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BETWEEN:

FRASER COMPANIES LIMITED.....APPELLANT;

AND

THE MINISTER OF NATIONAL }  
 REVENUE ..... } RESPONDENT.

*Revenue—Excess Profits Tax Act 1940—Interest properly charged on unpaid taxes from date prescribed for filing return—Appeal dismissed.*

*Held:* That in an assessment for tax under the Excess Profits Tax Act, 1940, interest was correctly charged since all unpaid taxes bear interest from the date prescribed for the filing of the return to the date of payment.

APPEAL under the provisions of the Income War Tax Act.

The appeal was heard before the Honourable Mr. Justice Angers at Saint John.

*R. B. Hanson, K.C.* and *W. J. West, K.C.* for appellant.

*J. J. F. Winslow, K.C.* and *A. A. McGrory* for respondent.

The facts and questions of law raised are stated in the reasons for judgment.

ANGERS J. now (June 5, 1951) delivered the following judgment:

This is an appeal under sections 58 and following of the Income War Tax Act, made applicable to matters

arising under the provisions of the Excess Profits Tax Act, 1940, in virtue of section 14 of the latter, by Fraser Companies Limited, of the Town of Edmundston, Province of New Brunswick, against the assessments for the years 1940, 1941 and 1942 which appear from the copies of notices of assessment forming part of the documents transmitted to the Registrar of the Court by the Minister of National Revenue and deposited in the record, to have been mailed respectively on April 14, 1944, for the year 1940, on October 18, 1945, for the year 1941 and on January 11, 1946, for the year 1942.

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It seems to me advisable to quote the definition of certain terms, which are liable to arise frequently in these notes, contained in the Excess Profits Tax Act, 1940. The numbers indicate the sections of the Act.

2. (1) In this Act and in any regulations made under this Act, unless the context otherwise requires, the expression,

- (c) "Excess profits" means that portion of the profits of the taxpayer in excess of the standard profits;
- (f) "Profits" in case of a corporation or joint stock company for any taxation period means the amount of net taxable income of the said corporation or joint stock company as determined under the provisions of the Income War Tax Act in respect of the same taxation period;
- (h) "Standard period" means the period comprising the calendar years one thousand nine hundred and thirty-six to one thousand nine hundred and thirty-nine, both inclusive, or the fiscal periods of the taxpayer ending in such calendar years or those of such years or fiscal periods since January first, one thousand nine hundred and thirty-six, during which the taxpayer was carrying on business;
- (i) "Standard profits" means the average yearly profits derived by a taxpayer in the standard period from carrying on the same general class of business as the business producing the profits in the year of taxation, or the standard profits as determined in accordance with section five of this Act: Provided, however, that losses incurred by the taxpayer during the standard period shall not be deducted from the profits in the standard period but the years or fiscal periods when such losses were incurred shall nevertheless be counted in determining the average yearly profits during the said standard period.

(2) Unless it is otherwise provided or the context otherwise requires expressions contained in this Act shall have the same meaning as in the Income War Tax Act, and definitions contained in the said Income War Tax Act shall apply in this Act.

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14. Without limiting any of the provisions contained in this Act, sections forty to eighty-seven, both inclusive, of the Income War Tax Act, excepting section seventy-six A thereof, shall, *mutatis mutandis*, apply to matters arising under the provisions of this Act to the same extent and as fully and effectively as they apply under the provisions of the Income War Tax Act.

(The learned judge here refers to the notices of appeal filed by appellant and continues):

The appellant submitted the following Statement of Reasons for appeal:

Fraser Companies Limited, being a depressed business or industry during the basic standard period and having no standard profits established during the said period, and having no accrued, established or ascertained liability to pay Income or Excess Profits Tax, under the provisions of the law, it was not possible to estimate the amount of any Income or Excess Profits Tax under the provisions of the law in the absence of an established base, in respect to either income or excess profits for which such tax or taxes might be payable; to attempt to do so would at best be to guess at the tax, if any;

having no standard profits established during the fiscal period for 1942, estimation of appellant's taxable income or excess profits, if any, or the tax payable thereon, was impossible in law and in fact;

it being impossible to estimate the income, the excess profits or the tax thereon, no interest on any taxes levied after the establishment of the standard profits is due or payable, except such as may have been incurred, if any, in respect of the period between the date of the decision of the Board of Referees and the date of the full payment of the assessed tax on March 23, 1944, date prior to the first assessment, and no interest is exigible during that interim period;

in any event, the amount of the assessment, including interest, either under that of April 14, 1944, or that of October 18, 1945, or that of January 11, 1946, was absorbed and paid in the manner hereinabove indicated in March, 1944, prior to either assessment, and the appellant claims to be refunded the amount so designated as interest and paid as aforesaid;

in the premises no interest in respect of either tax for the year 1942 is payable by the appellant;

in the alternative, if any sum was exigible for interest on the tax as assessed, that amount is limited to such amount as may be found to be due from the date of the establishment of the standard profits by the Board of Referees to the date of payment.

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The decision of the Minister dated June 8, 1944, signed by the Minister of National Revenue per the Deputy Minister of National Revenue for taxation, and also part of the file of the Department sets forth (*inter alia*):

WHEREAS the taxpayer duly filed Income and Excess Profits Tax Returns showing its income for the years ended 31st December, 1940, 1941 and 1942 respectively.

AND WHEREAS taxes were assessed by Notices of Assessment dated the 14th April, 1944.

AND WHEREAS Notices of Appeal were received dated 5th May, 1944, in which objection is taken to the assessed taxes for the reasons therein set forth.

The Honourable the Minister of National Revenue having duly considered the facts as set forth in the Notices of Appeal, and matters thereto relating, hereby affirms the said Assessments on the ground that the taxpayer was properly assessed for interest under the provisions of the said Acts. Therefore on these and related grounds and by reason of the provisions of the Income War Tax Act and Excess Profits Tax Act the said Assessments are affirmed.

On June 20, 1944, the appellant, in compliance with Section 60 of the Income War Tax Act, sent to the Minister a Notice of Dissatisfaction, in which it merely says that it desires its appeal to be set down for trial.

The reply of the Minister, as usual, denies the allegations contained in the Notice of Appeal and the Notice of Dissatisfaction insofar as they are incompatible with the statements contained in his decision and affirms the assessments as levied.

