ANDERSON LOGGING COMPANY.....APPELLANT; 1924

AND *Oct. 15, 16. *Oct. 1.

HIS MAJESTY THE KING.....RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Taxation—Income—Logging company—Profit—Sale of timber land—Evidence—Onus—Statute—Retroaction—Income and Personal Property Taxation Act, (B.C.) 1921, 2nd Sess., c. 48, s. 36.

Where the powers of a company, incorporated to take over as a going concern a logging business, included the power to acquire timber lands with a view to dealing in them and turning them to account for the profit of the company, and it bought a tract of timber land and sold it at a profit the same is not a capital profit but one derived from the business of the company and as such assessable to income tax under section 36 of the Income and Personal Property Taxation Act (B.C.) 1921, 2nd Sess., c. 48.

A party contesting the validity of an assessment upon income is bound to establish facts upon which it can be affirmatively asserted that the assessment was not authorized by the taxing statute; and it is only when these facts bring the matter into a state of doubt that the onus falls upon the Crown to show that the profit was earned in an operation which was a part of the business carried on by the assessed party.

But the above Taxation Act having no retrospective operation the assessment in this case in respect of profits made before the date of the enactment of the statute is illegal and should be reduced accordingly.

Judgment of the Court of Appeal ([1924] 2 W.W.R. 926) varied.

APPEAL from the decision of the Court of Appeal for British Columbia (1), affirming the judgment of Downey J., Court of Revision, and sustaining the assessment of a profit made by the appellant company on a sale of a tract of timber as income under s. 36 of the Income and Personal Property Taxation Act, (B.C.) 1921, 2nd Sess., c. 48.

The material facts of the case and the questions at issue are fully stated in the judgment now reported.

E. P. Davis K.C. and *E. F. Newcombe* for the appellant. The $130,000 in question were the proceeds of the sale of the capital assets of the company and not income received by the company in the ordinary course of carrying on its business and, therefore, was not taxable under the Act.

*PRESENT:—Anglin C.J.C. and Duff, Mignault, Newcombe and Rinfret.

(1) [1924] 2 W.W.R. 926.

1924

ANDERSON LOGGING CO. v. THE KING.

Even if the sum in question must be considered "income" within the Act, it was income of the year 1920 in which the sale was made and, therefore, is not assessable.

If it is held that the appellant's contention in this last respect is wrong, then in any event only the sums of money which were received in the years 1921 and 1922, which amount to $66,269.28 can properly be assessed against the appellant.

The evidence shows that the object of the company was to log these timber properties, and that they were only sold when the company had sold its logging equipment and apparently given up its business.

The onus was upon the Crown to shew that the profit was earned in an operation which was a part of the business carried on in fact by the company. *Stevens* v. *Hudson Bay Co.* (1); *Tebreau Rubber Co.* v. *Farmer* (2); *Commissioner of Taxes* v. *Melbourne Trust Ltd.* (3).

Killam for the respondent. The profit was property assessed as income, first according to the definition of income as contained in the Taxation Act, and also in view of the decisions rendered in similar cases. *Northern Assurance Co.* v. *Russell* (4); *Scottish Investment Trust Co.* v. *Surveyer of Taxes* (5); *California Copper Syndicate* v. *Harris* (6); *Stevens* v. *Hudson Bay Co.* (1); *Commissioners of Taxes* v. *Melbourne Trust Ltd.* (3).

The judgment of the court was delivered by:—

DUFF J.—The appellant company in 1920 sold its Thurlow Island timber limits at a price which was largely in advance of the moneys expended in acquiring them, part of which price was paid in 1920, part in 1921, and part, though not the whole of the residue, in 1922. The principal topic of controversy on this appeal is whether the profit accruing from this sale was, in whole or in part, assessable to income tax. The solution turns primarily upon the answer to be given to the question whether or not the profit falls within the category of "income" within the meaning of the British Columbia statute. A subsidiary

(1) [1909] 101 L.T.R. 96.
(2) [1910] 5 T.C. 658.
(3) [1914] A.C. 1001.
(4) [1889] 2 T.C. 571.
(5) [1893] 2 T.C. 231.
(6) [1904] 5 T.C. 159.

question, turning upon the effect of a statute of 1921 that authorizes the assessor to enter upon the roll of one year the amount of assessable income received during any previous year but not included in the statutory return made by the person receiving it, will also have to be disposed of.

