H. A. ROBERTS LIMITED ..... APPELLANT;

AND

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

1969

*Mar. 13, 14
June 6

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Taxation—Income tax—Termination of mortgage agency business—Whether compensation received capital or income—Income Tax Act, R.S.C. 1952, c. 148, ss. 3, 4.

The appellant company carried on a real estate business and for a number of years prior to 1963 carried on also a mortgage business in one of the five separate departments into which it had organized its business. Most of the revenue from the mortgage business came from agency contracts obtained from three other companies. In 1963, these agency contracts were terminated. The appellant received payment of $83,633.72 as compensation and closed its mortgage department. The Minister assessed the amount of compensation received as income. The Exchequer Court upheld the Minister's assessment. The company appealed to this Court.

Held: The appeal should be allowed.

The payments were payments of compensation for the termination of a separate business of the appellant. Therefore, the compensation received was a capital.

Even if the mortgage business was not a business separate from its other activities, the cancellation of the agency contracts represented the loss of capital assets of an enduring nature the value of which has been built up over the years, and therefore the payments received by the appellant represented capital receipts.

Revenu—Impôt sur le revenu—Fin d'un contrat d'agence d'hypothèques—L'indemnité reçue est-elle un revenu ou un capital—Loi de l'impôt sur le revenu, S.R.C. 1952, c. 148, art. 3, 4.

La compagnie appelante exerçait un commerce d'immeubles, et, durant plusieurs années avant 1963, elle exerçait aussi un commerce d'hypothèques dans l'un des cinq services dans lesquels elle avait réparti toute son entreprise. La majeure partie de son commerce d'hypothèques lui provenait de contrats d'agence qu'elle avait obtenus de trois autres compagnies. En 1963, on a mis fin à ces contrats d'agence. La compagnie appelante a reçu une somme de $83,633.72 comme indemnité et elle a fermé son service d'hypothèque. Le Ministre a cotisé le montant de l'indemnité comme un revenu et cette cotisation a été maintenue par la Cour de l'Échiquier. La compagnie en appela à cette Cour.

Arrêt: L'appel doit être accueilli.

Le paiement fut le paiement d'une indemnité pour la cessation d'une entreprise distincte de l'appelante. L'indemnité reçue était donc un capital.

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*PRESENT: Cartwright C.J. and Martland, Ritchie, Hall and Spence JJ.

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Même si le service d'hypothèques n'était pas une entreprise distincte des autres occupations de l'appelante, la résiliation des contrats d'agence représentait une perte d'un bien de capital d'une nature permanente et dont la valeur avait été acquittée au cours des années. Par conséquent, le paiement reçu par l'appelante représentait un reçu de capital.

APPEL d'un jugement du Juge de district Sheppard de la Cour de l'Échiquier du Canada[1], en matière d'impôt sur le revenu. Appel accueilli.

APPEAL from a judgment of Sheppard D.J. of the Exchequer Court of Canada[1], in an income tax matter. Appeal allowed.

P. N. Thorsteinsson, for the appellant.

G. W. Ainslie, Q.C., for the respondent.

The judgment of the Court was delivered by

SPENCE J.:—This is an appeal from the decision of Mr. Justice Sheppard, District Judge of the Exchequer Court of Canada[1], delivered on October 28, 1968. By that judgment, the learned trial judge dismissed the appeal of the taxpayer H. A. Roberts Limited from the assessment by the Minister of National Revenue made in connection with the appellant's 1963 taxation year, and confirmed the allocation of two sums received by the appellant in that year, i.e., $73,633.72 from the Crown Life Insurance Company, and $10,000 from Burrard Mortgage Investments Limited, to income. It is necessary to outline the circumstances in some detail.

H. A. Roberts had been engaged in the real estate business for some time. On April 2, 1929, H. A. Roberts Limited was incorporated as a private company by Memorandum of Association under the British Columbia *Companies Act.* The taxpayer carried on as a real estate company for a considerable number of years. During that period, the company, as any other real estate dealer, was called upon from time to time to obtain mortgages for purchasers of real estate through it and to loan funds of its customers on mortgages.

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[1] [1969] 1 Ex. C.R. 266, [1968] C.T.C. 517, 68 D.T.C. 5330.

