, 1938. The appellant on the 23rd day of September, 1938, appealed from the said assessment and the Notice of Appeal or a true copy thereof is marked Schedule A4 hereto.

8. On the 2nd day of June, 1936, the appellant filed with the Commissioner of Income Tax its return of income for the taxation year 1935, which return or a true copy thereof is marked Schedule B1 hereto. In the said return the appellant calculated the income tax payable by it for the said taxation year, 1935, at the sum of \$871.42, of which \$371.42 was paid by the appellant to the Province of Saskatchewan on the 2nd day of June, 1936. On the 23rd day of August, 1938, the Commissioner of Income Tax assessed the appellant the sum of \$11,541.07, claiming that he has determined the same to be the tax on its income in Saskatchewan for the taxation year 1935, and that the said income has been determined by him pursuant to the Regulations made by the Lieutenant Governor in Council pursuant to subsection (4) of Section 7, Chapter 9 of the Statutes of Saskatchewan, 1932, intituled the *Income Tax Act, 1932*. The said assessment or a true copy thereof is marked Schedule B2 hereto. Notice of the said assessment was given to the appellant on the 23rd day of August, 1938. In the assessment notice credit was given for the sum of \$371.42 paid by the appellant showing a balance payable amounting to \$11,169.65. The appellant on the 23rd day of September, 1938, appealed from the said assessment and the Notice of Appeal or a true copy thereof is marked Schedule B3 hereto.



9. On the 26th day of May, 1937, the appellant filed with the Commissioner of Income Tax its return of income for the period of ten months ending the 31st day of October, 1936, which return or a true copy thereof is marked Schedule C1 hereto. Accompanying the said return was a balance sheet for the year ended 31st October, 1936, which balance sheet is attached and is marked Schedule C2 hereto. In the said return the income tax payable by the appellant is calculated by it as the sum of \$2,335.85, which sum was paid by the appellant to the Province of Saskatchewan on the 26th day of May, 1937. On the 23rd day of August, 1938, 10 the Commissioner of Income Tax assessed the appellant the sum of \$10,136.60, claiming that he has determined the same to be the tax on its income in Saskatchewan for the period of ten months ending the 31st day of October, 1936, and that the said income has been determined pursuant to the Regulations made by the Lieutenant Governor in Council pursuant to subsection (4) of Section 7, Chapter 9 of the Statutes of Saskatchewan, 1932, intituled the *Income Tax Act, 1932*. The said assessment or a true copy thereof is marked Schedule C3 hereto. Notice of the assessment was given to the appellant on the 23rd day of August, 1938, and in the said Notice credit is given for the sum of \$2,335.85 paid 20 thereby showing a balance payable amounting to \$7,800.75. The appellant on the 23rd day of September, 1938, appealed from the said assessment and the Notice of Appeal or a true copy thereof is marked Schedule C4 hereto.

10. On the 3rd day of May, 1938, prior to assessing the appellant's income for the years 1934, 1935 and 1936, the Commissioner of Income Tax wrote to the appellant on the 3rd day of May, 1938, for certain information. This communication is in the following terms:—

30 "I have for assessment your returns of income filed with this Department for the years 1934 to 1936 inclusive and note on examination the following on which further information will be required:

(1) For the years ending December 31, 1934 and 1935, the audited financial statement did not accompany the return filed. These will be required and in the return for the year ending October 31, 1936 a reconciliation between the net income as shown in the financial statements and returns as filed, should be submitted.

(2) Advise the amount of sales made in this Province during the year 1934.

(3) Of the bad debts written off in each of the years 1934 to 1936 inclusive, advise the amount contracted yearly, prior to 1931.

40 (4) The reconciliation of net taxable income for the period ending October 31, 1936 discloses an addition to and a deduction from income on investment depreciation. Full details of this will be required.

(5) Advise if the loss in disposal of securities net, amounting to \$23,525.00 is included in investment depreciation or in any other figure in the reconciliation of taxable income submitted.

(6) Supply a breakdown of miscellaneous expenses for each of the years 1934 to 1936 inclusive.

(7) Advise the amount of directors' fees or bonuses paid during each of the above years.

Your early attention to the above will be appreciated."

11. On the 6th day of June, 1938, the appellant wrote to the Commissioner of Income Tax enclosing duly certified Auditor's balance sheets as of the 31st day of December, 1934, and the 31st day of December, 1935, together with a statement in answer to questions 1 to 7 inclusive as required by the said Commissioner of Income Tax. The said balance sheets and the said statement or true copies thereof are attached hereto  
10 and are marked Schedules D1, D2 and D3 respectively.

12. On the 13th day of June, 1938, the Commissioner of Income Tax wrote to the appellant for further information in the following terms:

"I wish to acknowledge receipt of your letter dated June 6th together with enclosures and on examination find I shall still require details of the following in order to dispose of your file.

1. Total interest income received in each of the years 1934, 1935 and 1936 from marketable securities.

2. Advise if the Depreciations charged on Buildings, Equipment, Fixtures, etc., are in accordance with Dominion Income Tax rates and regulations. Kindly also forward details as to the charges, on  
20 Depreciation, made in the Reconciliation of taxable income for the years 1934 and 1935, amounting to \$14,227.76 and \$10,278.81.

3. Details of differences that exist in the provision of pensions as noted on the auditor's statements and Reconciliation of Net profits for the years 1935 and 1936.

4. Reconciliation of your Insurance Reserve for the years under review.

Your return of income for the year ended October 31st, 1937, has not yet come to hand. Kindly forward this in the near future  
30 together with information requested as it affects this return in my letter of May 3rd, 1938, and above.

Your early attention to the above will be greatly appreciated."

13. On the 8th day of July, 1938, the appellant wrote the Commissioner of Income Tax in reply as follows:—

"Replying to your letter of June 13th, 1938, we are pleased to advise you as follows:

1. Total interest income received in each of the years 1934, 1935 and 1936 from marketable securities. See statement attached.

2. The depreciation charged off on buildings, equipment, fixtures, etc., agrees with the amount deducted in the Dominion returns. The  
40 additional items, namely, \$14,227.76 in 1934 and \$10,278.81 in 1935, represent additional amounts claimed in those years on account of not claiming full depreciation in the Dominion returns for the years 1931, 1932 and 1933.

3. Details of differences that exist in the provision of pensions as noted on the Auditor's statements and reconciliation of net profits for the years 1935 and 1936. The differences between the

provisions for pensions on the Auditor's statements and on our reconciliation statements were:

1935	\$52,553.18
1936	\$42,199.87
1937	\$75,656.21

These amounts were taken up in works costs in the respective years, becoming a part of cost of sales account.

4. Reconciliation of your insurance reserve for the years under review. See statement attached.

10 Regarding the last question in your letter we are attaching hereto statements giving such information. We trust with this information you will be able to complete our returns."

The statement referred to in this reply or a true copy thereof is attached and is marked Schedule D4 hereto.

14. Subject to the objection of the appellant to the relevancy of the facts submitted in this paragraph, it is admitted that with respect to the income of the appellant for the taxation year A.D. 1934, the appellant has not filed with the Commissioner of Income Tax any statement within the meaning of the Regulations, a true copy whereof is marked Schedule 20A3 hereto, objecting to the method of allocation and apportionment of the income for that year as adopted by the said Commissioner of Income Tax, other than to the extent to which such objection may be inferred from the statement in the appellant's return that "no allocation figures are given because there is no income to allocate to the Province of Saskatchewan."

15. Subject to the objection of the appellant to the relevancy of the facts admitted in this paragraph, it is admitted that with respect to the income of the appellant for the taxation years A.D. 1935 and A.D. 1936, the appellant has not filed with the Commissioner of Income Tax any 30 statement within the meaning of the said Regulations, objecting to the method of allocation and apportionment of the income for those years as adopted by the said Commissioner of Income Tax, other than to the extent to which such objection may be inferred from the alternative method of allocation and apportionment of such income which may be embodied in the returns of the appellant.

16. With respect to any of the years 1934, 1935 or the said ten months period of 1936 the Commissioner of Income Tax had not requested any further information from the appellant nor has the appellant supplied the Commissioner of Income Tax with any further information than that 40 contained in the appellant's said returns, the analysis of the deduction for bad debts as set out in Schedule B to the notices of appeal (Schedules A4, B3 and C4 hereto), and in the correspondence referred to in clauses 11, 12, 13 and 14 hereof.

DATED at Regina, Sask., this 7th day of December, A.D. 1938.

"S. Quigg"

Counsel for the Commissioner of  
Income Tax.

"Frank L. Bastedo"

Counsel for the Appellant, Inter-  
national Harvester Company of  
Canada Limited.

## PART II.—EVIDENCE, Including Affidavits.

TRANSCRIPTION of *viva voce* evidence given by Arthur Brown at the hearing of the appeal herein before the Board of Revenue Commissioners, said Arthur Brown having been called as a witness on behalf of the appellant.

December 7th, 1938.

ARTHUR BROWN, for Appellant, Examination-in-Chief.

EXAMINED by Mr. Bastedo:

Q. Mr. Brown, you are the Manager of the International Harvester  
10 Company of Canada Limited? A. I am.

Q. How long have you been Manager at Regina? A. A little over a year, since last August, formerly of Weyburn.

Q. Before you were Manager here, you were Manager at Weyburn?  
A. Yes.

Q. For how long? A. 10 years.

Q. Where were you before that? A. Saskatoon.

Q. How long have you been connected with the Company in Saskat-  
chewan? A. 21 years.

Q. Were you with the Company at Weyburn when that Branch  
20 closed? A. Yes.

Q. That was in August, 1937? A. Well, September, the latter part of September.

Q. Why did it close? A. No business. It did not pay its way.

Q. They closed the Swift Current Branch? A. Yes.

Q. Why? A. For the same reason.

Q. The Company still owns the Company's buildings at Weyburn?  
A. They do.

Q. Pays taxes? A. They do.

Q. And a certain amount of up-keep? A. A little.

30 Q. For how long have those branches not made money? A. It is pretty hard for me to say just what they have made. Expenses against sales vary . . . . . and so far as actual profit and loss, we cannot tell.

Q. Where would they have this information? A. In Hamilton.

Q. Hamilton is the Head Office for the whole of Canada? A. Yes.

Q. How long has the Weyburn Branch not been making money?  
A. Since 1931.

(MR. QUIGG here objects to this evidence)

Q. You were Manager at Weyburn in 1934, 1935 and 1936? A. 1935  
and 1936.

40 Q. And in 1934? A. Assistant Manager in 1934.

Q. Were you acquainted with general conditions in Saskatchewan at that time? A. Yes.

Q. In 1934-35 and 1936 would the Company's costs of operation in Saskatchewan have any direct relationship on the costs of operation in

ARTHUR BROWN, for Appellant, Examination-in-Chief.

the whole of Canada? Would the profit made in the whole of Canada have any ratio to cost in Saskatchewan? A. If I understand that clearly, I would say not. One branch may cost more to operate and make less profits in certain years. Weyburn had no crop. The only sales were made where there was a crop, around Regina, and in other areas where there was a crop.

Q. Do the costs of operation go down in proportion as sales go down? A. No.

10 Q. Costs of sales do not go down when the sales go down? A. No. . . . a year ago for the three branches the operating costs were \$196,000.00. This year it cost \$167,000.00 to operate the three branches.

Q. Do the Company's dealers make money on commission out of sales? A. Yes. Our dealers are not making any money in the Province to-day and some of them are on relief I am told.

(MR. QUIGG objected to the admission of this evidence. The Board ruled that Mr. Bastedo should be allowed to proceed on the understanding that he will link the evidence up either with the question of the whole income in Saskatchewan or with the question  
20 of comparative costs in relationship to income outside and inside Saskatchewan.)

Q. Mr. Brown, what factors are there in Saskatchewan, say in the last — say in 1934, 1935 and 1936 that are peculiar to Saskatchewan in the way of your business or in the profits you make from your business? A. Well, firstly crop failures.

Q. What were the conditions in Saskatchewan in 1934, 1935 and 1936? A. In 1934 — very bad, especially in the south. 1935 — crops looked good in the spring that were no good in the fall and sales were made in 1935 that were bad sales due to crop failures. In 1936 no sales were  
30 made in any part of the province except right around Regina.

Q. How do those conditions compare with crop conditions in other Provinces, say in Ontario? A. Better crops in Manitoba, Ontario and the East. A lot better in Alberta.

Q. What about sales conditions apart from the Province's credit conditions? A. Very much restricted under the present set-up.

Q. Could you mention anything particularly that affects your sales or collections? A. Firstly, farmers' financial standing, and secondly, the Civil Rights Act.

Q. The Limitation of Civil Rights Act? A. Yes, the Limitation of  
40 Civil Rights Act, and the Debt Adjustment Board to a certain extent.

Q. Did this situation as to credit affect the quantity of your sales? A. Amount of Sales?

Q. Yes. A. Yes.

Q. Would your expenses in Saskatchewan go down in proportion to your sales? A. Expenses in all the branches were reduced naturally but not to the same extent as the sales were down. We have a certain fixed debt, taxes, heat and light. You have to keep up a certain force to perform the duties of the office.

ARTHUR BROWN, for Appellant, Examination-in-Chief.

Q. You own and pay taxes on your present buildings? A. Yes.

Q. And corporation tax? A. Corporation Tax, yes.

Q. Did these costs in Saskatchewan go down in proportion to the decrease in the sales? A. No.

Q. How would you be affected in particularly bad years where you could sell. . . . A. There is a tendency to return machines. . . . we have to recondition them. . . . added expenses.

Q. Return the machines? A. Machines that are not sold in other towns, and in our contract we agree with the dealer to pay freight back  
10 from the town to the warehouse in here.

Q. You pay that because he has not been able to sell the implements?  
A. Yes.

Q. More machines have been returned in the last few years? A. Yes.

Q. In 1934, 1935 and 1936. A. Yes, each year more.

Q. Implements returned and not sold? A. Yes.

Q. Returned from your dealers in outlying districts and you pay the freight back? A. Yes.

Q. They have to be re-conditioned, re-painted. . . .? A. Yes.

Q. Would that condition obtain in Ontario? A. There might be some  
20 of it but not to the same extent. It is conditions that are causing it.

Q. Conditions peculiar to Saskatchewan in 1934, 1935 and 1936?  
A. Yes.

Q. How would these crop conditions in 1936 compare in Saskatchewan with Manitoba so far as your business is concerned? A. Volume?

Q. Yes. A. Considerably down. We get comparative figures from the various branches. I could not tell exact amount but it is down in Saskatchewan.

Q. How would it compare with Saskatchewan sales in good years?  
A. Saskatchewan sales were better.

30 Q. How would the expense of managing the Winnipeg Branch compare with the managing of the Company's branch in Regina in comparison to sales? A. Proportionate expenses are higher in Regina than in Winnipeg.

(At this point some discussion developed as to whether it would be possible to agree as to the correctness of the proposition in the struck-out paragraph No. 7 of the Admission of Facts. Counsel for the department maintained his objection both to the relevancy and admissability of any evidence on the matters contained in that paragraph and the Board, therefore, requested Mr. Bastedo to continue, subject always to Mr. Quigg's objection.)  
40

Q. Would you elaborate, Mr. Brown? A. I do not know whether there is a lot I can say. I do know our office staff is larger. We have more accounts to handle, more of a set-up here than in Winnipeg. Sales are higher under normal conditions. Expenses are low in proportion.

Q. Do you know of your own knowledge how expenses of operating proportion to sales compares with Ontario? A. I could not say.

ARTHUR BROWN, for Appellant, Examination-in-Chief.

Q. How about Alberta? A. We have more than Alberta naturally owing to them getting more business than we do cost to sell is less in Alberta where business is greater.

Q. Has the cost of sales any fixed proportion to the amount of sales in Saskatchewan? A. In this Province we have a set figure. Expenses are set and we cannot change them. . . . we have no sales.

MR. SIBBALD asked Mr. Brown:

Q. Some of your cost elements are rigid? A. That's right.

10 Q. Is the proportion of the costs that are rigid smaller or greater part of the costs?

A. I would not want to say definitely—pretty close—the rigid expenses are what we might increase. At the present time we have the same field force and within about two or three in the office. We have eliminated two managers, and two collection managers and two office managers.

Q. Business that was done before the drought in Saskatchewan, would the proportion of expenses to sales be greater or less in 1934, 1935 and 1936 than the cost in normal years before the drought? A. Percentage  
20 of cost is greater now by far than in 1926, 1927 and 1928 when they were doing more business.

Q. That would include 1934, 1935 and 1936? A. Yes.

Q. Is it a fact that the expense of doing business varies in different provinces of Canada? A. The set up is similar to ours.

Q. These elements of cost were down in Ontario? So far as sales are concerned, in proportion to costs? A. Our expenses to sales here would be higher.

MR. SIBBALD asked Mr. Brown:

Q. How intimately do you know that to be the case? A. From the  
30 figures which we get. The more business you get in the more profit you make. During good years we shipped carloads to territories. Today we ship one or two or a few machines. Costs go up in handling. Local freight instead of . . . freight and also office could handle more work in larger scale than on smaller shipment of machines. Very little more work in invoicing a carload. Expenses increase as times get worse. It is the same with repairs. Instead of shipping out large consignments we local ship smaller ones which involves a lot more work. We have to take back more machines. They used to clean up. Today we more or less have to clean up, take machines back and recondition them—repaint—  
40 Not only in recent years, but including 1934, 1935 and 1936.

Q. There was a great reduction in sales? A. That condition obtained in 1934, 1935 and 1936.

MR. BASTEDO continued:

Q. How do prices in Ontario compare with prices in Saskatchewan apart from increased freight? A. We have factory prices but I would not want to state definitely what they are within the Province.

ARTHUR BROWN, for Appellant, Examination-in-Chief.

ARTHUR BROWN, for Appellant, Cross Examination.

Q. What is the sales price? A. We have a price f.o.b. Hamilton, that is f.o.b. factory price which would be the same for Ontario as for here. Difference would be in the freight.

Q. Is retail selling price in Ontario same as in Saskatchewan except for the matter of freight? A. I think they are.

Q. How has the Limitations of Civil Rights Act affected the volume of sales in Saskatchewan? A. I could not say to what extent.

10 Q. It means a cut-down as to the number of sales? A. Credits are stricter on that account. No sale is made unless they can pay a certain amount of cash or give good security.....

Q. Is there any other credit condition that you can think of that exists in Saskatchewan and does not exist anywhere else apart from the Limitation of Civil Rights Act? A. Just the general financial conditions of the Province and the farmers in the Province naturally has an effect on the condition.

MR. QUIGG cross-examined:

Q. You did not have anything to do with filing of these income  
20 tax returns? A.....All we do here is to take the forms that are sent to us and make the returns at the office over here for the Province.

Q. Were you aware that there was an allocation method set up in these returns? A. No.

---

I, Marie S. Simons, stenographer, make oath and say,—

1. That I am a stenographer in the employment of the Public Service Commission of the Province of Saskatchewan.

2. That on the 7th day of December, A.D. 1938, having first been sworn truly to take down in shorthand and afterwards correctly to transcribe into long-hand the evidence to be given herein by Arthur Brown,  
30 called as a witness herein on behalf of the appellant, I took same down in shorthand and afterwards correctly transcribed the same into long hand and that this and the foregoing seven other sheets, each initialled by myself, constitute such transcription.

3. That same is a true and complete record of the evidence so given.

Sworn before me at the City  
of Regina in the Province  
of Saskatchewan this 24th  
day of January, A.D. 1939.

“Marie S. Simons”

“Andrew S. Sibbald”  
40A Commissioner for Oaths  
in and for the  
Province of Saskatchewan.



## AFFIDAVIT OF FRANK M. MORTON

(Filed by Appellant on appeal to Board of Revenue Commissioners)

I, Frank M. Morton, of the City of Hamilton in the Province of Ontario, make oath and say:

1. That I am a Vice President of the International Harvester Company of Canada, Limited, the above named appellant, and as such have knowledge of the matters herein deposed to.

2. That I am familiar with the business carried on by International Harvester Company of Canada, Limited, throughout the Dominion of 10Canada and the cost of carrying on such business, including the various conditions that enter into the said cost, and I am also familiar with the sales of its goods made by the Company throughout Canada.

3. That the cost to the said Company of doing business in Canada varies greatly in different provinces and sections of Canada, depending upon wages payable, proximity to point of manufacture, crop conditions, credit conditions, taxes and other factors. Such cost does not bear any fixed proportion to the amount of sales in any province or section of Canada. In the fiscal year ending October 31, 1937, the ratio of wages and salaries paid by the Company in all its operations was 24.975% of the 20total sales made.

In Manitoba the ratio of wages and salaries paid to sales in Manitoba was 7.62%.

In Saskatchewan the ratio of salaries and wages paid to sales in Saskatchewan was 15.20%.

In Alberta the ratio of salaries and wages paid to sales in Alberta was 9.26%.

“Frank M. Morton.”

SWORN before me at the City  
of Hamilton in the Province  
30 of Ontario, this 14th day of  
December, A.D. 1938.

“Russell W. Treleaven”  
A Notary Public in and for the  
Province of Ontario.  
(Seal)

## AFFIDAVIT OF CLARENCE B. MUNGER

(Filed by appellant, subject to objection, on appeal to King's  
Bench Judge)

I, CLARENCE B. MUNGER, of the City of Hamilton, County  
40of Wentworth, Province of Ontario, Dominion of Canada, make oath and  
say:—

I am the General Auditor of the International Harvester Company of Canada, Limited, a Corporation incorporated under the laws of said Province of Ontario. As such General Auditor of the International

Harvester Company of Canada, Limited, I am in charge of the accounting of the Company, both manufacturing and selling. The income Tax returns of said Company for the Dominion of Canada are prepared under my supervision, and I am familiar with the preparation of the Income Tax returns of said Company for the Province of Saskatchewan. My duties as said General Auditor have given me knowledge of the matters set forth in this affidavit.

On the Income Tax returns of the International Harvester Company of Canada, Limited, for the Dominion of Canada for the calendar year 1934, for the calendar year 1935, and for the 10 months' period ending October 31, 1936, a deduction was made for bad debts written off in each of the respective taxable periods of the following amounts:

1934	\$422,974.70
1935	991,545.07
10 months' period ending October 31, 1936	820,760.35

These are the same amounts as were deducted on the Income Tax returns of said International Harvester Company of Canada, Limited, for the Province of Saskatchewan.

20 The Income Tax returns of the taxpayer for the Dominion of Canada have been audited by the Dominion Department, and said deductions of bad debts have been allowed.

The appellant taxpayer on said Saskatchewan Income Tax returns for 1934, 1935 and the 10 months of 1936 ending October 31st, claimed as a deduction for bad debts all the bad debts written off in each of the respective taxable periods, no matter when the debts arose.

By its letter of May 3, 1938, the Income Tax Commissioner of Saskatchewan asked the appellant taxpayer for further information in regard to its said Income Tax returns, among which was in the amount 30 of total bad debts written off in the Saskatchewan returns the amount of bad debts written off contracted in 1931 and subsequent years, and the amount of bad debts written off in said returns contracted in 1930 and prior years.

On June 6, 1938 the appellant taxpayer wrote to the said Income Tax Commissioner, giving the information so requested.

On June 13, 1938 the Provincial Tax Commissioner wrote the appellant taxpayer, asking for further information in regard to its returns which was enclosed by letter of the appellant taxpayer dated July 8, 1938.

On August 22, 1938 the Commissioner of Income Tax issued addi- 40 tional assessment notices for each of the periods above set forth, namely: the calendar year 1934, the calendar year 1935, and the 10 months' fiscal period ended October 31, 1936, which are the additional assessments involved in the appeal above specified. In the notices of additional assessment made by the said Commissioner, there was added back to taxable income the amount of all bad debts written off, contracted prior to 1931, and accordingly the appellant taxpayer was allowed a deduction only of the actual amount of bad debts written off in each of the above taxable periods where the debts arose in 1931 or later years.

The appellant taxpayer did not know until receiving said assessment notices that allowance for bad debts in excess of the amount actually written off in each of the taxable periods was not being made, and no opportunity was granted the taxpayer to discuss the question of the allowance of a reserve for bad debts over and above the amount of the write-off of actual bad debts allowed.

As a matter of good accounting practice, the net income of a business in a given period cannot be ascertained until there has been deducted from the gross income of that year an amount representing the losses 10 that may reasonably be expected to be incurred on the sales during that year. The appellant taxpayer claims that it is entitled to a deduction in each of the taxable periods involved in this appeal of a reasonable addition to its reserve for bad debts to cover the loss that will be suffered on receivables taken on the sales in said years. The experience of the Company in its business during the last six years is that for the whole of its business it has lost, or will lose, 1.8% of the sales made, and for its Saskatchewan business 3.79%.

It is submitted, therefore, that a reserve of 2% of the entire sales of the Company is a reasonable reserve for the entire business of the Com- 20 pany, or, if the Saskatchewan business is considered separately, a reserve of 3% of the Saskatchewan business is reasonable.

As a result of allowing the appellant taxpayer no addition to the reserve for bad debts and allowing a deduction only for bad debts actually written off in the taxable periods in question, which debts arose in 1931 and later years, the Saskatchewan Income Tax Commissioner has found a greater net income in Saskatchewan than the entire net income of the Company on its Dominion returns as finally audited. I give below in parallel columns the amount of net income of the Company in each of the above periods as finally approved on the audit by the Income Tax Depart- 30 ment of the Dominion of Canada, and the net income for the Province of Saskatchewan as found by the Saskatchewan Income Tax Commissioner in said additional assessments of August 22, 1938.

	<i>Dominion Income</i>		<i>Saskatchewan Income</i>
1934	\$ 80,424.24	1934	\$ 97,641.39
1935	123,652.87	1935	230,821.47
1936	380,212.17	1936	212,732.11

SWORN to before me in the City of Hamilton  
in the County of Wentworth, Province of  
Ontario, Dominion of Canada, this 2nd  
40 day of May, 1939.

“C. B. Munger.”

“C. S. Lees”  
Notary Public.

(Seal)

## AFFIDAVIT OF CLARENCE B. MUNGER

(Filed by Appellant, subject to objection, on appeal to King's Bench Judge)

I, Clarence B. Munger, of the City of Hamilton, County of Wentworth, Province of Ontario, Dominion of Canada, make oath and say:

I am the General Auditor of the INTERNATIONAL HARVESTER COMPANY OF CANADA, LIMITED, and have charge of the general accounting, both for the manufacturing and selling operations, of said Company and have knowledge in my said capacity of the matters set forth in this affidavit.

Said International Harvester Company of Canada, Limited, hereinafter referred to as the "Company", has two manufacturing plants both located in the Province of Ontario. About 70% of the goods sold by the Company are manufactured by its plants in Ontario, and the balance consists of goods imported from the United States.

When the Company purchases goods manufactured by others, the profit of the manufacturer is included in the price at which the goods are sold to the Company.

As to the goods manufactured by the Company in Ontario, there is a profit on the manufacturing operations, which arises in the Province of Ontario and does not arise in the Province of Saskatchewan where the goods are sold.

To arrive at the net income of the Company in Saskatchewan, therefore, it is necessary to eliminate the profit on the manufacturing operations in Ontario. In the attached exhibits, made a part of this affidavit, there are set forth two different methods by which the manufacturing profit arising in the Province of Ontario is excluded from the total net income of the Company so that only the profit arising from selling operations in Saskatchewan should be taxed in Saskatchewan.

(1) Exhibit A hereto attached shows the net profit or loss of the Company for the year ending December 31, 1934, the year ending December 31, 1935, and the 10 months' fiscal period ending October 31, 1936.

The total net income shown is the same as that found by the Saskatchewan Commissioner, except that instead of a deduction for actual bad debt loss arising on sales in 1931 and subsequent years, which the Commissioner allowed, there has been taken a deduction as a provision for bad debts equal to 2% of the branch house sales.

Then there has been deducted 10% of the manufacturing cost of the goods manufactured at the Company's plants, representing the manufacturing profit arising in Ontario.

The result shows the following net profit or loss from the selling operations of the Company in the years in question:

1934	\$105,536.58
1935	245,442.49
10 months period ending October 31, 1936	441,259.56

Since the manufacturing profit has already been deducted, the balance of the net income may be allocated on the basis of sales.

In 1934 there was a loss, so there is no allocation to make.

In 1935, 22.128% of the sales were made by Saskatchewan. 22.128% of \$245,442.49, the total net income from selling, gives a net income from selling in Saskatchewan of \$54,311.51.

In 1936, 18.5268% of the sales were made in Saskatchewan. That percentage of \$441,259.56, the total net income from selling, gives \$81,751.28, the net income from selling in Saskatchewan.

10 The Commissioner has found a net income for the Company in Saskatchewan in each of the above periods as follows:

1934	\$ 464,737.70
1935	1,043,119.44
10 months' period ending October 31, 1936	1,148,239.88

(2) The second method adopted for ascertaining the net income from the selling operations of the Company in Saskatchewan is to start with the Saskatchewan sales. From the total sales is deducted the cost of the goods sold in Saskatchewan by applying the same ratio of cost of goods sold to sales which applies to the entire operations of the Company. From the balance has been deducted 10% of the manufacturing cost of goods manufactured at the Company's plants, representing the manufacturing profit arising in Ontario. From the result has been deducted the expenses of the Saskatchewan branches and such proportion of the head office expense as the Saskatchewan sales bear to the entire sales of the Company.

Miscellaneous income consisting of interest earned by the Saskatchewan Branches, and finance charges accrued by the Saskatchewan branches, have been added.

30 A provision for bad debts of 3% of the sales of the Saskatchewan branches has been deducted, since the loss from bad debts in Saskatchewan is greater than in the Dominion as a whole.

The results for the periods in question are as follows:

1934	Loss	\$166,333.24
1935	Loss	156,306.38
10 months' period ending October 31, 1936,	Loss	88,745.67

See Exhibit B. attached hereto.

4010 On its Saskatchewan Income Tax returns for the year 1935 and the months period ending October 31, 1936, the Company allocated to Saskatchewan a portion of the total net income found by apportioning one-third of the total net income on the ratio of sales in Saskatchewan to total sales, one-third by the ratio of tangible property in Saskatchewan to total tangible property, and one-third by the ratio of wages and salaries paid in Saskatchewan to total wages and salaries paid.

Under such a method of allocation, the entire manufacturing profit of the Company on the goods sold in Saskatchewan is not allocated to Saskatchewan and the Company has paid tax on the basis of such allocation and asks no refund thereof.

But an allocation of the entire net income of the Company on the sales ratio only, taxes in Saskatchewan the entire profit of the Company, both manufacturing and selling, arising from the sale of such goods in Saskatchewan. The manufacturing profit thereof accrued in Ontario.

The taxpayer does not submit the tests herein given under Paragraph 1 and Paragraph 2 as methods of arriving at the tax in Saskatchewan, but as tests to show that the assessments arrived at by the Provincial Commissioner are excessive and arbitrary.

10 I attach hereto Exhibit C giving a bad debt analysis for the Dominion of Canada; and Exhibit D, a bad debt analysis for Saskatchewan.

SWORN to before me in the City  
of Hamilton in the County of  
Wentworth, Province of Ontario,  
Dominion of Canada, this 2nd  
day of May, 1939.

“C. B. Munger.”

“C. S. Lees”.

(Seal) Notary Public.

(Exhibits C and D not printed in Appeal Case.)

## 20 AFFIDAVIT OF CLARENCE B. MUNGER

(Filed by Appellant, subject to objection, on appeal to King's  
Bench Judge)

I, Clarence B. Munger of the City of Hamilton, County of Wentworth, Province of Ontario, Dominion of Canada, make oath and say:

I am the General Auditor of the International Harvester Company of Canada, Limited.

Below is given a statement showing the actual bad debts originating from all branch house sales of the International Harvester Company of Canada, Limited during the period 1927 to 1936 inclusive, which have  
30 been written off during the period January 1, 1927 to October 31, 1938, together with the estimated future losses to be sustained on notes taken during the period 1927 to 1936 which as of October 31, 1938, were still outstanding. This statement shows that the percentage of actual bad debts written off to total sales is 2.6% the percentage of estimated future losses to total sales is 2.3% and the total of actual plus estimated losses to total sales is 4.9%.

SWORN before me in the City of  
Hamilton, in the County of  
Wentworth, Province of Ontario,  
40 Dominion of Canada this 22nd  
of April, 1939.

“C. B. Munger.”

“C. S. Lees”

(Seal) Notary Public.

(Statement at foot of this affidavit not printed in Appeal Case.)

## PART III—EXHIBITS

## SCHEDULE A3

(Admission of Facts)

“Province of Saskatchewan

“Income Tax Act 1932.

“Regulations.

“ISSUED pursuant to subsection (4) of section 7 of chapter 9 of the Statutes of Saskatchewan, 1932, intituled *The Income Tax Act 1932*, and approved under order made in council on the 23rd day of November, 101933.

“Covering such cases where the Minister is unable to determine or obtain information required to ascertain the income within the Province of a corporation or joint stock company carrying on a trade or business within and without the Province.

“1. Interest, dividends, rents and royalties less their proportionate share of deductions allowed shall be separately determined or ascertained, and if they are received in connection with the trade or business of the taxpayer in the Province, shall be income liable to taxation.

20 “2. The income referred to in regulation 1 having been separately determined and ascertained, the remainder of the income of the taxpayer liable to taxation shall be taken to be such percentage of the remainder of the income as the sales within the Province bear to the total sales.

“The sales of the taxpayer shall be measured by the gross amount which the taxpayer has received during the preceding year from sales and other sources in connection with the said business, excluding, however, receipts from the sale or exchange of capital, assets and property not sold in the regular course of business and also receipts from interest, dividends, rents and royalties the income of which has been separately determined or ascertained under the provisions of regulation 1.

30 “3. If for any reason the portion of income attributable to business within the Province cannot be determined under the provisions of regulation 2, the income referred to in regulation 1 shall first be separately ascertained or determined and for the purpose of ascertaining or determining the proportion of the remainder of the income of the taxpayer, such remainder of income shall be specifically allocated or apportioned within and without the Province by the Commissioner.

40 “4. If a taxpayer believes that the method of allocation and apportionment herein prescribed or as determined and as applied to his business, has operated or will so operate as to subject him to taxation on a greater portion of his income than is reasonably attributable to business or sources within the Province, he shall be entitled to file with the Commissioner a statement of his objections and of such alternative method of allocation and apportionment as he believes to be proper under the circumstances, with such details and proof and within such time as the Commissioner may reasonably prescribe, and if the Commissioner shall

conclude that the method of allocation and apportionment heretofore employed is in fact not applicable or equitable, he shall re-determine the taxable income by such other method of allocation and apportionment as seems best calculated to assign to the Province for taxation the portion of the income reasonably attributable to business and sources within the Province.

"5. These regulations shall not be applied to determine the income within the Province of a corporation or joint stock company carrying on a trade or business within and without the Province where

- 10 (a) the method or system of accounting used by the taxpayer enables the Commissioner to determine or to obtain the information required to ascertain the income of the taxpayer liable to taxation.
- (b) the income of the taxpayer liable to taxation can be determined or ascertained by allowing the exemption provided by paragraph (m) of Section 4 of the *Income Tax Act, 1932*."

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### SCHEDULE A1

(Admission of Facts)

Form 102  
For use of Corporations  
20 and Joint Stock  
Companies

1934

Where fiscal period is other than the Calendar year this form will also be used for all fiscal periods ending between September 1, 1934, and August 31, 1935.