In dealing with the major question it may be assumed, as it was assumed on the argument, that the distinction between the accretions to capital, such as the capital profit realized upon the sale of a capital investment, and the profit derived from the labour, or capital, or both combined, in carrying on or carrying out a venture or a business for profit, is a distinction both admissible and proper under the terms of the British Columbia statutes of 1911 and 1917.

The appellant company was incorporated under the British Columbia Companies Act of 1907, and its objects, declared in its memorandum of association, were; to take over as a going concern a certain logging business carried on in the state of Washington, with a view to adopting a specified agreement identified by reference to the articles of association, and to carry the agreement into effect; to acquire by purchase or otherwise timber licences, timber leases and timber lands, and to sell and deal in these; and to carry on a general business as loggers and dealers in logs and timber of all sorts. The company was also empowered to carry on any other business capable of being conveniently carried on in connection with the business already mentioned; to make arrangements, by way of partnership or otherwise, with others carrying on any of these businesses; and to acquire the shares and securities of any joint stock company so engaged, and generally to deal with these. There are general powers to buy and sell lands and other property, to borrow money and create securities of various kinds, and, finally, there is power to distribute any property of the company among the members in specie.

It is sufficiently clear from the memorandum of association that one of the substantive objects of the company was to acquire timber lands and timber rights with a view to dealing in them and turning them to account to the profit of the company. The nature of the business actually carried on by the company from its inception down to 1916

1924

ANDERSON LOGGING CO. v. THE KING.

Duff J.

is not disclosed. We learn of one transaction and one only —the purchase of the limits already mentioned, in 1910. Whether the logging business in Washington referred to in the memorandum of association was actually taken over, and, if taken over, whether it was carried on or resold, we do not know; nor do we know anything of the terms of the agreement which the company was to carry into effect on taking over that business. In 1916 the principal partners of the company, Messrs. Anderson and Jeremiason, arranged with one Kiltze for a right of way through his property, a lot adjoining the Thurlow Island limits—a right of way required for the convenient exploitation of the limits. At about the same time, apparently, the company purchased from Kiltze the timber on his lot, this timber being afterwards sold to a Mr. P. B. Anderson. In 1917 the company entered into an arrangement with the same Mr. P. B. Anderson, by which Anderson undertook to remove all timber from the limits, paying for the timber so taken off, as well as all that ought to be taken off but should be left standing, at the rate of $2.50 per thousand feet, board measure; to manufacture the timber into logs, and to sell them at the best price obtainable, and to pay to the company one-half of the moneys realized from such sales. Anderson proceeded to carry out the agreement, and did so, apparently without interruption, until the year 1920, when he bought the timber outright under the agreement already mentioned, at the price of one hundred and eighty thousand dollars odd, $80,000 being paid at the date of the agreement, and $50,000 being payable in each of the years 1921 and 1922.

For the purposes of this appeal it will not be necessary to consider critically the words of the British Columbia definition of "income." It may be assumed, as it was assumed on the argument—for the purposes of this appeal only—that the tests which have been applied in the decisions of the courts upon controversies arising under the Income Tax Acts of the United Kingdom are those by which the liability of the appellant company is to be determined.

The principle of these decisions can best be stated for our present purpose in the language of Lord Dunedin in his

judgment delivered on behalf of the Judicial Committee, in *Commissioner of Taxes* v. *The Melbourne Trust, Ltd.* (1),

> It is common ground that a company, if a trading company and making profit, is assessable to income tax for that profit. * * * The principle is correctly stated in the Scottish case quoted, *California Copper Syndicate* v. *Harris* (2). It is quite a well settled principle in dealing with questions of income tax that where the owner of an ordinary investment chooses to realize it, and obtains a greater price for it than he originally acquired it at, the enhanced price is not profit in the sense of schedule D of the Income Tax Act of 1842 assessable to income tax. But it is equally well established that enhanced values obtained from realization or conversion of securities may be so assessable where what is done is not merely a realization or change of investment, but an act done in what is truly the carrying on, or carrying out, of a business;

or, in the language of the judgment from which this quotation is made, which follows in sequence after the passage cited:

> What is the line which separates the two classes of cases may be difficult to define and each case must be considered according to its facts; the question to be determined being—Is the sum of gain that has been made a mere enhancement of value by realizing a security, or is it a gain made in an operation of business in carrying out a scheme for profit-making?

or, in the form adopted by Sankey J.—in *Beynon* v. *Ogg* (3)—from the argument of the Attorney General—was the profit in question

> a profit made in the operation of the appellant company's business?