In the year 1946, the appellant was appointed mortgage representative in British Columbia for the Crown Life Insurance Company. At the time of that first appointment, the appellant was not the sole agent for the said insurance company in British Columbia but from and after the 7th of June 1948 the appellant occupied such sole and exclusive agency. For the appellant's services to the Crown Life it was entitled to receive 10 per cent of the interest collected for the company up to $100,000 and 7½ per cent on interest collected above that amount. Thereafter, the appellant organized its business in departments as follows:

1. Real Estate.
2. Mortgages.
3. Insurance.
4. Property Management.
5. Appraisals.

In the year 1964, i.e., after the taxation year with which this appeal is concerned, it added another department, that of Property Development. In the year 1953, the appellant had built its own building at 530 Burrard Street, Vancouver, B.C. On the ground floor of that building, it established the offices for the various departments other than the mortgage department; the second floor of the building was occupied in whole by the mortgage department. That department was staffed by from ten to thirteen persons and had as its head a manager. The department was operated as an altogether separate entity from the other kinds of businesses which the taxpayer carried on and it was made very specific that those in other departments were not entitled to obtain information from those employed in the mortgage department. That department, in addition to handling the Crown Life agency, took on other similar mortgage agencies. By an agreement made on August 1, 1960, it became the sole and exclusive agent in British Columbia for Burrard Mortgage Investments Limited and carried on as to second mortgages much the same business for Burrard as it was carrying on as to first mortgages for Crown Life. In addition, a company known as Abernathy Mortgage Corporation held an exclusive agency for the Occidental Life Insurance Company of California. The appellant purchased all the shares in the Abernathy Mortgage Corporation and as a result entered into an

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agency contract with the Occidental Life Insurance Company of California dated June 30, 1959. Mr. J. P. Roberts, giving evidence on behalf of the appellant, testified that with the ever increasing amount of the appellant's business being involved in the mortgage department and by far the greatest share of such business being that of the Crown Life Insurance Company, in the year 1960, he began to be concerned lest termination of that agency would result in a heavy loss to his company. The original agreement in the year 1946, and the subsequent amendments thereafter, had been carried out by letter and such agreements had contained no provision for termination. It would appear, therefore, that the agency could have been terminated on reasonable notice.

Mr. Roberts testified that he conferred with Mr. Jamieson, the mortgage superintendent of the Crown Life upon the topic. Mr. Jamieson was approaching retirement age and one of the motives moving Mr. Roberts to obtain an exact provision as to what would occur were the agency to be terminated was that the excellent relationship between him and Mr. Jamieson would not necessarily be continued with the latter's successor. Mr. Jamieson readily agreed that some compensation would be due to the appellant upon termination and as a result under date the 24th of February 1960, Mr. Jamieson, for the Crown Life Insurance Company, wrote to Mr. Roberts, for the appellant, outlining the new terms of the agency agreement. The commission upon interest collected was reduced from $7\frac{1}{2}$ per cent to 6 per cent and it was specifically provided that

> the Crown Life Insurance Company shall have the right to discontinue the servicing portions of the agreement without cause on ninety (90) days' written notice to H. A. Roberts Limited upon payment to H. A. Roberts Limited of one-half of one per cent. ($\frac{1}{2}$%) of the then unpaid balance of the mortgages being serviced by H. A. Roberts Limited for the Crown Life Insurance Company.

The appellant continued to operate in the same fashion under those terms. By the year 1962, the appellant was servicing as agent a mortgage portfolio for the Crown Life Insurance Company of almost $15,000,000 in outstanding principal amounts, a mortgage portfolio for Burrard Mortgage Investments of about $2,000,000 outstanding principal, and a mortgage portfolio in the Occidental Life Insurance Company of California of about the same $2,000,000 figure. The appellant had, in addition, a very

few independent clients for whom it operated as mortgage agents and this small amount of business was, for the sake of finance and efficiency, turned into a mortgage department. The appellant had completely set up its accounting and reporting system to comply with the requirements of the Crown Life and Burrard Mortgage Investments, and particularly the former. The appellant had purchased an accounting machine at the cost of $6,000 for such purpose.

In the year 1962, the Crown Life Insurance Company, having built its own office building in Vancouver and having usable space therein, determined to establish its own mortgage department for British Columbia in such building and to terminate the agency held by the appellant. Therefore, on September 28, 1962, the Crown Life Insurance Company, over the signature of its vice-president and superintendent of mortgages, gave notice to the appellant in these terms:

> Pursuant to our letter to you of February 24th, 1960, we beg to give you formal notice of discontinuance of our agreement with you as of February 1st, 1963.

