

B.C. FIR AND CEDAR LUMBER }
 COMPANY (DEFENDANT) } APPELLANT;

1931
 *May 1.
 *May 13.

AND

HIS MAJESTY THE KING (PLAINTIFF) . . RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH
 COLUMBIA

*Taxation—Provincial income tax—"Income" in B.C. Taxation Act—
 "Use and Occupancy Insurance" policy—Moneys paid for loss of
 profits not earned—Taxation Act, R.S.B.C., 1924, c. 254, s. 2.*

Insurance moneys received under a policy commonly known as "use and
 occupancy insurance" and paid by way of indemnity for profits not
 earned, but irretrievably lost, are not taxable income nor subject to
 taxation under the British Columbia *Taxation Act*, R.S.B.C., 1924, c.
 254, s. 2.

APPEAL from the decision of the Court of Appeal for
 British Columbia (1), affirming the decision of Macdonald
 J. (2) and maintaining the respondent's action.

The respondent brought an action to recover \$8,750.68
 alleged to be due and payable by the appellant for
 taxes upon its property and income. The appellant
 claimed to be entitled to a substantial set off or allowance.
 The appellant was carrying on business as manufacturer
 and dealer in lumber products, at the city of Vancouver.
 In 1923 it insured with 17 fire insurance companies against
 loss and damage to its plant and property by fire, and
 also against loss or damage which might be sustained
 in the event of its plant being shut down and busi-
 ness suspended in consequence of fire and damage.
 The insurance last mentioned is commonly known as
 "use and occupancy insurance." It was effected by
 the appellant under such policies to the total amount
 of \$60,000 in respect of loss of "net profits," and \$84,000
 in respect of "fixed charges." The plant and premises of
 the appellant were destroyed by fire in August, 1923, and,
 by adjustment with the insurance companies under the
 last mentioned policies, the appellant was paid \$43,000 for

*PRESENT:—Anglin C.J.C. and Newcombe, Lamont, Smith and Can-
 non JJ.

(1) (1930) 43 B.C. Rep. 227; [1931] 1 W.W.R. 33.

(2) (1929) 42 B.C. Rep. 401; [1931] 1 W.W.R. 33.

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loss of "net profits" and \$52,427.90 in respect of "fixed charges," making a total, thus paid by the insurance companies to the appellant, of \$95,427.90. The appellant without taking legal advice upon the question as to whether these insurance moneys were taxable or not, included, in its "return" for the year 1923, the sum of \$41,293.20 of such moneys, and in the year 1924 the sum of \$33,706.80. The appellant, without at the time questioning its liability, voluntarily paid income tax on these amounts and sought in the respondent's action an allowance or set-off in respect of such payments.

The definition of "income" in the *Taxation Act*, R.S. B.C., 1924, c. 254, s. 2, reads as follows:—

"Income" includes the gross amount earned, derived, accrued, or received from any source whatsoever, the product of capital, labour, industry, or skill; and includes all wages, salaries, emoluments, and annuities accrued due from any source whatsoever (including the salaries, indemnities, or other remunerations of members of the Senate and House of Commons of the Dominion and officers thereof, members of the Provincial Legislative Councils and Assemblies and Municipal Councils, Commissions, or Boards of Management, and of any Judge of any Dominion or Provincial Court, whether the said salaries, indemnities, or other remunerations are paid out of the revenues of His Majesty in right of the Dominion or in right of any Province thereof or by any person); and includes all income, revenue, rent, interest or profits arising, received, gained, acquired, or accrued due from bonds, notes, stocks, debentures, or shares (including the stocks, bonds, or debentures of the Dominion or of any Province of the Dominion, or of any municipality), or from real and personal property, or from money lent, deposited, or invested, or from any indebtedness secured by deed, mortgage, contract, agreement, or account, or from any venture, business, or profession of any kind whatsoever:

J. W. de B. Farris K.C. for the appellant.

E. Pepler for the respondent.

The judgment of the court was delivered by

ANGLIN C.J.C.—We are of the opinion that this appeal should be allowed with costs throughout.

The British Columbia *Taxation Act* nowhere provides for taxation of moneys paid by way of indemnity for profits not earned, but irretrievably lost.

The moneys in question here represent insurance placed by the appellant in order to meet the possibility of destruction by fire of its means of earning profits. That event occurred, with the result that the appellant made no profits

whatever out of the property in respect to which it had placed the insurance, which could be taxed for the period in question. There are, therefore, no profits to tax and, in the absence of clear language authorizing such a course, I find nothing in the statute to warrant the taxing of money substituted for the profits by way of indemnity for their loss.

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Appeal allowed with costs.

Solicitor for the appellant: *C. H. Locke.*

Solicitor for the respondent: *E. Pepler.*
