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THE MINISTER OF NATIONAL REVENUE *(Respondent)* ..... APPELLANT;

AND

SPRUCE FALLS POWER & PAPER COMPANY LIMITED *(Appellant)* RESPONDENT.

THE MINISTER OF NATIONAL REVENUE *(Respondent)* ..... APPELLANT;

AND

THE JAMES MacLAREN COMPANY LIMITED *(Appellant)* ..... RESPONDENT.

*May 1, 4, 5, 6
*Oct. 6

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

*Revenue—Excess Profits Tax—Income Tax—Deduction from income of portion of amount paid under provincial Corporation Tax Act attributable to logging operations—Excess Profits Tax Act, 1940 (Can.) 1940 (2nd Sess.) c. 32—Income War Tax Act, R.S.C. 1927, c. 97 as amended, s. 5(1)(w)—The Dominion-Provincial Tax Rental Agreements Act, 1947, c. 58, s. 3—P.C. 331, Jan. 30, 1948 as amended by P.C. 952.—Interpretation Act, R.S.C. 1927, c. 1, s. 20.*

These appeals were argued together. The first respondent carried on in the Province of Ontario, the other in Quebec, the business of manufacturing pulp and paper and as an incident thereto, logging operations. Each in filing Income and Excess Profits tax returns for the year 1947, deducted from its income that portion of taxes it paid under the relevant provincial Corporation Tax Act, it attributed to its logging operations, and claimed such allowance by virtue of s. 5(1)(*w*) of the *Income War Tax Act*, R.S.C. 1927, c. 97 and P.C. 331 as amended by P.C. 952. The deductions were disallowed by the appellant, but on appeal to the Exchequer Court, Cameron J., held that a taxpayer engaged in an integrated business, such as the respondents, had the right to apportion his income as between logging and other operations and claim a deduction for the provincial tax paid in respect thereof.

*Held:* (Kerwin and Cartwright JJ. dissenting).—That the type of taxation to which s. 5(1)(w) was directed was provincial taxation specifically imposed on income from mining or logging operations and had no reference to general provincial taxes on income.

*Per:* Kerwin and Cartwright JJ., (dissenting, agreed with the trial judge).—The amount which the respondent claimed to be entitled to deduct from its taxable income was imposed by way of tax on income and the income upon which this amount of tax fell was derived from logging operations. It would be a forced construction of the clause to hold that it had no operation in the case of a tax on income which in fact fell upon income derived from logging operations merely because it also fell on the income of the taxpayer from other sources.

Judgments of the Exchequer Court of Canada [1952] Ex. C.R. 68 and 75 set aside and assessment restored.

*PRESENT: Kerwin, Taschereau, Rand, Kellock, and Cartwright JJ.

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APPEALS from two judgments of the Exchequer Court of Canada, Cameron J. (1), allowing the respective appeals of the respondent taxpayers from an assessment for excess profits tax for the year 1947.

*David Mundell, Q.C.* and *T. Z. Boles* for the appellant.

*Roderick Johnston, Q.C.* and *Terence Sheard, Q.C.* for Spruce Falls Power & Paper Co. Ltd., respondent.

*John Aylen, Q.C.* and *J. R. Tolmie* for James MacLaren Co. Ltd., respondent.

The dissenting judgment of Kerwin and Cartwright, JJ. was delivered by:—

CARTWRIGHT J. (dissenting):—These appeals were argued together and raise the same questions relating to taxes demanded on income for the 1947 taxation year. To make clear what these questions are it will be sufficient to refer briefly to the facts in the case of the first appeal.

The respondent Spruce Falls Power and Paper Company Limited carries on the business of manufacturing and selling sulphite pulp and newsprint paper. It has the right to cut the timber on extensive limits in the Province of Ontario. It conducts logging operations on these limits in the course of which it cuts the standing timber into pulpwood logs which it transports to its mill at Kapuskasing, Ontario. At the mill these logs are processed or manufactured into sulphite pulp and newsprint paper. The business of the appellant is thus a wholly integrated operation, in the course of which it acquires a raw product in its natural state, namely standing timber, and through a series of operations converts such raw product into finished or semi-finished products, namely sulphite pulp and newsprint paper, which it sells to the ultimate consumer thereof. In respect of such business the respondent filed a return under *The Corporations Tax Act, 1939,* of the Province of Ontario shewing net income for the year ending December 31, 1947 of $5,807,161.33 and tax payable thereon of $406,501.29. In its amended return of Dominion of Canada Income and Excess Profits Taxes for the year ending December 31, 1947, the respondent claimed to deduct from its taxable income 46·36 per cent of the said tax of

(1) [1952] Ex. C.R. pp. 68 and 75.