The evidence discloses that the appellant is an incorporated company engaged in the manufacture of pulp and lumber products. During the "standard period", i.e. the period comprising the calendar years 1936 to 1938 both inclusive as defined in paragraph (*k*) of subsection (1) of section 2 of The Excess Profits Act, 1940, its capital employed and net taxable income or net loss were as follows:

1951 FRASER COMPANIES LTD. v. MINISTER OF NATIONAL REVENUE — Angers J. —	Capital employed	net income or loss	% on capital
1936—	17,011,709.40	136,578.56	0.8%
1937—	19,224,813.69	850,177.61	4.4%
1938—	19,082,316.35	71,433.28	0.4%
1939—	18,953,882.03	55,095.57 (loss)	nil

The average capital employed during that period was \$18,568,155.37 per year (not \$18,568,180.37 as mentioned in appellant's brief) and the percentage of net taxable income on the capital employed during the same period was 1.4 per cent.

All amounts of income tax levied and assessed for 1939 and previous years were paid and the issues in the present appeal do not concern those years except by reference to the standard period established by The Excess Profits Tax Act, 1940 (4 Geo. VI, chap. 32) assented to on August 7, 1940.

On April 2, 1941, the appellant filed its Income and Excess Profits return for the year 1940 and it paid the Income Tax on its net taxable income audits Excess Profits Tax on the basis of 10 per cent of capital employed.

On the same day, April 2, 1941, believing it was a depressed business within the meaning of the Act, the Company made application to the Minister to be declared a depressed business and for a reference to the Board of Referees to have its standard profits ascertained and established. The appellant's application was not dealt with and granted by the Minister until February 11, 1942, when he directed that the Board of Referees ascertain the standard profits of appellant.

The Board only rendered its decision on February 26, 1944, when the Company received notice from the Department of National Revenue that its application had been considered by the Board and approved. Unquestionably the Board moved slowly. The long delay which elapsed between the time the application was made and the day on which the standard profits were ascertained by the Board have a material bearing on the issue involved in the present appeal. I shall deal with this question more fully later.

Pending the belated decision of the Board of Referees, the appellant, convinced that its standard profits during the basic period were so low that it would not be just to

determine its liability to tax under the Excess Profits Tax Act because the business was depressed during the standard period, computed as standard profits, in accordance with the provisions of section 5 of the Act, at the figure of 10% per annum on the amount of capital employed in the business at the commencement of the last year of the standard period, i.e. as at January 1, 1939, the amount finally established being \$18,956,021.84.

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It was submitted on behalf of appellant that its claim for a rate of standard profit of 10% was based on the following considerations:

- (a) 1940 costs and selling prices for sulphite and ground-wood pulp, paper-board, lumber, lath, shingles and ties.
- (b) 1937 quantities marketed for sulphite and ground-wood pulp and paper-board and 1941 quantities marketed for lumber products.
- (c) 1941 miscellaneous revenue, administration, interest, depletion, depreciation and assessor's adjustments.

Counsel for appellant observed that these factors established "potential earnings and estimated profits", which might have been realized annually during the standard period under normal conditions, of \$1,830,197.82 and a percentage of 9.66 per cent on the capital employed as at January 1, 1939.

The Board of Referees in their finding ignored the potential earnings of the appellant as submitted and fixed its yearly standard profits at the arbitrary sum of One Million Dollars, equal to 5.27 per cent per annum of the capital employed.

It was urged on behalf of appellant that the sum of One Million Dollars was not based on any accurate figures, but is an arbitrary amount fixed by the Board of its own motion.

It was submitted by counsel that in April, 1941, the appellant having no base established and having proceeded to pay as required by the Act on the basis of 10 per cent, found that on the basis of 5.27 per cent of capital employed the payments were insufficient and that this was subsequently cured.

It appears from the evidence that up to March, 1944, no assessments had been made against the appellant for

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the years 1940, 1941 and 1942, except the assessment for the year 1940 made on February 12, 1942, which was subsequently withdrawn and replaced by another assessment dated April 14, 1944.

The proof reveals that in March, 1944, the appellant remitted to the Department of National Revenue the full amount of all Income Tax and Excess Profits Tax due for the said three years on the basis of 5.27 per cent on the capital employed. From this counsel for appellant concluded that, when the assessments for 1940, 1941 and 1942 were made on April 14, 1944, there were no arrears owing for either class of tax.

It was urged on behalf of appellant that it never admitted liability to pay interest and that in fact no interest was due at any time. Counsel added that not only was no interest ever due by appellant but that according to the Department's own figures, particularly in relation to the years 1941 and 1942 on the basis of credits allowed by the Department in 1945, there was actually a credit in favour of the Company. On April 14, 1944, following the decision of the Board of Referees, the Department proceeded to make assessments for the three years in question; it revised the assessment for 1940 and for the first time issued notices of assessment for the years 1941 and 1942.

These assessments indicate the following:

For the year 1940—No. A-42225—Date of mailing: April 14, 1944.		
Net income declared .....		\$1,363,251.67
Income tax levied .....		\$ 241,562.98
Interest thereon levied .....		9,535.11
	Total	\$ 251,098.09
Payments credited—		
Income tax in full .....	\$ 241,562.98	
On account interest .....	230.28	241,793.26
Leaving a balance claimed for interest of		\$ 9,304.83
Excess Profits Tax levied .....		216,439.93
Interest thereon levied .....		14,375.87
	Total	\$ 230,815.80

Payments credited—

Excess Profits Tax levied .....	\$ 216,439.93	
Interest thereon levied .....	75.00	\$ 216,514.93
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Leaving a balance claimed for interest of		\$ 14,300.87

For the year 1941—No. A-42226—Date of mailing: April 14, 1944.

Net income declared .....		\$2,872,349.07
Income tax levied .....		513,200.51
Interest thereon levied .....		6,728.57
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Total	\$ 519,929.08	

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Payments credited—

Income tax in full .....	\$ 513,200.51	
Interest .....	nil	513,200.51
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Leaving a balance claimed for interest of		\$ 6,728.57
Excess Profits Tax levied .....		983,342.06
Interest thereon levied .....		41,585.10
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Total \$1,024,927.16

Payments credited—

Excess Profits Tax in full .....	\$ 983,342.06	
Interest .....	nil	983,342.06
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Leaving a balance claimed for interest of		\$ 41,585.10
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For the year 1942—No. B-560, Date of mailing: April 14, 1944.