The appellant company is a company incorporated for the purpose of making a profit by carrying on business in various ways including, as already mentioned, by buying timber lands and dealing in them. It is difficult to discover any reason derived from the history of the operations of the company for thinking that in buying these timber limits the company did not envisage the course it actually pursued for turning these limits to account for its profit as at least a possible contingency; and, assuming that the correct inference from the true facts is that the limits were purchased with the intention of turning them to account for profit in any way which might present itself as the most convenient, including the sale of them, the proper conclusion seems to be that the assessor was right in treating this profit as income.

On behalf of the appellant company it is contended, first, that the onus was upon the Crown to shew that the profit

(1) [1914] A.C. 1001, at pp. 1009 and 1010.

(2) 6 F., 894; 5 T.C. 159.

(3) [1918] 7 T.C. 125, at p. 132.

1924

ANDERSON LOGGING CO. v. THE KING.

Duff J.

was earned in an operation which was a part of the business carried on in fact by the company; and, secondly, that from what is described as the isolated case of the purchase and sale of these timber limits no inference as to the course of the company's business can properly be drawn.

First, as to the contention on the point of onus. If, on an appeal to the judge of the Court of Revision, it appears that, on the true facts, the application of the pertinent enactment is doubtful, it would, on principle, seem that the Crown must fail. That seems to be necessarily involved in the principle according to which statutes imposing a burden upon the subject have, by inveterate practice, been interpreted and administered. But, as concerns the inquiry into the facts, the appellant is in the same position as any other appellant. He must shew that the impeached assessment is an assessment which ought not to have been made; that is to say, he must establish facts upon which it can be affirmatively asserted that the assessment was not authorized by the taxing statute, or which bring the matter into such a state of doubt that, on the principles alluded to, the liability of the appellant must be negatived. The true facts may be established, of course, by direct evidence or by probable inference. The appellant may adduce facts constituting a *prima facie* case which remains unanswered; but in considering whether this has been done it is important not to forget, if it be so, that the facts are, in a special degree if not exclusively, within the appellant's cognizance; although this last is a consideration which, for obvious reasons, must not be pressed too far.

Making all such allowances, however, it seems reasonable to conclude in this case that the judge of the Court of Revision could properly hold that the appeal must be dealt with on the hypothesis that the company's business included that of making a profit by buying timber limits with the intention of turning them to account (and by selling them, if necessary) in such a manner as might seem most convenient and profitable; and that the timber limits in question were not purchased solely with the view to logging them.

In support of the suggestion that the principal business of the company was in fact the business of logging there

is, apart from the memorandum of association, no evidence entitled to appreciable weight, and hardly any which can properly be considered at all. A witness was called who at one time was secretary of the company, but whose connection with the company, according to his own statement, began later, at all events, than the year 1920. He was asked the question—"What has been the principal business of the company?" and his answer was "Logging." The balance sheets themselves shew that the company was not in possession of any logging equipment after the year 1917 (there is nothing to shew that it ever had any); and in the income tax return made in the year 1922, signed by this witness, as well as by the president of the company, the business of the company is said to be "timber investments." Counsel for the Crown very properly declined to cross-examine him, on the ground that he had no personal knowledge of the relevant facts. It is not unimportant to remark that neither of the principal partners of the company, who could have given a history of the company's affairs from its inception, was called as a witness nor, as has already been mentioned, was any but the most meagre evidence adduced as to the character of the company's operations before 1916.

In support of the contention that the limits were in fact bought with the exclusive object of logging them, the only evidence is the evidence of the same witness, who had and could have no personal knowledge of the design of the directors of the company in purchasing the limits, while the gentlemen who could have given information on the subject, both authentic and exact, were not examined. The witness deposed, it is true, to a conversation in 1916 with these two gentlemen, which was relied upon as indicating that at that time they contemplated logging the property. The conversation, as narrated by the witness, is equally consistent with the existence of an intention to acquire a right of way over adjoining property, affording improved facilities for working the limits, in order to enhance the value of the timber, and with a view to realizing that value in any manner in which it might most profitably be realized, by sale or otherwise; and could afford at the highest only the most shaky basis for the suggested inference, in

1924

ANDERSON LOGGING CO. v. THE KING.