$406,501.29, i.e. $188,454.00, as being tax on its income derived from logging operations within the meaning of s. 5(1)(*w*) of *The Income War Tax Act* and the regulations made thereunder. This deduction was disallowed by the appellant but was allowed in full by the learned trial judge.

The two questions which we have to determine are whether the respondent is entitled to any deduction and, if so, whether the amount of the deduction claimed is correctly computed.

The answer to the first question turns on the construction of the relevant provisions of the statute and the regulations. The relevant regulations are P.C. 331, dated the 30th of January, 1948 and P.C. 952, dated the 6th of March, 1948 which amended section one of P.C. 331. It is not necessary to repeat their terms. The meaning of the words used construed in their ordinary sense appears to me to be entirely consistent with the view taken by the learned trial judge and indeed I find the construction he has placed upon them a more natural one than that contended for by the appellant.

At the time both of the Orders in Council referred to were passed the enabling section under which they were made, s. 5, s-s. 1, paragraph (*w*) of the *Income War Tax Act* as amended by 11 Geo. VI c. 63, s. 4, s-s. 5, read as follows:—

> "Income" as hereinbefore defined shall for the purpose of this Act be subject to the following exemptions and deductions:—
>
> (*w*) Such amount as the Governor in Council may, by regulation, allow for amounts paid in respect of taxes imposed on the income, or any part thereof, by the Government of a province by way of tax on income derived from mining operations or income derived from logging operations.

S-s. 6 of s. 4 of 11 Geo. VI, c. 63, reads as follows:—

> (6) Paragraph (*w*) of subsection one of section five of the said Act, as enacted by subsection five of this section, is applicable to income of the nineteen hundred and forty-seven and subsequent taxation years and to tax payable thereon but in the case of the nineteen hundred and forty-seven taxation year no amount may be deducted thereunder greater than that proportion of the total amount that might be deducted in respect of the whole taxation year that the number of days in the said taxation year in the calendar year nineteen hundred and forty-seven is of the number of days in the whole of the taxation year.

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By s. 2(2) of 11 and 12 George VI c. 53, (assented to on June 30, 1948) Paragraph (*w*) was repealed and the following was substituted therefor:—

> (*w*) such amount as the Governor in Council may, by regulation, allow in respect of taxes on income for the year from mining or logging operations.

As s-s. 6 of s. 4 of 11 Geo. VI, c. 63, quoted above, was not amended it would follow that the expressed intention of Parliament was that paragraph (*w*) as last enacted should be applicable to income of the 1947 and subsequent taxation years and to tax payable thereon.

The appellant contends that the validity of the regulations is to be determined and that they are to be construed, so far as their construction is governed by the terms of the enabling statute, with reference to paragraph (*w*) as it appeared in the 1947 statute rather than that in the 1948 statute and that whichever statute is applicable gave power to the Governor in Council to allow a deduction from income of taxes on income from logging operations only if such tax was specifically imposed as and expressly limited to a tax on income derived from such operations and that no power was given to enact regulations allowing a deduction in respect of taxes on income from logging operations paid under a taxing statute applying to income generally. The learned trial judge has held that the governing statutory provision is paragraph (*w*) as enacted in 1948. Mr. Mundell argues that this is wrong. His submission is that the paragraph as enacted in 1947 was the only enabling statute in force when the regulations were passed, that their validity must be determined with reference to that section and that if they were not authorized by it they were void and there was nothing upon which s. 20(*a*) of the *Interpretation Act* could operate when the 1948 amendment was passed.