Net income declared .....		\$2,590,076.81
Income tax levied .....		\$ 462,391.51
Interest .....		nil
		<hr/>

Total \$ 462,391.51

Payments credited—

Income tax in full .....	\$ 462,391.51	
Interest .....	nil	
No balance payable		
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Excess Profits Tax levied .....		\$ 955,313.96
Interest thereon .....		14,096.18
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Total \$ 969,410.14

Excess Profits Tax .....	\$ 955,313.96	
Interest .....	nil	955,313.96
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Leaving a balance claimed for interest of		\$ 14,096.14
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The Board of Referees, however, fixed the yearly standard profits of appellant at \$1,000,000, equal to 5.27 per cent per annum of the capital employed. The appellant submits that the sum of \$1,000,000 is purely an arbitrary amount fixed by the Board and a figure which could not have been



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anticipated either by the taxpayer or the Minister and which is not "just" within the meaning of section 5 of the Act.

In April 1941 the appellant, having proceeded to pay in compliance with the Act on the basis of 10 per cent, found on the basis of 5.27 per cent of capital employed that the payments made were insufficient. This was later corrected.

Up to March 1944 no assessment had been made against appellant for the years 1941 and 1942. An assessment, made on February 12, 1942, bearing No. A535, for the year 1940, was subsequently withdrawn and replaced by assessment No. A42225 dated April 14, 1944.

The appellant contends that in March, 1944, previous to any assessment by the Department for the years 1940, 1941 and 1942, the company remitted the full amount of all income and excess profits tax due for the said three years on the basis of 5.27 per cent on the capital employed, so that when the assessments were actually made on April 14, 1944, no arrears for either class of tax was owing. The appellant further contends that it never at any time admitted liability to pay interest and that, in fact, no interest was ever due; it submits in addition that not only was no interest due at any time, but that on the footing of the respondent's own figures, especially with regard to 1941 and 1942 on the basis of credits allowed by the Department in 1945, there was a credit in favour of the taxpayer which was applied by the Minister to various years' taxes.

On April 14, 1944, after the decision of the Board of Referees was rendered, the Department proceeded to make assessments for the three years at issue, revised the assessment for 1940 and, for the first time, issued notices of assessment for 1941 and 1942.

An appeal against these assessments was made on May 5, 1944, and was prosecuted with diligence, security for costs was given and the appeal was ready to be transmitted to the Court, when, in April 1945, counsel for appellant was verbally notified by the Assistant Deputy Minister of Taxation (legal) that the assessments were to be vacated or modified.

The appeal was kept in abeyance until October 18, 1945, when new notices of assessment were issued by the

Department for the years 1941 and 1942. No new notice of assessment was sent for 1940, so that it may be considered that notice number A-42225 of April 14, 1944, is final for 1940.

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With respect to 1941 a new notice of assessment number A-44377 dated October 18, 1945, was transmitted to the appellant; it disclosed the following item:

1. Taxable income at \$2,842,324.71 as against \$2,872,349.07 in A42226 of April 14th, 1944, a difference of \$30,024.36 in favour of the taxpayer.		
2. Income Tax levied .....	\$ 507,796.13	
Interest thereon levied .....	4,296.71	\$ 512,092.84
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3. Excess Profits Tax levied .....	\$ 963,634.71	
Interest .....	39,259.63	1,002,894.34
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4. Payments credited:		
(a) For Income Tax in full .....	\$ 507,796.13	
(b) For interest on same in full .....	4,296.71	512,092.84
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(c) For Excess Profits Tax in full .....	\$ 963,634.71	
(d) For interest in full .....	39,259.63	1,002,894.34

Counsel for appellant submitted that the tax and the interest were paid in full without any additional money from the taxpayer and that the adjustment is due to several factors, specified as follows:

1. The Taxable Income is less than that declared in Assessment Notice No. A42226 by.....	\$ 30,024.36
2. A Credit of 15c per cord on 100,081.18 cds. pulpwood for Depletion Reserve .....	15,012.18
and 15c per cord additional allowance .....	15,012.18
Total credited for Depletion and special allowance on pulpwood .....	30,024.36

Attached to assessment notice A-44377 is a statement of payments and transfers, relating to income tax and excess profits tax, which discloses the following figures:

<i>Income tax</i>	
amount levied .....	\$ 507,796.13
amount paid .....	513,200.51
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	a credit \$ 5,404.38
transfer from 1943 .....	65,474.17
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	\$ 70,878.55
transfer to interest general tax 1941 .....	4,296.71
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	\$ 66,581.84
transfer to excess profits tax interest 1941 .....	1,635.22
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	leaving a credit of \$ 64,946.62
transfer to 1945 general tax.....	64,946.62
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According to counsel for appellant's intimation, a reference to assessment A42226 dated April 14, 1944, for the year 1941, would disclose these items:

income tax (with no payment thereon) .....	\$ 6,728.57
interest on excess profits tax (with no payments credited) .....	41,585.10

I must say that this assessment was not produced, notwithstanding several requests by the Deputy Registrar.

It was suggested by counsel for appellant that, if a proper assessment had been made in 1944 for the year 1941, allowing all payments and credits as of the latter year, there would have been no interest levied.

It was submitted by counsel that, with respect to the taxation year 1942, a new assessment notice number B1157 dated October 18, 1945, was delivered to the taxpayer and that it disclosed these items:

1. taxable income at \$2,575,806.71 as against \$2,590,076.81 in assessment notice number B560;	
2. income tax levied .....	\$ 459,822.88
interest thereon .....	nil
3. excess profits tax levied .....	942,325.72
interest levied thereon .....	13,494.74
	\$ 956,320.46
4. payments credited:	
income tax in full.....	459,822.88
excess profits tax and interest in full.....	956,320.46

It was pointed out by counsel that all the income tax and the excess profits tax and interest had been paid in full and a credit for the future years established.

Counsel for appellant drew the attention of the Court to the fact that attached to the assessment notice number B1157 dated October 18, 1945, which was not produced, is a statement of transfers of overpayments showing the following figures:

*Income tax*

tax levied .....	\$ 459,822.88	
amount paid .....	462,469.18	
		a credit \$ 2,646.30
transfer to 1943 general tax, allegedly made at the time of the previous assessment .....	77.67	
		a credit \$ 2,568.63
transfer to excess profits tax 1942 .....	2,568.63	

*Excess profits tax*

tax levied .....	\$ 942,825.72	
amount paid .....	956,623.95	a credit
		\$ 12,798.23
transfer to excess profits tax 1943 (made at some previous assessment) .....	309.99	
		a credit \$ 12,488.25
transfer from general tax .....	2,568.03	
		a credit \$ 15,056.87
transfer to excess profits tax interest .....	13,494.74	
		a credit \$ 1,562.13
transfer to 1945 excess profits tax.....	1,562.13	

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It was intimated by counsel that a reference to assessment notice B560 dated April 14, 1944, for the year 1942, will indicate:

interest charged on income tax .....	nil
interest charged on excess profits tax unpaid .....	\$ 14,096.18

This notice of assessment was not filed and counsel's statement is consequently of no avail.