Duff J.

the absence of the direct evidence which could have been and was not given, if the fact was as suggested.

As to the suggestion that the purchase and sale of these limits was only an isolated transaction of its kind, it will be necessary to discuss whether, assuming it to be the fact, that could assist the appellant company. But while considering what are the findings of fact upon which the examination of the questions raised by the appellant must proceed, it is to be observed that, strictly, this transaction was not an isolated transaction. The evidence disclosed, rather by accident, another transaction in timber, a purchase apparently in the year 1916, from the witness Kiltze, and the sale of the timber so purchased to the Mr. P. B. Anderson already mentioned. This transaction, it is true, in itself, without any further explanation, has not much significance. The purchase may very well have been prompted by the circumstance that the timber adjoined the company's limits and could profitably be worked along with them, thus, in any event, adding to the value of the limits; this minor transaction constituting, one might perhaps say, a mere incident in the larger one. But, on the other hand, there is the investment in the shares of the Standard Lumber Company, of which no explanation is given; and when these facts are related to the circumstance that in 1922 the business of the company was described as the business of " timber investments," words fairly descriptive of a category of investments embracing standing timber, as well as shares in timber companies, one can hardly, in the absence of explanation from the appellant company, proceed on the assumption that the venture in question was the sole transaction of the kind in the history of the company.

Mr. Davis, who argued the appeal with all his usual ingenuity and force, sought to bring the transaction under discussion within the analogy of a sale by a trader or manufacturer of his premises or part of his plant. In the case of a joint stock company incorporated under the British Columbia " Companies Act," the recognized distinction has full play between capital which is not available for distribution among the shareholders—except in cases in which a special statutory procedure is followed, in which case the

company is entitled to reduce its capital, whether share capital or paid-up capital—and surplus assets which are legally susceptible of distribution as dividends. Upon this distinction all surplus assets, over and above the paid-up capital, are so distributable if the governing body of the company is minded to distribute them. And it may often happen that the proceeds realized from the sale of business premises or part of a manufacturer's plant are surplus assets in this sense, which, for the purpose of considering the legal authority of the company to distribute such proceeds as dividends, would not fall within the denomination "capital." A distinction, however, between "capital" in the popular sense, in which the word is employed as the antithesis of "income," and this stricter conception of the law of companies, appears to be well recognized in the decisions upon the incidence of the income tax; and without expressing an opinion upon the point, it may be assumed that the distinction is not abrogated by the statute under which this tax, now in question, is imposed. Sales of a business premises or a manufacturing plant, where the proceeds are to be reinvested in the purchase of a new plant or new premises, would, as a rule, no doubt fall within the first alternative of Lord Dunedin's test, "change or realization of investment," even although the money realized should, in whole or in part, be lawfully distributable among the shareholders as dividends. The company's limits having, it is said, been purchased with a view to logging them, and the sale having taken place in execution of a resolve on the part of the company to abandon that branch of its business (evidenced, it is suggested, by the absence of all reference to the logging plant in the annual balance sheets produced), the facts of this case, it is argued, bring it within the same category.

In view of the terms of the British Columbia definition, assuming the limits had been bought with no definite intention of realizing a profit out of them otherwise than by logging them—that is, through logging operations carried on by the company itself in which the timber would be cut down, converted into logs and sold—it may be open to question whether the judge of the Court of Revision would have been entitled, having regard to the memorandum of

1924

ANDERSON LOGGING CO. v. THE KING.

Duff J.

association and the other circumstances mentioned, to treat the profits as a capital profit and not assessable to income tax. The point does not strictly arise on this appeal, and it is unnecessary to consider or discuss the question whether it would be a proper reading of the words already quoted to treat them as contemplating a profit made by a joint stock company in any profit-making "venture" falling within any of the different kinds of business or venture the company assessed is authorized to engage in. Most, if not all, of the decisions to which we have been referred, in which the profit in question arose from the purchase and sale of a single property or of the totality of a stock in trade of a given class, have been cases in which sale was held to have been definitely contemplated from the outset as one, at least, of the modes of dealing by which the expected profit was to be earned. In the *California Copper Syndicate's Case* (1), the dealing which was the source of profit under discussion was a sale of property which, it was found as a fact, had been purchased with the "sole object" of reselling it at a profit. In *Beynon* v. *Ogg* (2), the wagons, from the sale of which the profit there in debate was derived, were purchased, it was also found as a fact, as a speculation with the same expectation and object. In *The Commissioner of Taxes* v. *Melbourne Trust, Ltd.* (3), already referred to, the object of the company was to take over, nurse, develop and realize the assets out of the sale of which the profit in question arose.