I, at present, incline to the view that Mr. Mundell's argument, in this regard, would be unanswerable in a case in which the amending statute was clearly prospective. The question is rendered difficult by the fact that the 1948 amendment is made retrospective in its operation. Parliament could of course by aptly framed legislation validate regulations which had been previously passed but were for some reason invalid. Parliament is assumed to be familiar with the law and with the orders of the Governor in Council

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of general application and it is arguable that, when it provided that paragraph (*w*) as enacted in 1948 should apply to the 1947 taxation year, it intended that the already existing regulations should be deemed to have been passed under the new paragraph. I do not, however, find it necessary to decide this question in this appeal, because if it be assumed, as I will now assume, that the statutory provision to which we should have regard is paragraph (*w*) as enacted in 1947 I am of opinion that the decision of the learned trial judge was right. It would have been a simple matter for the draftsman of the paragraph to have made it clear that the operation of the section was to be restricted to a tax specifically and exclusively levied on income from logging operations but Parliament has not seen fit to use such words and the words used seem to me to be apt to authorize the regulations passed by the Governor in Council construed as they have been construed by the learned trial judge.

It is said for the appellant that the words "by way of tax on income derived . . . from logging operations" support the construction for which he contends, but in my view the words "by way of" are not words of art and the ordinary meaning of the words of the clause taken as a whole seems to me to include the tax here in question. Leaving aside for the moment the question of the accuracy of the computation, it is clear that the $188,454 which the respondent claims to be entitled to deduct from its taxable income was imposed by way of a tax on income and that the income upon which this amount of tax fell was derived from logging operations. It would, I think, be a forced construction of the clause to hold that it has no operation in the case of a tax on income which does in fact fall upon income derived from logging operations merely because it also falls on the income of the taxpayer from other sources.

I should have arrived at the above conclusion from a consideration of the words of the statute alone and it appears to me to be fortified by a consideration of the following circumstances. As I have said already, Parliament is assumed to know the existing law including the public statutes of the provinces and we are informed by all counsel that there was not in force in any province in the year 1947 any legislation under which a tax was levied on income

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derived from logging operations which would answer the description of the only sort of tax to which in the appellant's submission clause (*w*) could have application. It is said for the appellant that this is not significant as the clause and the regulations passed thereunder were intended to look only to the future but if this is so it is difficult to understand why the 1948 amendment was made retrospectively applicable to the 1947 taxation year. So far as logging operations and income derived therefrom are concerned, to adopt the construction for which the appellant contends would have the result of leaving both the legislation and the regulations without subject matter in a year to which they were expressly made applicable. It would further appear that the construction adopted by the learned trial judge avoids, while that contended for by the appellant would bring about, a result involving, to borrow the words of my brother Rand, an apparent discrimination which might seem unjust.

For these reasons, even on the assumption that it is to the 1947 form of paragraph (*w*) that we should look, I agree with the conclusion of the learned trial judge in regard to the first question above mentioned.

In regard to the second question, as to whether the amount of the deduction claimed was correctly computed in accordance with the regulations and particularly whether it was computed in accordance with sound accounting principles with reference to the value of the logs at the time of their delivery at the respondent's mill, I am in agreement with the reasons and the conclusion of the learned trial judge.

I would dismiss both appeals with costs.

The judgment of Taschereau and Kellock, JJ. was delivered by:—

KELLOCK J.:—These appeals, which were argued together, involve the construction of s. 5(1)(*w*) of the *Income War Tax Act* as enacted by s. 2(2) of c. 53 of the Statutes of 1948, which came into force on June 30 of that year. The question between the parties arises in the determination of the "net taxable income" of each company under *The Excess Profits Tax Act*, which statute, by s. 2(1)(*c*) of the Second Schedule, makes applicable the provisions of the *Income War Tax Act* in determining such income.

The question of construction which arises in each case is as to whether the words "in respect of taxes on income for the year from . . . logging operations" in s. 5(1)(*w*) are limited to a provincial tax imposed specifically on such income, or whether the paragraph contemplates as well, the deduction of a part of a general income tax, apportioned on the basis of the proportion which income from logging bears to total income. In the court below the latter view was taken and the appellant contends that this view is erroneous.

Prima facie the language of the statute is specific. The deduction authorized is the amount "in respect of taxes paid to . . . a province on income derived from logging operations." The respondents' contention really is that this language is to be read as meaning

> in respect of that proportion of taxes paid to a province which corresponds to the proportion which income received from logging bears to the total income taxed.

Both parties sought to interpret the legislation by reference to regulations passed under antecedent legislation, as well as by reference to the earlier legislation itself. Counsel for the appellant also referred us to other Dominion and provincial legislation which it was said formed part of a general scheme which included the legislation which is here directly in question.