It was urged that, if the proper credits had been given for 1942 and a proper assessment made in 1944 for the former year, after crediting all payments, there would have been no interest chargeable.

It was submitted that on January 11, 1946, a downward revision of tax was made by the Minister with respect to the year 1942 and a new notice of assessment issued bearing number B1373, which indicated a taxable income of \$2,555,036.61 as against \$2,590,076.81 shown in assessment notice number B560, a decrease of \$35,040.20. This new notice of assessment contains the following particulars:

income tax levied .....	\$ 456,084.27
interest thereon levied .....	nil
excess profits tax levied .....	927,905.68
interest thereon levied .....	12,951.09
	<u>\$ 940,856.69</u>

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The notice in question discloses in addition that the income tax and the excess profits tax were paid in full and that the interest on the excess profits tax was absorbed by credits transferred from other years. It also indicates that a credit of \$3,738.61 on the income tax for the year 1942 had been transferred to the income tax for the year 1944 and that a credit of \$14,920.04 on the excess profits tax for the year 1942 had been transferred as follows:

\$10,078.60 to the income tax for the year 1944

4,841.44 to the excess profits tax for the year 1945

543.65 (interest credit) to the excess profits tax for the year 1945.

A table, allegedly agreed to form part of the record, showing a summary of income and excess profits taxes for the years 1940, 1941 and 1942 and the interest thereon, as levied by the Department of National Revenue, and indicating the adjustments, is included in the appellant's brief. As this table is rather extensive and may conveniently be referred to, I do not deem it expedient to analyse it.

Another table, supposed to be a statement of the reductions in the income and excess profits taxes for the years involved, contains the following information:

Reduction in taxes for 1941, 1942 and 1943 resulting from additional pulpwood depletion, less adjustment of reserve for bad debts:

	Income Tax	Excess Profits Tax	Total
1941 tax .....	5,404.38	19,707.35	25,111.73
1942 tax .....	6,307.24	27,408.28	33,715.52
1943 tax .....	5,517.14	21,653.83	27,170.97
	<u>17,228.76</u>	<u>68,769.46</u>	<u>85,998.22</u>
Interest levied			
on 1940 tax .....	9,535.11	14,375.87	23,910.98
on 1941 tax .....	4,296.71	39,259.63	43,556.34
on 1942 tax .....		12,951.09	12,951.09
	<u>13,831.82</u>	<u>66,586.59</u>	<u>80,418.41</u>
Less:			
paid on interest levied			
on 1940 tax .....	305.28		305.28
	<u>13,526.54</u>	<u>66,586.59</u>	<u>80,113.13</u>

Credit from reduction in taxes for 1941, 1942 and 1943 in excess of total interest levied .....	3,702.22	2,182.87	5,885.09	1951 FRASER COMPANIES LTD. v. MINISTER OF NATIONAL REVENUE  Angers J.
Overpaid on 1942 tax prior to assessment notices Oct. 18, 1945 (Adj. depreciation on tractor) .....			387.66	
Overpaid on 1943 tax (instalment payments in excess of total tax due as shown on tax return T. 2-1943 .....			55,832.60	
Total transferred to credit of 1944 and 1945 taxes .....			62,105.35	
Transferred from 1941 to 1944 .....			41,340.92	
Transferred from 1942 to 1944 .....			13,817.21	
Transferred from 1942 to 1945 .....			6,047.22	
			62,105.35	

NOTE

Transfer of \$83,391.23 from 1943 to 1941 includes:		
overpaid through instalment payments on 1943 tax.....		55,832.60
credit through adjustment of pulpwood depletion less adjt. of bad debts reserve .....		27,170.97
transfer from 1942 to 1943 .....		387.66
		83,391.23

It was submitted on behalf of appellant that this table shows clearly that, on account of reductions in taxes and additional allowances, all taxes levied and interest thereon for the years in question were paid in full before April 14, 1944, date of the first assessment after the standard profits base was established.

It was argued on behalf of appellant that, with regard to the years 1941 and 1942 on a proper basis of assessment, after reducing the amount of taxable income and crediting allowances for depletion, not only was there no balance payable on income tax or excess profits tax and no interest exigible on either for 1941 and 1942 but that there was a credit balance. Counsel specified that this credit balance was not only large enough to pay all levies for 1941 and 1942, but was sufficient to pay all the balance claimed on either class of tax and the interest thereon and still leave a balance to the taxpayer's credit, which was applied on taxes of succeeding years.

Counsel concluded that: 1.—having regard to the facts existing in this appeal, there was no legal right vested in the Minister to impose interest on alleged deficiency payments for 1940, 1941 and 1942, the final assessments show-

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ing that there was no deficiency; 2.—considering the law as it stood in 1941, there was, with regard to the years 1940, 1941 and 1942 for excess profits tax and for the years 1941 and 1942 for income tax, no interest exigible at any time and that in the alternative, if any such interest was payable, it ran only from the date of assessment; 3.—for excess profits tax purposes, on the basis of the law as it stood in 1941, it was not possible for the taxpayer to estimate its taxable income, because between August 7, 1940, and February 16, 1944, the taxpayer had no established “standard profit” or base within the meaning of the Act.

It was contended on behalf of appellant that, having regard to the facts established by the Board, there was no right vested in the Minister to impose interest on alleged deficiency payments and that the payments made by the taxpayer, beginning in April 1941 and continuing throughout 1942 and 1943, were sufficient to pay both classes of taxes in full, if credits and allowances reducing the amount of taxable income and the quantum of the tax, such as were allowed in the assessments made in 1945 and 1946 for the years 1940, 1941 and 1942, had been allowed when the original assessments were made for each of the said years. It was further alleged that the earlier assessments did not faithfully represent either the amount of taxable income or the amount of taxes of either class payable by the taxpayer and that, if the allowances had been made even on the basis of the right to impose interest, it would have been found that there were no deficiency payments and that therefore no interest was exigible.