### PROVINCE OF SASKATCHEWAN INCOME TAX

Date Received May 28, 1935
-------------------------------

Return of Income for the Fiscal period ended December 31, 1934.

This return is to be prepared by the taxpayer and one copy must be delivered or mailed postpaid to the SASKATCHEWAN INCOME TAX COMMISSIONER, SASKATCHEWAN CO-OPERATIVE CREAMERY  
30 BUILDING, REGINA, SASK., on or before 31st MAY, 1935, or within four months after the end of the taxpayer's fiscal period.

PRINT NAME AND ADDRESS PLAINLY BELOW

PENALTIES.—Failure, refusal, or neglect to furnish this Return, or the making of a false Return, renders the taxpayer liable to heavy penalties under The Income Tax Act.

Name of taxpayer in full—International Harvester Company of Canada, Ltd.  
Address of Head Office—Hamilton, Ontario.  
Address of chief office or place of business in Saskatchewan—1810 Dewdney Ave.

40 Nature of business—Sale of farm implements, tractors, motor trucks, etc.  
Number and location of branches in Saskatchewan; Number 8, at—see rider



Last previous Return covered the period ended December 31, 1933. This Return covers all income in Saskatchewan for 12 months ending December 31, 1934.

State if an audit of the company's books was made for this fiscal period. Yes  
 State Name and Address of Auditor—Deloitte, Plender, Haskins & Sells,  
 Toronto, Ontario.

For Use of Department	COMPUTATION OF TAX		This column for use of Taxpayer	This column for use of Department (Added by Department)
(Added by Department)		Loss per Summary \$827,271.15	None.....	
Net tax payable..... 4,382.07		Income Subject to Tax (Form 11).....		97,641.39
<b>10</b> Penalty.....		Tax at 5 per centum.....		4,882.07
Interest.....		Less Tax paid under Corporations Taxation Act..... (Do not include annual License Fee)		500.00
Total..... 4,382.07		NET TAX PAYABLE.....		4,382.07
Amount paid.....		NOTE:—No Tax Payable if the amount thereof is less than \$1.00.		
Balance due.....				
CHECKED			ASSESSED	

Note.—Where the tax payable does not exceed \$20 the whole amount shall be sent with the return, and where the tax exceeds \$20 the sum of \$20 or one-quarter of the tax whichever is the greater, shall be sent with the return. If the full amount is not paid on May 31, 1935, interest **20** will be charged on the unpaid balance at the rate of 6 per cent per annum.

INSTRUCTIONS:—Fill in carefully all the information required on this Form. In addition thereto every corporation, or joint stock company must attach to this return a copy of auditor's unabridged report with certified financial statements including Assets and Liabilities, Trading or Operating and Profit and Loss Statements for the accounting period covered by this return. These must be signed by the Auditor. Information submitted will be treated in strict confidence.

I, F. E. Austin, Asst. Treasurer, International Harvester Company of **30**Canada, Ltd., hereby certify that the return, statements and schedules contained herein, and the additional schedules (if any) are true in every respect and are complete statements of the gross income and expenses and deductions claimed by this Company, for the period stated.  
 Date May 23, 1935. Telephone No. . . . Signature of Official—F. E. Austin.

SUMMARY OF INCOME AND EXPENSE  
 YEAR ENDED DECEMBER 31, 1934.

Gross Sales.....		\$ 8,896,733.40
Closing Inventory .....		9,693,663.23
		<hr/>
		\$18,590,396.63
<b>40</b> Beginning Inventory.....	\$ 9,989,793.27	
Purchases.....	1,191,612.02	
Raw Materials and Supplies.....	2,995,911.48	
Manufacturing Wages.....	968,921.04	
Repairs and Maintenance.....	81,969.97	
Other Manufacturing Expense including Municipal Taxes.....	350,473.90	15,578,681.68
		<hr/>
(Forward to Page 20).....		\$ 3,011,714.95

(Forward from Page 19) .....		\$ 3,011,714.95
By Interest on Receivables and Bank .....	263,410.96	
Miscellaneous Revenue .....	195,269.33	458,680.29
		<hr/>
To Head Office Expense, including Selling, Collection, Administrative and General .....		\$ 3,470,395.24
		2,567,611.50
		<hr/>
To Sundry Interest Paid .....	60.42	\$ 902,783.74
Depreciation Write off .....	341,019.98	
10Bad Debts written off .....	422,974.70	
Miscellaneous business expense (not including donations) .....	78,113.88	842,168.98
		<hr/>
		\$ 60,614.76
Deduct:		
10% on Manufacturing investment all outside Saskat- chewan .....		887,885.91
		<hr/>
Net Loss .....		\$ 827,271.15

NOTE:—No allocation figures are given because there is no income to allocate to the Province of Saskatchewan.

LOCATION OF BRANCHES IN SASKATCHEWAN

20	No. Battleford, Sask.	164 Railway Ave.
	Regina, Sask.	1810 Dewdney Ave.
	Regina, Sask.	1155 Broad St.
	Saskatoon	25 Twenty-Second St. West
	Saskatoon	Avenue A and Twenty-Second St.
	Swift Current	2 - 44 Second Avenue West.
	Weyburn	Government Road
	Yorkton	West Broadway.

SCHEDULE B1  
(Admission of Facts)

30Form 102 1935  
For use of Corporations  
and Joint Stock  
Companies  
Where fiscal period is other than the  
Calendar year this form will also  
be used for all fiscal periods ending  
between September 1, 1935 and  
August 31, 1936.

PROVINCE OF SASKATCHEWAN  
INCOME TAX

Date Received June 2, 1936
-------------------------------

Return of Income for the 12 months ended December 31, 1935.  
This return is to be prepared by the taxpayer and one copy must be  
40delivered or mailed postpaid to the SASKATCHEWAN INCOME TAX  
COMMISSIONER, SASKATCHEWAN CO-OPERATIVE CREAMERY  
BUILDING, REGINA, SASK.

If the fiscal period ends between September 1, 1935 and January 31, 1936, inclusive, this return must be filed on or before May 31, 1936. If the fiscal period ends between February 1, 1936 and August 31, 1936, inclusive, this return must be filed within four months from the close of the fiscal period.

## PRINT NAME AND ADDRESS PLAINLY BELOW

**PENALTIES:**—Failure, refusal, or neglect to furnish this Return, or the making of a false Return, renders the taxpayer liable to heavy penalties under The Income Tax Act.

Name of taxpayer in full—International Harvester Company of Canada, Ltd.

Address of Head Office—Hamilton, Ontario.

Address of chief office or place of business in Saskatchewan—1810 Dewdney Avenue Regina (If this return is made by an Extra-Provincial

Corporation that has no branch in Saskatchewan, state the name of the chief agent in Saskatchewan)

Nature of business in Saskatchewan—Sales of Farm Implements, Tractors, Motor Trucks, etc.

Number and location of branches in Saskatchewan; Number 8, at (See rider)

Last previous Return covered the 12 months ended December 31, 1934

State if an audit of the company's books was made for this fiscal period.

Yes

State Name and Address of Auditor—Deloitte, Plender, Haskins & Sells—Toronto, Ontario.

20 For Use of Department (Added by Department)	COMPUTATION OF TAX		This column for use of Taxpayer	This column for use of Department (Added by Department)
Net tax payable..... 11,041.07	Income Subject to Tax (Form 11).....		17,428.32	230,821.47
Penalty..... 500.00	Tax at 5 per centum.....		871.42	11,541.07
Interest.....	Less Tax paid under Corporations Taxation Act.....		500.00	500.00
Total..... 11,541.07	(Do not include annual License Fee)			
Amount paid..... 371.42	NET TAX PAYABLE.....		371.42	11,041.07
Balance due..... 11,169.65				
AUDITED	NOTE:—No Tax Payable if the amount thereof is less than \$1.00.		EXAMINED	

**Note.**—If the full amount of the tax is not paid on the date this return is due, interest at the rate of 6 per cent per annum will be charged.

**INSTRUCTIONS:**—Fill in carefully all the information required on this Form. In addition thereto every corporation or joint stock company must attach to this return a copy of auditor's unabridged report with certified financial statements including Assets and Liabilities, Trading or Operating and Profit and Loss Statements for the accounting period covered by this return. These must be signed by the Auditor. Information submitted will be treated in strict confidence.

I, H. E. Millar, Manager, International Harvester Company of Canada Ltd., hereby certify that the return, statements and schedules contained herein, and the additional schedules (if any) are true in every respect and are complete statements of the gross income and expenses and deductions claimed by this Company for the period stated.

Date June 1st 1936 Telephone No. 93185. Signature of Official—International Harvester Company of Canada Limited by H. E. Millar.

(Memorandum attached to Return B1.)

SUMMARY OF INCOME AND EXPENSES  
YEAR ENDED DECEMBER 31, 1935

Gross Sales		\$13,110,506.29
Closing Inventory .....		9,369,299.63
		\$22,479,805.92
Beginning Inventory .....	\$ 9,693,663.23	
Purchases .....	1,931,793.34	
Raw Materials and Supplies .....	4,416,011.28	
<b>10</b> Manufacturing Wages .....	1,562,363.26	
Repairs and Maintenance .....	101,500.10	
Other Manufacturing Expenses including Municipal Taxes .....	463,544.07	18,168,875.28
		4,310,930.64
By interest on Receivables and Bank .....	210,578.37	
Miscellaneous Revenue .....	185,463.49	396,041.86
		4,706,972.50
To Head Office Expense, Selling, Collection, Administrative and General Expense .....		3,186,908.29
		1,520,064.21
<b>20</b> To Sundry Interest Paid .....	255.62	
Depreciation Written Off .....	334,062.02	
Bad Debts Written Off .....	991,545.07	
Miscellaneous Business Expense (Not including donations) .....	84,959.04	1,410,821.75
		\$ 109,242.46

ALLOCATION OF INCOME

	In Saskatchewan	Total	Per Cent
<b>30</b> Salaries and Wages .....	\$ 277,084.66	\$ 3,437,815.56	8.0599%
Tangible Property .....	2,593,875.95	14,676,617.54	17.6735
Gross Receipts .....	2,901,095.71	13,110,506.29	22.1280
			47.8614%
	Average		15.9538%
Saskatchewan Proportion 15.9538% of \$109,242.46—			\$17,428.32
Tax at 5%			871.42

LOCATION OF BRANCHES IN SASKATCHEWAN

	No. Battleford, Sask.	164 Railway Ave.
	Regina, Sask.	1810 Dewdney Ave.
<b>40</b>	Regina, Sask.	1155 Broad St.
	Saskatoon	25 Twenty-Second St. West.
	Saskatoon	Avenue A and Twenty-Second St.
	Swift Current	2 - 44 Second Ave. West.
	Weyburn	Government Road
	Yorkton	West Broadway.

The taxpayer has allocated its total net income to Saskatchewan on the basis of a formula assigning one-third of the income on the basis of sales in Saskatchewan to total sales of the Company, one-third on the basis of property in Saskatchewan to total property of the Company, and

one-third on the basis of wages and salaries paid in Saskatchewan to total wages and salaries paid.

The Saskatchewan Income Tax Act in Section 4(*m*) provides that the following income shall not be liable to taxation: "Profits earned by a corporation or joint stock company, other than a personal corporation, in that part of its business carried on at a branch or agency outside of Saskatchewan."

The International Harvester Company of Canada, Limited, is an Ontario corporation, manufacturing in Ontario, and selling its goods in 10 Ontario and the other Provinces of the Dominion and also to purchasers in foreign countries. It is necessary, therefore, to ascertain its net income in Saskatchewan by an allocation method.

It is submitted that a formula allocating net income one-third on the basis of sales in Saskatchewan to total sales, one-third on the basis of tangible personal property in Saskatchewan to total tangible property, and one-third on the basis of wages and salaries paid in Saskatchewan to total wages and salaries paid, gives reasonable weight both to the manufacturing and selling business and provides a reasonable allocation of net income. Accordingly, on this return the net income of the International Harvester 20 Company of Canada, Limited has been allocated to Saskatchewan on the above basis.

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SCHEDULE C1  
(Admission of Facts)

Form 102  
For use of Corporations  
and Joint Stock  
Companies

1936  
Fiscal periods ending between Sept-  
ember 1, 1936, and August 31, 1937,  
inclusive, are treated as 1936 re-  
turns for Departmental purposes.

PROVINCE OF SASKATCHEWAN  
INCOME TAX

Date Received May 26, 1937
-------------------------------

30

Return of Income for the 10 months ended October 31, 1936

This return is to be prepared by the taxpayer and one copy must be delivered or mailed postpaid to the SASKATCHEWAN INCOME TAX COMMISSIONER, SASKATCHEWAN CO-OPERATIVE CREAMERY BUILDING, REGINA, SASK.

If the fiscal period ends between September 1, 1936, and January 31, 1937, inclusive, this return must be filed on or before May 31, 1937. If the fiscal period ends between February 1, 1937, and August 31, 1937, inclusive, this return must be filed within four months from the close of 40 the fiscal period.

PRINT NAME AND ADDRESS PLAINLY BELOW

PENALTIES.—Failure, refusal, or neglect to furnish this Return, or the making of a false Return, renders the taxpayer liable to heavy penalties under The Income Tax Act.

Name of taxpayer in full—International Harvester Company of Canada, Ltd.

Address of Head Office—Hamilton, Ontario

Address of chief office or place of business in Saskatchewan—1810 Dewdney Ave., Regina (If this return is made by an Extra-Provincial Corporation that has no branch in Saskatchewan, state the name of the chief agent in Saskatchewan)

Where do you wish communications respecting your Income Tax Returns to be sent? H. E. Millar, 1810 Dewdney Ave., Regina.

Nature of business in Saskatchewan—Sales of farm implements, tractors,  
10 motor trucks, etc.

Number and location of branches in Saskatchewan: Number 8, at see rider.

Last previous Return covered the 12 months ended December 31, 1935. State if an audit of the company's books was made for this fiscal period  
Yes.

State name and address of Auditor—Deloitte, Plender, Haskins & Sells—  
Toronto, Ontario.

For Use of Department		COMPUTATION OF TAX		This column for use of Taxpayer	This column for use of Department
(Added by Department)					(Added by Department)
20	Net tax payable.....	10,136.60	Income Subject to Tax (Form 11) .....	56,716.99	212,732.11
	Penalty.....		Tax at 5 per centum.....	2,835.85	10,636.60
	Interest.....		Less Tax paid under Corporations Taxation Act.....	500.00	500.00
	Total.....	10,136.60	(Do not include annual License Fee)		
	Amount paid.....	2,335.85	NET TAX PAYABLE.....	2,335.85	10,136.60
	Balance due.....	7,800.75			
AUDITED		NOTE:—No Tax Payable if the amount thereof is less than \$1.00.		EXAMINED	

Note:—If the full amount of the tax is not paid on the date this return is due, interest at the rate of 6 per cent. per annum will be charged.

INSTRUCTIONS.—Fill in carefully all the information required on this  
30 Form. In addition thereto every corporation or joint stock company must attach to this return a copy of the auditor's unabridged report with certified financial statements including Assets and Liabilities, Trading or Operating and Profit and Loss Statements for the accounting period covered by this Return. These must be signed by the Auditor. Information submitted will be treated in strict confidence.

I, H. E. Millar, Manager, International Harvester Co. of Canada, Ltd., hereby certify that the return, statements and schedules contained herein and the additional schedules (if any) are true in every respect and are complete statements of the gross income and expenses and deductions  
40 claimed by this Company for the period stated.

Date May 26th, 1937. Telephone No. 93185. Signature of Official—H. E. Millar.

SUMMARY OF INCOME AND EXPENSES  
FOR FISCAL PERIOD ENDED OCTOBER 31, 1936

Gross Sales .....		\$11,489,313.45
Less Cost of Goods Sold:		
Inventory at Beginning .....	\$ 9,369,299.63	
Merchandise bought for resale.....	1,887,215.59	
Raw Materials and Supplies .....	2,809,849.63	
Manufacturing Wages.....	1,890,445.36	
Repairs and Maintenance.....	106,226.19	
<b>10</b> Other Costs.....	531,910.15	
	\$16,594,946.55	
Less Inventory at End.....	8,984,730.14	7,610,216.41
Gross Trading Profit.....		\$ 3,879,097.04
Additional Income:		
Interest Received.....	225,207.41	
Miscellaneous Income.....	306,159.27	531,366.68
Total Gross Income.....		4,410,463.72
Less Expenses:		
<b>20</b> Head Office Expense, Selling, Collection, and Administrative and General Expense.....		2,662,023.38
		1,748,440.34
Depreciation written off.....	280,369.98	
Bad Debts written off.....	820,760.35	
Interest Paid.....	446.64	
Miscellaneous Expenses .....	269,316.45	1,370,893.42
Taxable Net Income.....		\$ 377,546.92

RECONCILIATION OF NET PROFIT PER BOOKS WITH TAXABLE  
NET INCOME, FISCAL PERIOD ENDED OCTOBER 31, 1936.

Net Profit per Books.....		\$ 101,505.13
<b>30</b> Add:		
Losses on Capital transactions .....	26,845.42	
Provision for Dominion Income Tax 1936.....	57,000.00	
Under Provision 1934 and 1935 Dominion Income Tax.....	6,193.60	
Patent Fees.....	131.00	
Additions to Reserves:		
Losses on Receivables.....	1,000,000.00	
Insurance.....	41,005.81	
Pension Fund.....	69,899.87	
Investment Depreciation .....	90,225.30	1,291,301.00
		1,392,806.13
<b>40</b> Deduct:		
Interest on Dominion of Canada Bonds.....	58,649.53	
Additional depreciation allowable in Dominion Return.....	3,845.58	
Charges to Reserves:		
Losses on Receivables.....	820,760.35	
Insurance.....	2,213.07	
Pension Fund Payments.....	69,828.18	
Investment Depreciation.....	59,962.50	1,015,259.21
<b>50</b> Taxable Net Income.....		\$ 377,546.92

PROVINCE OF SASKATCHEWAN INCOME TAX 1936  
ALLOCATION OF INCOME

	In Sask- atchewan	Total	Per Cent
Salaries and Wages.....	\$ 263,942.81	2,809,965.81	.093931
Tangible Property.....	2,449,000.00	14,282,000.00	.171475
Gross Receipts.....	2,128,603.92	11,489,313.45	.185268
Total.....			.450674
Average—1/3.....			.150225
<b>10</b> Saskatchewan proportion—15.0225% of \$377,546.92—			\$56,716.99
Tax at 5%.....			2,835.85
Less Tax paid under Corporations Taxation Act.....			500.00
Net Tax Payable.....			\$ 2,335.85

LOCATION OF BRANCHES IN SASKATCHEWAN

	No. Battleford, Sask.	164 Railway Ave.
	Regina, Sask.	1810 Dewdney Ave.
	Regina, Sask.	1155 Broad St.
<b>20</b>	Saskatoon.....	25 Twenty-Second St. West.
	Saskatoon.....	Avenue A and Twenty-Second St.
	Swift Current.....	2 - 44 Second Ave. West.
	Weyburn	Government Road
	Yorkton	West Broadway

SCHEDULE D3

(Admission of Facts)

(Answers of Appellant dated June 6, 1938 to Questions)

*Answer to Question No. 1.*

Reconciliation of Net Loss Per Books with Taxable Income—December 31, 1934.

		\$	245,648.09
<b>30</b> Add:			
Donations.....	3,881.93		
Loss on Equipment Scrapped—Chatham and Hamilton Works.....	6,152.59		
Estimated Income Tax.....	9,100.00		
Additions to Reserves:			
Losses on Receivables.....	700,000.00		
Insurance.....	43,815.75		
Pension Fund.....	66,300.00		
Investment.....	15,537.50		844,787.77
			\$ 599,139.68
<b>40</b> Less:			
Charges against Reserves:			
Bad Debts.....	420,892.73		
Insurance.....	11,821.65		
Payments from Pension Reserve.....	66,292.23		
Investment Depreciation.....	2,562.00		
Profit on Furniture and Fixtures Scrapped and Sold.....	54.40		
Profit on Sale Province Ontario Bonds.....	188.75		
<b>50</b> Interest on Tax Exempted Government Bonds.....	22,461.81		
Depreciation.....	14,227.76		
Manitoba commission for collecting wage tax.....	11.52		
Balance Unemployment Relief Fund.....	12.07		538,524.92
Taxable Income.....		\$	60,614.76



## Reconciliation of Net Profit per Books with Taxable Income—December 31, 1935.

Net Profit per Books .....			\$106,990.23
Add:			
Donations .....		4,165.20	
Loss on Equipment Scrapped and Sold—Chatham and Hamilton Works.....		12,021.47	
Loss on Sale of Saskatchewan Farm Bonds .....		74.50	
Estimated Income Tax .....		10,000.00	
Additions to Reserves:			
10   Losses on Receivables .....		1,000,000.00	
Insurance.....		40,521.00	
Pension Fund.....		76,553.18	
Investments.....		59,962.50	1,203,297.85
			<u>\$ 1,310,288.08</u>
Less:			
Charges against Reserves:			
Bad Debts.....		989,312.10	
Insurance.....		8,752.14	
Payments from Pension Reserve.....		76,206.90	
20   Investment Depreciation.....		15,537.50	
Profit on Furniture and Fixtures Scrap- ped and Sold.. ..		97.12	
Profit on Real Estate .....		450.00	
Interest on Tax Exempt Government Bonds.....		99,000.00	
Depreciation.....		10,278.81	
Manitoba commission for collecting wage tax .....		12.17	
Income tax overestimated for 1934.....		1,398.88	1,201,045.62
			<u>\$ 109,242.46</u>

*Answer to Question No. 2.*

30	SALES IN PROVINCE OF SASKATCHEWAN—YEAR 1934		
	North Battleford.....	\$ 299,138.74	
	Regina .....	307,336.46	
	Saskatoon.....	454,878.94	
	Swift Current.....	150,913.77	
	Weyburn.....	105,898.60	
	Yorkton.....	551,086.11	
			<u>\$1,869,252.62</u>

*Answer to Question No. 3.*

		BAD DEBTS		
		1934	1935	1936
40	Total Bad Debts written off in Saskatchewan returns.....	422,974.70	991,545.07	820,760.35
	Less:			
	Bad Debts written off contracted 1931 and subsequent:			
	1931.....	15,928.30	23,366.54	15,391.93
	1932.....	6,496.75	21,725.75	14,113.70
	1933.....	5,499.32	7,452.49	10,750.80
	1934.....	1,663.10	9,717.40	4,932.88
50	1935.....		2,242.05	4,885.06
	1936.....			605.69
		<u>29,560.47</u>	<u>64,504.23</u>	<u>50,680.06</u>
	Bad Debts written off of 1930 and prior origin.....	393,414.23	927,040.84	770,080.29

Answer to Question No. 4.

RESERVE FOR INVESTMENT DEPRECIATION DECEMBER 31, 1935.

	No.	Par Value each	Purchase Cost	Market 12-31-35	Present Value 12-31-35	Depre- ciation
Hamilton Hotel Co. Ltd. Bonds.....	5	1000.00	4500.00	180.00	900.00	3600.00
Montreal Automobile Trade Association.....	1	75.00	75.00			75.00
<b>10</b> Dominion Agricultural Credit Co. Ltd., 10% call on 250 shares.....	250	100.00	2500.00	50%	1250.00	1250.00
Dominion of Canada War Loan 1937-5%.....	19500	100.00	2100037.50	105.00	2047500.00	52537.50
Dominion of Canada..... Refunding Loan 1936 —2%.....	750	99.75	74175.00	100.00	75000.00	
City of Vancouver, B. C. 3% Inst. Deben- <b>20</b> tures.....	5	1000.00	5000.00	500.00	2500.00	2500.00
			<u>2186287.50</u>		<u>2127150.00</u>	<u>59962.50</u>

RESERVE FOR INVESTMENT DEPRECIATION OCTOBER 31st, 1936

	No.	Par Value each	Purchase Cost	Market 10-31-36	Present Value 10-31-36	Depre- ciation
Hamilton Hotel Co. Ltd. Bonds.....	5	1000.00	4500.00	180.00	900.00	3600.00
Montreal Automobile Trade Association.....	1	75.00	75.00			75.00
<b>30</b> Dominion Agricultural Credit Co. Ltd. 10% call on 250 shares.....	250	100.00	2500.00	20.00	500.00	2000.00
Dominion of Canada War Loan 1937-5%.....	12500	100.00	1346137.50	101.00	1262500.00	83637.50
City of Vancouver B. C. 3% Inst. Deben- tures (1st install. due 1936, paid \$436.00).....	5	1000.00	4564.00	800.00	3651.20	912.80
			<u>135776.50</u>		<u>1267551.20</u>	<u>90225.30</u>

**40** Answer to Question No. 5.

The loss in disposal of securities net amounting to \$23,525.00 is included in the figure of \$26,845.42 added back to profit per books for 1936.

Answers to Question No. 6.

MISCELLANEOUS EXPENSES

1934:

Charges to Reserves:

Insurance.....	\$11,821.65	
Pension payments.....	66,292.23	\$78,113.88
	<u>78,113.88</u>	

	1935:		
	Charges to Reserves:		
	Insurance.....	8,752.14	
	Pension Payments.....	76,206.90	84,959.04
			<hr/>
	1936:		
	Exchange.....	10,301.31	
	Repairs.....	6,096.51	
	Insurance Reserve.....	8,625.45	
10	Municipal Taxes.....	66,101.44	
	Extra Compensation—1936.....	148,750.21	
	Provision for U.S. Unemployment		
	Insurance.....	633.68	
	Excise Tax on Imports.....	1,179.54	
	Excess of Debits over Credits—		
	Pension Reserve.....	27,628.31	269,316.45
			<hr/> <hr/>

Answer to Question No. 7.

		DIRECTORS' FEES	
	1934.....	\$	230.00
	1935.....	\$	110.00
20	1936.....	\$	250.00

### SCHEDULE D4

(Admission of Facts)

(Statement of Appellant dated July 8th, 1938)

#### INTERNATIONAL HARVESTER COMPANY OF CANADA, LTD. INCOME FROM INVESTMENTS.

		Dominion of	Other	Total
		Canada Bonds	Securities	
	1934.....	\$22,461.81	\$ 4,249.05	\$26,710.86
	1935.....	99,000.00	4,052.67	103,052.67
30	1936.....	59,837.03	3,429.09	63,266.12
	1937.....	17,984.04	4,102.38	22,086.42

#### RESERVE FOR INSURANCE

		Debit	Credit
	Balance, January 1, 1934.....	\$	\$ 938,945.05
	Reversal of amount charged dealers in 1933.....	19,120.88	
	Additions to Reserve in 1934:		
	Charged to operating expenses and dealers.....		43,815.75
	Insurance charged dealers in 1934 (reversed in 1935).....		18,002.47
	Fire Losses.....	10,161.07	
40	Expenses of Insurance Department.....	1,660.58	
		<hr/>	
	Balance, December 31, 1934.....		969,820.74
	Reversal of amount charged dealers in 1934.....	18,002.47	
	Additions to Reserve in 1935:		
	Charged to operating expenses and dealers.....		40,521.00
	Insurance charged dealers in 1935 (reversed in 1936)....		19,977.50
	Fire Losses.....	6,936.18	
	Expenses of Insurance Department.....	1,815.96	
		<hr/>	
	Balance, December 31, 1935.....		1,003,564.63

Reversal of amount charged dealers in 1935.....	19,977.50	
Additions to Reserve in 1936:		
Charged to operating expenses and dealers.....		41,005.81
Fire losses.....	1,255.11	
Expenses of Insurance Department.....	957.96	
Balance, October 31, 1936.....		1,022,379.87
Addition to reserve in 1937:		
Charged to operating expenses and dealers.....		42,719.98
Fire losses.....	8,354.58	
<b>10</b> Balance, October 31, 1937.....		<u><u>\$1,056,745.27</u></u>

## INCOME TAX—YEAR 1937.

Bad Debts written off in 1937 in Saskatchewan Return.....		\$814,072.37
Less:		
Bad Debts contracted 1931 and subsequent		
1931.....	\$14,512.80	
1932.....	17,048.48	
1933.....	7,914.89	
1934.....	7,474.88	
<b>20</b> 1935.....	6,611.25	
1936.....	4,009.97	
1937.....	1,426.79	58,999.06
Bad debts written off 1930 and prior origin.....		<u><u>\$755,073.31</u></u>

RESERVE FOR INVESTMENT DEPRECIATION  
OCTOBER 31, 1937.

	No.	Par Value each	Purchase Cost	Market	Present Value	Depre- ciation
<b>30</b> Hamilton Hotel Co. Ltd. Bonds.....	5	\$1,000.	\$4,500.	\$250.	\$1,250.	\$3,250.00
Montreal Automobile Trade Ass'n.....	1	75.	75.			75.00
Dominion Agricultural Credit Co. Ltd. 10% Call 250 shares.....	250	100.	2,500.			2,500.00
City of Vancouver B.C., 3% Inst. Debentures.....	5	1,000.	4,115.	850.	3,497.75	617.25
			<u>\$11,190.00</u>		<u>\$4,747.75</u>	<u>\$6,442.25</u>

## SCHEDULE A2

(Admission of Facts)

(COPY OF ASSESSMENT FOR YEAR ENDING DECEMBER 31st, 1934)

## THE PROVINCIAL TAX COMMISSION

Revenue Building,

Regina, Sask.

Date Aug. 23, 1938.

INTERNATIONAL HARVESTER COMPANY OF CANADA, LTD.,

Allocation of Taxable Income to the Province of Sask.,

Year Ending December 31st, 1934.

<b>10</b>	Taxable income as per reconciliation .....		60,614.76
	Add:		
	Bad Debts written off contracted prior to 1931 .....		393,414.23
	Excess depreciation charged prior years .....		14,227.76
	Corporation Tax deductible from net income only .....		500.00
	Directors Fees.....		230.00
			<hr/>
			468,986.75
	Less:		
	Interest received from other securities .....		4,249.05
			<hr/>
<b>20</b>	Net Income subject to allocation .....		464,737.70
	Gross Sales of Company everywhere .....	8,896,733.40	
	Gross Sales of Company in Sask. ....	1,869,252.62	
	Percentage of Sask. Sales to total Sales .....	21.010%	
	Income applicable to Sask.		
	21.010% of 464,737.70 .....		97,641.30
	Under the provisions of <i>The Income Tax Act, 1936</i> , notice is hereby given that for the period ended December 31st, 1934, the amount of tax assessed and levied against the International Harvester Company of Canada Ltd. your income is as follows:		
	Net Taxable Income.....		97,641.39
<b>30</b>	Amount of Tax at 5 per centum.....		4,882.07
			<hr/>
	Total Tax.....		4,882.07
	Less Tax paid under Corporation Taxation Act.....		500.00
			<hr/>
	Net Tax Payable.....		4,382.07
	Penalty.....		
	Interest.....		
	Total.....		4,382.07
	Amount paid.....		

## SCHEDULE B2

(Admission of Facts)

**40** (COPY OF ASSESSMENT FOR YEAR ENDING DECEMBER 31st, 1935)

## THE PROVINCIAL TAX COMMISSION

Sask. Co-Operative Creamery Bldg.

REGINA

August 23, 1938

INTERNATIONAL HARVESTER COMPANY OF CANADA LIMITED

Allocation of Taxable Income to the Province of Sask.,

YEAR ENDING DECEMBER 31st, 1935.

	Taxable income reported .....		109,242.46
	Add:		
<b>50</b>	Bad Debts written off contracted prior to 1931 .....		927,040.84
	Excess depreciation chargeable to prior years .....		10,278.81
	Corporation Tax .....		500.00
	Directors' Fees.. ..		110.00
			<hr/>
	(Forward to page 32).....		1,047,172.11

(Forward from Page 31).....	\$ 1,047,172.11
Less:	
Interest received from other securities.....	4,052.67
	<u>1,043,119.44</u>
Gross Sales of Company everywhere.....	13,110,506.29
Gross Sales of Company in Sask.....	2,901,095.71
Percentage of Sask. Sales to total Sales.....	22.1280%
Income applicable to Sask.	
22.1280% of 1,043,119.44.....	230,821.47
<b>10</b> Under the provisions of <i>The Income Tax Act, 1936</i> , notice is hereby given that for the period ended December 31st, 1935, the amount of tax assessed and levied against International Harvester Company of Canada Limited your income is as follows:	
Net Taxable Income.....	230,821.47
Amount of Tax at 5 per centum.....	11,541.07
	<u>11,541.07</u>
Total Tax.....	11,541.07
Less Tax paid under Corporation Taxation Act.....	500.00
	<u>11,041.07</u>
Net Tax Payable.....	11,041.07
Penalty—late filing.....	500.00
Interest.....	
<b>20</b> Total.....	<u>11,541.07</u>

### SCHEDULE C3

(Admission of Facts)

(COPY OF ASSESSMENT FOR PERIOD ENDING OCTOBER 31st, 1936)

#### THE PROVINCIAL TAX COMMISSION

Sask. Co-Operative Creamery Bld.

Regina

August 23, 1938.

#### INTERNATIONAL HARVESTER COMPANY OF CANADA LIMITED

Allocation of Taxable Income to the Province of Saskatchewan

Year Ending October 31st, 1936.

<b>30</b> Taxable income reported.....	\$377,546.92
Add:	
Bad debts written off contracted prior to 1931.....	770,080.29
Excess depreciation charged.....	3,845.58
Corporation Tax.....	500.00
Provision for U.S. Unemployment Insurance.....	633.68
Directors Fees.....	250.00
	<u>1,152,856.47</u>
Less:	
<b>40</b> Income from Investments.....	63,266.12
Less interest already deducted.....	58,649.53
	<u>4,616.59</u>
Net income subject to allocation.....	1,148,239.88
Gross Sales of Company everywhere.....	11,489,313.45
Gross Sales of Company in Sask.....	2,128,603.92
Percentage of Sask. Sales to total Sales.....	18.5268%
Income applicable to Sask.	
18.5268% of 1,148,239.88.....	212,732.11

Under the provisions of *The Income Tax Act, 1936*, notice is hereby given that for the period ended October 31st, 1936, the amount of tax assessed and levied against the International Harvester Company of Canada Limited, your income is as follows:

Net Taxable Income.....	212,732.11
Amount of Tax at 5 per centum.....	10,636.60
	10,636.60
Total Tax.....	10,636.60
Less Tax paid under Corporations Taxation Act. ....	500.00
	10,136.60
Net Tax payable.....	10,136.60
	10,136.60
Total.....	10,136.60

10

SCHEDULE A4

(Admission of Facts)

(NOTICE OF APPEAL TO THE BOARD OF  
REVENUE COMMISSIONERS)

(re 1934 Assessment)

IN RE THE INCOME TAX ACT 1932

—and—

INTERNATIONAL HARVESTER COMPANY OF CANADA LIMITED

Notice of appeal is hereby given from an assessment bearing date the 23rd day of August, 1938, wherein a tax in the sum of \$4,382.07 was levied in respect of income for the taxation year 1934.

(Note:—Schedule A4 is in other respects similar in form to schedule B3 post pages 33-36 except as to difference in reference to sections of 1932 and 1936 Income Tax Acts.

Dated September 23rd, 1938.

SCHEDULE B3

(Admission of Facts)

(NOTICE OF APPEAL TO THE BOARD OF  
REVENUE COMMISSIONERS)

(Re 1935 Assessment)

30

IN RE THE INCOME TAX ACT 1936

—and—

INTERNATIONAL HARVESTER COMPANY OF CANADA LIMITED

Notice of appeal is hereby given from an assessment bearing date the 23rd day of August, 1938 wherein a tax in the sum of \$11,169.65 was levied in respect of income for the taxation year 1935.