S. 5(1)(*w*) was first enacted in 1946 by s. 41 of c. 55, and came into force on August 31, 1946. As so enacted, the section was as follows:

> 5(1) "Income" as hereinbefore defined shall for the purpose of this Act be subject to the following exemptions and deductions,
>
> (*w*) such amount as the Governor in Council may by regulation allow in respect of taxes paid to the government of a province on income derived from mining or logging operations in the province.

At the time of this enactment *The Dominion-Provincial Taxation Agreement Act, 1942,* 6 George VI, c. 13, and complementary provincial legislation, was in force. The agreements provided for thereby were, as provided by s. 2 of the Dominion statute, in force "for the duration of the war and for a certain readjustment period thereafter". In fact, they continued in some cases until the end of the year 1946, and in the remainder until the closing months thereof. Under the terms of these agreements the provinces undertook to repeal or suspend all income and cor-

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poration taxes. It was, however, provided that the provinces might, notwithstanding, levy "taxes, license fees and royalties upon or in respect of natural resources within the Province."

We were advised that in some of the provinces there had been in existence for some years before 1946, taxes on income from mining operations but no similar taxation specifically on income from logging operations. The agreements, however, precluded all provincial taxation on personal or corporation income. Having regard to this legislative background, s. 5(1)(*w*) would appear to have been directed to permitting deduction of specific taxes, and not to have had any reference to general provincial taxes on income which did not then exist and were prohibited under the existing legislation.

On July 17, 1947, s. 5(1)(*w*) was repealed by s. 4(5) of c. 63 of the Statutes of 1947 and the following substituted:

(*w*) Such amount as the Governor in Council may, by regulation, allow for amounts paid in respect of taxes imposed on the income, or any part thereof, by the Government of a Province *by way of tax* on income derived from mining operations or income derived from logging operations.

The French version of the statute is as follows:

(*w*) Le montant que le gouverneur en conseil peut admettre par règlements pour des montants versés à l'égard des impôts établis sur le revenu ou sur une partie du revenu par le gouvernement d'une province *sous forme d'impôt* sur le revenu provenant d'opérations minières ou sur le revenu provenant d'opérations forestières.

The words "by way of tax" and the words "sous forme d'impôt", in my opinion, even more clearly preclude the view that there was in the contemplation of Parliament anything other than a provincial tax specifically imposed on income from logging or mining.

Moreover, on the same day as s. 5(1)(*w*) was amended, namely, July 17, 1947, c. 58 of 11 George VI, was also enacted, by s. 3(1)(*a*) of which authority was given to the Minister of Finance, with the approval of the Governor-in-Council on behalf of the Government of Canada, to enter into agreements with the governments of the provinces under which the latter should refrain from levying personal income taxes, corporation income taxes, and corporation taxes as should be defined in the agreement, in respect of the period of five years commencing January 1, 1947. By

s-s. (2) it was enacted that notwithstanding anything in s-s. (1), such agreements might provide that the provinces might

(*a*) levy, or empower a municipality to levy income tax or corporation income tax on income earned during the whole or any part of the period mentioned in paragraph (*a*) of subsection one derived from mining operations or on income so earned derived from logging operations as defined in the agreement;

(*b*) impose corporation income tax, in such manner as may be agreed upon, at a rate of five per centum on income of corporations earned during the whole or any part of the period mentioned in paragraph (*a*) of subsection one attributable to their operations in that Province . . .

S-s. (6) of s. 4 of c. 63 of the 1947 statutes, which amended the *Income War Tax Act*, had provided that s. 5(1)(*w*) of that Act should be applicable to income of the 1947 and subsequent taxation years.

By July 17, 1947, British Columbia, Saskatchewan, Manitoba, New Brunswick and Prince Edward Island had already enacted enabling legislation with respect to Dominion-Provincial taxation agreements, and on August 27, 1947, Nova Scotia followed suit. Paragraph 8 of the form of agreement provided for by this provincial legislation, of which that enacted by British Columbia is an example, is as follows:

8. (1) Notwithstanding anything contained in clause six British Columbia may, during the period commencing on January 1, 1947, and ending on December 31, 1951, impose, levy and collect royalties and rentals on or in respect of natural resources within the province of British Columbia.