Dealing with the claim for interest on income tax assessed, counsel admitted that under section 48 of the Income War Tax Act, read in conjunction with section 54, Parliament authorized the assessment of interest on all *unpaid* income tax from the date fixed for the filing of the return to the date of payment. He declared, however, that in the present case the amount levied for the 1940 income tax was paid in full at the time the first assessment was issued and that in fact the amount remitted for income tax overpaid the sum levied by \$3,040.99, which was credited upon the Excess Profits Tax Act for that year. In counsel’s opinion this eliminates all right to charge interest for the year 1940.

Regarding the claim for interest on income tax for 1941 and 1942 it was submitted that the record shows that the amount levied for income tax on April 14, 1944, had been paid in full in March 1944 and that the assessment notice A42226 indicates that nothing was due for interest on the 1941 income tax account and that assessment notice A44377 for the year 1941, due to re-assessments and credits, discloses that, while interest was charged for the year 1941, all had been settled, not by the taxpayer but absorbed by transfers made by the Department.

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Concerning the year 1942 counsel pointed out that assessment notice B560 shows no interest, the tax having been paid in full before the assessment and that the same position is indicated by the final assesment notice B1157 dated October 18, 1945.

Counsel's conclusion was that, with respect to the three taxation years in question, having regard to the series of assessments made after payment of the tax, the Department's own figures disclose that, after credits were allowed, which should have been allowed as from the time the tax returns were made, there were no deficiency payments of income tax and that consequently no interest was exigible.

It was submitted on behalf of appellant, in connection with the excess profits tax, that notice of assessment A535 for the year 1940 dated February 12, 1942, indicated a tax of \$120,788.98 and interest of \$205.80, but that notice of assessment A42225 dated April 14, 1944, before which date the tax had been paid in full, showed an interest charge of \$14,375.87. It was further submitted that subsequently, due to credits granted under assessment B1157 dated October 18, 1945, this charge was entirely absorbed.

Regarding the year 1941 counsel stated that there was an interest charge of \$41,585.40, the tax itself having been paid in full, but that by notice of assessment A44377 dated October 18, 1945, this interest charge was absorbed due to credits allowed then which, in his opinion, should have been allowed as from the time when the return for 1941 was made in 1942. He inferred that in the circumstances no interest in equity was chargeable for that year.

Counsel drew the attention of the Court to the fact that the same condition obtains for the year 1942, that the



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tax had been paid in full in March 1944, that assessment notice B560 issued on April 14, 1944, indicates that \$14,-096.18 were levied while all the tax had been paid and that subsequently, by reason of credits and readjustments allowed under assessment B1157 dated October 18, 1945, in which the tax was reduced, the amount claimed for interest was declared paid and a credit for other years established.

It was submitted by counsel for appellant that in the year 1940 and the following years, after the enactment of the Excess Profits Tax Act which made the taxes applicable to the profits of the appellant's fiscal year 1940, the Company being a depressed industry and having no profits established during the fiscal period and no accrued and ascertained liability to pay either income or excess profits taxes under the provisions of the law as it stood in 1941, it was not possible to estimate the amount of any tax, particularly the excess profits tax, payable by it in respect of the year 1940 and the two following years. Counsel said that the appellant having no standard profit established during the whole period, estimation of its taxable income, if any, or of the tax payable by it in respect of the year 1940 and the following years was impossible of performance in fact and in law.

Counsel urged that, there being no base rate established until 1944 and in view of the provisions of the law as it stood in 1941, no interest accrued until an assessment was made in April 1944 and that by April 1944, before the assessments were made, the entire amount of both income and excess profits taxes had been paid in full, nay, having regard to the subsequent assessment, overpaid.

Counsel alleged that the respondent, after the appeal had been entered, amended the assessments and, while seeking to preserve the right to make the various levies for interest, absorbed the whole. He explained that what is sought in the present appeal is the return of the amounts levied for interest, but that, if the appellant fails on that point, it relies on the fact that a corporation may under subsection (3) of section 48 of the Income War Tax Act pay its taxes by instalments *without interest* until after assessment. He specified that, insofar as the years 1940 and 1941 for excess profits tax and the year 1941 for income tax are

concerned, under the provisions of subsection (3) of section 48 and of section 49 of the Income War Tax Act in force in 1941 for income tax purposes and through the application of sections 14 and 16 of the Excess Profits Tax Act for the years 1940 and 1941 for excess profits tax purposes, there would be no interest chargeable on deficiency payments, except after assessment, pursuant to the provisions of section 54 of the Income War Tax Act.

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Counsel signalled out that subsection (3) of section 48, as it existed in 1941, stipulated that "any corporation may pay the tax in respect of any fiscal period by instalments without interest", as provided for by subsection (1) of said section. In counsel's opinion subsection (3) of section 48, as it stood in 1941, clearly provides that a corporation may pay its taxes by instalments without interest and that, if it does so, there is no provision in the Act compelling it to pay interest on deficiency payments, except after assessment, in compliance with section 54 of the Income War Tax Act.

As mentioned by counsel for appellant, section 54 as it existed in 1941, required the Minister to send a notice of assessment to the taxpayer, verifying or altering the amount of the tax as estimated by the latter in his return and subsection (3) thereof enacts that all taxes due and unpaid shall bear interest at the rate of 5 per cent per annum, unless otherwise provided.

Counsel relied on subsection (3) of section 48 enacting that "any corporation may pay the tax in respect of any fiscal period by instalments without interest", as provided for by subsection (1) of this section.

It was argued on behalf of appellant that under subsection (4) of section 54 it is clear that, if interest may be charged, it can only be charged after assessment, at the rate of 3 per cent. It was submitted that at the time the original assessments were made on April 14, 1944, all taxes had been paid, that there remained only the claim for interest, but that on the vacating of the assessments and the issue of new ones in October 1945, due to credits, transfers and adjustments, even the interest had been absorbed by the Department.

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Counsel pointed out that the depletion allowances shown in the notice of assessment A44377 reduced the taxes previously assessed for the years 1940, 1941 and 1942 and that the taxes for these three years were overpaid, the overpayments being applied in part by the Income Tax Division in settlement of interest levied for the said three years and the balance carried forward as payment on account of income and excess profits taxes for 1944 and 1945.

It was contended by counsel for appellant that sections 48 and 49 of the Income War Tax Act were only applied, as they existed in 1941, for income tax purposes, but that pursuant to sections 14 and 16 of the Excess Profits Tax Act, as enacted in 1941, they were made applicable for excess profits tax purposes to the years 1940 and 1941.