It will be seen that that notification was a little longer than that required by the letter of September 24, 1960. Thereafter, the Crown Life Insurance Company paid to the appellant the sum of $73,633.72, being one-half of one per cent of the principal value of Crown Life mortgages then in force in British Columbia which amount was $14,726,744. Upon that occurrence, the manager of the mortgage department of the appellant came to the conclusion that there was no future in remaining in that position. He was, at the same time, one of the controlling officers of the Burrard Mortgage Investments Limited and, therefore, he caused Burrard also to cancel its agency agreement. Under the agreement with Burrard, the latter was entitled to cancel the agreement without cause on ninety days' written notice and on the payment of the sum of $20,000. Burrard, however, objected to the accounting which had been made to it by the appellant and on solicitors' advice, to avoid litigation, the appellant accepted from Burrard the sum of $10,000 in settlement, and mutual releases were executed. It is these two sums of $73,633.72 and $10,000 which the Minister has put into income which the appellant submits should be regarded as capital receipts and, therefore, not subject to income tax.

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At the time the Crown Life Insurance Company terminated its agreement and established its own mortgage department in British Columbia, eight or nine of the employees of the appellant's mortgage department left the appellant's service and became employees of Crown Life's mortgage department in British Columbia. At roughly the same time, the Occidental Life Insurance Company of California cancelled its agency agreement and by an arrangement made between the appellant and the Occidental Life the agency business was transferred to another agent known as MacAulay Nichols, with that agency agreeing to pay to the appellant 25 per cent of the commissions it obtained. Amounts received under that agreement have been credited to income and we are not concerned with them in this appeal. One of the employees of the appellant's mortgage department went to MacAulay Nichols. The manager of the department and two more of the staff became employees of Burrard Investments Limited, and one retired.

It will be seen, therefore, that the appellant lost the complete staff of its mortgage department. The appellant moved its other departments into the second floor of the building previously occupied by that mortgage department, which it discontinued, and let out to tenants the ground floor which it had previously occupied with those other departments. Some attempts were made to obtain other correspondence agency contracts with other insurance companies but Mr. Roberts' evidence was that such attempts were, at best, half-hearted. He pointed out that having lost all his staff, he would have to, even if he were fortunate enough to obtain an agency, which he did not consider a possibility, have "started from scratch". It appears that the only possible market was in U.S. insurance companies and at that time the demand for mortgages in the U.S. was such that they were not interested in entering the mortgage field in British Columbia.

With the proceeds of the payments by Crown Life and Burrard Investments, the appellant purchased two different insurance agencies known as George Barker Agency and the Day Ross Roberts Agency. The amounts paid out, totalling $72,500, were treated as capital items. The payments for the shares of the Abernathy Mortgage Company,

to which I have referred above, were treated in the same fashion as capital outlay. Mr. Roberts testified that he had never sold an agency.

The appellant made its submission to this Court upon two bases. Firstly, that the mortgage correspondency business carried on by the appellant was a distinct business separate from its other activities and that the cancellation by the Crown Life Mortgage and Burrard Mortgage Investments effectively brought that business to an end and therefore compensation received therefor was a capital receipt to the appellant. Secondly, the appellant urged, in the alternative, that the loss of the Crown Life and Burrard Mortgage agency contracts represented the loss of capital assets of an enduring nature, the value of which had been built up over the years so that payment received by the appellant for such a loss was a capital receipt.

The trial judge, in his reasons for judgment, concluded:

> After the cancellation the Mortgage Department was closed and the staff disbanded, the majority of them being absorbed by the Crown Life and the individual mortgagees who were customers of the appellant were serviced by the Accounting Department of the appellant. Therefore, while the Mortgage Department was a separate department, it was not a separate business.