(2) Notwithstanding anything contained in clause six, British Columbia or any municipality authorized by British Columbia may, during the period mentioned in paragraph one of this clause, impose, levy and collect taxes on income derived from mining operations or income derived from logging operations, or from both, carried on in the province of British Columbia during the said period, but no such tax shall be imposed by a municipality except in lieu of a tax on property or on any interest in property, other than residential property or any interest therein, of the person carrying on the said mining or logging operations.

(3) Canada will allow as a deduction in computing income under the *Income War Tax Act* of the period mentioned in paragraph one of this clause, royalties and rentals, and taxes, mentioned in paragraphs one and two of this clause, respectively.

Having regard, therefore, to the situation revealed by this legislation, there can be no doubt in my opinion that the type of taxation to which s. 5(1)(*w*), as enacted in 1947, was directed, was provincial taxation specifically imposed on income from mining or logging operations, that is, for amounts paid in respect of taxes imposed on the income or

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any part of the income of the taxpayer "by way of tax on income derived from mining or . . . logging operations", or in the language of the French version, "sous forme d'impôt" on income so derived.

No regulations had been passed under s. 5(1)(*w*) as enacted in 1946 and when the paragraph was amended in 1947, it did not accord with paragraph 8 of the agreements in that it did not provide for deduction in the case of a municipal tax. On January 30, 1948, by P.C. 331, regulations were, however, passed, the first recital stating that an amendment to s. 5(1)(*w*) would be proposed at the then present session of Parliament to take care of this omission. It was also recited that the proposed amendment would implement the undertaking contained in clause 8 of the agreements relative to taxes on income derived from mining or logging operations. Paragraph 3 of the regulations in so far as they apply to income from logging operations is as follows:

> 3. In these regulations,
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> (*a*) "Income derived from logging operations" by a person means
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> (i) where logs are sold by him to any person at the time of or prior to delivery to a sawmill, pulp or paper plant or other place for processing or manufacturing logs, or delivery to a carrier for export from Canada, or delivery otherwise, the net profit or gain derived by him from
>
> (A) the acquisition of the timber or the right to cut the timber from which the logs were obtained, and the cutting and sale, or the cutting, transportation and sale of the logs, or
>
> (B) the acquisition, transportation and sale of the logs, or
>
> (ii) where he does not sell but processes, manufactures or exports from Canada logs owned by him, the net profit or gain reasonably deemed to have been derived by him from
>
> (A) the acquisition of the timber or the right to cut the timber from which the logs were obtained, and the cutting and the transportation of the logs to the sawmill, pulp or paper plant or other place for processing or manufacturing, or to the carrier for export from Canada, as the case may be, or
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> (B) the acquisition of the logs and the transportation of them to such point of delivery
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> computed in accordance with sound accounting principles with reference to the value of the logs at the time of such delivery, excluding any amount added thereto by reason of processing or manufacturing the logs.

It is argued for the respondents that this paragraph supports their contention that s. 5(1)(*w*) contemplates the deduction of an apportioned part of a general provincial income tax in that the regulation provides for the segregation of income from logging from other income.

Even if it would be proper to construe the statute by reference to the regulations, I do not think that this contention is sound. Whether s. 5(1)(*w*) referred to a specific tax or a general tax, if a person in the pulp and paper business, for example, who carried on his own logging operations, was to be permitted to deduct the tax in respect of income from the purely logging operations, it was necessary that the regulations should provide a basis for the segregation of that income. Accordingly, the regulations with respect to both logging and mining income are completely colourless so far as this contention is concerned.

P.C. 331 was amended on March 6, 1948, by a new paragraph one, which reads as follows:

> 1. Subject to these regulations the amount that a person may deduct from income under paragraph (*w*) of subsection one of section five, is an amount not exceeding the proportion of the total taxes therein mentioned paid by him to
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> (*a*) the Government of a Province, or
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> (*b*) a municipality in lieu of taxes on property or any interest in property other than his residential property or any interest therein
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> that the part of his income that is equal to the amount of
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> (*c*) income derived by him from mining operations as defined herein, or
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> (*d*) income derived by him from logging operations as defined herein
>
> is of the total income in respect of which the taxes therein mentioned were so paid.