It was suggested by counsel that the principle that no interest was payable under section 48 of the Income War Tax Act, as it applied to the year 1941 for income tax purposes and to the years 1940 and 1941 for excess profits tax purposes, is clear when sections 48 and 49 are examined, as they applied to the year 1942 and the subsequent years, because on August 1, 1942, said sections were amended with the intention of providing that, if any deficiency arose in the tax paid by reason of an underestimate made by the taxpayer, such deficiency, after notice of assessment, would be payable with interest at 5 per cent per annum from the day four months after the end of the taxation year after payment and that these amendments were made to apply in respect of fiscal periods ending on and after December 31, 1942.

It was submitted that, in addition to the foregoing argument with respect to interest on excess profits tax for the years 1940, 1941 and 1942 and on income tax for the year 1941, it is unjust and inequitable that the Company should be charged interest on alleged deficiencies (which did not in fact exist when finally assessed in October 1945) in the payment of taxes arising by reason of the delay by the Department in submitting the case to the Board of Referees or by reason of the delay of two years by the Board of Referees under the Excess Profits Tax Act in determining a standard profit or base for the Company.

Counsel pointed out that, before the assessment for the years 1940, 1941 and 1942, the appellant had fully paid

the income and the excess profits taxes as finally assessed in April 1944, that subsequently the Department withdrew the assessments, except for 1940, and that, on October 18, 1945, issued amended assessments which gave credits to the taxpayer more than sufficient to wipe out the claim for interest and indeed leave a credit which was applied on subsequent years. According to counsel the interest charge for 1940 was balanced or absorbed by transfers and credits from 1941 and other years.

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Counsel finally contended that it would be unjust, inequitable and contrary to the proper construction of the taxing Statute that the appellant should be forced to pay taxes on amounts which were not determinable and which it is not obligated to pay prior to the determination of its standard profit or indeed until the actual assessments had been made, in respect of which the Company was in no way in default.

After recapitulating the facts and quoting the definitions of the words "excess profits", "standard profit" and "standard period", which, by the way, comprises the years 1936 to 1939 inclusive, counsel for respondent referred to section 5 of the Excess Profits Tax Act, of which subsection (1) enacts:

5. (1) If a taxpayer is convinced that his standard profits were so low that it would not be just to determine his liability to tax under this Act by reference thereto because the business is either of a class which during the standard period was depressed or was for some reason peculiar to itself abnormally depressed during the standard period when compared with other businesses of the same class he may, subject as hereinafter provided, compute his standard profits at such greater amount as he thinks just, but not exceeding an amount equal to interest at ten per centum per annum on the amount of capital employed in the business at the commencement of the last year or the fiscal period of the taxpayer in the standard period computed in accordance with the First Schedule to this Act: . . .

Section 11, dealing with the payment of tax, reads thus:

11. Any person liable to pay any tax hereunder shall estimate the amount of tax payable and shall send with the return of profits not less than one-third of the aggregate amount of such tax and may pay the balance within four months thereafter, together with interest at the rate of five per centum per annum upon such balance from the last day prescribed for the making of such return until the time payment is made, and all the provisions of the Income War Tax Act relating to payments at other times than those herein specified shall, mutatis mutandis, apply as if enacted in this Act.

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Section 12, relating to assessment, is thus worded:

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12. After examination of the taxpayer's return the Minister shall 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 shall be paid in the same manner, at the same time and subject to the same interest and penal provisions as if the additional tax were found due under the provisions of the Income War Tax Act.

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Counsel pointed out that in virtue of section 14, sections 40 to 87 of the Income War Tax Act, save 76A, shall apply, mutatis mutandis, to matters arising under the provisions of the Excess Profits Tax Act as fully as they do under the provisions of the Income War Tax Act.

Section 33 fixes the time within which every person liable to taxation shall deliver to the Minister a return of his total income during the last preceding year. This section has no materiality in the present case.

Subsection (2) of section 35 provides that a corporation shall make a return within four months from the close of its fiscal period. As indicated by its return, the appellant's fiscal year ends on December 31.

In virtue of subsection (1) of section 48 any person liable to pay a tax is required to estimate the amount of tax payable by him and to send with his return not less than one-third of the amount of the tax and may pay the balance within four months thereafter, together with interest at the rate of 5 per cent per annum upon the balance outstanding.

Amendments to section 48 were made affecting the 1941 and 1942 periods, whereby corporations were permitted to pay during each of the last four months an amount equal to one-twelfth of the tax as estimated by the taxpayer and during each of the next eight months one-eighth of the balance of the tax so estimated.

It was submitted by counsel that, if a corporation elected to make payments as provided by this amendment, no interest was chargeable in respect of the amounts paid, but that the corporation remained liable to pay interests on the difference between the amount estimated and paid and that finally assessed by the Minister.

Section 49 stipulates an additional interest at the rate of 3 per cent per annum upon the deficiency from the date of default to the date of payment. It may be convenient to quote the section:

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49. If any person liable to pay any tax under this Act . . . pays less than one-third of the tax as estimated by him, or should he fail to make any payment at the time when the filing of his return is due, or fail to pay the balance of the tax as estimated by him within four months therefrom, he shall pay, in addition to the interest of five per centum per annum provided for by the last preceding section, additional interest at the rate of three per centum per annum upon the deficiency from the date of default to the date of payment.

Section 54 provides that, after examination of the taxpayer's return, the Minister shall send him a notice of assessment verifying or altering the amount of the tax estimated, that any additional tax which may be due over the estimated amount shall be paid within one month from the date of the mailing of the notice of assessment and that all unpaid taxes shall bear interest at 5 per cent per annum from the date prescribed for the filing of the return to the date of payment.

Section 55 is immaterial herein.

Counsel drew the attention of the Court to the fact that in its return dated April 2, 1941, for the taxation period ended December 31, 1940, the appellant estimated its net taxable income at \$956,042.87, the income tax thereon at \$168,021.33 and its excess profits tax at \$114,725.14, making a total of \$282,746.47, which the Company paid.

It was submitted that the Company reckoned the average capital employed in the years 1936 to 1939 inclusive at \$18,568,180.37 and particularly in the year 1939 at \$18,953,882.03—and that the Board of Referees, by order dated February 26, 1944, ascertained the capital employed as at January 1, 1939, to be \$18,956,021.84.