1. A full statement of the facts is as follows:

FACTS:

International Harvester Company of Canada Limited is a company incorporated under the *Companies Act* of the Dominion of Canada, having its head office at the City of Hamilton, in the Province of Ontario.

The said company carries on business in the Province of Saskatchewan, having its registered office in the City of Regina, in the said Province.

The business of the said company is the manufacture and sale of 10 agricultural implements and parts thereof and business incidental thereto. The manufacture of the said implements and parts is carried on by the said company entirely in the Province of Ontario. The sale thereof is carried on partly in the Province of Saskatchewan and partly in other provinces and countries.

All monies received by the company in Saskatchewan, either for sales or as payments on notes owing the Company, are deposited in separate bank accounts and remitted in full to the head office of the company in Hamilton, Ontario, and head office in turn sends to its branches in Saskatchewan such monies as are required by them for operating and 20 incidental expenses.

The said Company delivered to the Commissioner of Income Tax a statement of its income for the year 1935 and at the request of said Commissioner furnished particulars as set out in Schedule A. to this notice of appeal.

The said company has further at the request of the said Commissioner presented a statement analyzing the amount of deduction for bad debts as set out in Schedule B to this notice of appeal.

The Commissioner of Income Tax sent on the above date, 23rd of August, 1938, a notice of assessment with a statement showing the amounts 30 which he had added to the income of the company, which statement is as set out in Schedule C to this notice of appeal. The Commissioner in making said assessment relied on the regulations of 23rd November, 1933.

2. The reasons for appeal are as follows:

REASONS FOR APPEAL.

1. *The Income Tax Act 1936* authorizes the levying of a tax on income. The only jurisdiction of the Province of Saskatchewan so to levy is under section 92, clause (2), of the *British North America Act*, authorizing "Direct Taxation in the Province", and it is submitted that only income in the Province, that is to say earned in the Province, can be 40 taxed. This is so enacted, for the purposes of this appeal, in section 23 of the Act. The appellant company says that the income on which the Commissioner has made his assessment is not the income of the company ascertained to have been earned in Saskatchewan.



2. The appellant company submits that the regulations of 23rd of November, 1933, particularly clause 2 thereof, are beyond the powers of the Lieutenant Governor in Council in that for the purpose of giving the Province jurisdiction to tax they purport to give a meaning to language which it does not properly bear. The Provincial Legislature, having power only to levy a tax on income earned in the Province, must ascertain what that income actually is and cannot make rules or authorize the Lieutenant Governor in Council to make rules which will result in defining that as income which is in fact not income.

10 3. The appellant company says that its income, or net profit or gain from any specified area, including a province, depends on cost of doing business in that area, including rents, wages payable, interest rates, proximity to point of manufacture, and other factors and that such costs vary greatly in different sections of Canada and do not bear any fixed or determinable proportion to the amount of sales in such area and that its income therefore does not vary from province to province in proportion to the amounts of sales in those provinces.

4. The appellant company further says that the result of the application of the said regulations of 23rd of November, 1933, is that the 20 amounts which may properly be income in the Province and amounts which should not be so included are completely merged one with another and are not severable one from the other.

5. The income of the appellant company is derived from various factors only some of which arise or operate within the Province of Saskatchewan. The products which the company sells are manufactured entirely outside the Province of Saskatchewan. The appellant company says that the various factors entering into the earning of income should be taken into consideration and given effect to in so far as they arise or operate within and without the Province.

30 6. The appellant company says that subsection (2) of section 27 of the Act, purporting to confer upon the Commissioner power to determine the proportionate part of income earned in Saskatchewan, is *ultra vires* for the same reasons as heretofore given with respect to the said regulations of 23rd of November, 1933, which are shortly (without restricting the general reference to preceding clauses) that the Commissioner cannot validly be empowered to declare that to be income in Saskatchewan which is not in fact income in Saskatchewan.

7. The appellant company further says that the profit or income of the company is one and indivisible. It is the sum total of the gains and 40 losses of the company in all places where it carries on its business placed against each other at the head office of the company and arises only at such head office when such computation has been made. The appellant company says that it carries on business in several provinces of Canada and that its head office is in the Province of Ontario and that its income can therefore be said to have existence only in the Province of Ontario.

8. The deductions for bad debts should be allowed in accordance with ordinary accountancy practice in the year in which the deduction is made on the books of the tax paying company.

DATED at Regina this 23rd day of September, A.D. 1938.

INTERNATIONAL HARVESTER  
COMPANY OF CANADA, LIMITED,

By its solicitors,  
MACKENZIE, THOM, BASTEDO,  
WARD & McDOUGALL,  
Per: "T"

10

TO: The Board of Revenue Commissioners.

(For Schedule A hereto see memo. attached to Schedule B1 ante page 22, lines 1 to 36).

(For Schedule B hereto see answer to question 3, Schedule D3 ante page 27, line 38).

(For Schedule C hereto see Schedule B2 ante page 31, line 38).

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SCHEDULE C4  
(Admission of Facts)

20

NOTICE OF APPEAL TO THE BOARD OF  
REVENUE COMMISSIONERS)  
(re Period Ending October 31st, 1936)  
IN RE THE INCOME TAX ACT 1936

—and—

INTERNATIONAL HARVESTER COMPANY OF CANADA LIMITED.

Notice of appeal is hereby given from an assessment bearing date the 23rd day of August, 1938, wherein a tax in the sum of \$7,800.75 was levied in respect of income for the ten month period ending 31st October 1936.

Note.—Schedule C4 is in other respects similar in form to Schedule B3.  
30 ante pages 33-36.)

Dated September 23rd, 1938.

**EXHIBIT A TO AFFIDAVIT OF CLARENCE B. MUNGER**  
Sworn May 2nd, 1939.  
(Ante page 14.)

**INTERNATIONAL HARVESTER COMPANY OF CANADA, LIMITED**  
**STATEMENT SHOWING NET PROFIT OR LOSS FROM SELLING OPERATIONS**  
YEARS 1934, 1935, 1936

	Year ended Dec. 31, 1934	Year ended Dec. 31, 1935	10 month Period ended Oct. 31, 1936
<b>10</b> Gross Sales			
By Branch Houses.....	\$ 7,880,960.55	\$ 11,399,870.16	\$ 10,089,389.16
All Other Sales.....	1,015,772.85	1,710,636.13	1,399,924.29
	\$ 8,896,733.40	\$ 13,110,506.29	\$ 11,489,313.45
Cost of Goods Sold:			
Imported Goods.....	\$ 1,547,859.02	\$ 2,568,208.59	\$ 2,076,018.48
Goods Manufactured at Company's Plants.....	4,422,155.37	6,341,837.80	5,558,726.04
Goods Purchased in Canada.....	170,683.15	196,301.63	179,736.39
	6,140,697.54	9,106,348.02	7,814,480.91
<b>20</b> Other Income:			
Interest Received.....	\$ 2,756,035.86	\$ 4,004,158.27	\$ 3,674,832.54
Miscellaneous Income.....	263,410.96	210,578.37	225,207.41
	195,269.33	185,463.49	306,159.27
	\$ 3,214,716.15	\$ 4,400,200.13	\$ 4,206,199.22
Less:			
Head Office Expense, Selling, Collection, and Adm. and General Expense.....	\$ 2,661,384.48	\$ 3,280,952.09	\$ 2,738,128.86
Bad Debts Charged Off.....	422,974.70	991,545.07	820,760.35
Interest Paid.....	60.42	255.62	446.64
Miscellaneous Expenses.....	69,681.79	18,204.89	269,316.45
	3,154,101.39	4,290,957.67	3,828,652.30
<b>30</b> Net Taxable Income as reported in Saskatchewan Return.....(Carried Forward)	\$ 60,614.76	\$ 109,242.46	\$ 377,546.92

EXHIBIT A to Affidavit of Clarence B. Munger—Continued.

	Year ended Dec. 31, 1934	Year ended Dec. 31, 1935	Period ended Oct. 31, 1936
Net Taxable Income as reported in Saskatchewan Return. (Brought Forward).....	\$ 60,614.76	\$ 109,242.46	\$ 377,546.92
Adjustments made by the Provincial Commissioner of Income Taxes:			
Add:			
Bad Debts charged off (see above).....	\$ 422,974.70	\$ 991,545.07	\$ 820,760.35
Less Charge-Offs of 1931 and subsequent..... (c)	29,560.47	64,504.23	50,680.06
Corporation Tax.....	393,414.23	927,040.84	770,080.29
Directors' Fees.....	500.00	500.00	500.00
U.S. Unemployment Insurance.....	230.00	110.00	250.00
Excess Depreciation prior years.....	14,227.76	10,278.81	633.68
	\$ 468,986.75	\$ 1,047,172.11	\$ 1,152,856.47
Deduct:			
Non taxable interest.....	4,249.05	4,052.67	4,616.59
<b>20</b> Net Taxable Income as determined by Commissioner.....	\$ 464,737.70	\$ 1,043,119.44	\$ 1,148,239.88
Taxpayers adjustments:			
Add:			
Reversal of Bad Debts allowed..... (c)	29,560.47	64,504.23	50,680.06
	\$ 494,298.17	\$ 1,107,623.67	\$ 1,198,919.94
Deduct:			
Provision for Bad Debts (2% of Branch House Sales)..... (a)	157,619.21	227,997.40	201,787.78
	336,678.96	879,626.27	997,132.16
<b>30</b> Manufacturing and Selling Profit			
Deduct:			
Manufacturing Profit—10% of Manufacturing Cost..... (b)	442,215.54	634,183.78	555,872.60
Net Profit or *Loss from Selling.....	*\$ 105,536.58	\$ 245,442.49	\$ 441,259.56

\*—(Typed in red ink.)

**EXHIBIT TO AFFIDAVIT OF CLARENCE B. MUNGER**  
Sworn May 2nd, 1939  
(Ante page 14.)

**INTERNATIONAL HARVESTER COMPANY OF CANADA, LTD.**  
**PROFIT AND LOSS STATEMENT ON SEPARATE ALLOCATION BASIS**  
**PROVINCE OF SASKATCHEWAN**  
**YEARS 1934, 1935, 1936**

	Year ended Dec. 31, 1934	Year ended Dec. 31, 1935	10 month Period ended Oct. 31, 1936
<b>10</b> Total Sales.....	\$ 2,010,456.26	\$ 3,041,405.94	\$ 2,293,326.14
Less Cost of Goods Sold (Based on ratio of total Cost of Goods sold of the Company to the total Sales of the Company).....	1,387,616.91	2,112,560.57	1,559,920.44
	<b>\$ 622,839.35</b>	<b>928,845.37</b>	<b>\$ 733,405.70</b>
<b>Deduct:</b>			
Manufacturing Profit—10% of Cost of Goods Manufactured at Company's plants (Based on ratio of Cost of Goods Manufactured at Company's plants to Cost of Goods Sold).....	99,922.29	147,118.72	110,957.14
	<b>\$ 522,917.06</b>	<b>\$ 781,726.65</b>	<b>\$ 622,448.56</b>
<b>20</b> Deduct:			
Expenses of Saskatchewan Branches:			
Freight, Duty, etc.....	150,836.02	261,470.58	165,595.89
Selling and Collecting Expenses.....	452,103.97	514,213.10	466,297.28
Expenses of Head Office (Based on ratio of Saskatchewan Sales to total Sales of Company).....	103,334.99	153,643.53	114,374.57
	<b>*\$ 183,357.92</b>	<b>*\$ 147,600.56</b>	<b>*\$ 123,819.18</b>
<b>Add</b> Miscellaneous Income:			
Interest received by Saskatchewan Branches.....	73,549.38	74,741.77	96,966.31
Finance charges accrued by Saskatchewan Branches.....	3,788.99	7,794.59	6,906.98
	<b>*\$ 106,019.55</b>	<b>*\$ 65,064.20</b>	<b>*\$ 19,945.89</b>
<b>30</b> Deduct:			
Provision for Bad Debts—3% of Sales of Saskatchewan Sales shown above.....	60,313.69	91,242.18	68,799.78
Net Loss in Saskatchewan.....	<b>*\$ 166,333.24</b>	<b>*\$ 156,306.38</b>	<b>*\$ 88,745.67</b>

\*—(Typed in red ink.)

## PART IV—JUDGMENTS, ETC.

DECISION OF THE BOARD OF REVENUE  
COMMISSIONERS

MR. D. J. THOM, K.C., and  
MR. F. L. BASTEDO, K.C., appearing for the International Harvester  
Company of Canada Limited,

—and—

MR. S. QUIGG, K.C., appearing for the Provincial Tax Com-  
mission.

10 By these proceedings the above appellant (hereinafter referred to as  
the "company") appeals to the Board of Revenue Commissioners under  
Section 57 of *The Income Tax Act, 1936*, from assessments of income tax  
made by the Provincial Tax Commission against the company with res-  
pect to the latter's income earned in each of its three taxation years  
1934, 1935 and 1936. The appeals are of considerable importance not  
only because of the substantial amount of provincial taxes concerned  
but also because the company questions the constitutional right of the  
Province to tax the company's income or, in any event, to tax the com-  
pany's income in the manner which has here been employed. It was  
20 agreed by counsel who appeared for the company and for the Provincial  
Tax Commission respectively at the hearing that the three appeals should  
be dealt with by the Board together. Upon inquiry, the Board was  
advised by both counsel that the only respect in which the three appeals  
may be considered to differ is that the company has made payments  
on account of the assessments for each of the taxation years 1935 and  
1936 but not for 1934. It was urged by counsel for the Provincial Tax  
Commission that, by reason of said two payments, the company was in  
some way estopped with respect to the taxation years 1935 and 1936  
from objecting to the legality of the method of assessment. The Board  
30 believes, however, that any liability to taxation, whether viewed from the  
standpoints of the amount of the tax or from that of the right to tax,  
or from that of the method of taxation must arise in the last analysis  
out of the operation of a statute or other enactment having the force of a  
statute and not out of any payment on account by the person sought to  
be taxed. The Board, therefore, deals with the appeals in respect of  
the unpaid balances for the taxation years 1935 and 1936 on exactly the  
same basis as it deals with the appeal in respect of the whole assessment  
for the year 1934.

One ground of appeal expressed in each of the three notices was that  
40 the Province had erred in refusing to allow as deductions from relevant  
income certain bad debts written off by the company during each of the  
years under review. The Saskatchewan Income Tax Act first came into  
effect in 1932 and was levied in that year by a method of computation

which referred to the 1931 income. No income tax is chargeable by Saskatchewan with respect to income upon which amounts received by the taxpayers prior to the year 1931 have any bearing. The Province does not allow a deduction in respect of a write-off after December 31, 1930 (or such other date as may be relevant having regard to the taxpayer's fiscal year) of accounts receivable which came into being before that date. The deductions in respect of which the company alleges that the Province has erred are of this type.

By clause (d) of Section 6 of *The Income Tax Act, 1932*, being Chapter 9 of the Statutes of that year, it is provided that a deduction from taxable income shall not be allowed in respect of,

“6. (d). amounts transferred or credited to a reserve, contingent account or sinking fund, except such an amount for bad debts as the minister may allow and except as otherwise provided in this Act:”

When the Act was consolidated and amended in 1936 by Chapter 15 of the Statutes of that year, the above prohibition against deductions was carried forward without change except that in the meantime the discretion as to the allowance for bad debts had been vested in the commissioner under the Act instead of in the minister. By these enactments first the minister and later the commissioner were made “*persona designata*” for the purpose of fixing the allowance which was to be made. This Board is of the opinion that the effect of the enactment in question is that there is no appeal from the decision of the minister or commissioner as the case may be according to which Act applies, with respect to what deductions may be allowed from taxable income for bad debts and that the Board is, therefore, without jurisdiction as to this portion of the appeals.

The Board, however, holds instructions from the Provincial government that, even although there be no right of appeal from the ruling of the minister or commissioner on this point, the Board is, as a matter of administration quite apart from the exercise of appellate powers, to review, upon request of any interested taxpayer, the deductions made or refused to be made because of bad debts. For this reason, and also in order to deal with the matter in the event of the Board being in error in believing that the quotation above operates as a limitation upon the Board's appellate powers, the Board now states that it believes the minister or commissioner to have proceeded rightly upon this point. Income received by the taxpayer prior to 1931 is outside the purview of the Saskatchewan Income Tax Act. Income received in or after 1931 is within that purview and should not be offset or reduced for taxation purposes by deductions of accounts which arose, and in connection with which loss was incurred, in the prior irrelevant period. Saskatchewan did not tax the income received in those prior years and should not have its later revenue reduced by deductions referable to the prior years. In any event, the Board, in reviewing the discretion of the minister or commissioner upon this point, believes itself to be bound by the decision of the

court in the case of *Caledonian Railway Company vs. Inland Revenue*, 1 Tax Cases, at p. 497. In that case the commissioners in charge of the administration of the taxing Act were given discretion with regard to allowances for wear and tear similar to what the minister, and later the commissioner were given under the Saskatchewan Income Tax Act with regard to deductions for bad debts. The court, on appeal from the commissioners with regard to the discretion which they had exercised as to an allowance for wear and tear, held as follows:

10 The Commissioners "have held, following out the wide discretion vested in them by the statute, that no wear and tear has taken place in this plant for which any allowance would be just and reasonable. I cannot see how we can review that conclusion. If, indeed, we were satisfied that the Commissioners had misread the statute, and had not applied their minds to the question, we might have sent the case back to them for consideration, obviously. But I am satisfied that they have applied their minds very directly to the question, and have come deliberately to the conclusion that the plant had suffered no diminution in value  
20 to the Company, and was capable of producing with the same outlay the same amount of profit, as it had been at any former period. . . . . I am not prepared to alter, and therefore, I propose that we should confirm the judgment of the Commissioners."

This Board believes that the decision of the Court as quoted above is also applicable to the discretion of the minister or commissioner with regard to what allowance is to be made for bad debts. We cannot find that either the minister or the commissioner has misread the statute nor can we find that they have not applied their minds to the question. The practice which they have established is a reasonable one with respect to  
30 the point with which it is concerned. We are of the opinion, therefore, that the discretion which has been exercised upon this point should not be interfered with. The Board, therefore, disallows this portion of the company's appeals.

The other grounds of appeal, numbers 1 to 7 inclusive, in each of the three notices of appeal, are of a different kind. Although expressed in a number of alternative ways in order to bring out various aspects of the company's contentions, these other grounds of appeal may be summarized as being to the effect that the Province, in making the assessments now under review, has purported to tax income derived outside  
40 Saskatchewan, and in doing so has,

- (a) exceeded its powers under the *British North America Act* in that the taxation in question is not "taxation within the province"; and
- (b) proceeded in breach of Section 21a of *The Income Tax Act, 1932*, and Section 23 of *The Income Tax Act, 1936*, each of which reads as follows:

"The income liable to taxation under this Act of every person residing outside of Saskatchewan, who is carrying on business in Saskat-



chewan, either directly or through or in the name of any other person, shall be the net profit or gain arising from the business of such person in Saskatchewan."

In order to understand and to estimate the soundness of these contentions of the company, it is necessary to refer to the method of assessment actually used in these three cases. Subsection (4) of section 7 of *The Income Tax Act, 1932*, reads as follows:

10 "7.(4). Where the minister is unable to determine or to obtain the information required to ascertain the income within the province of any corporation or joint stock company or of any class of corporations or joint stock companies, the Lieutenant Governor in Council may, on the recommendation of the minister, make regulations for determining such income within the province or may fix or determine the tax to be paid by a corporation or joint stock company liable to taxation."

That subsection was repeated in the 1936 Act as subsection (4) of Section 9 thereof with the substitution of the word "commissioner" for the word "minister" wherever the latter occurred in the 1932 Act. It was verbally admitted by counsel for both parties at the hearing that an 20 Order in Council had been passed as provided and that the regulations thereby made are the regulations set out in Exhibit "A3" filed and admitted by both parties at the hearing. By those regulations provision was made to cover cases where the minister was unable to determine or to obtain information required to ascertain the income within the province of corporations or joint stock companies which carry on trade or business both within and without the province. Counsel for the company and for the Provincial Tax Commission assisted the Board by preparing and filing a statement of mutually admitted facts from which it appears that the appellant company is a corporation or company of that 30 type. The regulations, (Exhibit "A3") read as follows:

"1. Interest, dividends, rents and royalties less their proportionate share of deductions allowed shall be separately determined or ascertained, and if they are received in connection with the trade or business of the taxpayer in the Province, shall be income liable to taxation.

40 "2. The income referred to in regulation 1 having been separately determined and ascertained, the remainder of the income of the taxpayer liable to taxation shall be taken to be such percentage of the remainder of the income as the sales within the Province bear to the total sales.

"The sales of the taxpayer shall be measured by the gross amount which the taxpayer has received during the preceding year from sales and other sources in connection with the said business, excluding, however, receipts from the sale or exchange of capital, assets and property not sold in the regular course of business and also receipts from interest, dividends, rents and royalties the income of which has been separately determined or ascertained under the provisions of regulation 1.

"3. If for any reason the portion of income attributable to business within the Province cannot be determined under the provisions of regulation 2, the income referred to in regulation 1 shall first be separately ascertained or determined and for the purpose of ascertaining or determining the proportion of the remainder of income of the taxpayer, such remainder of income shall be specifically allocated or apportioned within and without the Province by the Commissioner.

10 "4. If a taxpayer believes that the method of allocation and apportionment herein prescribed or as determined and as applied to his business, has operated or will so operate as to subject him to taxation on a greater portion of his income than is reasonably attributable to business or sources within the Province, he shall be entitled to file with the Commissioner a statement of his objections and of such alternative method of allocation and apportionment as he believes to be proper under the circumstances, with such details and proof and within such time as the Commissioner may reasonably prescribe, and if the Commissioner shall conclude that the method of allocation and apportionment heretofore employed is in fact not applicable or equitable, he shall re-determine the taxable income by such other method of allocation and apportionment as seems best calculated to assign to the Province for taxation the portion of the income reasonably attributable to business and sources within the Province.

20

"5. These regulations shall not be applied to determine the income within the Province of a Corporation or joint stock company carrying on a trade or business within and without the Province where

30 "(a) the method or system of accounting used by the taxpayer enables the Commissioner to determine or to obtain the information required to ascertain the income of the taxpayer liable to taxation.

"(b) the income of the taxpayer liable to taxation can be determined or ascertained by allowing the exemption provided by paragraph (m) of Section 4 of *The Income Tax Act, 1932.*"

Paragraph (m) last referred to reads as follows:—

40 "(m) profits earned by a corporation or joint stock company, other than a personal corporation, in that part of its business carried on at a branch or agency outside of Saskatchewan;"

In view of ground 7 in the company's notices of appeal to the following effect,—

"The appellant Company further says that the profit or income of the company is one and indivisible. It is the sum total of the gains and losses of the company in all places where it carries

on its business placed against each other at the head office of the company and arises only at such head office when such computation has been made. The appellant company says that it carries on business in several provinces of Canada and that its head office is in the Province of Ontario and that its income can therefore be said to have existence only in the Province of Ontario."

it is clear that the application of the above regulations is not excluded by either clause (a) or clause (b) of regulation 5.

10 The Company could have proceeded under regulation 4 but the phrase therein "he shall be entitled to file... etc.," is clearly only permissive and instead of using that method the company has elected to exercise its statutory right of appeal to this Board under Section 57 of *The Income Tax Act, 1936*.

Regulations 1, 2, and 3 in the complete set of five are, therefore, the ones which have been used. Pursuant thereto the Income Tax Commissioner has used a computation basis which has regard to the ratio between the company's total sales and its sales within the province.

The first duty of the Board in reviewing the propriety of the course  
20 followed by the commissioner is to find whether regulations 1, 2, and 3 were correctly considered by him to apply to this case.

The company has never filed with the commissioner a statement of income derived exclusively within Saskatchewan. In fact, it is not required to do so by the Act. Section 29 of the 1932 Act reads as follows:

30 "Every person liable to taxation under this Act shall, on or before the thirty-first day of May in each year, without any notice or demand, and any person whether liable to taxation hereunder or not, upon receipt of a notice or demand in writing from the commissioner or any officer authorized to make such demand, deliver to the minister a return, in such form as the minister may prescribe, of his total income during the last preceding year."

and subsection (1) of Section 32 of the 1936 Act reads as follows:

"Every person liable to taxation under this Act shall, on or before the thirty-first day of May in each year, without any notice or demand, deliver to the commissioner a return, in such form as the commissioner may prescribe, of his total income during the last preceding year."

40 It is clear from these requirements and also from subsection (4) of Section 7 of the 1932 Act quoted above that the legislature at all times realized the difficulty or impossibility of segregating or identifying the exclusively Saskatchewan income. The income tax returns made year by year by the company itself to the commissioner were filed at the hearing and are referred to in detail below. They each proceed upon a total income and total expenditure basis and then, as set out below, refer to an allocation basis of one kind or another with respect to the Saskatchewan share. Ground 7 of the company's three notices of appeal, reading in part as follows,—

“The appellant company further says that the profit or income of the company is one and indivisible. It is the sum total of the gains and losses of the company in all places where it carries on its business placed against each other at the head office of the company and arises only at such head office when such computation has been made.”

is extremely relevant as indicating that, whether or not the returns by themselves indicated that actual income in Saskatchewan alone could not be ascertained, the company has now, for purposes of the appeal, definitely admitted and even adopted that view.

The returns themselves, however, are to the same effect.

The return for the year 1934, after first setting out a summary of the company's whole income and expense applicable to its business wherever carried on, contained a footnote by the company reading as follows:

“No allocation figures are given because there is no income to allocate to the Province of Saskatchewan.”

The return for the year 1935 similarly set out a summary of the Company's whole income and expenses and then contained an allocation table as between Saskatchewan and the total area in which the Company carried on business. In addition the Company included in its 1935 return a special memorandum reading as follows:

“The taxpayer has allocated its total net income to Saskatchewan on the basis of a formula assigning one-third of the income on the basis of sales in Saskatchewan to total sales of the Company, one-third on the basis of property in Saskatchewan to total property of the company, and one-third on the basis of wages and salaries paid in Saskatchewan to total wages and salaries paid.

30 “The Saskatchewan Income Tax in Section 4 (*m*) provides that the following income shall not be liable to taxation: “Profits earned by a corporation or joint stock company, other than a personal corporation, in that part of its business carried on at a branch or agency outside of Saskatchewan.”

The International Harvester Company of Canada, Limited, is an Ontario corporation, manufacturing in Ontario, and selling its goods in Ontario and the other Provinces of the Dominion and also to purchasers in foreign countries. It is necessary, therefore, to ascertain its net income in Saskatchewan by an allocation method.

40 It is submitted that a formula allocating net income one-third on the basis of sales in Saskatchewan to total sales, one-third on the basis of tangible personal property in Saskatchewan to total tangible property, and one-third on the basis of wages and salaries paid in Saskatchewan to total wages and salaries paid, gives reasonable weight both to the manufacturing and selling business and provides a reasonable allocation of net income. Accordingly, on this return, the net income of the International

Harvester Company of Canada, Limited has been allocated to Saskatchewan on the above basis."

The return for the year 1936 similarly set out a summary of the company's total income and expenses and then added an allocation table reading as follows:

	In Saskatchewan	Total	Per Cent
"Salaries and Wages	\$263,942.81	2,809,965.81	.093931
Tangible Property	2,449,000.00	14,282,000.00	.171475
Gross Receipts	2,128,603.92	11,489,313.45	.185268
<b>10</b> Total			.450674
Average—1-3			.150225
Saskatchewan proportion—15.0225% of \$377,546.92			\$56,716.99
Tax at 5%			2,835.85
Less Tax paid under Corporations Taxation Act			500.00
Net tax payable			<u>\$2,335.85</u> "

The contents of these three returns indicate that the company in making the returns, itself proceeded upon an allocation basis. It should be noted that although that basis differs from the basis prescribed in the Province's regulations, the company's proposed allocation basis is just as much sub-  
**20**ject to the objections which it has urged in its grounds of appeal as is the other allocation basis provided for in the Province's regulations. The Board desired at the hearing to be informed as to how the use of any allocation basis by the company had first arisen. For the sole purpose of ascertaining whether the company's returns for the three earlier taxation periods to which the Province's Income Tax Act applied provided this information, the Board referred at the hearing to the company's returns for the taxation periods 1931, 1932 and 1933, (Exhibits "E" "F" and "G"). These earlier returns threw no light on the origin of the company's practice but instead indicated, at any rate with regard to the  
**30**1931 return, that the company had in that earlier period made returns in the way which the Province had used in making the three assessments now appealed from. The 1931 return, after setting out a summary of the company's whole income and expenses, added the respective figures of gross sales and of Saskatchewan sales and indicated the percentage which the latter is of the former. The 1932 and 1933 returns each contained statements of total income and expenses and each added a foot-note reading as follows:

"No allocation figures are given because there is no income to allocate to the Province of Saskatchewan."

**40** The Board believes that while the form in which the company made its returns for each taxation period from 1931 to 1936 inclusive may have assisted in leading the Income Tax Commissioner to conclude that he could not determine the Company's income derived within Saskatchewan, he would nevertheless have been driven to that conclusion in any event by the very nature of the case. The company's scale of operations is

extra-provincial as well as intra-provincial and its whole operations are conducted for accountancy purposes as a unit which makes no distinction between its Saskatchewan operations and the remainder of its operations. There can be no question about this circumstance as the company itself in ground 7 of its Notice of Appeal so states, as quoted above. Even if the company had set up an accountancy distinction between its manufacturing operations outside Saskatchewan, and its sales operations separately in Saskatchewan and in other provinces, neither the company nor the province's taxing officers nor other persons could have said with fin-  
**10**ality or with certainty that such division was correct or other than arbitrary and artificial. As illustrating this, it may be pointed out that the Saskatchewan sales contribute to the need of and to the profits from the non-Saskatchewan manufacturing operations. Further, the company's general overhead expenses contribute to the carrying on and earning of profits by all divisions, territorial and otherwise, of the company's operations. The exact point at which to divide either profits or costs under these respective two heads must necessarily be a matter of opinion.

While, therefore, the Board notes the form in which the company made its returns and particularly the company's reasoned conclusion as  
**20**to the necessity of an allocation basis in its return respecting its 1935 income wherein the company states, "It is necessary therefore to ascertain its net income in Saskatchewan by an allocation method", the Board does not feel that any evidence as to why an allocation basis has been used in the forms is necessary. Whatever the reasons for referring through-out to an allocation, the returns were actually made by the company on or by reference to an allocation basis over a period of six successive years including the three years under review. Even if they had been made in any other form, the Board believes, for the reasons expressed above, that the Province could not have determined or identified the actual as dis-  
**30**tinct from some arbitrarily estimated profit attributable to the company's operations in Saskatchewan. The Board finds, therefore, that this company's case falls within subsection (4) of section 7 of the 1932 Act and within subsection (4) of section 9 of the 1936 Act and that regulations 1, 2 and 3 do apply. The question as to whether they have an illegal result remains to be considered.

It is necessary here to make a distinction which was referred to by counsel for the company. He pointed out that ground 7 in the grounds for appeal is to the effect that there is no income of the company which may be taxed by the Province of Saskatchewan whereas grounds 1 to 6  
**40**inclusive proceed on the assumption that the Province of Saskatchewan has jurisdiction to tax an income of the company, although not by the method here used.

The Board will deal first with ground number 7, already quoted above. We have in this decision concurred in the view both of the company and of the Income Tax Commissioner that it is impossible to establish the exact point at which either the revenues or expenditures of the company inside and outside the Province can be differentiated from each other for the purpose of establishing an exact and distinct Saskatchewan income

which is neither contributed to by nor contributes to non-Saskatchewan operations. The company contends therefore that as its income "is one and indivisible" and as its head office is in Ontario its income can be said to have existence only in Ontario and to be taxable as amongst the various provinces, only by Ontario.

In support of this contention counsel for the company quoted *City of Kingston v. Canada Life Assurance Company*, 19. O.R. p. 453, particularly at pages 457 to 460 each inclusive; and *De Beers Consolidated Mines Limited vs. Howe*, H.L. 1905, 75 L.J.K.B., at p. 858 particularly at p. 860.

10 In the opinion of the Board this contention of the company cannot be supported and is not supported by either of the two cases cited. The direct taxation powers of the province with respect to persons within the jurisdiction (and whether with relation to their income or otherwise) are not held to be inapplicable by either of those two cases. The *City of Kingston vs. Canada Life Assurance Company* case, decided in 1890, was to the effect that the City of Kingston could not, under the personal property provisions of the Assessment Act of the Province of Ontario, tax the income of the defendant whose head office was in the City of Hamilton. The report of the decision is not entirely clear when read by  
 20 itself and the Board has therefore referred to the contents of said Assessment Act (R.S.O. 1887 Cap. 193) as it existed when the matters in question in that case arose. The act was one whereby a municipality was given power to tax both real and personal property. Personal property, in the case of a corporation or partnership, was to be assessed at the corporation's or partnership's usual place of business and, if it had more than one place of business, each such branch was to be assessed for that portion of the personal property which belonged to the particular branch. In the event of this being impossible, the corporation or partnership was  
 30 assessed for the whole personal property. The defendant had elected to be assessed in Hamilton. The court's decision was merely to the effect that, on the facts of that case, the type of activity carried on by the company's agents who solicited insurance business in Kingston was not such a type as to result in there being in Kingston a "branch" of a kind which could be said to have personal property. The Court further held that income was not personal property within the meaning of the Assessment Act. The last few sentences in the decision of the Chancellor, when read with the statute, are clear to the above effect.

The *De Beers* case must also be read in the light of the statute  
 40 upon which it was based, namely *The Income Tax Act 1853*, being 16 and 17 Victoria, Cap. 34. By this decision of the House of Lords it was decided that the plaintiff company was resident in the United Kingdom for income tax purposes. The question in issue was not one of the power of the British Parliament to tax the company but was rather one as to whether it should be taxed in the way a resident company was taxed under that Act for income tax purposes as distinct from the way in which a non-resident company was taxed under that Act for income tax pur-

poses. Section 2 of the Act provides that the tax shall be granted and made payable yearly as set out in certain schedules of which the relevant one is Schedule (d) and reads as follows:

“SCHEDULE (D)”.

10 “For and in respect of the annual profits or gains arising or accruing to any person residing in the United Kingdom from any kind of property whatever, whether situate in the United Kingdom or elsewhere, and for and in respect of the annual profits or gains arising or accruing to any person residing in the United Kingdom from any profession, trade, employment, or vocation, whether the same shall be respectively carried on in the United Kingdom or elsewhere, and to be charged for every twenty shillings of the annual amount of such profits and gains.

20 And for and in respect of the annual profits or gains arising or accruing to any person whatever, whether a subject of Her Majesty or not, although not resident within the United Kingdom, from any property whatever in the United Kingdom, or any profession, trade, employment or vocation exercised within the United Kingdom, and to be charged for every twenty shillings of the annual amount of such profits and gains:

And for and in respect of all interest of money, annuities, and other annual profits and gains not charged by virtue of any of the other schedules contained in this act, and to be charged for every twenty shillings of the annual amount thereof.”