This Court had occasion, in *Frankel Corporation v. M.N.R.*[2], to consider a related question. The Frankel Corporation Limited, as did the present appellant, had carried on under one corporate structure a variety of businesses including, (1) a steel operation, (2) a wreckage and salvage operation, (3) a scrap iron and steel operation, and (4) a non-ferrous smelting and refining operation. The Frankel Corporation sold its non-ferrous smelting and refining operation including the inventory at hand. Frankel alleged that this sale of inventory was part of the sale of a business and was not a sale in the ordinary course of the company's business so that the proceeds from such sale should not be considered part of the company's income. It is true that the actual decision of this Court was that the sale of the inventory was not a sale in the ordinary course of business, but in order to come to that conclusion the Court had to hold that the subject of the contract between the Frankel Corporation and the purchaser was the sale

[2] [1959] S.C.R. 713, [1959] C.T.C. 244, 59 D.T.C. 1161, 19 D.L.R. (2d) 497.

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of a business despite the fact that that business was not the subject of any separate incorporation. Martland J., giving the judgment of the Court, quoted extensively the judgment of the trial judge in the Exchequer Court of Canada and then stated, "I agree with these conclusions".

The learned trial judge in the Exchequer Court had regard for such circumstances as the source of the material and supplies used in the operation, the employees of Frankel who bought the material and supplies, the machinery and equipment used in the operation, the employees who operated such machinery, the portion of the premises where the operation was carried on, the customers who bought the products, the employees of Frankel who sold those products, the name under which the operation was carried on, and the trade-mark and trade name used on the products. He said, in part:

> Indeed, the whole process by which profit was earned seems to have been quite distinct from the others, save in respect of the acquisition of minor quantities of scrap material from the wrecking and salvage operation, the combination for some purposes of the accounting with that of the ferrous scrap operation and such general matters as control by the same board of directors, the arrangement of a single union contract for employees of the appellant, employees' pension and insurance plans, and the ultimate preparation of the profit and loss account for the operations of the company.

In my view, the separation of the mortgage department of the appellant was at least as distinct and probably much more distinct than the separation of the non-ferrous smelting and refining department of the Frankel Corporation. The employees worked in a distinct premises, under a manager of that department only, the method of accounting was set up especially for that department, the mortgages issued on behalf of the Crown Life and Burrard were issued very generally to others than the customers of the appellant and because of the necessity of keeping confidential such customers' affairs the employees of the mortgage department were expressly prohibited from giving any other department in the appellant company information as to the affairs of those other customers. The only control of the mortgage department by anyone other than the staff thereof was by the directors of the company and, of course, it is the duty of the directors to control all departments, one may say, the different businesses, of the company.

I have come to the conclusion that, applying the decision of this Court in *Frankel Corporation v. M.N.R.*, it should be determined that the payments by the Crown Life Insurance Company and Burrard Mortgage Investments Limited were payments of compensation for the termination of a separate business of the appellant. Therefore, under *Van Den Berghs v. Clark (H. M. Inspector of Taxes)*[3] and *Barr, Crombie & Co. Ltd. v. Commissioners of Inland Revenue*,[4] the compensation received is capital and cannot be assigned to the appellant's income for the year 1963.

I turn to consider the appellant's alternative submission.

Even if the mortgage correspondency business carried on by the appellant was not a distinctive business separate from its other activities, the loss of the Crown Life and Burrard Mortgage contracts represented "the loss of capital assets of an enduring nature, the value of which had been built up over the years" so that the payment received by the appellant for the loss thereof represented a capital receipt.

As was said by Lord Evershed in *Wiseburgh v. Domville*[5], when referring to the distinction between the case where such payments are to be considered as capital receipts or, on the other hand, as income:

> But, the matter being largely one of degree and so of fact, as Lord Normand said, I think the question is one of fact for the commissioners to find.

The same view was expressed by Lord Normand (the Lord President) in *Kelsall Parsons & Co. v. Inland Revenue*[6]:

> ...no infallible criterion emerges from a consideration of the case law. Each case depends upon its own facts...

Again, as Lord Evershed pointed out in *Wiseburgh v. Domville, supra, Kelsall Parsons & Co. v. Inland Revenue* was very much at one end of the line and *Barr, Crombie v. Inland Revenue*[7] very much at the other. In the *Kelsall* case, the taxpayer had some sixteen agencies, and only one of them was cancelled. It was held that under such circumstances the obtaining of an agency or the cancellation

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[3] [1935] All E.R. 874, [1935] A.C. 431, 19 Tax Cas. 390.
[4] (1945), 26 Tax Cas. 406.
[5] [1956] 1 All E.R. 754 at 757, 36 Tax Cas. 527.
[6] (1938), 21 Tax Cas. 608 at 619.
[7] (1945), 26 Tax Cas. 406.