Counsel stated that the Company, in making up its income tax return for 1940, paid excess profits tax only under the first part of the second schedule, namely 12 per cent of \$956,042.87, and regarding item 47, indicated:

Tax at 12 per cent (estimated excess profits tax payable) \$114,725.14, adding this statement: "Standard Profits claim filed on S.P. 1".

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It was submitted on behalf of respondent that there are no answers in the second part of the return dealing with standard profits, that no indication is made that the Company had elected to make any computation of its standard profits and that, if it had elected to compute its standard profits at 10 per cent of its capital employed, the return would have shown no tax payable under part 2 of the second schedule, subject to the proviso in section 5(1). It was specified that the right to compute the standard profits at 10 per cent on the capital is subject to the proviso that the Board of Referees shall ascertain the standard profits at an amount, in its sole discretion, of not less than 5 per cent and not more than 10 per cent of capital employed at the commencement of the preceding year in the standard period as computed by the Board.

In its return dated April 30, 1942, covering the taxation period ending December 31, 1941, the Company estimated its net taxable income for that year at \$2,478,579.32, its income tax at \$442,321.96 and its excess profits tax at \$545,287.45, the income and excess profits taxes totalling \$987,609.41, which, according to his solicitor, the appellant paid.

Counsel again stated that the Company made no answers to the second part of the excess profits tax questions other than "S.P. 1 claim filed." It was submitted that the appellant made no computation of its standard profits and that the 10 per cent of the capital employed during the relevant period, according to the Company's estimate of capital, would amount to \$1,895,388.20, whereas the Company's own estimate was \$2,478,579.32, which would mean a substantial amount payable under the second part of the second schedule.

It was argued by counsel for respondent that it is incorrect to state, as is mentioned in paragraph 4 of appellant's factum, that "meantime, in accordance with the provisions of section 4 of the Excess Profits Tax Act, the appellant . . . computed its standard profits as commanded by the Statute, at the amount of 10 per cent per annum on the amount of capital employed in the business at the commencement of the last year of the standard period, that is as at January 1, 1939, the amount finally established being \$18,956,021.84."

It was further alleged that another error in this statement is that the appellant is not commanded by the Act to compute its standard profits at 10 per cent but is only permitted to do so, and then subject to the proviso that the Board shall ascertain the standard profits on an amount of capital as computed by the Board. Counsel for respondent found it difficult to understand how the Company could in 1941, 1942 and 1943 compute its standard profits on the amount of capital of \$18,956,021.84 when this sum was not ascertained until February 26, 1944, the date on which the Board of Referees made its finding to that effect.

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It was submitted that on June 25, 1943, the appellant estimated its taxable income for 1942 at \$2,590,508.35, the income tax payable thereon at \$462,469.18 and the excess profits tax at \$569,911.84, making a total of \$1,032,381.02, which amount was paid by the taxpayer.

Counsel stated that on February 26, 1944, the Board of Referees ascertained and allowed the appellant's standard profits at \$1,000,000, which is somewhat in excess of 5 per cent of the capital as established by the Board and that following this ruling the Income Tax authorities made their assessment and notified the taxpayer accordingly.

Counsel contended that these assessments were amended ("re-amended" seems more accurate) by the Income Tax Office and that a final assessment, including interest, was made and paid by the Company. He thereupon gave a detailed statement of the income and excess profits taxes and of the payments thereon. I do not deem it necessary to quote this statement.

According to counsel it may be seen that in each year there was a deficiency in the amount paid for taxes at the time these payments were due.

With regard to section 33 of the Income War Tax Act, counsel repeated that every person liable to taxation must file a return of his total income by a definite date, which, in the case of corporations, is fixed within four months of the close of their fiscal year, the fiscal year of the appellant ending on December 31.

Counsel alleged that for the year 1942 the time for filing the return was six months from the close of the fiscal period, which extended the time to June 30 (section 35).



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It was claimed on behalf of respondent that there are many errors in appellant's factum which are generally denied, except insofar as are admitted in respondent's factum to be correct. Counsel here dealt with some of these errors; I do not consider expedient to review them in detail.

Counsel added that there are also errors in the table set out in appellant's factum, but that, even supposing them to be correct, the conclusion drawn by the appellant is not exact, although it is a fact that prior to April 14, 1944, namely on March 23, 1944, the taxes assessed, including interest, were nearly all paid.

It was urged by counsel that the payments claimed by appellant to be credited against interest were in fact applied to the taxes as from the due date thereof.

Counsel concluded that the figures showing payments amounting to \$1,057,520.89, made on March 23, 1944, on account of taxes, were for taxes due on April 30, 1941, April 30, 1942, and on the instalment dates in 1942 and 1943 in respect of the 1942 taxes and that the interest was not paid in full at that time.

By section 33 the appellant was required, without notice or demand, to file a return of its total income during the preceding year as follows:

- on April 30, 1941, for the year 1940
- on April 30, 1942, for the year 1941
- on June 30, 1943, for the year 1942.

Subsection 1 of section 54 provides that after examination of the return the Minister shall send a notice of assessment to the taxpayer verifying or altering the amount of the tax as estimated by the latter.

Subsection 2 stipulates that any additional tax found due over the estimated amount shall be paid within one month from the date of the mailing of the notice of assessment.

Subsection 3 says that all taxes found due and unpaid shall bear interest at the rate of 5 per cent per annum from the date prescribed for the filing of the return to the date of payment.

Dealing with the penalty for delay in payment of the tax, subsection enacts (*inter alia*) that, if the taxpayer fails to pay the additional tax aforesaid within one month from the date of mailing of the notice of assessment, he shall pay, in addition to the interest of 5 per cent provided for by subsection 3, interest at 3 per cent per annum from the expiry of the period of one month from the date of the mailing of the notice of assessment to the date of payment, provided however that, notwithstanding the date of mailing of any notice of assessment, the additional rate of interest shall not be applied until after the expiry of four months from the date when the return was to be filed.

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The appellant filed returns at the proper times and paid what it estimated to be the full amount exigible for income tax and excess profits tax.

The Minister, after examination of the returns, sent notices of assessment in compliance with section 55 and, as thereby authorized, issued re-assessments. Section 55 has an extremely broad sense and the taxpayer is at the Minister's mercy.

The final assessments in each year included interest which was calculated from the dates fixed by the Act for the filing of the returns.