It is evident, therefore, that persons residing in the United Kingdom, paid a tax under that Act on the annual profits or gains from their property wherever situate, whether within or without the Kingdom, whereas persons residing outside the United Kingdom did not do so but paid a tax only on the annual profits or gains from their property within the United Kingdom. The Lord Chancellor Loreburn therefore commences his judgment,—

“The question in this appeal is whether the De Beers Consolidated Mines Limited ought to be assessed to income tax on the footing that it is a company resident in the United Kingdom. Had the appellants prevailed upon that question an ulterior point would have demanded consideration. Your Lordships, however, being satisfied upon the first point, dispensed with further argument.”

Later he states,—

40 “it follows that this company was resident within the United Kingdom for purposes of income tax, and must be assessed on that footing.”

Neither of these two cases, therefore, when read in the light of the respective statutes which they construed, support or in any way assist the appellant in the present case in its contention that it is taxable in respect of its income only where its head office and seat of control are situated. In the first case the court construed the statutory references to personal



property and in the second case the court construed the statutory references to resident and to non-resident companies and laid down certain criteria for distinguishing between them. The various dicta scattered through both decisions as to net income being computable, or even being found, where the seat of management exists and as to corporate residence being for income tax purposes where the real business is carried on, do not exclude the legality of a tax by the City of Kingston, or a tax by the British Parliament if the statutes had so read. In fact, in the second case the statute did so read even as to a company found to be non-resident, 10or, what the House of Lords held in the De Beers case to be the same thing, if the control of the company's business was exercised outside the Kingdom.

In Saskatchewan the Income Tax Act does not restrict the levy imposed thereunder to resident corporations. By subsection (3) of Section 7 of the 1932 Act it was provided that,—

20 “Save as herein otherwise provided, corporations and joint stock companies, no matter how created or organized, carrying on business within the province, shall pay a tax, at the rate applicable thereto set forth in the first schedule to this Act, upon income during the preceding year exceeding one thousand dollars.”

By subsection (3) of Section 9 of the 1936 Act it was provided that,—  
 “Save as herein otherwise provided, every Corporation and joint stock company, no matter how created or organized, residing or ordinarily resident or carrying on business within the province, shall pay a tax, at the rate applicable thereto set forth in the first schedule to this Act, upon its income during the preceding year.”

30at Paragraphs 2, 3 and 4 of the admission of facts filed with the Board the hearing clearly establish that the appellant was carrying on business in Saskatchewan during the three taxation years under review. As a person so carrying on business within the Province, the company is subject to direct taxation within the Province irrespective of residence as defined by the De Beers case and irrespective of where its grand total of net income is computed. The Board, therefore, rejects ground 7 of the appeals.

40 We now come to grounds 1 to 6 inclusive in the notices of appeal. These were stated by counsel for the company to be based upon the assumption, not however admitted by the company, that there is an income to be taxed by the Province. The company's contentions are set out in detail in the six grounds in question and resolve themselves into a plea that the use of the regulations quoted above has the result of levying taxation which is not “taxation within the Province” within the meaning of section 92 of the British North America Act and which is not taxation upon “net profit or gain arising from the business of such person in Saskatchewan” within the meaning of section 21a of our 1932 Act and section 23 of our 1936 Act. It is contended by the company that the

practice of computing the provincial income tax upon the same proportion of the company's total income which its Saskatchewan sales are of its total sales may from time to time result in taxing income which is neither present in nor derived from Saskatchewan. The company argues that there would be an exact correspondence of the income ratio to the sales ratio only if all factors of expense in effecting the sales were uniform within and without Saskatchewan and that this is not the case. In support of the contention that this was not the case, the company presented *viva voce* evidence under oath of its Regina Manager, Arthur

10 Brown, and an affidavit of its Vice-President, Frank M. Morton. Such testimony established that the cost to the company of doing business in different parts of Canada stands in varying proportions to sales effected in those various parts and that this is the case even between one branch and another in Saskatchewan. Both portions of said evidence compared certain factors in Saskatchewan with factors elsewhere but neither witness gave evidence or established that when all factors are taken into consideration the cost of doing business in Saskatchewan exceeds that of doing business elsewhere. The Board, therefore, while finding on this evidence that there are varying ratios of expense to sales in various

20 parts of Canada cannot, on the evidence submitted, make any finding as to whether that ratio in Saskatchewan is higher, equal to or less than that ratio elsewhere. Certain special items of expense or loss in Saskatchewan were referred to by each witness. No findings can be made on such an incomplete picture. These special items of expense or loss may be offset or exceeded by favorable factors such as volume of sales in an agricultural province where a highly mechanized type of farming is engaged in. Insofar as the witness Arthur Brown in some of his replies suggested a comparatively unfavorable result in Saskatchewan, the Board finds his evidence inconclusive and not definitely enough linked up

30 with the three taxation years under review. The Board further finds that it was not sufficiently shown that this witness had personal knowledge of all the facts in other provinces necessary to make a complete comparison. Frank M. Morton's affidavit is not directed to a complete comparison at all.

It has not, therefore, been established that the tax levied in any of the three years is higher than it should have been. In fact an examination of the eight grounds of appeal establishes that the company does not, except on the point of an allowance for bad debts, which point has already been dealt with, allege that the tax was larger than it should

40 have been.

It is, however, maintained by the appellant that the method used may have had that result.

Dealing first with the contention that the method used taxes income derived outside Saskatchewan and is, for that reason, in breach of Section 92 of *The British North America Act* which limits the Province to "taxation within the Province," and leaving out of consideration for the present the limitation in Sections 21a and 23 respectively of Saskatchewan's own two successive Income Tax Acts, the Board notes that the Province taxes

non-corporate taxpayers with respect to income whether derived within or without the Province. Reference to subsection (1) of Section 32 and to Section 3 of the 1936 Act will sufficiently establish that fact. Apart from such limitations as the Legislature may itself have placed upon the tax to be levied on inter-provincial corporations, a tax on the latter's income derived outside Saskatchewan would not be illegal unless it is also illegal when levied on all other taxpayers. The legislature has evidently considered that the fact of being found within Saskatchewan in any of the senses specified in Section 9 of *The Income Tax Act, 1936*, renders the

10 taxpayer subject to "taxation within the Province" within the meaning of *The British North America Act*. Income tax is a tax levied in proportion to ability to pay and that ability of a person found in the Province and subject to our laws may vary because of income derived outside the Province. The level of taxation to impose upon a person or estate subject to our laws may quite constitutionally be affected by the amount of his or its property outside the Province. See the decision of The Honourable Mr. Justice Ford in *Kerr vs. Superintendent of Income Tax and Attorney-General of Alberta, 1938, W.W.R. at p. 748* reading as follows:

20 "There is, however, express authority for the proposition that for certain purposes, analogous to those now arising for decision, foreign property may be regarded and taken into account in relation to provincial taxation.

As stated by Street J., in *Re Renfrew 29 O.R. 365*:

"There is no doubt that it was within the powers of our Legislature to have enacted that the property of a deceased person situate outside the Province should be considered in arriving at the aggregate value."

30 *i.e.*, for the purposes of ascertaining the rate of Succession Duty. This statement was referred to by Martin J.A., now Chief Justice of British Columbia, in a passage in *IN re Van Horne Estate (1919) 3 W.W.R. 76 at p. 78*, which was approved of by the Judicial Committee sub nom *Royal Trust Co. v. Minister of Finance of British Columbia (1922) 1 A.C. 87, at p. 93.*"

and the cases cited therein.

One point to be decided is evidently whether the tax is a tax on the income itself or a tax on the amount of the income or a tax levied on the person in respect of the income. Since the hearing before it, the Board has had the advantage of reading the decision of the Appellate Division of the Supreme Court of Alberta in the Kerr case referred to above. That

40 decision deals directly with this question and, for the reasons stated in the majority opinion of that court, the Board holds that, insofar as the *British North America Act* has any bearing upon the points here in issue the assessment is a legal assessment.

It may be pointed out that, if the tax on the amount of or with respect to non-Alberta income was a valid tax in the case of a private person as was held in the Kerr case, the reasoning so far as the *British North America Act* is concerned, is even stronger in Saskatchewan with

respect to a corporation because in subsection (3) of Section 7 of *The Income Tax Act, 1932 (Saskatchewan)* it was provided that,—

“Save as herein otherwise provided, corporations and joint stock companies, no matter how created or organized, carrying on business within the province, shall pay a tax, at the rate applicable thereto set forth in the first schedule to this Act, upon income during the preceding year exceeding one thousand dollars.”

and in subsection (3) of Section 9 of *The Income Tax Act, 1936*, it was provided that,—

10 “Save as herein otherwise provided, every corporation and joint stock company, no matter how created or organized, residing or ordinarily resident or carrying on business within the province, shall pay a tax, at the rate applicable thereto set forth in the first schedule to this Act, upon its income during the preceding year.”

In each of these subsections the duty to pay the tax is, by direct statutory enactment, imposed upon the corporate person.

The Board is, however, of the opinion that the method used does not tax income derived outside Saskatchewan. If this be correct, no  
20 question arises under the *British North America Act*. Detailed reasons have been set out above as to why it is impossible to determine or to obtain the information required to ascertain the company's income within the province. Reference has also been made to the company's own statement to that effect in ground 7 of its grounds for appeal that,—

30 “The appellant company further says that the profit or income of the company is one and indivisible. It is the sum total of the gains and losses of the company in all places where it carries on its business placed against each other at the head office of the company and arises only at such head office when such computation has been made. The appellant company says that it carries on business in several provinces of Canada and that its head office is in the Province of Ontario and that its income can therefore be said to have existence only in the Province of Ontario.”

In ground 5 the company also states,—

“The income of the appellant company is derived from various factors only some of which arise or operate within the Province of Saskatchewan. The products which the company sells are manufactured entirely outside the Province of Saskatchewan.”

40 The Legislature at subsection (4) of Section 7 of the 1932 Act and at subsection (4) of Section 9 of the 1936 Act made specific provision to meet such a case. The Lieutenant Governor in Council was authorized to make regulations “for determining such income within the province.” The regulations were to be merely an alternative means of determination of the “income within the province” in the absence, admitted in this case by the company, of any means of actually ascertaining it by computation and identification. The regulations issued pursuant to such statutory

authority determined the "income within the Province" by providing, *inter alia*, that,—

"The income referred to in regulation 1 having been separately determined and ascertained, the remainder of the income of the taxpayer liable to taxation shall be taken to be such percentage of the remainder of the income as the sales within the Province bear to the total sales.

10 The sales of the taxpayer shall be measured by the gross amount which the taxpayer has received during the preceding year from sales and other sources in connection with the said business, excluding, however, receipts from the sale or exchange of capital, assets and property not sold in the regular course of business and also receipts from interest, dividends, rents and royalties the income of which has been separately determined or ascertained under the provisions of regulation 1."

The phrase "shall be taken to be" quite logically follows on from the legislature's own direction that the regulations are to be used where the actual amount is unascertainable by the commissioner. Resort is had and properly had to a legal fiction in order to make the statute workable.  
20 For the purposes of the Act the amount so determined is the "income within the province."

The Board is strengthened in arriving at this decision by the concluding paragraph of the Honourable Mr. Justice Taylor's decision in *re The Income Tax Act, 1936, and Proctor and Gamble Company Limited, 1937*, 3 *W.W.R.* p. 680. That case also had to do with Saskatchewan income tax claims upon an interprovincial company and in it also some suggestion had been made that constitutional questions were involved in the application of the Act, and of these same regulations to the income of that company. The learned presiding judge held that this was not the  
30 case and stated as follows,—

"As I interpret the Act and Regulations the purpose is to ascertain and tax actual earned income within the Province of these extra-provincial companies and no constitutional question can be raised under the notice of intention to raise the contention that it is 'beyond the jurisdiction of a Provincial Legislature to impose income tax on an extra-provincial company unless that company has actually earned income within the Province and then only to the extent of the income actually earned there.' No attempt is made to do otherwise and the alleged constitutional issue does not in my opinion arise in this appeal."

40 The method here used has also been judicially approved by the Honourable Chief Justice Harvey of the Appellate Division of the Supreme Court of Alberta in *Swift Canadian Company Limited vs. the City of Edmonton* 62 *D.L.R.*, p. 175, where at p. 177 the learned Chief Justice states as follows,—

"I think, therefore, to say that the plaintiffs admit that there is no separate profit and loss account, is putting it quite mildly. The amended and subsequent returns filed by the plaintiffs

attempt to arrive at the income by setting out the total business of the plaintiff everywhere and the total net income derived therefrom, and then assigning to the Edmonton branch as its share of the total income the same percentage as its total business is of the total business everywhere. This method as already indicated shows the tax for the first year as less than one quarter of the amount shewn by the method adopted by their local manager, and is therefore naturally a much more satisfactory method from the plaintiff's point of view than the other, but I do not think that any intelligent person can seriously contend that it can be depended on to shew the actual profit of the Edmonton separate branch. It can only do so when all the branches are carrying on uniformly as to profit and loss which is practically never. It is indeed nothing but a substitute in the absence of the actual profit and loss account and might quite reasonably have been adopted by the Legislature but the Legislature provided a different method and it is the substitute authorized by the Legislature rather than the one suggested by the person paying the tax that we must adopt."

20 In that case the Swift Canadian Company Limited used a system similar to what the appellant is here appealing from. The Chief Justice held that whatever system the law required for computation in the absence of the actual figures must be followed and stated that the Swift Canadian Company Limited's system (*i.e.* the Saskatchewan system) "might quite reasonably have been adopted by the Legislature."

In *MacPherson vs. Moore*, 6 *Tax Cases*, p. 107, the Honourable Lord Justice MacKenzie states with regard to the necessity of establishing a figure for assessment purposes in that case which was also an income tax case where part of the taxpayer's business was done in the kingdom and part was not,—

"With regard to the Solicitor General's observation upon the practice of finding how the amount of the profits upon which the assessment is to be laid, I can only say that it is not necessary to arrive at a set conclusion upon that matter, because it is not a matter with which the Court is concerned. If the Act of Parliament says the amount of profits is to be ascertained they must be whether this can be done in a satisfactory method or not."

40 For these same reasons set out in the last few paragraphs above the Board rejects the contention that the assessments appealed against are contrary to section 21a of the 1932 Act and to section 23 of the 1936 Act which restrict the tax on inter-provincial companies to one in respect of "net profit or gain arising from the business of such person in Saskatchewan." That "net profit or gain" has been determined in the manner provided by law and no other profit or gain is taxed.

All three relevant cases in Saskatchewan and in Alberta, namely, the Kerr case, the Proctor and Gamble case and the Swift Canadian Com-

pany Limited case, each *supra*, approve and support in one way or another the course here followed.

The Board is aware of no decisions to the contrary. The trend of judicial decisions in both Saskatchewan and Alberta, therefore, supports the practice of the Provincial Tax Commission and the assessments here made. The Board regards itself as being under a duty to give effect to taxing statutes in the sense in which they have been construed and approved and applied by the courts. We, therefore, dismiss the three appeals and affirm the three assessments.

10 WITNESS the Seal of the Board of Revenue Commissioners attested by the hand of its Chairman this 27th day of January, A.D. 1939, and subscribed to by the members of the Board.

(sgd) ANDREW S. SIBBALD,  
*Chairman.*

(sgd) T. LAX,  
*Member.*

(sgd) P. BRADLEY,  
*Member.*

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NOTICE OF APPEAL

20 TO JUDGE OF COURT OF KING'S BENCH  
(re assessment for 1934)  
IN RE THE TREASURY DEPARTMENT ACT, 1938,  
—and—

INTERNATIONAL HARVESTER COMPANY OF CANADA,  
LIMITED, an Ontario Corporation doing business in the  
Province of Saskatchewan,

Appellant.

Notice of appeal is hereby given from the decision of the Board of Revenue Commissioners respecting the payment of taxes or other  
30 moneys alleged to be due from International Harvester Company of Canada, Limited, to the Crown as follows:

(a) The Crown claims that a tax in respect of income is payable by the appellant under an assessment bearing date the 23rd day of August, 1938, made by the Minister of or Commissioner of Income Tax in the sum of \$4,382.07 for the taxation year A.D. 1934. The appellant filed its return for the said year on the 28th day of May, 1935.

(b) The appellant on the 23rd day of September, 1938, appealed from the said assessment to the Board of Revenue Commissioners, and on the 27th day of January, 1939, the Board of Revenue Commissioners dis-

missed the said appeal and affirmed the said assessment, finding (in effect) that the Crown's said claim of \$4,382.07 is due.

The grounds of appeal are as follows:

(The same as in the Notice of Appeal re 1935 assessment, *see* post pages 58 to 61 except as to the difference in reference to sections of 1932 and 1936 Income Tax Acts.)

AND TAKE NOTICE that in support of this appeal shall be read the material which was before the Board of Revenue Commissioners at the hearing conducted before it and such further and other material as 10counsel may advise.

AND TAKE NOTICE that on the hearing of this appeal to a Judge of the Court of King's Bench, the said Judge will be moved on behalf of the appellant for an order reversing the order of the said Board of Revenue Commissioners and setting aside the said assessment, and for an order awarding to the appellant against the Crown costs of this appeal and of the said appeal to the Board of Revenue Commissioners, on such scale and of such amount as the Court may decide.

DATED at the City of Regina in the Province of Saskatchewan this 25th day of February, A.D. 1939.

20

MacKENZIE, THOM, BASTEDO,  
WARD & McDOUGALL,  
Per "FLB"  
Regina, Sask.,  
Solicitors for the Appellant.

TO: The Registrar of the Court of King's Bench.

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NOTICE OF APPEAL TO  
JUDGE OF COURT OF KING'S BENCH  
(*Re* Assessment for 1935)  
IN RE THE TREASURY DEPARTMENT ACT, 1938

30

—and—

INTERNATIONAL HARVESTER COMPANY OF CANADA,  
LIMITED, an Ontario corporation doing business in the Province  
of Saskatchewan,

Appellant.

Notice of appeal is hereby given from the decision of the Board of Revenue Commissioners respecting the payment of taxes or other moneys alleged to be due from International Harvester Company of Canada, Limited, to the Crown as follows:

(a) The Crown claims that a tax in respect of income is payable by the appellant under an assessment bearing date the 23rd day of August,



1938, made by the Commissioner of Income Tax in the sum of \$11,541.07 for the taxation year A.D. 1935. The appellant with its return filed on the 2nd day of June, 1936, paid a tax in the sum of \$371.42, and the Crown under the said assessment dated the 23rd day of August, 1938, claimed an additional tax in the sum of \$11,169.65.

(b) The appellant on the 23rd day of September, 1938, appealed from the said assessment to the Board of Revenue Commissioners, and on the 27th day of January, 1939, the Board of Revenue Commissioners dismissed the said appeal and affirmed the said assessment, finding (in effect) 10 that the Crown's said claim of \$11,169.65 is due.

The grounds of appeal are as follows:

(a) That the appellant during the taxing period in question was, upon the facts submitted, a corporation residing outside of Saskatchewan, and that therefore, by reason of section 23 of *Income Tax Act, 1936*, and constitutionally, its income liable to taxation was only the net profit or gain arising from its business in Saskatchewan during the said period.

(b) That there was no return or any information before the Commissioner of Income Tax or the said Board showing that the appellant for the period in question had any net profit or gain arising from its 20 business in Saskatchewan, and that there was therefore no right to assess the tax in question.

(c) That the Commissioner of Income Tax erred in relying upon regulations passed by Order in Council in attempting to determine or ascertain the income of the appellant in Saskatchewan, and, in particular (under Regulation No. 2), in taking the said income to be such percentage of the total income of the appellant as the sales within the Province bear to the total sales.

(d) That under section 9(4) of *The Income Tax Act, 1936*, and under said regulations themselves, the said regulation (if it applies at all to non- 30 residents) only applies in any event to a case where the Commissioner was unable to determine or obtain information required to ascertain the income within the Province of the appellant. The appellant made a return of its total income as required by section 32 of the said Act and was never asked by the Commissioner, under section 39 of the said Act or at all, for any return or information or additional information as to its net profit or gain arising from its business in Saskatchewan, and the said regulation under which the Commissioner purported to act has no application.

(e) That in any event the said regulation only applies to a resident 40 corporation, and that as to a non-resident corporation, such as the appellant, the said regulation is beyond the powers of the Lieutenant Governor in Council or the Province of Saskatchewan.

(f) That in order to bring taxation within the legislative jurisdiction of the Province it must be "direct taxation within the Province", as laid down in section 92(2) of the *British North America Act*. The burden was upon the Commissioner of Income Tax to show that the appellant had income or net profit or gain arising from its business in Saskatchewan before any income tax could be assessed against the appellant. There

being no evidence of any such income, the Commissioner, as was held by the Board of Revenue Commissioners, resorted to a fiction in endeavouring to determine the income of the appellant within the Province. In so doing the Commissioner of Income Tax erred and the said Board erred in affirming his assessment. The Province cannot resort to a fiction or apply a fictitious or notional method of determining income, or by any regulation or definition declare that to be income which is not in fact income, and the regulations in so far as they purport to do so are beyond the power of the Province.

10 (g) That, furthermore, the fictitious method applied by the Commissioner was an incorrect method of ascertaining or determining the net profit or gain of the appellant in Saskatchewan for the following reasons:

20 1. The total income of the appellant is derived from both the manufacture and sale of goods and from various factors, only some of which arise or operate within Saskatchewan. The products which the appellant sells are manufactured entirely outside of Saskatchewan, and only part of its goods are sold in Saskatchewan. Its income, if any, does not bear any fixed proportion to the amount of sales in Saskatchewan, or vary from Province to Province in proportion to the sales in those Provinces. The cost to the appellant of doing business in Canada varies greatly in different Provinces and sections of Canada, depending upon wages payable, proximity to point of manufacture, crop conditions, credit conditions, taxes and other factors.

2. Under the method employed by the Commissioner of resorting to the fiction of the said regulations, the tax in question was assessed regardless of whether the appellant had any income or net profit or gain within Saskatchewan, and even if the appellant had a loss arising from its business in Saskatchewan.

30 (h) That the said Board erred in holding, if it so did hold, that the tax assessed against the appellant is a tax assessed and levied on the person in respect of the income, and should have held that the tax assessed and levied under the said Act is a tax on the income itself, particularly with reference to a non-resident corporation. In the alternative, if the tax assessed and levied under the said Act is a tax on the person and not on the income itself (which is not admitted), then the Province of Saskatchewan cannot assess or levy a tax on the appellant, being a non-resident. The Board further erred in holding that the "net profit or gain" of the appellant had been determined in the manner provided by law, and in holding that no other profit or gain is taxed and in holding that the  
40 assessment is a legal assessment.

(i) That the fictitious income on which the Commissioner of Income Tax made the said assessment and which has been affirmed by the Board of Revenue Commissioners, is not the income of the appellant ascertained to have arisen in Saskatchewan, and the said Board erred in holding that the method used by the Commissioner does not tax income derived outside Saskatchewan.

(j) That the appellant should be allowed as a deduction for bad debts for the period in question such an amount credited to its reserve for bad debts as sound business experience shows to be reasonable, this being the amount which experience has shown will be lost as bad debts on the sales made in the period in question. The Commissioner of Income Tax erred in not making such an allowance, and the Board of Revenue Commissioners erred in holding that the Commissioner had exercised any discretion upon this point or that the discretion which had been exercised should not be interfered with.

10 AND TAKE NOTICE that in support of this appeal shall be read the material which was before the Board of Revenue Commissioners at the hearing conducted before it and such further and other material as counsel may advise.

AND TAKE NOTICE that on the hearing of this appeal to a Judge of the Court of King's Bench, the said Judge will be moved on behalf of the appellant for an order reversing the order of the said Board of Revenue Commissioners and setting aside the said assessment, and for an order awarding to the appellant against the Crown costs of this appeal and of the said appeal to the Board of Revenue Commissioners, on such  
20scale and of such amount as the Court may decide.

DATED at the City of Regina in the Province of Saskatchewan this 25th day of February, A.D. 1939.

MacKENZIE, THOM, BASTEDO,  
WARD AND McDOUGALL,  
Per "F.L.B."  
Regina, Sask.,  
Solicitors for the appellant.

TO: The Registrar of the Court  
of King's Bench.

30

NOTICE OF APPEAL TO  
JUDGE OF COURT OF KING'S BENCH.  
(Re-Assessment for 10 months ending Oct. 31, 1936.)  
IN RE THE TREASURY DEPARTMENT ACT, 1938,

—and—

INTERNATIONAL HARVESTER COMPANY OF CANADA,  
LIMITED, an Ontario Corporation doing business in the Province  
of Saskatchewan,

Appellant.

Notice of appeal is hereby given from the decision of the Board of Revenue Commissioners respecting the payment of taxes or other moneys  
40alleged to be due from International Harvester Company of Canada, Limited, to the Crown as follows:—

(a) The Crown claims that a tax in respect of income is payable by the appellant under an assessment bearing date the 23rd day of August, 1938, made by the Commissioner of Income Tax in the sum of \$10,136.60 for the period of ten months ending the 31st day of October, 1936. The appellant with its return filed on the 26th day of May, 1937, paid a tax in the sum of \$2,335.85, and the Crown under the said assessment dated the 23rd day of August, 1938, claimed an additional tax in the sum of \$7,800.75.

(b) The appellant on the 23rd day of September, 1938, appealed 10 from the said assessment to the Board of Revenue Commissioners, and on the 27th day of January, 1939, the Board of Revenue Commissioners dismissed the said appeal and affirmed the said assessment, finding (in effect) that the Crown's said claim of \$7,800.75 is due.

The grounds of appeal are as follows:—

(The same as in the Notice of Appeal *re* 1935 assessment. See ante pages 58-61.)

AND TAKE NOTICE that in support of this appeal shall be read the material which was before the Board of Revenue Commissioners at the hearing conducted before it and such further and other material as 20 counsel may advise.

AND TAKE NOTICE that on hearing of this appeal to a Judge of the Court of King's Bench, the said Judge will be moved on behalf of the appellant for an order reversing the order of the said Board of Revenue Commissioners and setting aside the said assessment, and for an order awarding to the appellant against the Crown costs of this appeal and of the said appeal to the Board of Revenue Commissioners, on such scale and of such amount as the Court may decide.

DATED at the City of Regina in the Province of Saskatchewan this 25th day of February, A.D. 1939.

30

MacKENZIE, THOM, BASTEDO,  
WARD AND McDOUGALL,  
Per "F.L.B."  
Regina, Sask.,  
Solicitors for the Appellant.

TO: The Registrar of the Court  
of King's Bench.

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NOTICE TO ATTORNEY GENERAL RAISING  
CONSTITUTIONAL QUESTION

TAKE NOTICE that International Harvester Company of Canada, 40 Limited, the above named appellant, has appealed to a Judge of the Court of King's Bench from the decision of the Board of Revenue Commissioners dismissing the appellant's appeals respecting the payment of income taxes alleged to be due from the said company to the Crown

1. under an assessment bearing date the 23rd day of August, 1938, in the sum of \$4382.07 for the taxation year A.D. 1934;

2. under an assessment bearing date the 23rd day of August, 1938, in the sum of \$11,541.07 for the taxation year A.D. 1935;

3. under an assessment bearing date the 23rd day of August 1938, in the sum of \$10,136.60 for the period of ten months ending the 31st day of October, 1936;

and the Honourable Mr. Justice Anderson, a Judge of the Court of King's Bench, has fixed Wednesday, the 26th day of April, A.D. 1939, at 10 the hour of 10.00 o'clock in the forenoon, Regina City time, at Chambers in the Court House at the City of Regina, as the time and place for the hearing of each of the said three appeals.

AND TAKE NOTICE that, while contending that upon the facts as admitted and given in evidence and upon the correct interpretation of the Income Tax Acts of Saskatchewan all of the said assessments of the appellant for income tax so appealed against are invalid and should be set aside, the appellant will, upon the argument of the said appeals at the time and place aforesaid, bring into question the constitutional validity of the *Income Tax Act 1932* and the *Income Tax Act 1936* and amend-  
20ments thereto in so far as the said Acts purport to authorize the said assessments of income tax against the appellant. The said Acts or such parts thereof as may be relied upon to impose such assessment or assessments are to such extent "*ultra vires*" the Legislature of Saskatchewan in that they do not constitute "direct taxation within the Province" within the meaning of the *British North America Act 1867*, section 92(2). In particular the appellant will, *inter alia*, argue:

1. That the annual income of the appellant which the Province of Saskatchewan could constitutionally tax for the periods in question was limited to the net profit or gain arising from the business of the appellant  
30in Saskatchewan during the said periods, and that in so far as the Statutes go beyond that limitation they are *ultra vires*, particularly, without limiting the generality of the foregoing sections 3, 7, 24, 29, 29(a), 31, 43, 44, 45, 46, 51 and 52 of the *Income Tax Act 1932*, and sections 3, 9, 27, 32, 33, 46, 47, 51, 52, 54, and 56 of the *Income Tax Act 1936*.

2. That the regulations passed by Order In Council, and in particular Regulation No. 2, purporting to authorize the determination or ascertainment of income of a corporation by taking the said income to be such percentage of the total income of the corporation as the sales within the Province bear to the total sales, are *ultra vires* the Lieutenant Governor  
40in Council and the Province of Saskatchewan.

3. That, there being no evidence of any net profit or gain of the appellant arising from its business in Saskatchewan during any of the periods in question, the Province of Saskatchewan had no right to resort to a fiction or apply a fictitious or notional method in determining income, or by any regulation or definition to declare that to be income which is not in fact and in law income, and the said regulations in so far as they purport to do so are *ultra vires* the Province.

4. That the fictitious method applied under the said regulations was an incorrect and not a true method of determining income and might result in the corporation being taxed even though it had a loss arising from its business in Saskatchewan during the periods in question or any of them.

5. That since the appellant is a non-resident corporation, then even if the tax assessed and levied under the said Income Tax Acts is a tax assessed and levied on the person and not on the income itself (which is not admitted by the appellant), the Province cannot constitutionally assess or levy a tax under the said Acts upon the appellant.

DATED at Regina, Saskatchewan, this 17th day of April, A.D. 1939.

MacKENZIE, THOM, BASTEDO,  
WARD AND McDOUGALL,  
Per "F.L.B."  
Regina, Sask.,  
Solicitors for International Harvester  
Company of Canada, Limited, the  
above named Appellant.

TO: The Attorney General of the  
20 Province of Saskatchewan.

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REASONS FOR JUDGMENT OF THE  
HONOURABLE MR. JUSTICE ANDERSON.

F. L. BASTEDO, K.C., for The International Harvester Company of  
Canada, Limited.

S. QUIGG, K.C., for the Attorney General and the Commissioner of  
Income Tax of Saskatchewan.

ANDERSON, J. (In Chambers.)

This is an appeal from the decision of the Board of Revenue Commissioners of the Province of Saskatchewan, dated the 27th day of January 1939, whereby the said Board dismissed three appeals of The International Harvester Company of Canada Limited against the following three income tax assessments of the Commissioner of Income Tax, dated the 23rd day of August, 1938:

- (1) an assessment of \$4,382.07 for the taxation year 1934.
- (2) an assessment of \$11,541.07 for the taxation year 1935.
- (3) an assessment of \$10,136.60 for a period of ten months ending October 31st, 1936.

The assessment for the taxation year 1934 was made under *The Income Tax Act*, Chapter 9 of 1932 and amendments thereto, while the assessments for 1935 and 1936 were made under *The Income Tax Act*, chapter 15 of 1936, substantially a consolidation of the 1932 Act with its amendments. Under section 53 of the 1932 Act as amended by chapters 6 and 16 of 1934, coming into force on the 15th February 1935 before any return was made by the appellant Company an appeal lay from the

primary assessment of the Commissioner of Income Tax to the Board of Revenue Commissioners, which right of appeal was carried forward in section 57 of *The Income Tax Act, 1936*. By both Acts a further appeal lay to a judge of the Court of King's Bench (section 54 of 1932 Act—section 58 of 1936 Act). Subsequently by sections 5 and 6 of chapter 8 of 1937, a right of appeal to the Court of Appeal was given, the empowering section being known as 58a of the 1936 Act. On the 23rd day of March 1938, sections 58 and 58a aforesaid were repealed by section 2 of chapter 91, 1938, but on that same day the new Treasury Department Act, chapter 8 of 1938, came into force, containing sections 41 and 42, corresponding to, and taking the place of, the repealed sections 58 and 58a.

For the purposes of these appeals, the provisions of the statutory enactments to be mainly considered are the relevant sections of *The Income Tax Acts of 1932 and 1936* (either verbatim, or substantially, the same) and of the *Treasury Department Act 1938*, sections 40, 41 and 42 dealing with appeals in their ascending order from the assessment of the Commissioner of Income Tax to the Board of Revenue Commissioners, to a judge of the Court of King's Bench and to the Court of Appeal.

20 Of *The Treasury Department Act 1938*, the following parts may be here noted:

“40.—(1) The Lieutenant Governor in Council may appoint a Board of Revenue Commissioners consisting of three members, one of whom shall be so appointed as chairman.

.....  
(8) The board shall have power to:

(a) hear appeals respecting the payment of taxes or other moneys due to the Crown;”

30 “41.—(1) An appeal shall lie to a judge of the Court of King's Bench from a decision of the Board on a question of law arising in an appeal to it under clause (a) of subsection (8) of Section 40. The consent of the Attorney General shall first be had and obtained to an appeal by the Provincial Tax Commission.

.....  
(6) At the hearing of the appeal the judge shall hear and consider the cause upon the material which was before the board at the hearing conducted before it and upon such further material or evidence as the judge may, upon or without terms, permit. The judge may affirm the decision of the board or amend or reverse the same in so far as it was based upon any error in law.”

40 The returns of the appellant Company herein for the years of 1934, 1935 and 1936 were filed with the Commissioner on May 28th 1935, June 2nd 1936 and May 26th 1937 respectively. Some time was taken up in the conveyance of, and compliance with, requests for further information, with the result that notice of assessment was given to the appellant for each of these three years on the 23rd day of August, 1938. (Admission of facts, paragraphs 7, 8 and 9). Appeal was taken against each

assessment of the Commissioner to the Board of Revenue Commissioners on the 23rd September 1938. After hearing counsel for both parties the Board dismissed the three appeals by their decision dated January 27th, 1939. These three appeals now come before me as a judge of the Court of King's Bench under section 41 aforesaid of *The Treasury Department Act*, chapter 8 of 1938.

Those framing these income tax Acts were evidently quite mindful of the limitations of provincial jurisdiction to "direct taxation within the province" as set forth in subsection (2) of section 92 of *The British North America Act*, as indicated by section 23 of the 1936 Act (verbatim the same as section 21a of 1932).

"23. The income liable to taxation under this Act of every person residing outside of Saskatchewan, who is carrying on business in Saskatchewan, either directly or through or in the name of any other person, shall be the net profit or gain arising from the business of such person in Saskatchewan."

The problem therefore is, did the Commissioner in making these three assessments keep within the authorization and limitation laid down in section 23 aforesaid. Counsel for the Commissioner argues in the affirmative, counsel for the appellant Company contends that he contravened this section, assessing income of the Company outside the province.

In considering the grounds of appeal herein, the following provisions in the Acts may be noted:

(a) the primary duty lies on the tax payer to deliver to the Commissioner before the 31st day of May in each year a return, of such a nature as to enable him to determine the taxable income within the Province. (Section 32 of 1936—section 29 of 1932).

30 "32.—(1). Every person liable to taxation under this Act shall, on or before the thirty-first day of May in each year, without any notice or demand, deliver to the commissioner a return, in such form as the commissioner may prescribe, of his total income during the last preceding year."