This provision substituted deduction of a proportion of the tax paid for the provision of paragraph one as originally passed in January, 1948, under which actual taxes paid by the taxpayer on income from mining or logging operations was deductible, although, in view of the definitions in paragraph three of the original regulations, some difficulty might well have arisen in cases where the ascertainment of the income by a province differed from the basis laid down in that paragraph. It was no doubt to obviate any such difficulty that the amendment was passed. As amended, the deduction authorized was the fraction of the provincial or municipal tax represented by the taxpayer's income from logging operations as defined by the regulations,

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divided by the taxpayer's total income in respect of which the taxes mentioned in s. 5(1)(*w*) were paid, i.e., the total income from logging as defined by the provincial legislation.

The enactment of the statute of 1948, and the repeal of s. 5(1)(*w*) as enacted in 1947, did no more, in my opinion, than remove the limitation on deduction to provincial taxes and permit the deduction of municipal taxes.

In my opinion, therefore, the appeals should be allowed with costs here and below.

RAND J.:—The question raised by these appeals is the right of the respondent companies to a deduction from income and excess profit taxes for the year 1947 under para. (*w*) of s-s. 1 of s. 5 of the *Income War Tax Act*. The deduction is in respect of taxes paid to the governments of Ontario and Quebec on income under the Corporation Taxation Act of each province. Para. (*w*) as enacted in 1947 reads:—

> Such amount as the Governor in Council may, by regulation, allow for amounts paid in respect of taxes imposed on the income, or any part thereof, by the Government of a province by way of tax on income derived from mining operations or income derived from logging operations.

As repealed and re-enacted in 1948, it is in these words:—

> Such amount as the Governor in Council may, by regulation, allow in respect of taxes on income for the year from mining or logging operations.

The provincial taxes were on the income of total operations carried on by the companies which included not only logging operations but also the production of pulp and paper. The companies claim the right to allocate a portion of those taxes to the logging operations; the contention of the Crown is that para. (*w*) applies only to taxes which are specifically imposed in relation to income from logging operations as a separate subject matter, even though the latter may be part of a larger operation as in the cases before us.

On its face, the 1947 version, by the words "by way of tax on income derived . . . from logging operations" indicates a tax related by the province exclusively to the income from those particular activities. But Mr. Johnson lays down as the first component of his argument, the proposition that in interpreting (*w*) we should apply the rule of apportionment approved by the Judicial Committee in

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*Commissioner of Taxation* v. *Kirk* (1), and followed in *International Harvester Co.* v. *Provincial Tax Commission* (2) and *Provincial Treasurer of Manitoba* v. *Wm. Wrigley Co. Ltd.* (3). That rule is this: that when a tax is imposed on a segment of business whose total operations extend beyond the taxing jurisdiction, the income from the whole of the operations is to be treated as distributed over the range of processes which make up that whole. This furnishes a basis on which the taxation of the income attributable to the portion carried on, say, in a province, can be determined: it may be a distribution of the income in relation to the cost of each such process or by means of any other formula that will fairly reflect the share in the end result which it contributes.

The fallacy in this lies in the fact that the rule is one relating to the taxation of a constructively segregated portion of an entire business; but there is no question of taxation here; the paragraph deals only with an allowable deduction of taxes exacted by another authority. What it is directed to is a provincial tax that is imposed upon an exclusive entirety of logging operations, or specifically on logging operations as a part of a larger entirety for which some rule of apportionment is necessary. Mr. Johnson's argument is one, in a proper case, to be addressed to the taxing authority of Ontario when such a tax is imposed as in the decisions mentioned. But there is no such provincial tax here, and there is, therefore, nothing on which the paragraph can operate. What he asks is that the plain language of the clause be complicated by the application of a rule designed for an entirely different purpose.

Then it is said that the regulations made under the authority of the paragraph as it was enacted in 1947 must, because of its repeal by the 1948 enactment, be read with the latter, and that, so read, the companies bring themselves within the provisions of both.

The regulations were made by P.C. 331 on January 30, 1948. The preamble refers to the language of para. (*w*), "by way of taxes on income derived, etc." and the deduction was to be in relation to taxes on income earned only from January 1, 1947, whatever might be the accounting

(1) [1900] A.C. 588. (2) [1949] A.C. 36.
(3) [1950] A.C. 1.

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period of the taxpayer ending in that year. It recites the intention to propose an amendment to para. (*w*) in relation to taxes "imposed on the income or any part thereof by any municipality authorized . . . by way of tax on income derived from . . . logging operations." By para. (2) of the operative part, a receipt for payment of the taxes in respect of which the deduction is claimed is required. By para. (3) "income derived from logging operations" is defined for both the case of logs which are cut and prepared and then sold, and where they are carried into further manufacture; and a basis is laid down for computing income "with reference to the value of the logs at the time of such delivery", meaning, where further operations are carried on, the delivery to the sawmill, pulp or paper plant or other place where they commence.

