BETWEEN:

1942

Sep. 22.

Sep. 25.

PIONEER LAUNDRY & DRY CLEANERS LIMITED ..... } APPELLANT;

AND

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

AND

EMPIRE CLEANERS LIMITED.. APPELLANT;

AND

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

Revenue—Income War Tax Act—Depreciation—Deduction—Reasonable amount—Nominal sum.

Held: That a nominal sum is not a reasonable amount to allow for depreciation of the value of machinery, plant and equipment, within the meaning of the Income War Tax Act.

APPEALS under the provisions of the Income War Tax Act from the decision of the Minister of National Revenue.

The appeals were heard before the Honourable Mr. Justice Robson, Deputy Judge of the Court, at Vancouver.

W. Martin Griffin, K.C. and *V. R. Hill* for appellants.

Dougald Donaghy, K.C. and *A. A. McGrory* for respondent.

ROBSON, Deputy Judge, now (September 25, 1942) delivered the following judgment:

It is clear from the circumstances of this case that the machinery, plant and equipment which were the subject of discussion in the earlier litigation (1) had considerable working value at the time it was purchased by the present appellant. The Minister had declined to make allowance for depreciation thereafter because of depreciation allowances made to the previous owner. The reason was that it was the same shareholding ownership, to put it briefly. The result of the litigation was that this was held to be

(1) (1938) Ex. C.R. 18; (1939) S.C.R. 1; (1940) A.C. 127.

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ROBSON J.

erroneous in law and not a sound exercise of a judicial discretion and that the appellant company must be treated as a new owner and, as a new owner, entitled to the allowance by the Minister of what in his judgment would be a reasonable sum in each taxation period from the time of acquisition by the appellant company. Such depreciation is in effect an operating cost. Percentages reached by practical experience are usually employed and the percentages would be on the value of the plant in question in any case, into which percentages and value the Minister could make independent inquiry. It is in harmony with sound business which must recognize that the value of plant will, in varying degree, shrink with each operating year. In keeping with that, the sum to be allowed for depreciation would be computed on a lower figure in each taxation year. But so long as there is any operating value and operation there is at least some reduction in value by use—which goes by the name of depreciation and which is part of the cost of earning profits.

As I read the judgments, the appellant company is in the position of purchaser of used machinery and equipment and would be entitled at least to the benefit of the Minister's judgment, judicially exercised, as to what should be allowed, in plain language, for loss by wear and tear of that machinery in the course of its use and operation while earning profits in a taxation period. The Minister was required by the judgment as rendered by the Judicial Committee to take the matter up again and exercise his judgment as to reasonable depreciation allowances. In proceeding to do that the Minister, or the Commissioner with his subsequent confirmation, allowed the nominal sum of one dollar for that depreciation, i.e., for the operating cost resulting from wear and tear in business use.

I am pressed to take the view that the Minister's judgment was final even if his figure, reached by calculation, was erroneous. Familiar cases were cited. But I must consider the judgment of the Judicial Committee. Doing so, I cannot think that this mere allowance of a nominal sum was a possibility within the contemplation of the learned Lords when they referred the question back to the Minister. I have to say, with deference, that I think the course pursued was not a consideration of a reasonable

amount for depreciation within the intention of the Act. I have not had the benefit of any explanation, simply the Minister's decision.

It seems to me that the experience of this case shows that the sums allowed the previous owners for depreciation were too large and that the property had not depreciated to the extent of the sums allowed. The then owners possibly made a gain to which they were not entitled, but nothing can be done about that here.

I do not consider that the allowance for depreciation of later acquired goods can be attributed to the whole of the property in question and so form a decision of the Minister upon an amount not merely nominal and applicable to the whole.

In the Empire Cleaners Ltd. case there is an additional ground of appeal as to later items, but it has not been made out that the Minister exceeded the scope of his authority.

I think that the appeals in respect of the merely nominal allowance for depreciation must be allowed to the extent herein indicated and the matter be referred back to the Minister for further consideration of allowance of reasonable sums for depreciation within the Act. I think that the appellant—Pioneer Laundry Company—should have costs. No costs to or against the Empire Cleaners Limited.

Judgment accordingly.