(b) the Commissioner may request, and the taxpayer should provide, any further necessary information. (Section 39 of 1936—section 37 of 1932).

40 "39.—(1) If the commissioner, in order to enable him to make an assessment or for any other purpose, desires information or additional information or a return from any person who has not made a return or a complete return, he may by registered letter demand from such person the information, additional information or return."

(c) the Commissioner is not bound by any return or information delivered, but, despite the return or information or lack of such, may determine the amount of the tax. (Section 54 of 1936—section 43 of 1932.)



"54. The commissioner shall not be bound by any return or information supplied by or on behalf of a taxpayer, and notwithstanding such return or information, or if no return has been made, the commissioner may determine the amount of the tax, . . . .".

The Commissioner is entitled to use his judgment: It would not be practical to have it otherwise: he may not believe in the accuracy or frankness of the information: the information may be inadequate, perhaps incapable of being perfectly supplemented.

(d) an omnibus power is given the Lieutenant Governor in Council  
10 to make regulations consistent with the spirit of the Act for the purpose of administering the Act. (Section 66 of 1936—section 63 of 1932).

"66. For the purpose of carrying out the provisions of this Act according to their true intent and of supplying any deficiency therein, the Lieutenant Governor in Council may make regulations not inconsistent with the spirit of the Act, which shall have the same force and effect as if incorporated herein."

(e) a specific power is granted the Lieutenant Governor in Council  
20 to make regulations for determining the income in Saskatchewan when the Commissioner is unable to determine, or obtain the information necessary to ascertain the taxable income with precision. (Section 9 (4) of 1936—verbatim the same as section 7 (4) of 1932).

"9.— . . . . .

(4) Where the commissioner is unable to determine or to obtain  
30 the information required to ascertain the income within the province of any corporation or joint stock company or of any class of corporations or joint stock companies, the Lieutenant Governor in Council may, on the recommendation of the Commissioner, make regulations for determining such income within the province or may fix or determine the tax to be paid by a corporation or joint stock company liable to taxation."

(f) Under section 7 (4) (verbatim the same as section 9 (4) afore-  
said the following regulations, Exhibit A 3, were made: (*See ante* page 17).

The fact that *The Income Act of 1932* and thus section 7 (4) was repealed by section 74 of *The Income Tax Act of 1936* does not affect the continuance of the Regulations in A3 made under section 7 (4) *supra*. (*See* section 40 of *The Interpretation Act*, Chapter 1 of R.S.S. 1930).

40 "40. Whenever an Act is repealed wholly or in part and other provisions are substituted, all bylaws, orders, regulations and rules made under the repealed Act shall continue good and valid is so far as they are not inconsistent with the substituted Act, enactment or provision until they are annulled or others made in their stead."

The grounds of appeal lettered (a) to (j) in each notice of appeal are the same. These grounds presented in several different ways in the notice and on argument, may, I think, be fairly summarized and enumerated as three:

(1) that it was a condition precedent to the use by the Commissioner of the mode of assessment outlined in Regulations 1 and 2 of Exhibit A 3, that the Commissioner was unable to determine or to obtain the information required to ascertain the taxable income: that the return required by section 32 (29) is only the total income: that the Commissioner did not request, but should have requested from the appellant Company its income in Saskatchewan to determine the assessment and accordingly each assessment was illegal as there was no compliance with the condition precedent.

10 (2) that the method of allocation or calculation proceeded on a wrong basis in taxing income without the Province and therefore was *ultra vires*.

(3) that the Commissioner proceeded on a wrong principle in dealing with bad debts, in not making a proper deduction therefor and each assessment was unlawful.

In regard to ground No. 1 above, it seems to me that the words "total income" in section 32 (29) should not receive so restricted an interpretation as appellant's counsel would place on them, but should be construed as meaning the whole income or all the income, including the 20 details or particulars which when put or added together constituted the whole or total income. The taxpayer knew or ought to have known the object of making a return namely, to give the Commissioner such data as would enable him to calculate accurately the taxable income in Saskatchewan: to give just the total income without adequate details would make the return useless. It was the primary duty of the appellant Company to provide a full return with details from which the Commissioner might be reasonably expected to calculate the taxable income, if such could be done. The exhaustive efforts made by the Commissioner to get the required information (paragraphs 10, 11, 12 and 13 of the 30 Admission of Facts together with Exhibits D 1, D 2, D 3, D 4, E, F and G) shew that the appellant's contention, that the income in Saskatchewan was never requested of the appellant Company, is not in accordance with the facts. There was no failure on the part of the Commissioner to endeavour to get the necessary information; in fact, his conduct is characterized by great perseverance, industry and fairness. No doubt in order to be authorized to use regulations 1 and 2 of A 3, it is a condition precedent that he is unable to determine or obtain the information required to ascertain the income within the province (section 9 40 (4)—section 6 (4) and regulation 5 of A 3) but the Commissioner is the one to decide his ability or inability to determine, or obtain the information required to ascertain the taxable income. Who else could decide? No argument had been, or could be reasonably made that the Commissioner was able to determine the exact amount of taxable income from the information provided. Accordingly the Commissioner was entitled by Section 9 (4) Section 7 (4) to proceed under the regulations in A 3. I decide against this ground of appeal.

The second ground of appeal is that the method of calculating or allotting the taxable income is *ultra vires*, as it really taxes income without

the province. Having disposed of the first ground by deciding that the condition precedent had been complied with, namely, that the Commissioner was unable to determine, or to obtain the information required to ascertain, the income within the Province, to give the right to apply the regulations of A 3, we next have to consider, do these regulations themselves contravene section 23 (21a). Obviously the Commissioner acted under the percentage calculation set out in Regulations 1 and 2 of A3. They are regulations, specifically authorized by statute and they carry a presumption that they are "not inconsistent with the spirit of the Act, 10 which shall have the same force and effect as if incorporated herein" (Section 66 of 1936—section 63 of 1932) and that they are "regulations for determining such income within the province." (Section 9 (4)—section 7 (4). By reason of such statutory authority for A 3 the onus probandi that these regulations are *ultra vires* rests on the appellant: this onus is very important from the very nature of the facts relevant to these assessments.

Firstly, it may be noted that the method of allotting the income in Saskatchewan as that percentage of the total income which the sales in Saskatchewan bear to the total sales (Regulations 1 and 2) is not to be 20 followed, if the system of accounting used by the taxpayer will shew with accuracy the actual income in Saskatchewan. (Regulation 5). The appellant had no such system. "The appellant keeps no separate profit and loss account in respect of the business it carries on in the Province of Saskatchewan, but does keep at its head office in Hamilton, Ontario, a profit and loss account of its entire business carried on in the Dominion of Canada and elsewhere."

(Admission of Facts, paragraph 6). Regulation 3 evidently has its statutory counterpart in the last clause of section 9 (4)—section 7 (4), which it was not deemed advisable by the Commissioner to use. The 30 percentage allotment authorized by Regulations 1 and 2 is taken from the Dominion Income Tax Act and Regulations, has been utilized in various provincial Acts both before and subsequent to the said Dominion Act, has stood the test of time and litigation and is, in my opinion, as accurate and equitable a method as can be devised under the circumstances.

In the 1934 return, Exhibit A1, the appellant indicates a net loss and adds this note, "no allocation figures are given because there is no income to allocate to the Province of Saskatchewan." The Commissioner did not take this note seriously and made his assessment at \$4,382.07. In the returns for the years 1935 and 1936, Exhibits B 1 and C 1, the 40 appellant in its memorandum of explanation accompanying its return intimates, *inter alia*, "It is necessary therefore to ascertain its net income in Saskatchewan by an allocation method." The appellant utilizes a different allocation method from the Commissioner, but the point to be stressed is, that the appellant itself deems it necessary to use an allocation method of some kind. The problem then becomes which is the best allocation method. The Commissioner who is the judge of this, has exercised his discretion accordingly and used Regulation 1 and 2 of A3.

The Commissioner, however, in Regulation 4 inferentially intimates that this percentage allocation, while perhaps the best that is practicable, is not mathematically perfect, and, if the taxpayer can demonstrate a method more accurate and equitable in determining the taxable income as applicable to its particular case, despite the percentage calculation already made, he is prepared to re-open the matter and re-determine and re-assess accordingly. I do not see how the Commissioner could go to any greater length in endeavouring to arrive at the proper amount. It is to be noted the appellant did not take advantage of the offer contained  
 10 in Regulation 4. Surely if the appellant knew of any better method than the said percentage allocation regarding its assessment, that was the time to demonstrate it at a round table conference. Not having taken advantage of that offer in Regulation 4 to demonstrate a better method of calculation, he is under the necessity on this appeal to discharge the onus of shewing the assessments tax some of the Company's income outside Saskatchewan. There is no proof of this. The evidence is that the assessments are approximately, but not absolutely accurate—an approximation to absolute accuracy.

With great deference to the Board of Revenue Commissioners, I am  
 20 unable to agree that the Commissioner made use of a legal fiction. The absence of scientific accuracy or mathematical precision in assessment does not predicate the presence of a legal fiction. These were real, genuine assessments of the Commissioner, calculated as accurately as was possible under the circumstances. Frequently in the Courts valid assessments must be made, which are only approximately correct: the degree of accuracy attained in these assessments of taxable income goes far beyond that of the assessment of damages by a judge in an action for damages for personal injuries where those injuries are very severe or fatal. Perfect assessment of damages in such cases is impossible from the  
 30 unascertainable elements entering into the computation of the damages. Take as an example an Engineer employed by a railway company, in good health, forty years of age, earning \$300.00 per month, killed in the course of his duties by the company's negligence. Human inability to foretell the future makes a perfect assessment of damages an impossibility: consider such indeterminable data as:—how long would the engineer have lived if he had not been so injured,—one, ten or twenty years; would he have been in working health had he lived; what would the employment market and the wages market have been; would there have been war and he conscripted. As our Courts have held for many years  
 40 the best that can be done in such cases is to assess the damages at such sum as appears reasonable, taking all these varying elements into consideration.

In these appeals we know the assessments are approximately correct. The farthest the appellant can go is, that (if the assessments are not absolutely correct) they may to a very slight amount tax income without Saskatchewan, but on the other hand they may to a very slight amount fall short of taxing all the income in Saskatchewan; neither the appellant nor any one else can prove which it is, because on the evidence

adduced or even available, such is incapable of proof. On the appellant lies the onus of proving the taxing of income without Saskatchewan in these assessments and the appellant cannot discharge that onus. It might be added that if all the appellant's income in Saskatchewan and in addition a small amount of income without Saskatchewan were taxed and if the Company were convinced that the quantum in excess of the lawful assessment was more than the costs of the services of an expert accountant to demonstrate the precise amount of assessment, the Company would in all probability have incurred that cost and taken advantage of the offer contained in Regulation No. 4 of A3. At most the assessment favors or penalizes the appellant Company in a very small sum—*de minimis lex non curat*. It all seems to narrow down to this, that the appellant Company asks me to find that a possibility is an actuality—and that, without any proof. I can only decide on proof: the appellant has adduced no sufficient proof and has failed to satisfy the onus cast on it. The second ground of appeal therefore fails.

In regard to the third ground of appeal that the Commissioner proceeded on a wrong principle in not making a proper reduction for bad debts and accordingly the assessment is invalid, the extent of the discretion of the Commissioner may be noted: (6) (d) of 1932 and 1936).

“6. In computing the amount of the profits or gains to be assessed, a deduction shall not be allowed in respect of:

(d) amounts transferred or credited to a reserve, contingent account or sinking fund, except such an amount for bad debts as the Commissioner may allow or except as otherwise provided in this Act.”

The contention of the appellant's counsel that the appellant should be allowed as a reduction for bad debts for the period in question such an amount credited to its reserve for bad debts as sound business experience shews to be reasonable, this being the amount which experience has shewn will be lost as bad debts on the sales made in the period in question, is, generally speaking, sound argument. Outside of growing crops the major problem of Saskatchewan for seven or eight years has been the problem of the adjustment of debts. It is a matter so notorious that I can take judicial notice of the fact that beginning with the year 1930 under the Provincial Debt Adjustment Acts with amendments the Provincial Debt Adjustment Commissioner or Board has been effecting a reduction of debts throughout the Province through its moratorium powers, while a first Board of Review for several years, and a second Board for several months, have been scaling down debts under The Farmers' Creditors Arrangement Act, a Dominion Statute, *inter alia*, farmers' debts for machinery to such implement companies as the appellant. The administrators of any income tax in Saskatchewan who did not allow a reasonable deduction for bad debts would be simply dead to the most live problem in Saskatchewan outside the growing of crops. Suppose for instance no deduction for bad debts was allowed by the Commissioner to a doctor who in his return made out his income return as the full amount charged on his books but collected, as we knew he

would in these hard times, only a fraction of what he charged on his books, I would think the assessment was made on a wrong principle and therefore invalid. The doctor's income would be but a fraction of the regular fees charged and deductions for bad debts should be made accordingly.

In these assessments of the appellant on the other hand, an hundred per cent deduction has been allowed by the Commissioner by virtue of the second paragraph of Regulations 2 of A3. "The sales of the taxpayer shall be measured by the gross amount...received...from sales"....  
 10The sales are not measured by the contract or sales prices but by the cash actually received on such sales—the gross sales with a deduction of the full amount of the bad debts. An hundred per cent deduction having been made by the Commissioner under the second paragraph of Regulation 2, he could not and, properly, did not allow any further reduction. I agree with the result arrived at by the Board of Revenue Commissioners in their decision in this matter, that the Commissioner was right in his disposal of the matter of bad debts, but with deference I do not agree with their reasoning as to why he was right. This ground of appeal fails.

If I am right in my opinion that the Commissioner has made a  
 20proper allowance for bad debts by deducting the full amount of bad debts under the second paragraph of Regulation 2 of A3, the acceptance or rejection of further evidence on that question becomes a matter of no practical importance.

There is, so far as I can ascertain, no decision of the Court of Appeal of Saskatchewan dealing with the points raised on these appeals, probably because the right of appeal to the Court of Appeal did not exist till 1937 (sections 5 and 6 of Chapter 8 of 1937). An appeal came before Taylor, J., as a judge of the Court of King's Bench in 1937 under section 58 of *The Income Tax Act of 1936*,—In re *Income Tax Act, 1932* and  
 30*Proctor & Gamble Company of Canada Limited (1937) 3 W.W.R. 680*. The facts and points of law raised therein are quite similar to those involved in these appeals. The said learned judge dismissed the appeal with costs. I agree with the reasons for judgment given in that appeal. (See also *Kerr v. Supt. of Income Tax (1938) 3 W.W.R. 740*; *Swift Canadian v. City of Edmonton 62 D.L.R., 175*).

I dismiss the three appeals and affirm the decision of the Board of Revenue Commissioners dated the 27th day of January, 1939, which affirmed the three assessments of the Commissioner.

As to the costs, my recollection is that both counsel argued costs should  
 40go to the successful party or in case of divided success, in accordance with success on the different grounds of appeal. The case of *In re Proctor and Gamble Limited supra* was cited as authority. That case is not applicable as to costs because at the time of its decision, namely, the 23rd of October 1937, subsection (5) of section 58 of *The Income Tax Act of 1936*, then in force, authorized the judge of the Court of King's Bench hearing the appeal to award costs. When, however, by *The Statute Law Amendment Act*, section 2 of Chapter 91 of 1938 coming into force the

23rd day of March 1938, sections 58 and 58a of *The Income Tax Act 1936* were repealed, and on the same 23rd day of March *The Treasury Department Act*, Chapter 8 of 1938 containing sections 41 and 42 corresponding to the said repealed sections 58 and 58a of *The Income Tax Act 1936* became law, the above quoted part of subsection (5) of section 58 dealing with costs before a judge of the Court of King's Bench was omitted from subsection (6) of section 41 of *The Treasury Department Act 1938*.

The assessments were not made till August 23rd, 1938, so section 41 of *The Treasury Department Act* would govern. *Butcher v. Henderson* 10(1868) L.R. 3 Q.B. 335; *Morgan v. Thorn* (1841) 10. L.J. Ex. 125; *Wodd v. Riley* (1867-8) L.R. 3 C.P. 26; *Levi v. Sanderson* (1869) 38 L.J.Q.B. 135; *Maxwell on Interpretation of Statutes* (7th ed.) p. 343. If there were no other provisions applicable, being *persona designata*, I would have no jurisdiction to award costs. See judgment of MacDonald, J., in *In re Provincial Apartments Limited* (1936) 3 W.W.R. 322, at p. 327. On the 1st of April 1939, however, the *Crown Suits (Costs) Act, 1939* came into force of which section 2 and section 5 (2) are as follows:

20 "2. In any action or other civil proceeding instituted before any Court in Saskatchewan by His Majesty or by the Attorney General or any person on behalf of His Majesty, or in any other action or civil proceeding to which His Majesty or the Attorney General or any person on behalf of His Majesty is a party, the costs of and incidental to the action or proceeding shall be in the discretion of the court, to be exercised in the same manner and on the same principles as between subject and subject, and the Court may order payment of costs by or to His Majesty accordingly."

"5.— . . . .

30 (2) This Act shall apply to proceedings pending when this Act comes into force".

I think it is quite clear that these proceedings before me are included in the words, beginning with the fourth line, "or in any other . . . civil proceeding to which His Majesty or the Attorney General or any person on behalf of His Majesty is a party." Both the Attorney General and the Commissioner of Income Tax, acting on behalf of His Majesty in the right of the Province, are parties to this appeal or civil proceeding and were represented by Mr. Quigg. Accordingly I think I have jurisdiction and should award costs "in the same manner and on the same principles as between subject and subject." The Commissioner of Income Tax will 40 have the costs of the three appeals before me upon taxation. There will be a set-off of the costs of the motion by way of preliminary objection to my jurisdiction, in which the appellant was successful.

DATED at Regina this 10th day of August, 1939.

"P. M. Anderson"  
J.K.B.

## IN THE KING'S BENCH

IN RE THE TREASURY DEPARTMENT ACT, 1938,

—and—

INTERNATIONAL HARVESTER COMPANY OF CANADA,  
LIMITED, an Ontario Corporation doing business within the  
Province of Saskatchewan,

Appellant.

THE HONOURABLE MR. JUSTICE ANDERSON  
IN CHAMBERS

Friday, the 11th day  
of August, A.D. 1939.

10

UPON THE APPLICATION of International Harvester Company of Canada Limited, the above named appellant, by way of appeal from the decision of the Board of Revenue Commissioners of the Province of Saskatchewan dated the 27th day of January, 1939, whereby the said Board dismissed three appeals of the said appellant respecting taxes claimed by the Crown to be payable by the said appellant under the following three income tax assessments dated the 23rd day of August, 1938.

- 20 (1) An assessment of \$4,382.07 for the taxation year 1934.  
(2) An assessment of \$11,541.07 for the taxation year 1935.  
(3) An assessment of \$10,136.60 for a period of ten months ending October 31st, 1936,

in the presence of counsel for the appellant and for the Provincial Tax Commission, the Commissioner of Income Tax, the Provincial Treasurer and the Attorney General for Saskatchewan, respondents, and counsel for the respondents having raised a preliminary objection that a judge of the Court of King's Bench has no jurisdiction to entertain the said appeals and, after having reserved judgment on the said preliminary objection the said Judge in Chambers having held on the 12th day of 30 April, 1939, that a judge of the Court of King's Bench had jurisdiction to hear the said appeals and having awarded the costs of the said preliminary objection and the argument thereon to the appellant against the respondents in any event; and the said judge having at a later date heard counsel upon the said appeals and having reserved his decision and having on the 11th day of August, 1939, delivered his decision (dated the 10th day of August, 1939) dismissing the said three appeals of the appellant and affirming the said decision of the Board of Revenue Commissioners, with costs as hereinafter ordered;

1. IT IS HEREBY ORDERED that the said three appeals of the 40 said appellant be and the same are hereby dismissed and that the said assessments be and the same are hereby affirmed.

2. AND IT IS FURTHER ORDERED that the appellant do pay to the Commissioner of Income Tax his costs of the said three appeals, upon taxation thereof, except the costs of the said application of the respon-



dents by way of preliminary objection to the jurisdiction of a judge of the Court of King's Bench, which last mentioned costs shall be payable by the respondents to the appellant in any event and shall be set off *pro tanto* against the costs taxable hereunder in favor of the Commissioner of Income Tax.

(sgd.) Joseph T. Reid,  
Chamber Clerk

[Seal]

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NOTICE OF APPEAL TO COURT OF APPEAL  
*re* 1934 Assessment

10

IN THE KING'S BENCH

IN RE THE TREASURY DEPARTMENT ACT, 1938,

—and—

INTERNATIONAL HARVESTER COMPANY OF CANADA,  
LIMITED, an Ontario corporation doing business in the Province  
of Saskatchewan,

Appellant.

NOTICE OF APPEAL

TAKE NOTICE that International Harvester Company of Canada Limited, the above named appellant, intends to appeal and does hereby  
20 appeal to the Court of Appeal for Saskatchewan from the decision of the Honourable Mr. Justice Anderson made in Chambers dated the 10th day of August, 1939, and delivered the 11th day of August, 1939, dismissing, with costs, the appeal of the said company from the decision of the Board of Revenue Commissioners of the Province of Saskatchewan dated the 27th day of January, 1939, whereby the said Board dismissed the appeal of the said company to the said Board from the "assessment" (so-called) bearing date the 23rd day of August, 1938, of a tax in respect of income, made by the Provincial Tax Commission or the Commissioner of Income Tax or Minister in the sum of \$4,382.07 for the taxation year  
30 A.D. 1934, and affirmed the said assessment, upon the following among other grounds, namely:—

(The grounds of Appeal are the same as in the Notice of Appeal *re* 1935 Assessment, post page 76 except as to the difference in reference to sections of 1932 and 1936 Income Tax Acts and changing the percentage in Ground No. 6, sub clause (b) from "22.1280%" to "21.010%" and figures "1935 to 1934.")

AND FURTHER TAKE NOTICE that at the sittings of the Court of Appeal for Saskatchewan to be held at the City of Regina commencing Monday, the 18th day of September, A.D. 1939, or so soon thereafter as  
40 counsel can be heard, the said Court will be moved on behalf of the said appellant for an order reversing and setting aside the said order of

the Honourable Mr. Justice Anderson and the order of the said Board affirming the said assessment, and for an order setting aside the said assessment with costs to the appellant of this appeal and of the appellant's prior appeals herein against the said Income Tax Commissioner and against the Crown.

AND FURTHER TAKE NOTICE that in support of this appeal, in addition to the evidence and material used before the Board of Revenue Commissioners at the hearing conducted before it, will be used the three affidavits of Clarence B. Munger filed on the appeal herein to the King's Bench Judge in Chambers, and in the alternative that the Court of Appeal will be asked to receive the said three affidavits of Clarence B. Munger as further evidence upon this appeal, and such further and other evidence as counsel may advise.

DATED at Regina, Sask., this 25th day of August, A.D. 1939.

MacKENZIE, THOM, BASTEDO,  
WARD AND McDOUGALL,

Per F.L.B.

Regina, Sask.

Solicitors for International Harvester Company of Canada Limited, Appellant.

20

TO: The Provincial Tax Commission.  
The Commissioner of Income Tax (of Saskatchewan)  
The Provincial Treasurer.  
And to their Solicitor, Alex Blackwood, Esq.,  
Deputy Attorney General,  
And to the Attorney General for Saskatchewan.

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NOTICE OF APPEAL TO COURT OF APPEAL  
*re* 1935 Assessment

30

IN THE KING'S BENCH

IN RE THE TREASURY DEPARTMENT ACT, 1938,

—and—

INTERNATIONAL HARVESTER COMPANY OF CANADA,  
LIMITED, an Ontario corporation doing business within the  
Province of Saskatchewan,

Appellant.

TAKE NOTICE that International Harvester Company of Canada Limited, the above named appellant, intends to appeal and does hereby appeal to the Court of Appeal for Saskatchewan from the decision of the Honourable Mr. Justice Anderson made in Chambers dated the 10th day of August, 1939, and delivered the 11th day of August, 1939, dismissing,

40

with costs, the appeal of the said company from the decision of the Board of Revenue Commissioners of the Province of Saskatchewan dated the 27th day of January, 1939, whereby the said Board dismissed the appeal of the said company to the said Board from the "assessment" (so-called) bearing date the 23rd day of August, 1938, of a tax in respect of income, made by the Provincial Tax Commission or the Commissioner of Income Tax in the sum of \$11,541.07 for the taxation year A.D. 1935, and affirmed the said assessment, upon the following among other grounds, namely:—

10 1. That the said decision is against law and the evidence and the weight of evidence.

2. That the appellant during the taxing period in question was, upon the facts admitted, a corporation residing outside of Saskatchewan, and that therefore, by reason of section 23 of the *Income Tax Act, 1936*, its income liable to taxation was limited to the net profit or gain arising from its business in Saskatchewan during the said period.

3. That in order to bring taxation within the legislative jurisdiction of the Province it must be "direct taxation within the Province" as laid down in section 92 (2) of the *British North America Act*, and therefore the 20 constitutional right of the Province to assess or levy a tax upon the income of the appellant is limited to the income (*i.e.* net profit or gain) of the appellant arising from its business in Saskatchewan during the taxing period.

4. That a taxing Act such as the *Income Tax Act* must be construed strictly and the words imposing the tax must be clear and unequivocal, and the burden was on the Commissioner of Income Tax or other authority supporting the tax to show that there was a valid assessment and that the tax is payable, *i.e.* to show that the income tax assessed and levied against the appellant was assessed upon ascertained or determined 30 net profit or gain of the appellant arising from its business in Saskatchewan for the period in question. There was no return or any information before the Commissioner of Income Tax or other taxing authority or the said Board or the said King's Bench Judge in Chambers showing that the appellant had any net profit or gain arising from its business in Saskatchewan for the period in question, and there was therefore no right to assess the tax in question and the assessment should be set aside.

5. That the evidence establishes that the Commissioner of Income Tax or other taxing authority, in purporting to make the assessment in question, had no evidence of and did not purport to tax the actual net 40 profit or gain arising from the company's business in Saskatchewan, but purported to rely upon regulations passed by Order-in-Council, and purported to determine or ascertain the income of the appellant within Saskatchewan by taking the said income to be such percentage of the purported total income of the appellant as the gross sales within the Province bear to the total gross sales of the Company.

6. That in purporting to rely upon the said regulations the said Commissioner or other taxing authority erred and the said assessment is invalid for the following reasons:—

(a) That under section 9 (4) of *The Income Tax Act, 1936*, and under the regulations themselves, the said regulations (if they apply at all to a non-resident, which is not admitted) only apply to a case where the said Commissioner or taxing authority was unable to determine or obtain information required to ascertain the income within the Province of the appellant. The appellant made a return of its total income as required by section 32 of the said Act and was never asked by the said Commissioner or other taxing authority under Section 39 of the said Act or at all for any return of information or additional information as to its net profit or gain arising from its business in Saskatchewan, and the said regulations under which the said assessment purports to have been made have no application to the appellant because the condition precedent to the making and application thereof did not exist.

(b) That in any event the said Commissioner or other taxing authority did not comply with the said regulations, but computed (incorrectly) what he considered to be the appellant's total income everywhere and then took the appellant's income in Saskatchewan to be such percentage of such computed total income as the gross sales within Saskatchewan bear to the total gross sales of the appellant everywhere, namely 202.1280%. If the said regulations apply at all to the appellant (which is not admitted), the sales of the taxpayer upon which the percentage referred to in the said regulations is based are not the gross sales of the taxpayer but the gross amount which the taxpayer has received in connection with its business during the preceding year from sales and other sources as defined in the said regulations, as to which the Commissioner of Income Tax or taxing authority had no evidence.

(c) That the said regulations, as to a non-resident corporation such as the appellant, are beyond the powers of the Lieutenant-Governor-in-Council as being inconsistent with section 23 of the *Income Tax Act, 1936*. That section, in limiting the income of a non-resident liable to taxation to its net profit or gain arising from its business in Saskatchewan, (being obviously passed to keep the Province within its constitutional taxing limit) means actual (and not fictitious or imaginary) net profit or gain.

(d) That the said regulations, as to a non-resident corporation such as the appellant, are *ultra vires* the Province of Saskatchewan. The tax appealed against is not assessed upon the actual income of the appellant that arose from its business in Saskatchewan during the taxing period in question, but was levied arbitrarily without the appellant's actual income within Saskatchewan having been determined or ascertained or without it having been determined or ascertained that the appellant had any net profit or gain in Saskatchewan for the period in question.

(e) That the income of the appellant which the Province of Saskatchewan could constitutionally and validly tax for the period in question was limited to the actual net profit or gain arising from the business of the appellant in Saskatchewan during the said period, and that in so far as the said regulations or the Income Tax Acts of Saskatchewan go beyond that limitation they are *ultra vires*, particularly, without limiting

the generality of the foregoing, sections 3, 7, 24, 29, 29(a), 31, 43, 44, 45, 46, 51 and 52 of the *Income Tax Act 1932*, and sections 3, 9, 27, 32, 33, 46, 47, 51, 52, 54 and 56 of the *Income Tax Act 1936*.

7. That, while contending that the burden was not on the appellant to show that the method of taxation resulted in taxing income outside the Province (but that the burden was on the taxing authorities to show the assessment was valid), the appellant says the evidence established that the method used by the Income Tax Commissioner or taxing authorities of resorting to the said regulation was a fictitious and incorrect method and  
10 did not in fact ascertain or determine the net profit or gain of the appellant in Saskatchewan, for the following, among other, reasons:—

(a) Under the method employed the tax in question was assessed regardless of whether or not the appellant had any net profit or gain within Saskatchewan and even though the appellant had a loss arising from its business in Saskatchewan for the period in question.

(b) Under the method employed the said Commissioner or taxing authorities invalidly imposed a tax on the profit earned by the appellant from the manufacture of its products, all outside Saskatchewan, and from the sales of goods outside Saskatchewan, and without paying any  
20 regard to the difference between the cost of making sales and realizing thereon in Saskatchewan and in other parts of Canada. The total income of the appellant is derived from both the manufacture and sale of goods from various factors only some of which arise or operate within Saskatchewan. The products which the appellant sells are manufactured entirely outside Saskatchewan, and only part of its goods are sold in Saskatchewan. The appellant's income, if any, does not bear any fixed proportion to the amount of sales in Saskatchewan, or vary from province to province in proportion to the sales in those provinces. The cost to the appellant of doing business in Canada varies greatly in different prov-  
30 inces and sections of Canada, depending upon wages payable, proximity to point of manufacture, crop conditions, credit conditions, taxes and other factors.

(c) The learned Judge in Chambers should have found, upon the evidence before him, that upon a proper computation, based on the business of the appellant carried on within Saskatchewan and the expenses thereof, the appellant had a loss arising from its business in Saskatchewan during the period in question; or in the alternative that upon a proper computation based on the appellant's total income, and allocating same according to the formula suggested by the appellant in its 1935 return,  
40 or after making a proper allowance for manufacturing profit and provision for bad debts, the amount taken by the said Commissioner or taxing authorities as the appellant's net income applicable to Saskatchewan for the period in question is an amount greatly in excess of the appellant's actual net income arising from its business in Saskatchewan.

(d) The learned Judge in Chambers should have found upon the evidence before him that under the method employed the said commissioner or taxing authorities incorrectly found a greater net income in

the Province of Saskatchewan alone for the period in question than the entire net income of the appellant as found by the Dominion income taxing authorities.

8. That the learned Judge in Chambers erred in finding, that, in assessment appealed against, the appellant had been allowed a 100% deduction or reserve for bad debts. The evidence shows that the sales upon which the Commissioner based his percentage in purporting to ascertain the Saskatchewan income under the said regulations were the gross sales of the appellant everywhere and its gross sales in Saskatchewan, 10 and not merely the gross amount received by the appellant from its sales everywhere and from its sales in Saskatchewan. The appellant, while contending that no assessment for income should have been made against it for the period in question, contends that in any event the learned Judge in Chambers, having held that the appellant should be allowed as a deduction for bad debts for the period in question such an amount credited to its reserve for bad debts as sound business experience shows to be reasonable, should have found and held that, as no such allowance had been made, the said Commissioner or taxing authority could not and did not in any event properly ascertain the net income of the 20 appellant for the period in question, and the said learned Judge should have set aside the said assessment. The said learned Judge should also have found upon the evidence that the said Commissioner or taxing authority gave the appellant no opportunity to give evidence as to its experience of the expected loss in bad debts, and that the appellant was not aware that the amount charged up in its returns for bad debts was going to be disallowed until it received notice of the assessment appealed from.

9. That the learned Judge in Chambers erred in dismissing the appellant's appeal herein and in affirming the decision of the Board of Revenue Commissioners affirming the assessment appealed against, and 30 should have allowed the appellant's appeal with costs and set aside the said assessment.

10. That the learned Judge in Chambers erred in holding that the onus lies on the appellant of proving or showing that the assessment appealed against taxes some of the company's income outside of Saskatchewan, or that there is no proof of this; and erred in finding that the assessments are approximately accurate or correct, or that the farthest the appellant can go is that the assessments may to a very slight amount tax income without Saskatchewan; or that on the other hand they may to a very slight amount fall short of taxing all the income within Saskat- 40 chewan, or that neither the appellant nor any one else can prove it does, or that on the evidence such is incapable of proof, or that at the most the assessment favours or penalizes the appellant company in a very small sum; or that it narrows down to the appellant asking the learned Judge to find that a possibility is an actuality, or to so find without any proof; or that the appellant adduced no sufficient proof or failed to satisfy the onus (if any) cast on it; and erred in applying the maxim *de minimis lex non curat*.

11. That the learned Judge in Chambers erred in his summary of the appellant's grounds of appeal and did not fully enumerate the same.

12. That the learned Judge in Chambers erred in not holding (as was held by the Board of Revenue Commissioners) that the taxpayer (appellant) is not required by the Income Tax Act to file a statement of income derived exclusively within Saskatchewan and that the said Act requires only a return of the taxpayer's total income during the taxing period. There was no appeal from the said finding of the said Board and in any event the learned Judge in Chambers erred in holding that  
10 the words "total income" in section 32 of the *Income Tax Act of 1936* should be interpreted otherwise than as interpreted by the said Board, or that it was the primary duty of the appellant to provide a full return with details from which the Commissioner might be enabled or be reasonably expected to calculate the taxable income, or that the object of making a return was to give the Commissioner such data as would enable him to calculate accurately the taxable income in Saskatchewan, or that the appellant knew or ought to have known such object. The learned Judge in Chambers should in any event have held that, even if the return re-  
20 quired under the said Act was a return of the income within Saskat-  
chewan (which the appellant does not admit), in the absence of any evidence of income within Saskatchewan or upon which income within Saskatchewan could be truly and definitely determined or ascertained the said assessment should be set aside.

13. That the learned Judge in Chambers erred in disagreeing with the Board of Revenue Commissioners that the Income Tax Commissioner made use of a legal fiction, and erred in finding that this was a real, genuine assessment of the Commissioner calculated as accurately as was possible under the circumstances, and erred in holding that the absence of scientific accuracy or mathematical precision in assessment  
30 does not predicate the presence of a legal fiction. Furthermore, there was no appeal from the finding of the Board of Revenue Commissioners that the Commissioner resorted to a fiction. The learned Judge in Chambers erred in holding in effect that the principle applicable to the calculation of damages has any bearing whatever upon the assessment of income, or that the degree of accuracy attained in the assessment against the appellant of taxable income for the period in question goes far beyond that of the assessment of damages by a judge in an action for damages for personal injuries where those injuries are very severe or fatal.