It is perhaps open to doubt whether so much emphasis would have been laid upon the circumstances that the property was acquired solely with a view to selling it if the statute to be applied had been expressed in the language of the British Columbia definition. Two recent authorities not mentioned in the argument seem to suggest that in these cases this circumstance was, perhaps, over-emphasized.

In the *Commissioners of Inland Revenue* v. *Korean Syndicate* (4), the syndicate was formed by an association of persons with the object, as expressed in the memorandum of association, of acquiring concessions and turning

(1) 5 T.C. 159.
(2) 7 T.C. 125, at p. 130.
(3) [1914] A.C. 1001.
(4) [1921] 3 K.B. 258.

them to account for the profit of the shareholders. The company acquired a concession in Korea, giving it the right to prospect over a large area and the exclusive right of working minerals within a particular district in that area. The original plan was that the syndicate should work the concession with its own capital, but after proceeding in this way for some years, it was considered more advantageous to deal with the concession in another way, and in the result it was handed over to another syndicate to work it, on terms of making annual payments. In discussing the question whether or not the syndicate was assessable in respect of these annual payments, Atkin L.J. says:

> It (the syndicate) has acquired concessions, and it has turned them to account, and the profits that arise in this matter are profits that arise from its so turning them to account. It seems to me that it does not at all matter how it chooses to turn them to account.

In *Gloucester Railway Carriage and Wagon Co.* v. *Commissioners of Inland Revenue* (1), the controversy turned upon the character of profits realized by the company from the sale of wagons which had been used in a branch of its business concerned exclusively with the letting of wagons on hire, the principal business of the company being the manufacture of such vehicles. It was found by the commissioners that,

> as the main object of the company was to make a profit in one way or another out of making wagons and rolling stock, no sharp line could be drawn between wagons sold, wagons let on hire-purchase, and wagons let on simple hire (2),

and that the sale of these wagons was therefore a profit-making operation in the course of the company's business. The essential conditions of assessability (where a profit proposed to be assessed is the profit derived from a sale of part of the company's property) appear to be that the company is dealing with its property in a manner contemplated by the memorandum of association as a class of operation in which the company was to engage, and, moreover, that the governing purpose in acquiring the property had been to turn it to account for the profit of the shareholders, by sale if necessary.

Reverting to the contention already mentioned, that the transaction with which we are concerned being an isolated transaction it cannot be brought within the second alterna-

(1) [1924] 40 T.L.R. 435. (2) 129 L.T. 691, at p. 694.

1924

ANDERSON LOGGING CO. v. THE KING.

Duff J.

tive of Lord Dunedin's test, this rule would have excluded from the scope of the tax the profits under consideration in the *California Copper Syndicate's Case* (1) and in *Beynon* v. *Ogg* (2); and on principle it is not easy to understand why a profit made out of a profit-making venture which, as such, is within the scope of the memorandum of the association, is not an operation in execution of a profit-making scheme within the contemplation of the decisions, merely because that venture has been the only transaction of its kind in the history of the company.

The sole *raison d'être* of a public company is to have a business and to carry it on. If the transaction in question belongs to a class of profit-making operations contemplated by the memorandum of association, *prima facie*, at all events, the profit derived from it is a profit derived from the business of the company.

Whether a single speculation by an individual, having no relation to his ordinary calling or business, from which a profit has been derived, could be a profit-making venture within the meaning of the British Columbia statute, or an adventure within the meaning of the English Act, is a question we are not required to consider. There are obvious distinctions for this purpose between the transactions of a joint stock company and the transactions of an individual, distinctions which may, according to the circumstances, affect the incidence of income tax. As Lord Sterndale M.R. said, in the *Korean Syndicate's Case* (3),

> I do not admit, either, that there can be no difference for this purpose between an individual and a company. If once you get the individual and the company spending money on exactly the same basis, then there would be no difference between them at all. But the fact that the limited company comes into existence in a different way from that in which an individual comes into existence is a matter to be considered. An individual comes into existence for many purposes, or perhaps sometimes for none, whereas a limited company comes into existence for some particular purpose, and if it comes into existence for the particular purpose of carrying out a transaction by obtaining concessions and turning them to account, then that is a matter to be considered when you come to decide whether doing that is carrying on a business or not.