Para. (1) of the regulation was amended on March 6, 1948 by a re-enactment providing that the amount deductible under para. (*w*) shall not exceed

> the proportion of the total taxes *therein mentioned* (in para. (*w*)) paid by him to
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> (*a*) the government of a province . . . that the part of his income that is equal to the amount of
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> * * *
>
> (*d*) income derived by him from logging operations as *defined herein* is of the total income in respect of which the taxes *therein mentioned* (para. (*w*)) were so paid.

The important words are "income . . . from logging operations as defined herein" that is, the basis set up in the regulations. In other words, if that basis should produce only one-half of the amount of income taxed by the province ,then only one-half of the taxes paid could be deducted under (*w*). The Dominion did not intend to allow deduction on the basis of larger income than that produced by the application of its own formula. What is clear is that the denominator of that fraction is a figure determined not by the Minister or any court but by the province. This, in turn, is connected with the Dominion-Provincial taxing agreements to which I shall later refer.

But it is argued that (*w*), re-enacted in 1948, is broader than that of 1947, both of which were declared to apply to the taxation year 1947; that it allows an income on logging operations to be ascertained by the Minister or court by apportioning the total income taxed by the province; and

that the regulations must be interpreted in the light of that change. The latter are governed by s. 20 of the *Interpretation Act;* but their meaning must be gathered in the light of the provision by which they were authorized; and if so construed, they are consistent with the repealing enactment, they remain in force, if not, they are so far superseded.

I see no difference in meaning between para. (*w*) of 1947 and that of 1948. The object of the latter was to extend the deduction to similar taxation by municipalities. But if the 1948 language is to be taken to permit a deduction in cases of taxation such as we have in the cases before us, the regulations would be inconsistent with it and would stand repealed, and there would then be none to authorize any deduction. Since the regulations were allowed to stand, it must be taken that the Governor in Council, at least, interpreted the 1948 amendment to the same effect as the language of 1947.

That the intention of Parliament is carried out by this interpretation is confirmed by s. 3(2)(*a*) of c. 58 of the Dominion statutes, 1947. *(The Dominion-Provincial Tax Rental Agreements Act, 1947).* This enactment authorized the Dominion government to enter into taxing agreements with the provinces, one effect of which was that the latter agreed not to impose personal or corporation income taxes for five years, subject to the exception, among others, that the government of a province might

> (*a*) levy or empower a municipality to levy income tax or corporation income tax on income earned during the whole or any part of the period mentioned in para. (*a*) of subsec. 1 derived from . . . logging operations.

I entertain no doubt that this language means a specific tax on the income derived from such an operation, ascertained by the province or municipality and nothing else; all other income was ruled out. The purpose was to apply consistently a principle of not affecting provincial taxation of natural resources in their immediate and direct exploitation. This statute was assented to on July 17, 1947, the day of the enactment of para. (*w*) for that year, and that the one was intended to be consistent with the other is inescapable. The question arises here only by reason of the fact that neither Ontario nor Quebec availed itself of the tax proposals. The apparent discrimination between specific

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taxation of ascertained income from logging operations and that involved in total income attributable to them may seem unjust but when the language of the legislation is reasonably free from doubt, that impression becomes irrelevant. The net income of total operations does not necessarily reflect a net return from all of its constituent segments and that was appreciated here by leading evidence to show the logging operations to have been by themselves profitable. But we cannot speculate on that or any other possible element in the policy behind the limitative provision: it is sufficient that Parliament has made its intention clear.

Since, then, in neither case is there a provincial tax on income from the logging operations segregated according to the terms of the taxing statute, the case is not within either the regulations or para. (*w*), and the Minister was right in his refusal to allow the deductions claimed.

The appeals must, therefore, be allowed and the actions dismissed with costs in both courts.

*Appeals allowed with costs.*

Solicitor for appellant: *T. Z. Boles.*

Solicitors for Spruce Falls Power & Paper Co. Ltd., respondent: *Johnston, Sheard & Johnston.*

Solicitors for James MacLaren Co. Ltd., respondent: *Aylen & Aylen.*