14. That the learned Judge in Chambers erred in finding that the  
40 Commissioner made exhaustive efforts to get the required information and erred in finding that there were any efforts showing that the appellant's contention, that the income in Saskatchewan was never requested of the appellant, is not in accordance with the facts. The learned Judge in Chambers erred in finding that there was no failure on the part of the Commissioner to endeavour to get the necessary information or that his conduct is characterized by great perseverance and industry or fairness. The learned Judge in Chambers should have held upon the evidence that the Commissioner made no effort to get evidence of the actual income,

that is net profit or gain, of the appellant arising from its business in Saskatchewan, but having requested and obtained certain information relating to the appellant's returns of total income and without having requested information as to the appellant's Saskatchewan income, arbitrarily purported to apply the said regulations and to assess the appellant thereunder. The learned Judge in Chambers erred in holding that the Commissioner is the one to decide his ability or inability to determine or obtain this information, or is entitled to use his own judgment or discretion, and erred in holding that the condition precedent to the use of  
 10 the said regulations had been complied with, or that the Commissioner was entitled to proceed under the said regulations.

15. That the learned Judge in Chambers erred in holding that the said regulations carry a presumption that they are not inconsistent with the spirit of the Act or that they are regulations for determining such income within the Province, or that the *onus probandi* that these regulations are *ultra vires* rests on the appellant. The learned Judge in Chambers erred in holding that Regulation 5 has any bearing on the question of the validity of the regulations, and erred in finding that the appellant has no system of accounting that will show with accuracy the actual  
 20 income in Saskatchewan. The learned Judge in Chambers erred in holding that the percentage allotment authorized by regulations 1 and 2 has stood the test of time or litigation, or is as accurate or equitable a method as can be devised under the circumstances, or has been utilized in various provincial Acts both before and subsequent to the *Dominion Income Tax Act*. The learned Judge in Chambers erred in holding (if he did so hold) that the memorandum and explanation accompanying the appellant's return for the taxation year 1935 had any bearing upon the points raised in this appeal or entitled the Commissioner to use the method set out in the said regulations in purporting to ascertain the appellant's Saskat-  
 30 chewan income; and erred in holding that the said method is an "allocation method."

16. That the learned Judge in Chambers erred in holding that Regulation 4 had any bearing on the questions at issue in this appeal, or that the Commissioner by the said regulation inferentially or at all intimated that he is prepared to re-open the matter or redetermine or re-assess accordingly, or that any offer to the appellant was contained in the said Regulation 4, and should in any event have held that the procedure outlined in Regulation 4 is permissive only and the fact that the appellant did not follow that procedure did not affect the appellant's right to appeal or the  
 40 questions raised upon this appeal. The learned Judge in Chambers erred in holding that the Commissioner could not go to any greater length (than Regulation 4) in endeavouring to arrive at the proper amount, or that if the appellant knew of any better method than the percentage "allocation" (referred to in the regulations) that was the time to demonstrate it at a round table conference, or that not having taken advantage of Regulation 4 the appellant is under the necessity on this appeal to discharge the onus of showing the assessments taxed some of the company's income outside Saskatchewan, or that there is any such onus.



17. That the learned Judge in Chambers erred in not deciding whether to accept or reject the further material (the three affidavits of Clarence B. Munger and the exhibits therein referred to) filed by the appellant on the hearing of this appeal before the said Judge in Chambers, and should have permitted the said further material to be filed.

18. That the learned Judge in Chambers erred in holding that the facts and points of law raised in the *Proctor and Gamble case* (1937, 3 W. W.R. 680) are quite similar to those involved in these appeals, and erred in agreeing with the reasons for judgment of the Honourable Mr. Justice Taylor in that appeal, and erred in holding (if he did so hold) that the case of *Kerr vs. Superintendent of Income Tax, 1938, 3 W.W.R. 740*, has any application to this appeal, and should have held that the decision in that case does not apply to a non-resident and that in any event the majority judgment in that case is not correctly decided.

19. That the Board of Revenue Commissioners erred in holding that the method used by the Assessment Commissioner or taxing authority does not tax income derived outside Saskatchewan, and that the net profit or gain of the appellant has been determined in the manner provided by law, and that the assessment is a legal assessment; and erred in holding that the tax assessed against the appellant is a tax assessed and levied on the person in respect of the income, and should have held that the tax assessed and levied under the Income Tax Acts is a tax on the income itself, particularly with reference to a non-resident corporation. In the alternative, if the tax assessed and levied under the said Acts is a tax on the person and not on the income itself (which is not admitted), then the Province of Saskatchewan cannot assess or levy a tax on the appellant, being a non-resident. The said Board also erred in holding that there was no appeal from the decision of the Commissioner with respect to what deduction should be allowed for bad debts, or that the Commissioner had exercised any discretion upon this point, or that the discretion which had been exercised (if any) should not be interfered with, and erred in other respects more particularly set out in the notice of appeal to the Judge in Chambers.

20. That the learned Judge in Chambers erred in stating that both counsel argued (before him) that costs should go to the successful party, counsel for the Provincial Tax Commission, Commissioner of Income Tax and Attorney General having argued on the appeal before the said Judge that there was no jurisdiction to grant any costs upon the said appeal. The learned Judge in Chambers should in any event have given no costs to the Commissioner of Income Tax.

AND FURTHER TAKE NOTICE that at the sittings of the Court of Appeal for Saskatchewan to be held at the City of Regina, commencing Monday, the 18th day of September, A.D. 1939, or so soon thereafter as counsel can be heard, the said Court will be moved on behalf of the said appellant for an order reversing and setting aside the said order of the Honourable Mr. Justice Anderson and the Order of the said Board affirming the said assessment, and for an order setting aside the said assessment with costs to the appellant of this appeal and of the appel-

lant's prior appeals herein against the said Income Tax Commissioner and against the Crown.

AND FURTHER TAKE NOTICE that in support of this appeal, in addition to the evidence and material used before the Board of Revenue Commissioners at the hearing conducted before it, will be used the three affidavits of Clarence B. Munger filed on the appeal herein to the King's Bench Judge in Chambers, and in the alternative that the Court of Appeal will be asked to receive the said three affidavits of Clarence B. Munger as further evidence upon this appeal, and such further and  
10 other evidence as counsel may advise.

DATED at Regina, Sask., this 25th day of August, A.D. 1939.

MacKENZIE, THOM, BASTEDO,  
WARD AND McDOUGALL,

Per F.L.B.

Regina, Sask.,

Solicitors for International Harvester  
Company of Canada Limited,  
Appellant.

TO: The Provincial Tax Commission,  
20 The Commissioner of Income Tax (of Saskatchewan),  
And to their Solicitor, Alex Blackwood, Esq.,  
Deputy Attorney General,  
And to the Attorney General for Saskatchewan.

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NOTICE OF APPEAL TO COURT OF APPEAL  
*re* 1936 Assessment

IN THE KING'S BENCH

IN RE THE TREASURY DEPARTMENT ACT, 1938,

—and—

30 INTERNATIONAL HARVESTER COMPANY OF CANADA,  
LIMITED, an Ontario corporation doing business in the Province  
of Saskatchewan,

Appellant.

NOTICE OF APPEAL

TAKE NOTICE that International Harvester Company of Canada Limited, the above named appellant, intends to appeal and does hereby appeal to the Court of Appeal for Saskatchewan from the decision of the Honourable Mr. Justice Anderson made in Chambers dated the 10th day of August, 1939, and delivered the 11th day of August, 1939, dismissing, with costs, the appeal of the said company from the decision of the Board  
40 of Revenue Commissioners of the Province of Saskatchewan dated the 27th day of January, 1939, whereby the said Board dismissed the appeal of the said company to the said Board from the "assessment" (so-called)

bearing date the 23rd day of August, 1938, of a tax in respect of income, made by the Provincial Tax Commission or the Commissioner of Income Tax in the sum of \$10,136.60 for the period of ten months ending the 31st day of October, A.D. 1936, and affirmed the said assessment, upon the following among other grounds, namely, all of the grounds numbered 1 to 20 inclusive set out in the notice of appeal of the appellant dated and served this 25th day of August, 1939, from the decision of the Honourable Mr. Justice Anderson dated the 10th day of August, 1939, and delivered the 11th day of August, 1939, dismissing, with costs, the appeal  
 10 of the said company from the decision of the Board of Revenue Commissioners of the Province of Saskatchewan dated the 27th day of January, 1939, whereby the said Board dismissed the appeal of the said company to the said Board from the "assessment" (so-called) bearing date the 23rd day of August, 1938, of a tax in respect of income, made by the Provincial Tax Commission or the Commissioner of Income Tax for the taxation year A.D. 1935, all of which grounds are hereby repeated and form a part of this notice of appeal, changing the percentage in ground No. 6, sub-clause (b), thereof from "22.1280%" to "18.5268%", and changing the figures "1935" in ground No. 7, sub-clause (c), and in  
 20 ground No. 15 thereof to "1936".

AND FURTHER TAKE NOTICE that at the sittings of the Court of Appeal for Saskatchewan to be held at the City of Regina commencing Monday, the 18th day of September, A.D. 1939, or so soon thereafter as counsel can be heard, the said Court will be moved on behalf of the said appellant for an order reversing and setting aside the said order of the Honourable Mr. Justice Anderson and the order of the said Board affirming the said assessment for the period of ten months ending the 31st day of October, A.D. 1936, and for an order setting aside the said assessment with costs to the appellant of this appeal and of the appellant's  
 30 prior appeals herein against the said Income Tax Commissioner and against the Crown.

AND FURTHER TAKE NOTICE that in support of this appeal, in addition to the evidence and material used before the Board of Revenue Commissioners at the hearing conducted before it, will be used the three affidavits of Clarence B. Munger filed on the appeal herein to the King's Bench Judge in Chambers, and in the alternative, that the Court of Appeal will be asked to receive the said three affidavits of Clarence B. Munger as further evidence upon this appeal, and such further and other evidence as counsel may advise.

40 DATED at Regina, Sask., this 25th day of August, A.D. 1939.

MacKENZIE, THOM, BASTEDO,  
 WARD AND McDOUGALL,  
 Per F.L.B.

Regina, Sask., Solicitors for International Harvester Company of Canada Limited, Appellant.

TO: The Provincial Tax Commission,  
 The Commissioner of Income Tax (of Saskatchewan),  
 And to their Solicitor, Alex Blackwood, Esq.,  
 50 Deputy Attorney General,  
 And to the Attorney General for Saskatchewan.

REASONS FOR JUDGMENT  
OF THE COURT OF APPEAL

(Delivered by the Hon. Chief Justice Turgeon for the  
Court, consisting of himself and Justices MacKenzie and  
Gordon.)

F. L. BASTEDO, K.C., for the appellant Company.  
S. QUIGG, K.C., for the respondents.

The appellant is an Ontario Company having its head office in the City of Hamilton, and is licensed to do business in Saskatchewan under the provisions of *the Companies Act* (Saskatchewan). The Company manufactures and sells agricultural implements. It sells in this Province but does no manufacturing here. On August 23rd, 1938, three income tax assessments were made upon the Company by the Commissioner of Income Tax (Saskatchewan) for the years 1934, 1935 and 1936, respectively. The amount assessed for 1934 was \$4,382.07, for 1935, \$11,541.07 and for 1936, \$10,136.60. The Company takes exception to all three assessments. An appeal against them was taken in the first instance to the Board of Revenue Commissioners, from the Board to a Judge of King's Bench, and now from the Judge to this Court.

20 The appellant's case is met at the outset by the objection, raised by the respondents' counsel, that the appeals taken to the Judge and to the Court are not authorized by law. If there is an appeal in Income Tax proceedings it must be given by statute and the appellant must show that its case comes within the Statute. The objection calls for an examination of a large number of statutory dispositions, the result of which, in my opinion, is to leave the question in a state of considerable doubt. For the sake of convenience I tabulate here the various enactments which bear upon the case. These are:

1932—Chapter 9, Sections 53 and 54.	
30 1934-35—Chapter 6, Section 2, }	Assented to on the same day, February 21st, 1935.
1934-35—Chapter 16, Section 7 }	
1936—Chapter 15, Sections 57-58, and 74.	
1937—Chapter 8, Sections 5 and 6.	
1938—Chapter 8, Sections 4 and 41, }	Assented to on the same day, March 23rd, 1938.
1938—Chapter 91, Section 2 }	
1939—Chapter 9, Section 16.	

Chapter 9 of the Statutes of 1932 was the original Income Tax Act. Sections 53, 54 and 55 dealt with appeals. They provided an appeal from the assessment to the "Minister", meaning the Provincial Treasurer, and 40 from the Minister to a judge of King's Bench. Power was given to the judge to hear and consider the cause upon the material filed by the Minister and upon any further evidence which might be produced by either party under his direction, and to affirm, amend or disallow the assessment. The judge's decision was to be final and subject to no appeal.

Chapter 6 of 1934-35 amended *The Treasury Department Act* by providing for the appointment of a Board of Revenue Commissioners, which

was empowered to hear appeals respecting the payment of taxes or other monies due to the Crown; its decisions in such cases to be final and not subject to further appeal "unless otherwise provided in any revenue Act." Chapter 16 of the same session amended *The Income Tax Act*, Chapter 9 of 1932, by substituting this Board of Revenue Commissioners for the Minister as the body to whom an appeal should be taken in the first instance.

In 1936 a new Income Tax Act was enacted, being Chapter 15 of the Statutes of that year. Its effect was to divide the provincial income tax 10 period into two parts for certain purposes. Section 73 provided that the new Act should apply to incomes earned or received in the year 1935 and to income in respect of fiscal years ending subsequently to the 31st day of August, 1935, and, by necessary intendment, to the incomes of future years; while section 74 (2) provided that the original Income Tax Act, Chapter 9 of the Statutes of 1932, and all its amendments, should continue, although repealed for other purposes, to apply to incomes earned or received in the years 1931, 1932, 1933, 1934, and to incomes in respect of fiscal years ending before the first day of September, 1935. The evident intention of the Legislature was that cases arising in respect of 20 these earlier years should all be treated alike, whether the assessment was made before or after the coming into force of the new Act. Nothing has since been done by legislation which can be interpreted as abrogating or modifying the law, either expressly or impliedly, in this respect. It follows that a taxpayer assessed now, in 1939, in respect of his income, say for 1932, is in the same position as were those taxpayers who were assessed for their 1932 income in 1933 or in 1934. This is the position of the appellant in respect to its appeal from the assessment made on August 23rd, 1938, upon its 1934 income. Its rights, and obligations must be determined by reference to the old Statute, Chapter 9 of 1932 with its 30 amendments. This legislation gives the appellant the right to appeal in the first instance to the Board of Revenue Commissioners and from the Board to a judge of King's Bench for final determination without further appeal. The Court has consequently no jurisdiction to entertain an appeal in respect to the assessment for 1934, and the application to the Court, in so far as it pertains to this assessment, must be dismissed. I shall add a word later on to what I have just said upon this question.

We come now to the assessments made, also on August 23rd, 1938, in respect of the appellants' income in 1935 and in 1936. The question raised here is much more involved than the one first dealt with.

40 *The Income Tax Act*, 1936, (Chapter 15 of that year), in setting up the procedure to be followed in respect to incomes for the year 1935 and subsequent years, provided for an appeal in sections 57, 58 and 59. The appeal granted was of the same nature as that provided in the Act of 1932 as amended. It lay, first, to the Board of Revenue Commissioners, and from the Board to a Judge of King's Bench, the judge having power to review the case and to affirm, amend or disallow the assessment; and his decision being final and subject to no further appeal.

In 1937, *The Income Tax Act, 1936*, was amended by Chapter 8. A new section, 58a, was added to the Act providing for an appeal from the decision of the Judge to this Court, such appeal to be had as if the decision were a judgment in an action between subject and subject. And the section went on to say that there should be no further or other appeal.

The statute remained in this form until March 23rd, 1938, granting an appeal from the assessment, first to the Board of Revenue Commissioners (Section 57), then from the Board to a Judge of King's Bench (Section 58), and finally, from the judge to the Court of Appeal (Section 58a.)

During this time the provisions of the *Treasury Department Act* respecting appeals to the Board of Revenue Commissioners remained as originally enacted in 1934-35 by Chapter 6 of that year. The Board had power to hear appeals "respecting the payment of taxes or other moneys due to the Crown", and to give decisions which should be final "unless otherwise provided for in any revenue Act." There are many revenue Acts in Saskatchewan, reference to section 12 of *The Provincial Tax Commission Act, 1938* (c. 10) showing that there must be at least eleven of them including the Income Tax Act. This Income Tax Act therefore was a revenue Act providing for an appeal from the Board to a judge in exception to the general provision that no such appeal should lie.

On March 23rd, 1938, two Acts were assented to whose effect must be considered with care. These were chapters 8 and 91. Chapter 8 repealed the former Treasury Department Act and enacted in its stead *The Treasury Department Act, 1938*. This new legislation, which is now in force, alters the statutory provisions respecting appeals heard by the Board of Revenue Commissioners. It provides in the first place (section 40(8)(a)) that the Board shall have power, as formerly, to hear appeals "respecting the payment of taxes or other moneys due to the Crown", but instead of saying, as in the case of the former Act, that such appeals "shall be final and not subject to further appeal unless otherwise provided for in any revenue Act", it provides (Sections 40 and 41), that an appeal shall lie from a decision of the Board on a question of law to a judge of King's Bench and from the judge to the Court of Appeal. In order to be heard by a judge of King's Bench the appellant must show that he is appealing, in the language of the Statute, (Section 40(1)), "from a decision of the board on a question of law arising in an appeal to it under clause (a) of subsection (8) of Section 40." Subsection (6) of section 41 then provides that "the judge may affirm the decision of the board or amend or reverse the same in so far as it was based upon any error in law". And section 42 says that an appeal shall lie from the decision of the judge to the Court "as if such decision were a judgment in an action between subject and subject."

So much for chapter 8 of the Statutes of 1938 assented to on the 23rd of March of that year. We come now to Chapter 91 assented to on the same day. This chapter 91 is the *Statute Law Amendment Act, 1938*. Section 2 says: "Sections 58 and 58a of *The Income Tax Act, 1936*, are

repealed." The sections of the Income Tax Act so repealed were those which provided an appeal from the Board of Revenue Commissioners to a judge and from the judge to the Court. It may be noted that the appeal thus abrogated was not an appeal confined to questions of law but one which went to the merits of the assessment.

The question now to be determined is, does the legislation of 1938 abolish appeals in Income Tax matters beyond the appeal to the Board of Revenue Commissioners, or, on the contrary, does it provide a new kind of appeal, an appeal on questions of law only, from all decisions of  
10 the Board including those delivered in respect to income tax assessments?

I have come to the conclusion that the new appeal provisions of *The Treasury Department Act* do apply to decisions of the Board on appeals taken to them from assessments respecting incomes covered by *The Income Tax Act, 1936*, that is, (Section 73), incomes earned or received in the year 1935 and in the fiscal years ending subsequently to the 31st day of August, 1935.

It is contended for the respondents against this conclusion that, *The Treasury Department Act* being a statute of general application, its provisions must be taken to be over-ridden by contrary or inconsistent  
20 provisions found in statutes dealing with particular subjects, in so far as these particular subjects are concerned. The statement of principle is sound but it does not govern this case. I have already indicated that I believe it does govern assessments made in respect to incomes to which the procedure of *The Income Tax Act, 1932*, still applies. The old Act and its amendments are still alive in so far as these earlier years are concerned. They set up a mode of appeal complete in itself, with an express finality, and applicable only to one particular form of taxation, viz. income tax. In my opinion, it would require an express repeal of these provisions, or inconsistent legislation of an equally particular nature  
30 and of later enactment, to alter the law concerning assessments made in those earlier years. Later inconsistent legislation effective to alter the law need not necessarily be found in a later income tax statute; it may well be woven into another statute, such for instance as *The Treasury Department Act*, so long as the language used leaves no doubt of its application to the particular subject of Income Tax. We have an example of this in the case of *The Dart, 1893 Pro. 33; 62 L.J. Pro. 32*, where the effect of certain legislation was considered. The subject matter of the legislation was, appeals from the decisions of a Divisional Court altering judgments of County Courts in certain Admiralty matters. *The Judicature*  
40 *Act, 1873*, enacted that from the decision of a Divisional Court on such an appeal there should be no further appeal without leave. *The County Courts Act, 1875*, which came into operation later, enacted that, in such cases, no leave to appeal should be necessary. It was held that, the two enactments being inconsistent, the later of the two, *The County Courts Act*, must prevail. But the question in that case does not seem to have been a difficult one, because both enactments were directed to the same thing: appeals in admiralty cases from the County Courts to the Divisional Courts, and from the Divisional Courts to the Court of Appeal.

Both enactments covered the whole of what was common ground; both could not validly occupy this ground at the same time, so the earlier had to give way to the later. Here, the provisions of *The Treasury Department Act, 1938*, apply generally to appeals coming before the Board of Revenue Commissioners from whatever source; *The Income Tax Act, 1932*, applies only to a particular class of appeals; there is certainly no express, and, in my opinion, no implied, repeal of the particular statute, by the general, and, consequently the former remains in force.

But the case is different, I think, when chapters 8 and 91 of the 10 Statutes of 1938 are placed side by side. The result of chapter 91 is to leave *The Income Tax Act, 1936*, in the position of granting an appeal (Section 57) upon the assessment to the Board of Revenue Commissioners. The section does not say that the appeal thus created shall be final. It serves merely to bring the assessment before the Board, which must proceed to hear it under the provisions of the Treasury Department Act. Sections 41 and 42 of that Act provide an appeal from all the decisions of the Board. Sections 58 and 58a of *The Income Tax Act, 1936*, being repealed, there remains no particular legislation creating an exception to the general law in respect to decisions rendered by the Board upon Income 20 Tax appeals. The special Act may create an exception either expressly or impliedly, but it does not necessarily do so. Here no such exception can be pointed out.

It follows, therefore, that the Court has jurisdiction to hear, and is bound by Statute to hear, the appeals respecting the assessments for the years 1935 and 1936, provided it can be shown that a question of law arises; in which event it will be the Court's duty to go into the case presented to the Board and to learned Judge of King's Bench and to "affirm the decision of the Board or amend or reverse the same in so far as it was based upon any error in law," (section 41(6)).

30 The doubt created by the simultaneous enactment of chapters 8 and 91 of 1938 has been removed for the future by section 16 of Chapter 9 of the Statutes of 1939. This enactment adds a new section (58) to *The Income Tax Act, 1936*, providing that appeals from decisions of the Board of Revenue Commissioners upon assessments shall be subject to and governed by sections 41 and 42 of *The Treasury Department Act*.

Among the contentions put forward by the appellant the broadest in its effect is the one which goes to the constitutionality of the legislation under which the assessments were made. The appellants say that *The Income Tax Act, 1936*, or at least that part of it which affects them, is 40 *ultra vires* the Legislature of Saskatchewan because it does not provide for direct taxation with the province as authorized by *The British North America Act*, section 92(2). The respondents submit argument in favour of the validity of the legislation, but at the same time they contend that the constitutional question involved is not properly before the Court in these proceedings. They say that the position of the parties here is similar to the position of those concerned in the Alberta Case of *Royal Trust Company v. Attorney General of Alberta (1934) 1 W.W.R. 824*, where Ewing, J., held that in certain proceedings taken before him under *The*



*Succession Duties Act* of that province he did not have jurisdiction to determine whether or not the Act was *ultra vires* the Provincial Legislature. It will not be necessary for me to examine the merits of the respondent's objection because, having heard a full argument on the constitutional question and examined the authorities submitted on both sides, I am convinced that the charge of unconstitutionality cannot be sustained. *The Income Tax Act* affects many classes of individuals and of corporations, some of its provisions may be applicable in one case and not in another, and it may, like any enactment of a Canadian Legislature, be 10 valid in part and invalid in part: *Toronto Corporation v. York Township Corporation* (1938), A.C. 415; 107 L.J.P.C. 43. It is not necessary on this occasion to make any pronouncement on the statute further than to say that those portions of it which govern the taxation of corporations in the appellant's position, that is extra-provincial corporations doing business in the province, are so worded as to indicate an intention to impose only a form of taxation which falls within the description of "direct taxation within the province": see the remarks of the present Chief Justice of Canada, then Mr. Justice Duff, in *Lovitt v. The King* 43 S.C.R. 106, at page 130. It will be well upon this point to read in the first place the 20 following sections of the statute:

"4. The following incomes shall not be liable to taxation hereunder:

(j) Profits earned by a corporation or joint stock company, other than a personal corporation, in that part of its business carried on at a branch or agency outside of Saskatchewan."

"23. The income liable to taxation under this Act of every person residing outside of Saskatchewan, who is carrying on business in Saskatchewan, either directly or through or in the name of any other person, shall be the net profit or gain arising from the business of such person in Saskatchewan."

30 These two statutory provisions must be read along with section 3 which is a lengthy section defining "income". When this is done it will appear clearly that in so far as the subject matter of the tax is "income" this term means in the present case and in the case of all corporations or joint stock companies, whether resident inside or outside of the province, (other than personal corporations), only the net profits arising from that part of the business of the corporation which is carried on in Saskatchewan. But in addition to sections 3, 4 (j) and 23 regard must be had to subsection (4) of section 9 which in its scope applies to all companies, 40 provincial or other, doing business in the province and which says:

"9.—(4) Where the commissioner is unable to determine or to obtain the information required to ascertain the income within the province of any corporation or joint stock company or of any class of corporations or joint stock companies, the Lieutenant Governor in Council, may, on the recommendation of the commissioner, make regulations for determining such income within the province or may fix or determine the tax to be paid by a corporation or joint stock company liable to taxation."

It will be observed that the machinery of this section is set in motion when the Commissioner of Income Tax is unable through lack of the necessary information to ascertain the income of the company within the province. In such a case the company does not escape taxation but another procedure is provided for taxing it. The Commissioner may recommend to the Government, and the Government may issue on his recommendation, regulations which he may use "for determining such income" which in the circumstances must mean, I take it, not the company's exact income, since the information on which this might be established is lacking, but an amount which is to be deemed to be its income for the purposes of the tax. Or the Government, acting under this section 9(4), may go further and, instead of issuing regulations for the commissioner's guidance, may itself dispose of the matter summarily by fixing the tax to be paid by the company. It may be said that, strictly speaking, a tax imposed by either of these methods is not a tax on income because admittedly the company's real income in the province has not been ascertained, but a tax on income, using this word income in its ordinary sense, is not the only tax which a province may impose upon an extra provincial company doing business in its territory. The judgment of the Privy Council in the case of *The Bank of Toronto vs. Lambe*, (1886) 12 A.C. 575; 56 L.J.P.C. at p. 91 says that "any person found within the province may legally be taxed there if taxed directly." In that case the tax was levied in Quebec upon a bank doing part of its business in that province but having its domicile and its capital in Ontario and it was held to be a valid tax although its amount was fixed in relation to the amount of the bank's paid up capital, thus situated outside the province.

In the present case the amount of the tax was determined by the Commissioner in accordance with regulations made by the Government under the authority of the Act as above cited. These regulations, after first disposing of interest, dividends and other sources of revenue with which we are not concerned, go on to say:

"2. The income referred to in regulation 1 having been separately determined and ascertained, the remainder of the income of the taxpayer liable to taxation shall be taken to be such percentage of the remainder of the income as the sales within the Province bear to the total sales.

"The sales of the taxpayer shall be measured by the gross amount which the taxpayer has received during the preceding year from sales and other sources in connection with the said business, excluding, however, receipts from the sale of exchange of capital, assets and property not sold in the regular course of business and also receipts from interest, dividends, rents and royalties the income of which has been separately determined or ascertained under the provisions of regulation 1."

In effect these regulations substitute for an amount which would be the net profits of the company earned in Saskatchewan, if the information necessary to ascertain these profits was available, another amount, to be

such portion of the company's total income as corresponds to the percentage which the company's sales in Saskatchewan bear to its total sales. I think that under the authority of *Bank of Toronto v. Lambe*, *supra*, such a tax is valid as being a direct tax within the province.

In my opinion, therefore, it was within the power of the Legislature to enact all the provisions of *The Income Tax Act, 1936*, with which we are now concerned, and it was within authority of the Lieutenant Governor in Council, acting under section 9 (4), to make the regulations which the Commissioner applied in determining the assessments in question.

10 We next have to examine certain objections taken by the appellants to the procedure followed by the commissioner. Before going into these matters it is convenient here to recall that we are concerned upon this appeal with errors in law only.

Acting under the powers conferred upon him by the regulations the commissioner assessed the company in the amounts already mentioned, viz., \$11,341.07 for 1935 and \$10,136.60 for 1936. The appellant objects to these assessments. They say in the first place that the circumstances required by law to make the regulations available to the commissioner had not arisen. The regulations are intended to become effective "where  
20 the commissioner is unable to determine or to obtain the information required to ascertain the income within the province, etc." It will suffice upon this point to say that the material contained in the appeal book, including that relied upon by the appellants in their appeal to the Board of Revenue Commissioners, makes it clear that in fact it was impossible to arrive with certainty at the portion of the company's profits earned in Saskatchewan, and that the best the company itself could do was to propose a formula of allocation which in its opinion appeared fair. In this condition of uncertainty the commissioner had recourse instead to the formula provided by the regulations. In my opinion he was justified in doing  
30 this. The extent of the uncertainty will be illustrated by the action of the appellants themselves. In their appeal to the Board of Revenue Commissioners they said:

40 "The appellant company further says that the profit or income of the company is one and indivisible. It is the sum total of the gains and losses of the company in all places where it carries on its business placed against each other at the head office of the company and arises only at such head office when such computation has been made. The appellant company says that it carries on business in several provinces of Canada and that its head office is in the Province of Ontario and that its income can therefore be said to have existence only in the Province of Ontario."

In the return they made for the year 1935 the appellants applied their own method of allocation, taxed themselves \$871.42 in respect of Saskatchewan profits, and paid this sum in. For the year 1936 they taxed themselves \$2,335.85 and paid this sum in also. Then on the hearing of the appeal they asked the Court to admit in evidence an affidavit of their

auditor in order to establish that no profits at all were made by them in Saskatchewan in 1935 or in 1936 but that large losses were made in those years and that therefore no tax was collectible. I mention those things because they indicate the uncertainty which existed; but they do not concern us in any other respect because there is no appeal to the Court on questions of fact. It is usual in such cases of uncertainty to provide in the statute for the fixing of the taxable amount by means of an estimate. In *Attorney General v. Till* (1910) A.C. 50; 79 L.J.K.B. 141, Lord Shaw says at page 153:

10 “The power of assessment and surcharge does not appear to me to assist the construction of section 55. Such powers are inserted in the Act simply because, in addition to all kinds of penalties, the Inland Revenue must ingather taxation; and if the taxpayer will not furnish the information himself, some means must be provided of recovering the duty, and these powers are given to enable them to proceed with the best available estimate.”

In this statement Lord Shaw was dealing with the case of a taxpayer who would not furnish the information; but the same reasoning 20 must apply when he is unable to furnish it. Here the best the appellants could do was to submit another method for arriving at an estimate.

If the commissioner requires any justification for having had recourse to the regulations in arriving at an estimate of the income and in assessing the appellants, that justification is furnished, in my opinion, by the circumstances of the case with which he had to deal.

After providing that the amount subject to taxation shall be ascertained by referring to the company's sales, the regulations go on to say that these sales “shall be measured by the gross amount which the taxpayer has received during the preceding year from sales and other sources 30 in connection with the said business” (certain kinds of receipts being excluded). Some discussion arose on the argument upon the meaning to be given to the words “amount . . . received”. Taken by themselves and without regard to established practice these words would be construed to mean “money received”. The commissioner however dealt with the case upon the assumption that amounts received, for instance, upon sales, included not only cash paid in but also receivables, such as notes, book debts, etc. This interpretation of the expression “amount received” is justified by Mr. H. W. A. Plaxton in the 1939 edition of his Canadian Income Tax Law, at page 31, and also in the 1930 edition of 40 Plaxton and Varcoe's Dominion Income Tax Law at pages 168 and 285, and the explanation given by these authors appears reasonable to me. The fairness and the practicability of these interpretations are illustrated, I think, by the facts dealt with in *St. Lucia Usines and Estates Company v. Colonial Treasurer of St. Lucia*, 1924 A.C. 508; 93 L.J.P.C. 212, and in *Gleaner Company v. Assessment Committee*, 1922, 2A.C. 169; 91 L.J.P.C. 181.

The amount to be settled for taxation in each year by the application of the above method is taken to be the company's income in Saskat-

chewan, although strictly speaking it is not its income but only an estimate of it. But the language used makes it clear that it must be dealt with by the commissioner in the same manner as real income: that is, the same scale of taxation must be applied to it, the same deductions allowed, etc. Therefore the only question remaining to be determined on this appeal is whether the commissioner made any mistake in law in arriving at the amount to be assessed. It is contended by the appellants that he did make such a mistake in dealing with the subject of "bad debts". I have formed the opinion that a mistake was made, although  
 10not altogether of the kind set up by the appellants.

In dealing with the matter of bad debts the commissioner refused to give any consideration to debts contracted before the 1st day of January 1931, this year 1931 being the first year in respect to which the tax was levied. In doing this I think he was right. The tax is an annual tax and each year is a unit standing by itself: (section 3 of the statute); *Gresham Life Assurance Company v. Attorney General* and others, 1916, 1 Ch. 228; 85 L.J. Ch. 201; *Gleaner Company v. Assessment Committee, supra*. This justifies the exclusion from consideration by the commissioner of all debts not contracted within the year actually under review. But in respect  
 20of each such year the question of bad debts arises in two forms: (1) the taxpayer may be able to satisfy the commissioner that some of the debts contracted in his favour in the course of the year's business have lost part or all of their original value; in such a case proper deductions should be made because it would be unjust to include the money thus lost as part of the real profits; (2) in respect of the remaining debts it may be reasonable to anticipate that some losses will occur eventually, and the commissioner may allow the taxpayer to set aside from the profits a sum to be placed in reserve as insurance against this possible loss; but in doing this the commissioner acts under specific statutory authority. The  
 30allocation of such reserve is authorized by section 6 (d) of the Act which says:

"6. In computing the amount of the profits or gains to be assessed, a deduction shall not be allowed in respect of:

.....

(d) amounts transferred or credited to a reserve, contingent account or sinking fund, except such an amount for bad debts as the commissioner may allow and except as otherwise provided in this Act".

I think that were it not for this statutory permission the commissioner  
 40would be in duty bound to tax the whole of the taxpayer's profits, after deducting the debts presently found to be bad, without allowing any reserve for the future. This seems to follow from what was laid down in the *Gresham* case, *supra*. Upon this subject of bad debts I think the following passage from page 228 of Plaxton and Varcoe's work, already referred to, is in point and that it applies to proceedings under *The Income Tax Act* of this province:

"This peculiar situation results from paragraph (d) of section 6. In the first place bad debts are deductible without a statutory provision. On the other hand, amounts of profits credited or appropriated to reserve to cover bad debts or any other eventuality are not deductible except by statute. Consequently, the situation is that the taxpayer may deduct any debt which is found to be bad in the year in which it is incurred, and in addition it is suggested may set aside from his profits whatever the Minister allows. The ordinary allowance for the reserve is five per cent."