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of an agency was very much in the course of business and that therefore any compensation paid for such cancellations would be part of the ordinary income of the taxpayer. On the other hand, in *Barr, Crombie v. Inland Revenue*, the company had a contract to manage the ships of the Barr Shipping Company Limited and from the beginning of its existence the taxpayer continued to act as manager for the shipping company receiving commissions and fees under a variety of headings. The contract was to run until 1951 and it provided that if the shipping company went into liquidation the remuneration to be paid to Barr, Crombie should become immediately due and payable. In November 1948, eight and a half years before the expiry of the agreement, the shipping company went into liquidation and had paid to the taxpayer £16,000 under the said article of the agreement. Lord Normand (the Lord President) pointed out at p. 412:

> And where you have a payment for the loss of the contract upon which the whole trade of the company had been built...and where in consequence of the loss the Company's structure and character are greatly affected, the payment seems to me to be beyond doubt a capital payment.

The payment was held to be a capital receipt not subject to income tax.

In *Commissioners of Inland Revenue v. Fleming & Co. (Machinery)* Ltd.[8], Lord Russell said at p. 63:

> The sum received by a commercial firm as compensation for the loss sustained by the cancellation of a trading contract or the premature termination of an agency agreement may in the recipient's hands be regarded either as a capital receipt or as a trading receipt forming part of the trading profit. It may be difficult to formulate a general principle by reference to which in all cases the correct decision will be arrived at since in each case the question comes to be one of circumstance and degree. When the rights and advantages surrendered on cancellation are such as to destroy or materially to cripple the whole structure of the recipient's profit-making apparatus, involving the serious dislocation of the normal commercial organisation and resulting perhaps in the cutting down of the staff previously required, the recipient of the compensation may properly affirm that the compensation represents the price paid for the loss or sterilisation of a capital asset and is therefore a capital and not a revenue receipt. Illustrations of such cases are to be found in *Van den Berghs, Ltd.*, 19 T.C. 390, [1935] A.C. 431, and *Barr, Crombie & Co. Ltd.*, 26 T.C. 406, 1945 S.C. 271. On the other hand when the benefit surrendered on cancellation does not represent the loss of an enduring asset in circumstances such as those above mentioned—where for example the structure of the recipient's business is so fashioned as to absorb the

[8] (1951), 33 Tax Cas. 57.

shock as one of the normal incidents to be looked for and where it appears that the compensation received is no more than a surrogatum for the future profits surrendered—the compensation received is in use to be treated as a revenue receipt and not a capital receipt. See e.g. *Short Brothers, Ltd.*, 12 T.C. 955; *Kelsall Parsons & Co.*, 21 T.C. 608.

Mr. Justice Thurlow in the Exchequer Court in *Parsons-Steiner Limited v. Minister of National Revenue*[9], considered these authorities and others in application to the following circumstances:

The taxpayer had, for many years, a contract with Doulton & Co. Ltd. of England whereby it acted as the exclusive agency in Canada for that company. The contract was, in the beginning, for one year definite, and was to continue thereafter until determined by three months' notice which might be given by either party. In 1954 the contract was determined effective at the end of 1955, and the parties negotiated a compensation of $100,000. It was agreed that $5,000 of that amount was applicable to the services performed by the taxpayer in the transfer of the agency business from it to Doulton's newly-created Canadian company, and it was admitted therefore that that sum fell into income. Thurlow J. held that the balance was a capital receipt. On the termination of the agency, two of the taxpayer's seventeen employees had transferred to Doulton's new company and in order to counter the expected drop in sales the taxpayer had employed several new salesmen and made a greater effort to augment sales of lines which it still carried. There were no changes in the premises occupied by the taxpayer and no salaries were cut as a result of the loss of the Doulton agency. One new agency was obtained but no agency could be obtained which would supply figurines comparable to the very well-known Doulton line. In the negotiations for the settlement of the compensation which Doulton would pay to the taxpayer the president of the taxpayer wrote a letter to Doulton one paragraph of which was as follows:

> At this point in our calculation, we stopped and gave thoughtful consideration to the matter of how much of the successful development of the Doulton market in Canada has been a joint effort, in the sense that you as manufacturers had created an acceptable product, and that we have done a fine job of establishing and servicing a distribution organization which you can be proud to take over without modification.