The observation of Hamilton J. (Lord Sumner), in *Liverpool and London and Globe Ins. Co.* v. *Bennett* (1), is also in point.

(1) 5 T.C. 159. (2) 7 T.C. 125.

(3) [1921] 3 K.B. 258 at p. 273.

I am of opinion (said that learned judge), that this analogy fails altogether and that the company's business cannot be split up in this way. The private individual may save to provide for his old age or his family; he has leisure to enjoy, he has ambitions to gratify, and his existence in fact can be separated into his private and his trading life. Nothing of the kind can be done with an insurance company. Its existence is limited by the scope of its memorandum and articles. It is a trading company and a trading company alone. It has no interests and no field of operations outside its business.

Mr. Davis relied mainly on two authorities: *The Tebrau Rubber Syndicate's Case* (1) and *Stevens* v. *Hudson's Bay Company* (2). It is undeniable that Lord Salvesen's judgment in the first of these cases contains dicta which give some support to the contention that, assuming the timber limits in question were purchased with the primary object of logging them, though for turning them to account for profit by sale if necessary, the profits derived from the sale would not be assessable. But these are dicta only, and they are expressed in such a way as to make it at least doubtful whether Lord Salvesen intended to lay down a general proposition applicable to cases other than those in which the whole undertaking of the company is disposed of. Lord Johnston, at all events, proceeds upon the ground, as already mentioned, that the profit was realized in a transaction that involved the winding up of the company. It was not a sale in carrying on, or carrying out, the business of the company but a sale inviting the abandonment of it. Lord Salvesen appears to have been disposed to take a somewhat more restricted view of the scope of the statutory provisions he was applying that subsequent decisions would appear to warrant. *The California Copper Syndicate's Case* (3), in respect of which he seems to have entertained considerable doubt, was in principle approved by the Judicial Committee in the *Melbourne Trust Case* (4) already referred to; and if the view of his judgment is that advanced on behalf of the appellants, it would be difficult indeed to reconcile it with the judgments, or with the decision, in the *Korean Syndicate's Case* (5).

As to the *Hudson's Bay Company's Case* (5), the profit in question arose from a sale of land owned by the Hudson's Bay Company, the title to which was derived from the

(1) 5 T.C. 658.
(2) 101 L.T.R. 96.
(3) 5 T.C. 159.
(4) [1914] A.C. 1001.
(5) [1921] 3 K.B. 258.

1924

ANDERSON LOGGING CO. v. THE KING.

Duff J.

original grant, the land being included in those reserved under the well-known arrangement with the Canadian Government, through which that Government acquired ownership, speaking generally, of the lands in the Canadian Northwest. The principle of the decision is made clear by the judgments of the Master of the Rolls and Lord Justice Farwell. The transaction was considered to be analogous to a sale by an individual of ancestral lands or of pictures from his picture collection, bought as part of the collection. It was not a sale in execution of a profit-making enterprise, either " adventure," or " trade," or " business." The Master of the Rolls likened the position of the Hudson's Bay Company, which came into being under a charter of Charles II, to that of an individual, and the Master of the Rolls and Farwell L.J., dwelt upon the difference between a chartered company, with unlimited powers (in relation to which the familiar distinction above adverted to, with respect to inviolable capital, and surplus assets distributable among the shareholders as dividends, has no meaning), and a company formed under the Joint Stock Companies Act.

The principle of this decision can have little application to the facts of the present case. The view taken by the Court of Appeal was that it was no part of the business of the Hudson's Bay Company to make a profit by buying and selling lands; that the transactions out of which the profits arose were merely conversions of part of the company's capital into another form; and therefore fell within the first of the categories mentioned in the citation from Lord Dunedin's judgment.

For these reasons, the profits now in question were assessable in the years in which they were realized; but the statute of 1921, having obviously no retrospective operation, gave no authority to the assessor to make any assessment in respect of moneys received before the enactment was passed, and the assessment must be reduced accordingly to $66,269.28. As the appellant company achieves a substantial success, it is entitled to its costs.

Appeal allowed with costs.

Solicitors for the appellant: *Davis, Pugh, Davis, Hossie & Ralston.*

Solicitors for the respondent: *Killam & Beck.*