10

In the present case the commissioner followed a course which in my opinion is not sanctioned by law. Instead of allowing the creation of a reserve he deducted from each year's profits an amount representing the losses incurred by the company during that year in respect of debts whenever contracted so long as they were contracted in the year 1931 or in a later year. Thus a debt contracted in 1931 could have been allowed as a deduction from the profits of 1936, if it turned out to be bad during the latter year. I am not saying that from a practical standpoint such a method of taking care of bad debts is not a reasonable one; in any case it seems to show a desire on the commissioner's part to act with the utmost fairness towards the appellant. But I do think that the statute in its present form does not allow it. In effect this procedure reopens the taxation of the earlier year by creating a credit to the taxpayer because of something which has since happened to the profits ascertained, and determined, and acted upon, for that earlier year. I am satisfied that the statute does not contemplate the reopening of any year's assessment at a later time on account of intervening fluctuations, upward or downward, in the profits determined at the time fixed for their determination; I refer again to the cases last cited. In another aspect the deduction thus allowed would appear to be something in the nature of a refund; but it does not appear to me to come within the operation of section 53 which provides for refunds.

30

On the other hand, the course followed by the commissioner in respect of these old debts does show the justice of making some provision in the taxpayer's favour on account of future losses from debts presently taken to be good; hence the inclusion in the Act of section 6 (d).

In acting under section 6 (d) the commissioner must exercise his discretion upon legal principles. In this case he refused to allow any deduction in respect of a reserve for bad debts and it is clear that he did so because he believed that he had power to protect them against all losses on account of bad debts by following the method I have described. But the Act does not sanction this method and therefore the commissioner acted under a mistake of law.

40

The assessments for the years 1935 and 1936 are therefore defective in so far as the subject of a reserve for bad debts is concerned. They must accordingly be set aside and new assessments made in accordance with law. This means that in making the new assessments the commissioner must reconsider the question of a reserve for bad debts in the

light of this judgment and must exercise the discretion vested in him by section 6 (d) of the Act upon sound principles. It is the commissioner's discretion thus properly exercised which must prevail, and he is a party to these proceedings, having been represented before us by counsel. I think that in the circumstances the proper course to follow is to refer the assessments back to him: *Pioneer Laundry and Dry Cleaners v. Minister of National Revenue* (1939) All Eng. R. 254. The appeal fails on all other grounds.

As to the costs, I think that, in view of the many issues raised and of the appellant's partial success, justice would be done by awarding the appellants two-thirds of their costs here and below, to be taxed on the King's Bench scale.

"W. F. A. Turgeon"  
C.J.S.

Delivered April 2nd, 1940.

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(FORMAL JUDGMENT OR ORDER OF COURT OF APPEAL.)  
IN THE COURT OF APPEAL FOR SASKATCHEWAN

ON APPEAL FROM  
THE KING'S BENCH

20 IN RE THE TREASURY DEPARTMENT ACT, 1938,

—and—

INTERNATIONAL HARVESTER COMPANY OF CANADA,  
LIMITED, an Ontario corporation doing business in the Province  
of Saskatchewan,

Appellant.

THE HONOURABLE  
THE CHIEF JUSTICE OF SASKATCHEWAN  
THE HONOURABLE MR. JUSTICE MacKENZIE  
THE HONOURABLE MR. JUSTICE GORDON

Tuesday, the 2nd  
day of April, A.D.  
1940.

30

The appeals of the International Harvester Company of Canada Limited, the above named appellant, from the decision of the Honourable Mr. Justice Anderson made in Chambers dated the 10th day of August, 1939, and delivered the 11th day of August, 1939, dismissing with costs the appeals of the said company from the decision of the Board of Revenue Commissioners of the Province of Saskatchewan dated the 27th day of January, 1939, whereby the said Board dismissed the appeals of the said company to the said Board from three purported assessments, all bearing date the 23rd day of August, 1938, of taxes in respect of income respectively made by the Provincial Tax Commission or the Commissioner of Income Tax or Minister in the sum of \$4,382.07 for the taxation year 1934, and by the Provincial Tax Commission or the Commissioner of

Income Tax in the sum of \$11,541.07 for the taxation year 1935, and in the sum of \$10,360.60 for the period of ten months ending October 31st, 1936, and affirmed the said assessments, having by consent been treated and argued as one appeal, with one appeal book, and having come on for hearing before this Honourable Court on Wednesday and Thursday the 15th and 16th days of November, 1939, and Monday, the 20th day of November, 1939, and upon hearing counsel for the appellant and for the respondents, and the Provincial Tax Commission, the Commissioner of Income Tax, the Provincial Treasurer and the Attorney General for  
 10 Saskatchewan, this Court having been pleased to order that the appeal should stand over for judgment, and the same having come on this day for judgment, and this Court having held that there is no appeal from the decision of the said Judge in Chambers in respect of the said assessment for the taxation year 1934, but that the said assessments for the taxation years 1935 and 1936 should be set aside because they are defective in so far as a reserve for bad debts is concerned, and this Court having awarded the appellant two-thirds of its costs incurred in this Court and below, and having held that on all other grounds the said appeals fail;

20 1. THIS COURT DOTH HEREBY ORDER AND ADJUDGE that there is no appeal from the decision of the said Judge in Chambers under the *Income Tax Act of 1932*, and that therefore the said appeal in respect of the said assessment for the taxation year 1934 be and the same is hereby dismissed on the ground that this Court has no jurisdiction to entertain the same.

2. THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the said assessments for the taxation years 1935 and 1936 respectively are defective in that they do not make provision for the appellant being allowed any deduction in respect of a reserve for bad debts, and that the  
 30 said assessments for the said years 1935 and 1936 be and the same are hereby set aside.

3. AND THIS COURT DOTH FURTHER ORDER that the Commissioner in making new assessments for the said years 1935 and 1936 shall reconsider the question of a reserve for bad debts in the light of the reasons for judgment of this Honourable Court delivered this day, and shall exercise the discretion vested in him by section 6 (d) of the *Income Tax Act, 1936*, upon sound principles.

4. AND THIS COURT DOTH FURTHER ORDER AND AD-  
 40 JUDGE that the respondents do pay to the appellant two-thirds of the appellant's costs of and incidental to its said appeals to this Court and its said appeals to a Judge of the Court of King's Bench, such costs to be taxed on the King's Bench scale.

[Seal]

"R. Charlton"  
 Registrar.



(Order granting special leave to appeal and allowing security).

IN THE COURT OF APPEAL FOR SASKATCHEWAN  
ON APPEAL FROM  
THE KING'S BENCH

IN RE THE TREASURY DEPARTMENT ACT, 1938,  
—and—

INTERNATIONAL HARVESTER COMPANY OF CANADA,  
LIMITED, an Ontario corporation doing business in the Province  
of Saskatchewan,

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Appellant.

THE HONOURABLE MR. JUSTICE MacKENZIE

THE HONOURABLE MR. JUSTICE GORDON

THE HONOURABLE MR. JUSTICE EMBURY

Tuesday the 28th  
day of May, A.D.

(AD HOC) 1940.

UPON THE APPLICATION of International Harvester Company of Canada Limited, the above named appellant, and upon hearing what was alleged by counsel for the said appellant and for the Provincial Tax Commission, the Commissioner of Income Tax, the Provincial Treasurer and the Attorney General for Saskatchewan, respondents, and upon reading the affidavit of F. L. Bastedo, filed, and the exhibits therein referred to, and it appearing that the appeals of the said appellant to this Court respecting three purported assessments of income taxes for the years 1934 and 1935 and the period of ten months ending October 31st 1936, respectively, were by consent treated and argued as one appeal in this Court, and this Court having delivered one judgment or order herein dated the 2nd day of April, A.D. 1940, dealing with the said three purported assessments;

1. THIS COURT DOTH HEREBY ORDER that special leave be and the same is hereby granted to International Harvester Company of Canada Limited, the said appellant, to appeal to the Supreme Court of Canada from the judgment or order of the Court of Appeal for Saskatchewan herein dated the 2nd day of April, A.D. 1940, except that part of the said judgment or order setting aside the said assessments for the taxation years 1935 and 1936 because they are defective in so far as a reserve for bad debts is concerned, as ordered in clauses 2 and 3 of the formal judgment, the part of the judgment or order of the Court of Appeal appealed from being clause 1 of the formal judgment or order of this Court and the judgment or decision of this Court that on all other grounds, except with respect to the deduction in respect of a reserve for bad debts, the appellant's appeals fail and including the disallowance by this Court of one-third of the appellant's costs of its appeals to this Court and a Judge of the Court of King's Bench.

2. AND THIS COURT DOTH FURTHER ORDER that the sum of \$500.00 paid into the Imperial Bank of Canada, as appears by its receipt duly filed dated the 25th day of May, A.D. 1940 as security that the said appellant will effectually prosecute its appeal as aforesaid from the

said judgment or order of the Court of Appeal for Saskatchewan herein, dated the 2nd day of April, A.D. 1940, and will pay such costs and damages as may be awarded against it by the Supreme Court of Canada, be and the same is hereby allowed as good and sufficient security.

3. AND THIS COURT DOTH FURTHER ORDER that the costs of this application be costs in the cause in the said appeal.

(sgd.) R. Charlton,  
Registrar.

[Seal]

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(Notice of Appeal to Supreme Court of Canada.)

10 IN THE COURT OF APPEAL FOR SASKATCHEWAN  
ON APPEAL FROM  
THE KING'S BENCH

IN RE THE TREASURY DEPARTMENT ACT, 1938,

—and—

INTERNATIONAL HARVESTER COMPANY OF CANADA,  
LIMITED, an Ontario corporation doing business in the Province  
of Saskatchewan,

Appellant.

TAKE NOTICE that International Harvester Company of Canada  
20 Limited hereby appeals to the Supreme Court of Canada from the judgment or order of the Court of Appeal for Saskatchewan, herein dated the 2nd day of April, A.D. 1940, but intends to limit its appeal the part only of such judgment or order of which the appellant complains being clause 1 of the formal judgment or order of the Court of Appeal and the judgment or decision of the said Court that on all other grounds, except in respect to the deduction in respect of a reserve for bad debts, as ordered in clauses 2 and 3 of the formal judgment or order of the Court of Appeal, the appellant's appeals fail, and including among the part complained of the disallowance by the said Court (in clause 4 of the  
30 formal judgment or order) of one-third of the appellant's costs of its appeals to this Court and to a Judge of the Court of King's Bench.

DATED at Regina, Sask., this 31st day of May, A.D. 1940.

THOM, BASTEDO, WARD AND  
McDOUGALL, Regina, Sask., Solicitors for the above named Appellant.

TO: The Provincial Tax Commission,  
The Commissioner of Income Tax,  
The Provincial Treasurer,  
40 The Attorney General for Saskatchewan,  
Respondents,

And to their Solicitor,  
Alex. Blackwood, K.C., Deputy Attorney General.

## (RESPONDENT'S NOTICE)

IN THE SUPREME COURT OF CANADA

IN RE THE TREASURY DEPARTMENT ACT, 1938

—and—

INTERNATIONAL HARVESTER COMPANY OF CANADA  
LIMITED, an Ontario corporation doing business in the Province  
of Saskatchewan,

Appellant.

—and—

**10** THE PROVINCIAL TAX COMMISSION,  
THE COMMISSIONER OF INCOME TAX,  
THE PROVINCIAL TREASURER, AND  
THE ATTORNEY GENERAL FOR SASKATCHEWAN,  
Respondents.

## NOTICE

TAKE NOTICE that subject to any motion that may be made by or on behalf of the respondents to quash the appeal of the appellants, and in the event of the Supreme Court of Canada holding that it has jurisdiction to hear the appeal, the respondents will, on the hearing of the **20** appeal, contend that the decision of the Court of Appeal for Saskatchewan should be varied in the following respects, that is to say:—

- (1) The said Court of Appeal for Saskatchewan should have held that there was no appeal from the decision of the Board of Revenue Commissioners with respect to the assessments for the taxation years 1935 and 1936 respectively, and the decision of the said Court of Appeal for Saskatchewan should accordingly be varied by holding that it had no jurisdiction to entertain the appeal with respect to the said assessments, the right of appeal to the said Court having been repealed by Section 2 of Chapter 91 of the Statutes of Saskatchewan, 1938.
- 30** (2) In the event of the Supreme Court of Canada holding that the said Court of Appeal for Saskatchewan had jurisdiction to hear the appeals with respect to the assessments for the taxation years 1935 and 1936 respectively, then the said Court of Appeal for Saskatchewan erred in holding that the Commissioner of Income Tax, in making an allowance for bad debts, made a mistake in law in arriving at the amounts to be assessed, and the decision of the said Court of Appeal for Saskatchewan should be varied by holding that no such mistake in law or any mistake in law was made, and that a proper and sufficient allowance for bad debts was made by the said Commissioner of Income Tax in arriving at **40** the amounts to be assessed.

(3) The said Court of Appeal for Saskatchewan erred in holding that the appellants are entitled to two-thirds of their costs to be taxed on the King's Bench scale, and the decision of the said Court of Appeal for Saskatchewan should be varied by awarding costs of the appeal and of the proceedings in the Court below to the respondents and by holding that the appellants are not entitled to any costs of the said appeal, or of the proceedings in the court below.

DATED at Regina, Saskatchewan, this 3rd day of June, A.D. 1940.

10

ALEX. BLACKWOOD,  
Deputy Attorney General,  
Solicitor for the above named  
respondents.

TO: Messrs. Thom, Bastedo, Ward and  
McDougall,  
Solicitors for the appellants.

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(ORDER OF REGISTRAR)

IN THE SUPREME COURT OF CANADA

ON APPEAL FROM

THE COURT OF APPEAL FOR SASKATCHEWAN

20

IN RE THE TREASURY DEPARTMENT ACT, 1938,

—and—

INTERNATIONAL HARVESTER COMPANY OF CANADA,  
LIMITED, an Ontario corporation doing business in the Province  
of Saskatchewan,

Appellant,

—and—

30

THE PROVINCIAL TAX COMMISSION,  
THE COMMISSIONER OF INCOME TAX,  
THE PROVINCIAL TREASURER, and  
THE ATTORNEY GENERAL FOR SASKATCHEWAN,

Respondents.

THE REGISTRAR IN CHAMBERS:           Saturday, the 17th day of  
August, A.D. 1940.

UPON THE APPLICATION of counsel for the appellant, counsel for the respondents consenting hereto, and it appearing that by notice served on the appellant's Ottawa agents on August 7th, 1940, the respondents have abandoned their notice of motion to quash the appeal herein for want of jurisdiction, dated the 10th day of June, 1940;

1. IT IS HEREBY ORDERED that the printing of the following documents or parts of the following documents in the Appeal Case herein be and the same is hereby dispensed with, namely:—

(1) The following schedules referred to in the Admission of Facts:—

10 Pages 2, 3 and 4 of A1, B1 and C1 (income tax returns), being inapplicable parts of the forms not filled in; the schedules to exhibit B3 (printed with exhibits); A4 (except the title and first paragraph, with a notation that the same is in other respects similar to schedule B3 except as to difference in reference to sections of 1932 and 1936 Income Tax Acts); C2; C4 (except the title and first paragraph, with a notation that same is in other respects similar to schedule B3); D1; D2.

(2) Exhibits E, F and G (income tax returns for the years 1931, 1932 and 1933).

(3) Tabular statement at the foot of the affidavit of Clarence B. Munger sworn April 22nd, 1939.

(4) Exhibits C and D referred to in the affidavit of Clarence B. Munger sworn May 2nd, 1939.

20 (5) The grounds of appeal set out in the notices of appeal to the Judge of the Court of King's Bench re assessments for 1934 and for ten months ending October 31st, 1936, (with a notation that the said grounds of appeal are the same as the grounds of appeal respecting the 1935 assessment except as to difference in reference to sections of 1932 and 1936 Income Tax Acts).

(6) The regulations quoted in the judgment of Anderson J., (printed as Exhibit A3.)

(7) The grounds of appeal set out in the notices of appeal herein to the Court of Appeal re assessments for 1934 and for ten months ending October 31st, 1936 (with a notation similar to that respecting Item No. 305 above.)

and that, with the above exceptions, the Appeal case shall contain, in addition to the documents typed in the appeal book on appeal to the Court of Appeal, the reasons for judgment and formal order of the Court of Appeal herein, the order of the Court of Appeal, giving special leave to appeal and allowing security and the respondents' notice dated the 3rd day of June, 1940.

2. AND IT IS FURTHER ORDERED that Exhibits A and B to the affidavit of Clarence B. Munger sworn May 2nd, 1939, may be printed in the Appeal Case lengthwise of the page.

40 3. AND IT IS FURTHER ORDERED that the Saskatchewan Income Tax Acts, Treasury Department Acts and amendments thereto and any other Saskatchewan statute of which nine printed copies are supplied to the Court, need not be printed in the factum of the appellant or respondents.

4. AND IT IS FURTHER ORDERED that the time for filing the Appeal Case herein be and the same is hereby extended to the 17th day of September, 1940, and that the time for filing factums herein be and the same is hereby extended to the 26th day of September, 1940, and that the appellant have leave to inscribe the appeal for hearing at the sittings of this Court commencing October first, 1940.

5. AND IT IS FURTHER ORDERED that the appellant's costs of the respondent's abandoned motion to quash the appeal herein for want of jurisdiction be paid by the respondents to the appellant.

10 6. AND IT IS FURTHER ORDERED that the costs of and incidental to this application be costs in the cause in the appeal.

(sgd.) "J. F. SMELLIE",  
Registrar.

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IN THE SUPREME COURT OF CANADA  
ON APPEAL FROM THE COURT OF APPEAL  
FOR SASKATCHEWAN

IN RE THE TREASURY DEPARTMENT ACT, 1938,

—and—

20 INTERNATIONAL HARVESTER COMPANY OF CANADA,  
LIMITED, an Ontario corporation doing business in the  
Province of Saskatchewan,

Appellant,

—and—

THE PROVINCIAL TAX COMMISSION,  
THE COMMISSIONER OF INCOME TAX,  
THE PROVINCIAL TREASURER, AND  
THE ATTORNEY GENERAL FOR SASKATCHEWAN,

Respondents.

30 CERTIFICATE AS TO STATEMENT OF CASE, AS TO  
SECURITY AND AS TO REASONS FOR JUDGMENT.

I, the undersigned Registrar of the Court of Appeal for Saskatchewan, do hereby certify that the foregoing printed document from page 1 to 104 inclusive, is the case stated by the parties pursuant to section 68 of the Supreme Court Act and the Rules of the Supreme Court of Canada in an appeal to the said Supreme Court of Canada in a certain appeal taken in the Court of Appeal for Saskatchewan between International Harvester Company of Canada Limited, an Ontario corporation doing business in the Province of Saskatchewan, appellant, and the Provincial Tax Commission, The Commissioner of Income Tax, The Provincial Treasurer and The Attorney General for Saskatchewan, respondents.

And I do further certify that the said International Harvester Company of Canada Limited, appellant, has given proper security to the satisfaction of the Court of Appeal for Saskatchewan as required by the 70th section of the Supreme Court Act, being by the payment into Court of the sum of \$500.00 to the credit of this cause, and a copy of the order of the Court of Appeal allowing the same may be found on pages 99 and 100 of the annexed case.

And I do further certify that I have applied to the Judges of the Court of Appeal for Saskatchewan for their opinions or reasons for judgment in this case, and the only reasons delivered to me by the said Judges are those of the Honourable the Chief Justice of Saskatchewan, he having delivered the judgment of the Court, consisting of himself and the Honourable Mr. Justice MacKenzie and the Honourable Mr. Justice Gordon.

And I do further certify that I have received a certificate from the Registrar of the Court of King's Bench to the effect that he has applied to the Judges of the said Court for their opinions or reasons for judgment upon the appeals of the appellant to a Judge of the Court of King's Bench from the decision of the Board of Revenue Commissioners for the Province of Saskatchewan, referred to in the next following paragraph, and that the only reasons delivered to him were those of the Honourable Mr. Justice Anderson printed on pages 64 to 73 of the annexed case.

And I do further certify that a true and correct copy of the decision of the Board of Revenue Commissioners dated the 27th day of January A.D. 1939, on the appellant's appeals to the said Board from the three purported assessments of income tax dated the 23rd day of August, 1938, as filed with the Registrar of the Court of King's Bench pursuant to section 41 of the Treasury Department Act, 1938, may be found on pages 40 to 57 of the annexed case, and that the annexed case contains all the other documents which were before the said Board upon the appellant's said appeals as forwarded to the Registrar of the Court of King's Bench pursuant to section 41 of the Treasury Department Act, 1938, except the documents and parts of documents of which the printing was dispensed with by the order of the Registrar of the Supreme Court of Canada in Chambers dated the 17th day of August, 1940.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the Court of Appeal for Saskatchewan this Ninth day of September, A.D. 1940.

(Sdg.) R. CHARLTON,  
Registrar of the Court of  
Appeal for Saskatchewan.

IN THE SUPREME COURT OF CANADA

ON APPEAL FROM THE COURT OF APPEAL  
FOR SASKATCHEWAN

IN RE THE TREASURY DEPARTMENT ACT, 1938,

—and—

INTERNATIONAL HARVESTER COMPANY OF CANADA,  
LIMITED, an Ontario corporation doing business in the  
Province of Saskatchewan,

10

Appellant,

—and—

THE PROVINCIAL TAX COMMISSION,  
THE COMMISSIONER OF INCOME TAX,  
THE PROVINCIAL TREASURER, AND  
THE ATTORNEY GENERAL FOR SASKATCHEWAN,

Respondents.

I, Frank L. Bastedo, of the City of Regina, in the Province of Saskatchewan, a member of the firm of Thom, Bastedo, Ward and McDougall, solicitors for International Harvester Company of Canada Limited, the above named appellant, hereby certify that I have personally compared the  
20annexed print of the case in appeal to the Supreme Court with the originals and that the same is a true and correct reproduction of such originals.

(Sgd.) FRANK L. BASTEDO,  
A Solicitor for the Appellant.



PART V.—SUPPLEMENTAL RECORD.

No. 1.

Formal Judgment.

IN THE SUPREME COURT OF CANADA  
ON APPEAL FROM THE COURT OF APPEAL FOR  
SASKATCHEWAN

In the  
Supreme  
Court of  
Canada.

No.1  
Formal  
Judgment  
22nd April  
1941

Tuesday, the 22nd day of April, 1941.

Present:

- 10 The Right Honourable the Chief Justice of Canada.
- The Honourable Mr. Justice Rinfret.
- The Honourable Mr. Justice Crocket.
- The Honourable Mr. Justice Davis.
- The Honourable Mr. Justice Kerwin.
- The Honourable Mr. Justice Hudson.
- The Honourable Mr. Justice Taschereau.

In Re The Treasury Department Act, 1938

and

INTERNATIONAL HARVESTER COMPANY OF CANADA, LIMITED,  
an Ontario corporation doing business in the Province of  
20 Saskatchewan,..... *Appellant.*

and

THE PROVINCIAL TAX COMMISSION,  
THE COMMISSIONER OF INCOME TAX,  
THE PROVINCIAL TREASURER, and  
THE ATTORNEY GENERAL FOR SASKATCHEWAN ..... *Respondents.*

30 The appeal of the above named Appellant from parts of the judgment of the Court of Appeal for Saskatchewan pronounced in the above cause on the 2nd day of April, A.D. 1940, having come on to be heard before this Court on the 15th, 16th, 17th and 18th days of October, A.D. 1940, in the presence of Counsel as well for the Appellant as for the Respondents, whereupon and upon hearing what was alleged by Counsel aforesaid, this Court was pleased to direct that the said appeal should stand over for judgment and the same coming on this day for judgment;

1. This Court Did Order and Adjudge that the said appeal should be and the same was allowed to the extent that clause 1 of the formal judgment or order of the Court of Appeal was set aside, and that the assessment for the taxation year 1934 was set aside and the same referred back

In the  
Supreme  
Court of  
Canada.

No. 1  
Formal  
Judgment  
22nd April  
1941—  
*continued.*

to the Commissioner, and that clauses 2 and 3 of the formal judgment or order of the Court of Appeal were declared to apply to the said assessment for the taxation year 1934.

2. And This Court Did Further Order and Adjudge that the said Respondents should and do pay to the said Appellant one-half of the Appellant's costs of its appeal to this Court.

3. And This Court Did Further Order and Adjudge that in all other respects the appeal of the said Appellant to this Court failed and should be and the same was dismissed.

4. And This Court Did Further Order and Adjudge that the cross-<sup>10</sup> appeal of the said Respondents should be and the same was dismissed with costs to be paid by the said Respondents to the said Appellant.

“Paul Leduc”.

Entered this 9th day of September, 1941.

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No. 2.

Reasons for Judgment.

IN THE SUPREME COURT OF CANADA

FRANK L. BASTEDO, K.C., *for the Appellant.*

SAMUEL QUIGG, K.C., *for the Respondents.*

22nd April, 1941.

20

(a) THE CHIEF JUSTICE (Sir Lyman P. Duff) concurred in by Davis and Taschereau, J.J. (dissenting in part).

The appellant company carries on the business of manufacturing and selling agricultural machinery and parts thereof. The Company is incorporated under the *Companies Act* of Ontario and is registered in Saskatchewan under the *Companies Act* of that province.

Its head office is at Hamilton, Ontario. Its manufacturing business is carried on wholly outside Saskatchewan. The Company sells its products in Saskatchewan, as well as in other parts of Canada. It is admitted that the central management and control of the Company are at the head <sup>30</sup> office in Hamilton.

On the 23rd of August, 1938, the Commissioner of Income Tax for Saskatchewan made assessments upon the Company in respect of its income for each of the years 1934 to 1936 inclusive. The subject of the tax, the taxable income of the Company for those years, was “determined” by the Commissioner in professed exercise of his authority under regulations approved by Order in Council of the 23rd of November, 1933; which regulations purport to derive their authority from sec. 7(4) of the *Income Tax Act* of 1932, chap. 9 of the Statutes of that year.

In the  
Supreme  
Court of  
Canada.

No. 2  
Reasons for  
Judgment  
(a) Duff  
C.J.S.  
(concurred  
in by Davis  
and Tasch-  
ereau, J.J.)

These assessments are, in my opinion, invalid for the reason that the regulation pursuant to which they purport to be made either does not apply to the appellant company, or was beyond the powers of the Lieutenant-Governor in Council.

The special provision governing the appellant company in respect of income tax is sec. 21a of the Statute of 1932, which is in these words:—

10 “The income liable to taxation under this Act of every person residing outside of Saskatchewan, who is carrying on business in Saskatchewan, either directly or through or in the name of any other person, shall be the net profit or gain arising from the business of such person in Saskatchewan.”

The appellant company is admittedly resident outside of Saskatchewan, within the meaning of this provision; and the business of the Company in Saskatchewan is limited to making contracts of sale by its agents and by them receiving the proceeds of such sales. The profits of the Company are derived from a series of operations, including the purchase of raw material or partly manufactured articles, completely manufacturing its products and transporting and selling them, and receiving the proceeds of such sales. The essence of its profit making business is a series of operations as a whole. That part of the proceeds of sales in Saskatchewan which is profits is received in Saskatchewan, but it does not follow, of course, that the whole of such profit “arises from” that part of the Company’s business which is carried on there within the contemplation of section 21a; and I think such a conclusion is negatived when the language of this section is contrasted with that of other sections of the Act.

By section 3, income is defined; and income of the kind we are considering, profits of a business, is “profits \* \* \* received by a person \* \* \* from any trade, manufacture or business \* \* \* whether derived from sources within Saskatchewan or elsewhere.”

30 It is clear, I think, that the effect of the words “net profit or gain arising from the business of such person in Saskatchewan” in section 21a is, for the purpose of that section, to delete from the definition of income in section 3 the words “or elsewhere.”

This view of section 21a is fortified by the language of other provisions. In section 4 it is enacted:—

“The following incomes shall not be liable to taxation hereunder:  
\* \* \* \* \*

“(m) profits earned by a corporation or joint stock company \* \* \* in that part of its business carried on at a branch or agency outside of Saskatchewan.”

40 “Branch or agency” seems to point to companies having their principal place of business in Saskatchewan and it is, perhaps, to such companies that the subsection is primarily directed. The word “agency” may be comprehensive enough to extend to any establishment of the Company, even at the place of its head office; but it is sufficient to point out that even in the case of companies whose seat of business is in Saskatchewan, the policy of the Statute is to remove from the incidence of income tax profits

In the  
Supreme  
Court of  
Canada.

No. 2  
Reasons for  
Judgment  
(a) Duff  
C.J.S.  
(concurring  
in by Davis  
and Tasch-  
ereau, J.J.)—  
*continued.*

In the  
Supreme  
Court of  
Canada.

No. 2  
Reasons for  
Judgment  
(a) Duff  
C.J.S.  
(concurrent  
in by Davis  
and Tasch-  
ereau, J.J.)—  
*continued.*

“earned” at “branches or agencies” elsewhere, without regard to the place where those profits may have been received.

The language of sections 23 and 24 seems also to give support to the view that the profits taxable under section 21a as “arising from the business” of a non-resident “in Saskatchewan” are that part of such profits as is “earned” therein.

Mr. Bastedo relied upon *Commissioners of Taxation v. Kirk* (1), and I think, with respect, that the judgment of Lord Davey, speaking for the Judicial Committee, is helpful in the elucidation of the Statute before us.

The income in question was in part derived from ore extracted from land in New South Wales and from the conversion there of this ore into a merchantable product. The Income Tax Statute of New South Wales charged within income tax income “derived from lands of the Crown held under lease or license” in New South Wales, and income “arising or accruing” from “any other source” in New South Wales. The Statute provided that “no tax shall be payable in respect of income earned” outside New South Wales. The company whose income came into question in that case was a mining company owning and working mines in New South Wales, the crude ore being there converted for the most part into concentrates. Almost the whole of the ore so treated was sold and the contracts for sale were made outside New South Wales. The Supreme Court of New South Wales held, following a previous decision, *In re Tindal* (2), that the whole of the income included in the proceeds of sales was earned and arose at the place where the sales were made and the proceeds of the sales received, and that, consequently, no part of such proceeds was taxable as income in New South Wales.

This judgment was reversed by the Judicial Committee. Their Lordships said at pp. 592 and 593:—

“Their Lordships attach no special meaning to the word “derived,” which they treat as synonymous with arising or accruing. It appears to their Lordships that there are four processes in the earning or production of this income: (1) the extraction of the ore from the soil; (2) the conversion of the crude ore into a merchantable product, which is a manufacturing process; (3) the sale of the merchantable product; (4) the receipt of the moneys arising from the sale. All these processes are necessary stages which terminate in money, and the income is the money resulting less the expenses attendant on all the stages. The first process seems to their Lordships clearly within sub-s. 3, and the second or manufacturing process, if not within the meaning of “trade” in sub-s. 1, is certainly included in the words “any other source whatever” in sub-s. 4.

So far as relates to these two processes, therefore, their Lordships think that the income was earned and arising and accruing in New South Wales. \* \* \* This point was, if possible, more plainly brought out in *Tindal's* case (2). \* \* \* The question in that case, as here, should

(1) [1900] A.C. 588.

(2) (1897) 18 N.S. W.L.R. 378.

have been what income was arising or accruing to Tindal from the business operations carried on by him in the Colony.

The fallacy of the judgment of the Supreme Court in this and in *Tindal's* case (1) is in leaving out of sight the initial stages, and fastening their attention exclusively on the final stage in the production of the income."

The distinction under the Statute there in question between "income received" and "income earned" is signalized by their Lordships in these observations at p. 592:—

10 "Nor is it material whether the income is received in the Colony or not if it is earned outside the Colony. The Supreme Court have thought in *Tindal's* case (1) and in these cases that the income was not earned in New South Wales because the finished products were sold exclusively outside the Colony."

20 The Deputy Attorney-General in his able argument contended that by sec. 21a of the Saskatchewan Act all profits received in Saskatchewan by a company having its residence outside Saskatchewan are taxable as profits "arising out" of that part of the company's business carried on in Saskatchewan. Sufficient has been said to indicate the grounds upon which, I think, considerations on which their Lordships in the Judicial Committee proceeded in *Kirk's* case (2) are pertinent here, and lead to the conclusion that this contention of the Crown ought not to be accepted.

I now turn to the regulation, the pertinent parts of which are as follows:—

"Covering such cases where the Minister is unable to determine or obtain information required to ascertain the income within the Province of a corporation or joint stock company carrying on a trade or business within and without the Province.

30 1. Interest, dividends, rents and royalties less their proportionate share of deductions allowed shall be separately determined or ascertained, and if they are received in connection with the trade or business of the taxpayer in the Province, shall be income liable to taxation.

2. The income referred to in regulation 1 having been separately determined and ascertained, the remainder of the income of the taxpayer liable to taxation shall be taken to be such percentage of the remainder of the income as the sales within the Province bear to the total sales."

40 The income with which we are concerned is that dealt with in paragraph two. The method of determination, as it is put in the regulation, is to ascertain the ratio of the sales within the province to the total sales of the company and then apply that ratio to the income. Income, for our present purpose, of course, means profits. I think, perhaps, I can explain my way of looking at the regulation more clearly by calling attention to the fact that the subject of taxation, as determined by this method, is a percentage of the sales in Saskatchewan, a percentage which is

(1) (1897) 18 N.S.W.L.R. 378

(2) [1900] A.C. 588.

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(a) Duff  
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ereau, J.J.)—  
*continued.*

identical with the ratio between total profits and total sales. Assume, for example, that the total sales amount to one hundred units of money and the total profits to twelve units of money and the sales in Saskatchewan to fifteen units of money. Then the subject of taxation is twelve per cent. of fifteen, an expression which, of course, is arithmetically identical with the expression fifteen per cent. of twelve, the form in which it is put in the regulation. In other words, under the regulation the subject of income tax is that part of the sales in Saskatchewan which is profit; that is to say, the whole of the profit received in Saskatchewan. This view of the effect of the regulation was not disputed 10  
by Mr. Quigg, who, as above intimated, supported it in argument as a proper application of the statutory provisions. I humbly think that this is a procedure wholly inadmissible under the Statute. Nowhere does the Statute authorize the Province of Saskatchewan to tax a manufacturing company, situated as the appellant company is, in respect of the whole of the profits received by the company in Saskatchewan. It is not the profits received in Saskatchewan that are taxable; it is the profits arising from its business in Saskatchewan, not the profits arising from the company's manufacturing business in Ontario and from the company's operations in Saskatchewan taken together, but the profits arising from the company's 20  
operations in Saskatchewan.

Section 7 (4), which is the enactment under which the Lieutenant-Governor in Council receives his authority to make regulations, limits that authority to making regulations "for determining such income within the province"; "such income" being (it cannot be anything else) the income contemplated by the taxing provisions of the Statute as the subject of income tax; that is to say, in the case of companies not resident in Saskatchewan, the profits arising out of that part of their business that is carried on in Saskatchewan. The regulation, consequently, if it applies 30  
to non-resident companies such as the appellant company, is not competently made, because the aim of it is not within the purpose for which the statutory authority is given to the Lieutenant-Governor in Council. The aim of the regulation is to determine the profits received by such companies in Saskatchewan. The authority is to make regulations for determining the net profits as limited and defined by section 21a.

The appeal should be allowed and the assessments set aside. The appellant company should have its costs throughout.

(b) RINFRET, J. concurred in by Crocket and Kerwin, JJ.

In the  
Supreme  
Court  
of Canada.