[9] [1962] Ex. C.R. 174, 62 D.T.C. 1148.

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Thurlow J. at p. 187, said:

> On the whole therefore having regard to the importance of the Doulton agency in the appellant's business, the length of time the relationship had subsisted, the extent to which the appellant's business was affected by its loss both in decreased sales and by reason of its inability to replace it with anything equivalent, to the fact that two of the appellant's employees became employees of the Doulton subsidiary on the termination of the relationship and the fact that from that time the appellant was in fact out of that part of its business, both as an agent and as a wholesale dealer, and particularly to the nature of the claim asserted in respect of which the payment was made, I am of the opinion that, except in so far as it was a consideration for services rendered to Doulton & Co. Limited, in connection with the take-over by its subsidiary, which is admitted to be income, and except in so far as it took the place of commissions on sales of goods ordered before, but invoiced after December 31, 1955, the payment in question was not income from the appellant's business, but was referable to the appellant's claim for loss of what it and Doulton Co. Limited as well considered to be the appellant's interest in the goodwill and business in Doulton products in Canada. In my view this was, to use Lord Evershed's expression, "A capital asset of an enduring nature". It was one which the appellant had built up over the years in which it had the Doulton agency and which on the termination of the agency the appellant was obliged to relinquish. The payment received in respect of its loss was accordingly a capital receipt.

In the present case, the cancellation of the two agencies, that of the Crown Life Insurance Company and Burrard Mortgage Investments Limited, did make a very distinct impact on the appellant's business. They were two out of the three such agencies which made possible the operation of the appellant's mortgage department. The loss of those agencies, as I have said, caused the mortgage department to simply cease to exist. The net income of the mortgage department, before general and administration expenses are considered, ranged from 27.6 per cent in 1958 to 51 per cent in 1961 of the whole net income of the taxpayer's business. In the fiscal year 1963, when the Crown Life agency was only in effect for ten months of the twelve, that percentage was 39 per cent.

Realizing therefore that the determination is one of degree, it would seem to me that the cancellation of the two correspondency agency contracts would fall into the line of cases illustrated by the *Barr, Crombie* case and the *Parsons-Steiner* case, and it would not be simply an example of the cancellation of one of a number of agencies as in *Kelsall Parsons & Co. v. Inland Revenue, supra.*

Substituting insurance agency vocabulary for mercantile agency vocabulary, I am of the opinion that the quota-

tion above from the letter written by Parsons-Steiner to Doulton & Co. Ltd. could be applied to the situation between this taxpayer and the Crown Life and Burrard Mortgage Investments.

The learned trial judge distinguished the *Parsons-Steiner* case from the present one on the grounds that in such case the taxpayer possessed an exclusive agency which was cancelled. In the present case the Crown Life agency was exclusive and I can see no difference in principle between an agency to sell china and one to solicit mortgages and manage them. The learned trial judge also pointed out that in the *Parsons-Steiner* case the compensation was negotiated while here the exact compensation paid was prescribed for in the agreement. Again, I cannot find such a circumstance decisive. In this case in 1960 the taxpayer realizing that it was building up a capital asset desired to assure that it would endure or that proper compensation would be paid for its loss and negotiated an exact provision for that compensation agreeing to a reduction of its income for the purpose of securing such compensation for loss of the capital asset. The payment of such prefixed compensation is no less a payment for a capital loss than a payment for such loss after negotiation at the time when it occurs. Finally, counsel for the Minister, if we were of the opinion that the *Parsons-Steiner* case was undistinguishable, invited us to hold it was badly decided and refuse to accept it. I am not willing to do so. With respect, I am of the opinion that Thurlow J. in *Parsons-Steiner* came to the correct conclusion after a careful and accurate analysis of the case law and the principles involved.

I am, therefore, of the opinion that the cancellation of these two agency contracts did represent the loss of capital assets of an enduring nature the value of which had been built up over the years and that therefore the payments received by this appellant represented capital receipts. For both of these reasons, I would allow the appeal with costs here and below and direct that the assessment for the 1963 taxation year be returned to the Minister of National Revenue for revision in accordance with these reasons.

Appeal allowed with costs.

Solicitors for the appellant: Thorsteinsson, Mitchell & Little, Vancouver.

Solicitor for the respondent: D. S. Maxwell, Ottawa.