It is trite law that the intention of the legislators to impose a charge upon a subject must be expressed in clear and unambiguous terms: *Micklethwait and Commissioner of Inland Revenue* (1); *Partington v. Attorney-General* (2); *Cox and Rabbits* (3); *The Oriental Bank Corporation v. Wright* (4); *Tennant v. Smith* (5); *McLaren and Minister of National Revenue* (6); *Craies*, Treatise on Statute Law, 4th ed., 107; *Beal*, Cardinal Rules of legal interpretation, 3rd ed., 491; *Maxwell*, Interpretation of statutes, 9th ed., 336.

The principle was briefly and clearly summed up by Lord Cairns *In re Partington v. Attorney-General (ubi supra)*:

. . . as I understand the principle of all fiscal legislation, it is this: If the person sought to be taxed comes within the letter of the law he must

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| (1) (1855) 11 Ex. C.R. 452, 456.            | (4) (1880) 5 A.C. 842, 856.    |
| (2) (1869) L.R. 4 E. & I. App.,<br>100, 122 | (5) (1892) App. Cas. 150, 154. |
| (3) (1878) 3 App. Cas. 473.                 | (6) (1934) Ex. C.R. 13.        |

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be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute.

The decision in the above case was approved *In re Attorney-General v. Earl of Selborne* (1).

It was submitted on behalf of respondent that in the present case the statute says that interest shall run from the date fixed for the filing of the return and not from the date of the assessment. In the case of excess profits the statute has not provided that interest shall run from the date when the standard profits are fixed nor from the date on which the notice of assessment is issued. The judgment of Maclean, J., *In re Peter Birtwistle Trust v. Minister of National Revenue* (2), with regard to interest, may be referred to with benefit. At page 101 the learned Judge said:

A question arises as to whether the appellant is liable for interest upon the tax, prior to the assessment. It appears that annual returns of income were made by the Canadian Trustee on behalf of the "Peter Birtwistle Trust", beginning with the year 1919. The first assessment seems to have been made in 1936, for the years 1919 to 1934 inclusive, and that apparently was the consequence of an application made in the Supreme Court of Ontario by the Colne Trustee, but that application, and the decision of Rose C.J. thereon, (1935) 4 D.L.R. 137, has nothing to do with the issue here, and no purpose would be served by any discussion of it. Sections 48, 49 and 54 of the Act provide for the imposition of interest, if the tax is not wholly paid at maturity. S. 55 provides for the continuation of liability for any tax where no assessment has been made.

The Peter Birtwistle Trust appealed to the Supreme Court; the appeal was allowed and the assessments were set aside. (Kerwin, J. dissenting). The judgment of Mr. Justice Kerwin was upheld by the Privy Council on an appeal *sub nom. Minister of National Revenue and Trusts and Guarantee Company, Ltd.* (3).

Counsel for respondent claimed that interest has been charged only on balances found to be due after giving credit for all allowances made by the Department. The claim seems to be well-founded.

(1) (1902) 1 K.B. 388, 396.

(3) (1940) A.C. 138.

(2) (1938) Ex. C.R. 95; (1939) S.C.R. 125.

It was admitted by counsel that section 48 (as amended by section 15 of Statute 1 Edward 8, chapter 38) is the governing section in respect of the income tax for the year 1940; it provides that "every person liable to pay any tax under this Act (except any tax payable under section eighty-eight hereof) shall estimate the amount of tax payable by him and shall send with the return of the income upon which such tax is payable not less than one-third of the amount of such tax and may pay the balance within four months thereafter together with interest at the rate of five per centum per annum upon such balance from the last day prescribed for making such return to the time payment is made."

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Section 49 added in the same statute stipulates:

49. If any person liable to pay any tax under this Act (except any tax payable under section eighty-eight hereof) pays less than one-third of the tax as estimated by him, or should he fail to make any payment at the time when the filing of his return is due, or fail to pay the balance of the tax as estimated by him within four months therefrom, he shall pay, in addition to the interest of five per centum per annum provided for by the last preceding section, additional interest at the rate of three per centum per annum upon the deficiency from the date of default to the date of payment.

Section 48 was again amended by section 26 of Statute 4-5 George 6, chapter 18, by adding subsections (2), (3), (4) and (5); subsection (3), the only one material and relevant herein, enacts:

(3) Any corporation may pay the tax in respect of any fiscal period by instalments without interest as provided for by subsection one of this section and section forty-nine as follows:

- (i) during each of the last four months of such fiscal period an amount equal to one-twelfth of the tax as estimated by the corporation to have been payable in respect of the fiscal period last preceding the said fiscal period first mentioned in this subsection, and,
- (ii) during each of the first eight months of the fiscal period next succeeding the said fiscal period first mentioned in this subsection an amount equal to one-eighth of the tax estimated by the corporation to be payable in respect of the said fiscal period first mentioned as aforesaid after deducting from the tax so estimated the sum of the instalments paid as provided for in subparagraph (i) of this subsection.

Section 48, amended as aforesaid, was applicable to the taxation year 1941. It was submitted on behalf of respondent that, in respect of the 1941 taxation period, the appellant was permitted to pay one-twelfth of its income tax

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as estimated by it during each of the months of September, October, November and December and the first eight months of 1942. Counsel added that the effect of section 48 was that the appellant could pay its tax for the year 1941 by instalments partly in advance of the usual time for payment, namely April 30, 1942, and partly by instalments payable in the first eight months of 1942 and that, if the full tax as might be finally assessed against the appellant had been paid by the instalments in the period ending on September 30, no interest would be chargeable. It was urged that, if the taxpayer underestimated the amount of its tax, it would be liable for interest on the deficiency under section 54. Subsection 3 of section 54 enacts:

Unless otherwise provided, all taxes found due and unpaid shall bear interest at the rate of five per centum per annum from the date prescribed for the filing of the return to the date of payment.

The record has never been completed in spite of numerous requests to counsel by the registrar. I feel that I have allowed counsel a reasonably long delay to produce the missing elements of evidence and that I should now dispose of the case as it stands.

After a careful perusal of the evidence and of the exhaustive argument of counsel and an attentive study of the law, which, I may say, is fairly intricate and lacks clarity and precision, I have reached the conclusion, with some hesitation, that the appellant was only assessed for interest provided for by the law. In view of the want of clearness and accuracy of the law and of the numerous assessments and re-assessments made, indicating obviously that the Minister or one of his underlings were not absolutely conscious of their position, I do not think that I should allow to the respondent his costs against the appellant.

There will accordingly be judgment dismissing the appeal without costs.

*Judgment accordingly.*

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