No. 2  
Reasons for  
Judgment  
(b) Rinfret, J.  
(concurrent in  
by Crocket  
and Kerwin,  
J.J.)

The appellant company is a company incorporated under the *Com-* 40  
*panies Act* of the Province of Ontario, having its head office in the city of Hamilton, in that province. It is registered under the provisions of the *Saskatchewan Companies Act*.

The business of the appellant is the manufacture and sale of agricultural implements and parts thereof and business incidental thereto. The manufacture of these implements and parts is carried on by the appellant entirely outside the province of Saskatchewan. The sale is carried

on partly in the province of Saskatchewan and partly in other provinces of Canada and in other countries.

All sales made in Saskatchewan of the appellant's goods are made by the agents of the appellant, at its various branch offices in Saskatchewan; and the sale contracts in respect of such goods are made and executed in Saskatchewan.

10 All moneys received by the appellant in Saskatchewan, whether in respect of sales or as payments on debts owing to the appellant, are deposited in separate bank accounts and remitted in full to the head office of the appellant in Hamilton, Ontario.

There are no directors of the appellant resident in Saskatchewan and no meetings of the Board of Directors of the appellant are held in that province. The central management and control of the appellant are held in the province of Ontario.

The appellant keeps no separate profit and loss account in respect of the business it carries on in the province of Saskatchewan. It only keeps at its head office a profit and loss account of its entire business carried on in Canada and elsewhere.

20 The Province of Saskatchewan levies a tax upon incomes authorized by *The Income Tax Act, 1932*, which later was followed by a new Act (practically a consolidation of the former Act and its amendments) assented to on April 1st, 1936. This Act of 1936 replaced the Act of 1932 which it repealed, except in certain respects, of which more will have to be said later.

Under the Act of 1932, every person liable to taxation shall on or before the thirty-first day of May in each year deliver to the Minister a return in such form as the Minister may prescribe of any total income during the last preceding year.

The Minister here means the Provincial Treasurer.

"Person" is defined in the Act, s. 2 (8):

30 "An individual, and includes a guardian, trustee, executor, administrator, agent, receiver or any other individual, firm or corporation, acting in a fiduciary capacity, and the heirs, executors, administrators, successors and assigns of such person."

For the purpose of the Act, "Income" is defined:

40 "The annual net profit or gain or gratuity, whether ascertained and capable of computation as being wages, salary or other fixed amount, or unascertained as being fees or emoluments, or as being profits from a trade or commercial or financial or other business or calling, directly or indirectly received by a person from any office or employment, or from any profession or calling, or from any trade, manufacture or business, as the case may be, whether derived from sources within Saskatchewan or elsewhere; and includes the interest, dividends or profits directly or indirectly received from money at interest upon any security or without security, or from stocks, or from any other investment, and whether such gains or profits are divided or distributed or not, and also the annual profit or gain from any other source [sec. 3]."

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It is stated that “any other source” includes:

“(a) the income from, but not the value of, property acquired by gift, bequest, devise or descent; and

(b) the income from but not the proceeds of life insurance policies  
\* \* \*

(c) the salaries, indemnities or other remuneration of all persons whatsoever, whether the said salaries, indemnities or remuneration are paid out of the revenue of His Majesty in respect of his Government of Canada, or of any province thereof, or by any person, except as herein otherwise provided; and

(d) all other gains or profits of any kind derived from any source within or without the province whether received in money or its equivalent.”

The Act then provides (sec. 4) for certain exemptions and deductions, of which only subs. (m) need be quoted:

“(m) profits earned by a corporation or joint stock company, other than a personal corporation, in that part of its business carried on at a branch or agency outside of Saskatchewan.”

It should merely be mentioned that the appellant is not a “personal corporation” within the definition of the Act (s. 2, subs. 9).

The liability to tax is imposed upon corporations and joint stock companies, no matter how created or organized, carrying on business within the province, at the rate applicable thereto set forth in the first schedule of the Act, upon income during the preceding year exceeding one thousand dollars (s. 7, subs. 3).

After examination of the taxpayer’s return, already referred to and provided for by sec. 29, the Minister must send a notice of assessment to the taxpayer verifying or altering the amount of the tax as estimated by him in his return; and any additional tax found due over the amount already paid by the taxpayer in accordance with sec. 44 (which provides for the payment of not less than one-quarter of the amount of the tax at the time when the return of the income is made) must then be paid within one month from the date of the mailing of the notice of assessment (s. 51).

The Act then authorizes an appeal to the Minister by any person, corporation or joint stock company who or which objects to the amount at which he or it is assessed, or considers that he or it is not liable to taxation (sec. 53).

Upon receipt of the notice of appeal, the Minister considers the same and is empowered to affirm or amend the assessment appealed against.

An appeal lies from the decision of the Minister to a Judge of the Court of King’s Bench (s. 54).

At the hearing of the appeal, the Judge hears and considers the cause upon the material filed by the Minister, and upon any further evidence which the appellant or the Crown may produce at the discretion of the Judge. The Judge may affirm, amend or disallow the assessment and it is enacted that “his decision shall be final in all matters relating to the appeal, and there shall be no appeal therefrom.”



By an Act to amend the Act of 1932, (which came into force on April 7th, 1934) "person" was declared to include "any body corporate and politic and any association or other body, and the heirs, \* \* \*." (subs. 2 of s. 2 of ch. 5 of the Statutes of 1934).

The administration of the Act and the control and the management of the collection of the taxes imposed thereby was entrusted to the Provincial Treasurer (s. 61); but it was provided that the Minister could authorize the Commissioner of Income Tax, appointed pursuant to the provisions of the Act, to exercise such of the powers conferred by the Act upon  
 10 the Minister as may, in the opinion of the Minister, be conveniently exercised by the Commissioner (s. 61 (2)).

In 1935 (c. 16 of the Statutes of 1934-1935), the Act of 1932 was amended by providing for an appeal to the Board of Revenue Commissioners in lieu of the appeal to the Minister, and by striking out the word "Minister" wherever it occurred in matters relating to the appeal and substituting for it the word "Board."

Then the *Income Tax Act, 1936*, came into force on April 1st of that year (c. 15 of the Statutes of 1936). The scheme of this new Act is practically  
 20 the same as that of the Act of 1932, including the amendments already mentioned, but with some differences which will be mentioned shortly.

On the 28th May, 1935, the appellant filed with the Commissioner of Income Tax its return of income for the taxation year 1934.

On the 2nd day of June, 1936, the appellant filed its return for the year 1935.

On the 26th of May, 1937, the appellant filed its return of income for the period of ten months ending the 31st October, 1936.

Prior to assessing the appellant's income for the years 1934, 1935 and 1936, the Commissioner of Income Tax asked for certain information from the appellant. The appellant gave the information on the 6th day of June,  
 30 1938. The Commissioner asked for further information, which was given on the 8th of July, 1938.

The Commissioner did not request any further information, nor did the appellant supply any.

On the 23rd of August, 1938, the Commissioner made an assessment in the sum of \$4,382.07 in respect of the income of the appellant for the taxation year 1934, an assessment in the sum of \$11,341.07 in respect of the income of the appellant for the taxation year 1935, and an assessment in the sum of \$10,136.60 in respect of the income for the period of ten months ending on the 31st October, 1936.

40 There was an appeal to the Board of Revenue Commissioners in respect of the assessment for each of the years 1934, 1935 and 1936.

The Board dismissed the three appeals and affirmed the three assessments.

Again there was an appeal from the Board to a King's Bench Judge. The latter (Anderson J.) again dismissed the three appeals and confirmed the decision of the Board of Revenue Commissioners.

The matter was then carried to the Court of Appeal of Saskatchewan, which adjudged that there was no right of appeal from the decision of the

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judge in chambers in respect of the assessment for the taxation year 1934. The appeal in regard to it was accordingly dismissed on the ground that the Court of Appeal had no jurisdiction to entertain the same.

The Court adjudged, however, that it had jurisdiction to entertain the appeals against the assessments for the taxation years 1935 and 1936. It held that they were defective in that they did not make provision for the appellant being allowed any deduction in respect of a reserve for bad debts. It ordered, therefore, that the said assessments be set aside; that the Commissioner, in making new assessments for the years 1935 and 1936, should reconsider the question of a reserve for bad debts in the light of the reasons for judgment of that Court and should exercise the discretion vested in him by s. 6(♣) of the *Income Tax Act, 1936*, upon sound principles. 10

By special leave of the Court of Appeal for Saskatchewan, the Company now appeals from the judgment of that Court

“except that part of the said judgment or order setting aside the said assessments for the taxation years 1935 and 1936 because they are defective in so far as a reserve for bad debts is concerned, as ordered in clauses 2 and 3 of the formal judgment, the part of the judgment or order of the Court of Appeal appealed from being clause 1 of the formal judgment or order of this Court and the judgment or decision of this Court that on all other grounds, except with respect to the deduction in respect of a reserve for bad debts, the appellant’s appeals fail and including the disallowance by this Court of one-third of the appellant’s costs of its appeals to this Court and a Judge of the Court of King’s Bench.” 20

\* \* \* \* \*

(Part omitted re right of appeal respecting year 1934.)

My conclusion, therefore, is that the appellant had a right of appeal to the Court of Appeal even from the assessment for the taxation year 1934. To that extent, the appeal from the judgment of the Court of Appeal should be allowed and that judgment varied accordingly. 30

The other points raised in this appeal concern the alleged errors in law in the judgment of the Court of Appeal with regard to the method of assessment adopted by the Commissioner of Income Tax and approved successively by the Board of Revenue Commissioners, by the Judge of the Court of King’s Bench and by the Court of Appeal; and concern the manner in which the Court of Appeal disposed of the question pertaining to the “reserve for bad debts.”

Dealing first with the method of assessment, the point comes up in this way. Under the *Income Tax Act, 1932*, regulations were issued

“covering such cases where the Minister is unable to determine or obtain information required to ascertain the income within the province of a corporation or joint stock company carrying on a trade or business within and without the province.” 40

These regulations provide as follows:  
(Regulations omitted—see page 17.)

It is conceded that, although these regulations were issued under the Act of 1932, they have continued in force and are applicable under the Act of 1936. Paragraph (m) of sec. 4, referred to in the regulations, is to the effect that "profits earned by a corporation or joint stock company, other than a personal corporation, in that part of its business carried on at a branch or agency outside of Saskatchewan," shall not be considered as income liable to taxation under the Act.

10 The regulations were made pursuant to subsection 4 of section 7 of the Act of 1932 (a similar provision is contained in the Act of 1936, subsection 4 of section 9). These subsections, both in the Act of 1932 and in the Act of 1936, read as follows:

"Where the minister is unable to determine or to obtain the information required to ascertain the income within the province of any corporation or joint stock company or of any class of corporations or joint stock companies, the Lieutenant-Governor in Council may, on the recommendation of the minister, make regulations for determining such income within the province or may fix or determine the tax to be paid by a corporation or joint stock company liable to taxation."

20 It was contended by the appellant that the regulations did not apply to the appellant's returns in the present case, because the Act apparently provides for a special regulation for the purpose of determining a special income in each particular case of persons or corporations liable to taxation; but the statute does not seem to be incapable of being construed as authorizing the Lieutenant-Governor in Council to make regulations, such as those we have before us, to apply in all cases "where the minister is unable to determine or to obtain the information required to ascertain the income."

30 Indeed it would seem that such construction is more reasonable and equitable because the effect would then be to put on an equal footing all cases where that situation obtains, instead of being limited to empowering the Lieutenant-Governor in Council to make for each case different regulations which might operate in a way to discriminate between the several taxpayers.

The regulations as made by the Lieutenant-Governor in Council, in the premises, avoid this possible objection and would appear therefore, to be more within the purpose of the Act.

40 A further objection to the application of the regulations in this case was put forward by counsel for the appellant. He says that, both by virtue of the Act and of the regulations themselves, the latter may be applied only "where the Minister is unable to determine or to obtain the information required to ascertain the income within the province"; but it should be remembered that the right of appeal to this Court, as well as to the Court of Appeal, is strictly limited to "a question of law arising in the appeal". The question whether the proper method of fixing or determining the tax was adopted by the Commissioner, consistently with the Act and the regulations, is, no doubt, a question of law; but the question whether the condition precedent existed as a result of which resort could be had to a special method of allocation provided for by the Act and by the

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regulations, i.e., whether the Minister was “unable to determine or to obtain the information required to ascertain the income within the province,” while it may be a decision strictly within the Minister’s discretion, is, at all events, a pure question of fact with which this Court cannot concern itself.

It may be added that there was here almost superfluous evidence in support of the contention that the condition precedent existed. Such was the finding, not only of the Commissioner, but also of the Board of Revenue Commissioners, the Judge of the Court of King’s Bench and the Court of Appeal. Had we had authority to entertain the objection, it would have been hopeless for the appellant to expect that this Court would interfere. In fact, in all its returns, the appellant itself resorted to the method of allocation and apportionment; and, in its return of 1935, it admitted that it was “necessary, therefore, to ascertain its net income in Saskatchewan by an allocation method.” 10

This objection cannot seriously be envisaged.

But the appellant then contends that the effect of the regulations is to go beyond the powers conferred by the statute and that they are *ultra vires* and unconstitutional, because, first, they are not authorized in their present form by the Acts of 1932 or 1936; and second, the result is to tax property outside of Saskatchewan and, as a consequence, to encroach upon the powers exclusively reserved to the Dominion Parliament under the *B.N.A. Act*. 20

In order to decide these two objections of the appellant it becomes necessary to return to a consideration of the statutes and regulations. The Acts specify that

“The income liable to taxation under this Act of every person residing outside of Saskatchewan, who is carrying on business in Saskatchewan, either directly or through or in the name of any other person, shall be the net profit or gain arising from the business of such person in Saskatchewan”.

 30

The regulations limit their application to

“Interest, dividends, rents and royalties \* \* \* received in connection with the trade or business of the taxpayer in the Province,”

and they stipulate that

“the remainder of the income of the taxpayer liable to taxation shall be taken to be such percentage of the remainder of the income as the sales within the Province bear to the total sales,”

thus indicating the intention to tax only the income arising from the business within the province.

The same intention appears in Regulation No. 4, where it is stated 40 that the method of allocation and apportionment therein prescribed is for the purpose of determining the income “reasonably attributable to business and sources within the Province.”

Regulation No. 5 expressly states that “these regulations shall not be applied to determine the income within the Province of a corporation or

joint stock company" where the method or system of accounting enables the Commissioner to obtain the information required to ascertain the income of the taxpayer liable to taxation or where the income of the taxpayer can be determined or ascertained by allowing the exemption provided by paragraph (m) of section 4 of the Act of 1932.

As we have already seen, that paragraph (m) exempts from taxation all "profits earned by a corporation or joint stock company \* \* \* in that part of its business carried on at a branch or agency outside of Saskatchewan."

10 Accordingly, the aim of the 1932 and 1936 Acts, with respect to non-resident companies which carry on business in Saskatchewan, is to reach by taxation only the income arising from the business in the province. As a consequence, these Acts are well within sub-head 2 of section 92 of the *B.N.A. Act (Bank of Toronto v. Lambe (1))*.

By the Acts, the tax is upon income arising from the business in the province. In my humble opinion, the regulations do exactly the same thing. On this branch of the case, it should be pointed out that the amount to be taxed under the regulations is a percentage of the sales in Saskatchewan, and that percentage is identical with the ratio between the total  
20 profits and total sales. With respect, the amount so to be taxed does not necessarily exceed the amount of the net profit or gain arising from the business in Saskatchewan.

It was next argued that, even if the Acts are constitutional or the regulations are *intra vires*, yet in their operation in the present case they have the effect of taxing profits or gains which did not arise from the business of the appellant in Saskatchewan.

At the outset, the appellant is met by the difficulty that the question whether profits or gains arose within or without Saskatchewan is really a question of fact already decided against it by the Commissioner of Income Tax, the Board of Revenue Commissioners and the Judge of the  
30 Court of King's Bench. In an endeavour to transform that objection into a question of law, appellant's counsel stresses the point to the extent of saying that the application of the regulations necessarily includes in the assessment manufacturing profits said to have arisen exclusively outside Saskatchewan, i.e., at the Head Office of the appellant in Hamilton, Ontario, where the central management and control of the appellant abide (*De Beers Consolidated Mines v. Howe (2)*; *Commissioners of Taxation v. Kirk (3)*).

Such, in my view, was not the purpose of the Acts of Saskatchewan or of the regulations made thereunder and applied in the present case.  
40 The Commissioner, in making each assessment, intended to tax exclusively the profits and gains arising from the business of the appellant in Saskatchewan. Neither the Commissioner of Income Tax nor the Board of Revenue Commissioners meant to reach anything but the profits or gains arising from the business of the appellant in Saskatchewan; and the method adopted by them to obtain that object—a method which was rendered necessary

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(1) (1887) 12 App. Cas. 575. (2) [1906] A.C. 455 (H.L.).  
(3) [1900] A.C. 588 (P.C.).

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as a result of the fact that the appellant does not keep separate profit and loss accounts for the business it carries on in the Province of Saskatchewan, but keeps at its head office in Hamilton an account of its entire profit and loss account for the business it carries on in Saskatchewan and elsewhere—was nothing else than the adoption of the best available means to ascertain the income of the appellant arising from its business in Saskatchewan, and nothing more.

The appellant should be reminded of the words of Lord Shaw in the House of Lords in *Attorney-General v. Till* (1):

“Such powers are inserted in the Act simply because, in addition to all kinds of penalties, the Board of Inland Revenue must ingather taxation; and if the taxpayer will not furnish the information himself, some means must be provided of recovering the duty, and these powers are given to enable the Board to proceed with the best available estimate.”

The appellant referred the Court to a great number of decisions on several statutes which may or may not, upon close examination, be found to contain provisions similar to the Acts of 1932 and 1936. The fallacy of attempting to apply these decisions to the present case is stated by Lord Davey, delivering the judgment of the Privy Council, in *Commissioners of Taxation v. Kirk* (2), and it is that these other Acts “in language, and to some extent in aim, differ from the Acts now before” this Court. As already pointed out, the appellant itself was driven to the admission that its exact and precise income arising from its business in Saskatchewan could not be ascertained, owing to its method of book-keeping and of keeping its profit and loss account. Under the circumstances, it was clearly necessary that the method of allocation and apportionment prescribed by the regulations should be resorted to by the Commissioner of Income Tax. It was the only method available to ascertain the income liable to taxation; and, like the Board of Revenue Commissioners and the other judges who have already passed upon this case, I think the appellant cannot complain.

\* \* \* \* \*

(Part omitted re bad debt reserve.)

As a consequence, the appeal should be allowed. The assessment for the year 1934 should be set aside and referred back to the Commissioner for the same purpose as the assessments for 1935 and 1936 have already been referred back by the Court of Appeal. I say nothing as to the right of the respondent to cross-appeal because, in any event, that cross-appeal fails.

The appellant succeeds to the extent of securing the same order with respect to the assessment for 1934 as it had with respect to the assessments for 1935 and 1936. Under the circumstances and without disturbing the allocation of costs already made in the Court below the appellant shall have one-half of its costs of the appeal to this Court, and the cross-appeal should be dismissed with costs.

(1) [1910] A.C. 50, at 72.

(2) [1900] A.C. 588, at 593.

(c) HUDSON J.

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This appeal concerns assessments of the appellant company in respect of income taxes imposed by the Province of Saskatchewan for the years 1934, 1935 and 1936. The statute applicable to the assessments for 1934 was a statute passed in 1932, and in respect of 1935 and 1936 a new Act passed in 1936, but, as the provisions of these two Acts, to which I wish to refer, are identical, for convenience I shall quote only the sections of the 1936 Act. That statute is chapter 15 of the Statutes of Saskatchewan. The charging section is section 9, of which subsections 3 and 4 must first be  
10 considered in this case. They are as follows:

“9. (3) Save as herein otherwise provided, every corporation and joint stock company, no matter how created or organized, residing or ordinarily resident or carrying on business within the province, shall pay a tax, at the rate applicable thereto set forth in the first schedule to this Act, upon its income during the preceding year.

(4) Where the commissioner is unable to determine or to obtain the information required to ascertain the income within the province of any corporation or joint stock company or of any class of corporations or joint stock companies, the Lieutenant-Governor in Council may on  
20 the recommendation of the commissioner, make regulations for determining such income within the province or may fix or determine the tax to be paid by a corporation or joint stock company liable to taxation. 1932, c. 9, s. 7; 1934-35, c. 16, ss. 6 and 12; amended.”

These provisions must be read with section 23 of the Act which provides:

“The income liable to taxation under this Act of every person residing outside of Saskatchewan, who is carrying on business in Saskatchewan, either directly or through or in the name of any other person, shall be the net profit or gain arising from the business of such person in Saskatchewan. 1932, c. 9, s. 21a.”

30 Under a provision in the 1932 Act, corresponding to subsection 4 of section 9, the Lieutenant-Governor in Council passed regulations to provide for determining income as prescribed. These regulations continued in force under the Act of 1936 by virtue of section 40 of the *Interpretation Act*, chapter 1, R.S.S., 1930, which is as follows:

“Whenever an Act is repealed wholly or in part and other provisions are substituted, all by-laws, orders, regulations and rules made under the repealed Act shall continue good and valid in so far as they are not inconsistent with the substituted Act, enactment or provision until they are annulled or others made in their stead.”

40 The regulations are as follows:

\* \* \* \* \*

(Regulations omitted—see page 17.)

The Commissioner in making his assessments applied Regulations 1, 2 and 3.

The appellant company did not take advantage of the provisions of Regulation No. 4 and, instead, appealed to the Board of Revenue

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Commissioners, a body created under the authority of the *Treasury Department Act*, as amended by chapter 6 of 1934-35. Under this statute the Board was given power to hear appeals respecting the payment of taxes or other moneys due to the Crown and "its decisions thereon shall be final and not subject to further appeal unless otherwise provided for in any revenue Act." The Board had power to adjudicate on facts as well as on law.

On the hearing before the Board, the appellants presented an alternative method of allocation of income and, in support of their case, evidence was adduced and heard by the Board. In a very fully considered judgment the Board confirmed the assessments made by the Commissioner of Income Tax. 10

There was no claim put forward for deduction on account of payment to another province, as provided for in section 7 of the Act which reads:

"7. (1) A taxpayer shall be entitled to deduct from the amount of tax which would otherwise be payable under this Act, the amount paid to any other province for income tax in respect of the income of the taxpayer derived from sources therein, if such province allows a similar credit to persons in receipt of income derived from sources within Saskatchewan. 20

(2) The deduction shall not at any time exceed the amount of tax which would otherwise be payable under this Act in respect of the said income derived from sources within such other province.

(3) A deduction shall be allowed only if the taxpayer furnishes evidence, satisfactory to the commissioner, showing the amount of tax paid and the particulars of income derived from sources within that province. 1933, c. 9, s. 4; 1934-35, c. 16, s. 12."

It should be said, however, that it does not appear whether in this case such a claim was available. 30

On a further appeal to Mr. Justice Anderson, who had jurisdiction to consider facts as well as law, the appellant's appeal was again dismissed. And on a further appeal to the Court of Appeal for Saskatchewan, which court had jurisdiction only in questions of law and not of fact, the appellants' appeal was again dismissed on this question, although allowed in respect of an allowance for bad debts.

Before this Court a question was raised as to the power of the Legislature to pass the *Income Tax Act*, particularly section 9 (4). The contention of counsel for the appellant, as I understood it, was that if subsection 4 was so construed as to authorize the inclusion in the amount assumed to be 40 earnings of a particular sum which might be considered as an external earning, then the subsection was invalid.

There can be no doubt about the power of the Legislature to impose a tax on a company found doing business within the Province. That was settled in the case of *Bank of Toronto v. Lambe* (1), and I think it follows

(1) (1887) 12 App. Cas. 575.



that the Legislature in settling the income tax may adopt any yardstick which they may deem suitable, providing, of course, the tax is being levied "in order to the raising of a revenue for provincial purposes" and not done to achieve any ulterior purpose beyond the proper legislative jurisdiction of the Province: see *Bank of Toronto v. Lambe* (1) (*supra*), and *Attorney-General for Alberta v. Attorney-General for Canada* (2) referring particularly to the judgment dealing with the taxation of banks.

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Next it was argued that the regulations are *ultra vires* of the Lieutenant-Governor in Council.

10 Under section 9 (4) the regulations apply only when the Commissioner is unable to determine or obtain the information required to ascertain the income within the Province. Therefore, the amount to be fixed under subsection 4 must normally be an assumed amount, to take the place of a figure which it is impossible to ascertain. For the purpose of fixing this assumed or estimated amount, the Lieutenant-Governor in Council is authorized to make regulations or to themselves fix or determine the tax.

20 The regulations first provide a general formula which would, no doubt, apply without objection to a very large number of cases but, recognizing that it might work hardship in some cases, provision was made in Regulation 4, enabling the taxpayer to present his objections and any alternative method of allocation or apportionment which he believes to be proper under the circumstances. The Commissioner then has the right to determine the taxable income as seems best calculated to assign to the Province for taxation the portion of the income reasonably attributable to business and sources within the Province.

30 After much consideration, I cannot say that these regulations exceed the power vested in the Lieutenant-Governor in Council under the authority of subsection 4. They seem to me to be generally well calculated to work out equitably the intention of the Legislature. The making of the estimate is not a purely arbitrary act on the part of an official but is open to review by an independent Board and by a Judge of the Court of King's Bench. Procedure somewhat similar to this is found in other jurisdictions, for example, in England: Halsbury's Laws of England, 2nd Edition, vol. 17, page 174:

"360. Where the true profits of a non-resident person chargeable to tax in the name of a resident person cannot be readily ascertained, the Commissioners may charge the non-resident person on a percentage of the turnover of the business done by the non-resident person through or with the resident person.

40 The percentage is determined, having regard to the nature of the business, by the Commissioners by whom the assessment is made, subject, where the assessment is made by the additional Commissioners, to appeal to the General or Special Commissioners, and subject to the right of the resident or non-resident to require the question to be referred to the Board of Referees, whose decision is final."

(1) (1887) 12 App. Cas. 575.

(2) [1939] A.C. 117.

It is further to be noted that the mode of allocation included in the regulations was not new. It had been in force in Saskatchewan for a number of years prior to the assessments in question and prior to the *Income Tax Act* of 1936. Moreover, it also appears from the statement of the Board of Revenue Commissioners that the appellants themselves in previous years had adopted the mode of allocation prescribed by the regulations.

The position of the Board, as I understand it, is this: "We have investigated the business giving rise to these assessments, we have heard the appellants' evidence, we have considered their own proposed method of allocation and we cannot find that such method would produce a result more reliable than the formula prescribed by the regulations. Under all the circumstances, we doubt if it is possible for anybody to frame a better formula." 10

On appeal, Mr. Justice Anderson, who also had jurisdiction to deal with facts, agreed with the Board.

Now it is claimed that the mode of allocation prescribed in the regulations, in its application to the assessments here, fails to take into account manufacturing profits which may have been earned by the appellants outside of Saskatchewan. This claim was made before the Board and, although it does not seem to have received as much consideration there as it did before us, it was considered by them. Apparently the Board thought that, while it was a factor to be considered, it formed only one of a group of imponderables, incapable of separate evaluation with any degree of certitude. 20

The question then is whether we, a tribunal having jurisdiction only to decide on questions of law, would be justified in setting aside the assessments. I do not think that this should be done unless we can say that no assessment under subsection 4 of section 9 is valid, if it can be shown that in any degree earnings outside of Saskatchewan may have been included in the estimate of the total figure deemed to be earnings within the Province. 30 I am not prepared to go that far.

If it could be said that the Commissioner and the Board and Mr. Justice Anderson had misconstrued the statute or the regulations, or failed to direct their minds to the questions involved, then the Court would be justified in sending it back for reconsideration. We have no information as to what was considered by the Commissioner, but the judgment of the Board of Revenue Commissioners indicates that the members of that body gave some consideration to all of the arguments and have not necessarily misconstrued either the statute or the regulations.

On the other points involved in this appeal, I agree with the conclusions of my brother Rinfret and also with the disposition of the appeal which is proposed by him. 40

## No. 3

## Order of His Majesty in Council granting Special Leave to Appeal.

AT THE COURT AT BUCKINGHAM PALACE.

The 27th day of March, 1942.

Present

## THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT  
LORD GAINFORDMR. SECRETARY MORRISON  
MR. CHANCELLOR OF THE  
DUCHY OF LANCASTERIn the Privy  
Council.No. 3  
Order of His  
Majesty in  
Council  
granting  
Special  
Leave to  
Appeal, 27th  
March, 1942

10 WHEREAS there was this day read at the Board a Report from the  
Judicial Committee of the Privy Council dated the 19th day of March 1942  
in the words following viz:—

20 “WHEREAS by virtue of His Late Majesty King Edward the  
Seventh's Order in Council of the 18th day of October 1909 there was  
referred unto this Committee a humble Petition of the International  
Harvester Company of Canada Limited in the matter of an Appeal  
from the Supreme Court of Canada in the matter of the Treasury  
Department Act, 1938, and between the International Harvester Com-  
pany of Canada Limited an Ontario corporation doing business in  
the Province of Saskatchewan Appellant and the Provincial Tax  
Commission the Commissioner of Income Tax the Provincial Treasurer  
and the Attorney-General for Saskatchewan Respondents setting forth  
(amongst other matters) that the Petitioner is a corporation incorpo-  
rated under the Companies Act of the Province of Ontario having its  
head office at the City of Hamilton in the Province of Ontario: that the  
business of the Petitioner is the manufacture and sale of agricultural  
implements and parts thereof and business incidental thereto: that  
the manufacturing operations of the Petitioner are carried on entirely  
30 outside the Province of Saskatchewan: that the selling operations of  
the Petitioner are carried on partly in the Province of Saskatchewan  
and partly in other provinces and countries: that the Petitioner has  
no directors resident in Saskatchewan no meetings of its board of  
directors are held in Saskatchewan and the central management and  
control of the Petitioner abide at the head office of the Petitioner in  
Hamilton Ontario: that the Petitioner carries on in the Province of  
Saskatchewan the business of selling farm implements and parts  
thereof which business is carried on at branch offices: that the sales  
made in Saskatchewan of the Petitioner's goods were made by em-  
ployees of the Petitioner at the Petitioner's various Saskatchewan  
40 branches and the sale contracts in respect of such goods made and  
executed in Saskatchewan: that all moneys received by the Petitioner  
in Saskatchewan are deposited in separate bank accounts and re-

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*continued.*

mitted in full to the head office of the Petitioner in Hamilton and the head office sends to the Saskatchewan branches such moneys as are required for operating and incidental expenses: that on these facts it is common ground that the Petitioner resides outside of Saskatchewan: that the Petitioner's income tax returns for the years 1931, 1932 and 1933 reported a loss in its total business everywhere, and then, by deducting from gross earnings '10% on manufacturing investment all outside Saskatchewan', increased its total loss by the manufacturing profit: that in the Petitioner's 1934 return it showed a profit in its total operations everywhere but after deducting there- 10  
from a profit on the manufacturing investment all outside Saskatchewan showed a net loss and paid no income tax for Saskatchewan: that in its 1935 return the Petitioner again showed a profit in its total operations everywhere but instead of deducting 10% on the manufacturing investment, all outside Saskatchewan it pointed out in its return that it manufactures in Ontario and sells goods in Ontario and other provinces and countries and computed its Saskatchewan income on the basis of a three-factor formula of tangible property, payroll and sales: that on that basis the Petitioner for the taxation year 1935 20  
paid an income tax of \$871.42 (from which it deducted the sum of \$500.00 paid to the Province of Saskatchewan for its 1935 annual tax under the Corporations Taxation Act): that in its 1936 return the Petitioner showed a profit in its total operations everywhere and again computed its Saskatchewan income on the basis of the formula submitted in its 1935 return paying a tax for the ten months period ending 31st October 1936, of \$2,835.85 (from which it deducted \$500.00 paid under the Corporations Taxation Act for that year): that the Commissioner did not question the formula upon which the Petitioner paid income tax for 1935 and 1936 but asked for certain information 30  
which was furnished by the Petitioner and asked the Petitioner for no further information: that on the 23rd August 1938 the Commissioner of Income Tax (or Provincial Tax Commission) made three so-called assessments against the Petitioner for income tax and notified the Petitioner thereof: that these 'assessments' after crediting \$500.00 Corporation Tax paid each year) were as follows:—

(a) for the taxation year 1934.....	\$ 4,382.07	
(b) for the taxation year 1935.....	11,541.07	
(c) for the period of ten months ending 31st October, 1936.....	10,136.60	
Total.....	\$26,059.74	40

that this tax for the three years in question amounts to \$23,352.47 more than the tax for those years as computed and paid by the Petitioner: that the Petitioner appealed against each of the said three 'assessments' to the Board of Revenue Commissioners: that the Board of Revenue Commissioners gave a decision on the 27th January 1939 dismissing the Petitioner's Appeals and affirming the assessments:

that the Petitioner appealed to a Judge of the Court of King's Bench respecting all three assessments: that Anderson J. on the 10th August 1939 handed down a written decision dismissing the Appeals: that the Petitioner appealed to the Court of Appeal for Saskatchewan and that Court on the 2nd April 1940 delivered judgment holding that it had no jurisdiction to entertain the Appeal from the decision of the Judge in Chambers with respect to the assessment for the year 1934 but holding that the assessments for the years 1935 and 1936 were defective in not giving the Petitioner a deduction in respect of a reserve for bad debts: that the assessments for the years 1935 and 1936 were therefore set aside and referred back to the Commissioner for reassessment with instructions to reconsider the question of a reserve for bad debts in the light of the reasons for judgment of the Court of Appeal and to exercise his discretion upon sound principles but otherwise dismissing the Petitioner's Appeal: that the Petitioner by special leave of the Court of Appeal appealed to the Supreme Court of Canada from the Judgment of the Court of Appeal except those parts of the Judgment in which the Petitioner succeeded: that the Respondents cross-appealed against those parts of the Judgment of the Court of Appeal upon which the Petitioner succeeded: that on the 22nd April 1941 the Supreme Court of Canada delivered judgment holding that there was a right of appeal to the Court of Appeal with respect to the assessment for 1934 and allowing the Petitioner's Appeal to the extent that the assessment for 1934 was set aside and referred back to the Commissioner for the same purpose as the assessments for 1935 and 1936 have already been referred back by the Court of Appeal the Respondents' Cross-Appeal being dismissed: that in other respects by the Judgment of the majority in the Supreme Court of Canada the Petitioner's Appeal failed and was dismissed: that the Respondents do not oppose the granting of special leave and are content that such leave should be granted as is evidenced by the written consent of the Deputy Attorney-General of Saskatchewan exhibited thereto: And humbly praying Your Majesty in Council to order that the Petitioner have special leave to appeal from that part of the Judgment of the Supreme Court herein dated the 22nd April 1941 as is adverse to it or for such further or other Order as to Your Majesty in Council may appear fit:

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute its Appeal against so much of the Judgment of the Supreme Court of Canada dated the 22nd day of April 1941 as is adverse to them upon entering into a Bond for 8,000 Dollars to be taken out with the United States Fidelity and Guarantee Company as security for the Respondents costs:

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*continued.*

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“And Their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioner upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondents) as the Record proper to be laid before Your Majesty on the hearing of the Appeal.”

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution. 10

Whereof the Governor-General or Officer administering the Government of the Dominion of Canada for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

E. C. E. LEADBITTER.