
BETWEEN:

EDMONTON NATIONAL SYSTEM OF BAKING, LIMITED ..... } APPELLANT;

AND

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

1944
Sept. 20
1947
Apr. 3

Revenue—Income—Excess Profits Tax Act 1940, secs. 3, 7(c), 14—"Any payments to proprietors, part owners or shareholders by way of salary, interest or otherwise"—Reimbursement by appellant to one of its shareholders for money spent on management services for appellant—Appeal allowed.

The majority of appellant's shares are owned by the National System of Baking of Alberta, Limited. That company in the year 1940 performed certain services for appellant in the way of management, supervision, purchase and delivery of commodities, bookkeeping and other services, receiving therefor the sum of $6,359.50 paid to it by appellant. After the payment of such sum the income of appellant was reduced to less than $5,000.

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Appellant was assessed for excess profits tax by respondent who contended that the payment of the sum of $6,359 50 was a payment by appellant to a shareholder of appellant by way of salary, interest or otherwise.

On appeal the Court found that the payment by appellant to National System of Baking of Alberta, Limited is a reimbursement to the latter of moneys disbursed by it for services performed for the appellant.

Held: That the payment of appellant to National System of Baking of Alberta, Limited, was not by way of salary or interest and that the words "or otherwise" in s. 7(*c*) of the Excess Profits Tax Act, must be interpreted strictly and do not apply to payments made to a shareholder as reimbursement for expenses incurred and services performed, but must be restricted to cover only salaries and interest payments or payments of a similar nature.

APPEAL under the provisions of the Excess Profits Tax Act, 1940.

The appeal was heard before the Honourable Mr. Justice Angers at Calgary.

H. S. Patterson K.C. and *A. W. Hobbs* for appellant;

Harold W. Riley and *A. A. McGrory* for respondent.

The facts and questions of law raised are stated in the reasons for judgment.

ANGERS J. now (April 3, 1947) delivered the following judgment:

This is an appeal under section 58 and following of the Income War Tax Act, made applicable to matters arising under the provisions of the Excess Profits Tax Act, 1940, in virtue of section 14 of the latter, by Edmonton National System of Baking Limited, of the city of Calgary, province of Alberta, against the decision of the Minister of National Revenue affirming the assessment for the year 1940, which appears from a copy of the notice of assessment forming part of the record of the Department of National Revenue to have been mailed on August 20, 1942.

In its notice of appeal, dated September 19, 1942, a copy whereof is also included in the record of the Department, the appellant states that its taxable income amounts to $4,586.14 and that, as this sum is under $5,000, it is

not subject to excess profits tax. The notice of appeal adds that the National System of Baking of Alberta Limited, which is a shareholder of Edmonton National System of Baking Limited, has received nothing by way of salary, interest or otherwise from appellant, that all it receives is recoupment of its expenses and that for this reason the Department of National Revenue should not assess the appellant for excess profits tax of $412.

The decision of the Minister, dated January 16, 1943, signed by the Minister of National Revenue per the Commissioner of Income Tax, also part of the record of the Department, sets forth *inter alia*:

WHEREAS the taxpayer duly filed an Income and Excess Profits Tax return, showing its income for the year ending 30th September, 1940.

AND WHEREAS in filing its said return the taxpayer claimed exemption from Excess Profits Tax under the provisions of Section 7(*c*) of the Act because its income was not in excess of $5,000, being in fact $4,586.14.

AND WHEREAS all the shares of the taxpayer are owned by the parent company, National System of Baking of Alberta Limited.

AND WHEREAS during the year 1940 the taxpayer paid or credited to the account of the parent company, management expenses totalling $6,359.50.

AND WHEREAS in assessing the taxpayer the provisions of the said Section 7(*c*) of the Excess Profits Tax Act were not considered applicable for the reason that the said profit of $4,586.14 was arrived at after payment of management expenses of $6,359 50 and an Excess Profits Tax Assessment was assessed by Notice of Assessment dated the 20th August, 1942.

The decision of the Minister then refers to the notice of appeal, summing up briefly its contents, and concludes:

The Honourable the Minister of National Revenue having duly considered the facts as set forth in the Notice of Appeal and matters thereto relating hereby affirms the said assessment on the ground that paragraph (*c*) of Section 7 of the Act provides for exemption from tax under the Act if the profits of the taxpayer are not in excess of $5,000 in the taxation year before providing for any payments to shareholders by way of salary, interest or otherwise; that as the taxpayer's profits exceeded $5,000 before providing for payment to its shareholder, the taxpayer is not entitled to the exemption provided by the said paragraph and therefore by reason of the said Section 7(*c*) and other provisions of the Act in that respect made and provided the assessment is affirmed as being properly levied.

On February 13, 1943, the appellant, in compliance with section 60 of the Income War Tax Act, sent to the Minister a notice of dissatisfaction in which it merely says that it desires its appeal to be set down for trial.

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The reply of the Minister, as usual, denies the allegations contained in the notice of appeal and the notice of dissatisfaction in so far as incompatible with the allegations of his decision and affirms the assessment as levied.

Formal pleadings were filed by consent.

In its statement of claim the appellant alleges in substance:

in the 1940 assessment year of appellant, the National System of Baking of Alberta Limited, which is a shareholder of the appellant, performed certain services for the appellant by way of supervision, purchase and delivery of commodities and bookkeeping, for which the appellant paid or credited to the said company the sum of $6,359.50 and the appellant in its income tax return claimed a deduction of the said sum;

the respondent alleges that a portion of the moneys so paid were paid by National System of Baking of Alberta Limited by way of salary, wages or remuneration to certain of its officers or employees who were then shareholders of the appellant;

the income of the appellant, after providing for the deduction of the sum of $6,359.50, was $4,586.14, and the appellant claimed to be exempt from any tax under the Excess Profits Tax Act, 1940, by virtue of section 7(*c*) thereof;

the respondent has refused to allow the said deduction, alleging:

(*a*) that the whole of the sum of $6,359.50 is a payment to a shareholder of the appellant by way of salary, interest or otherwise within the provisions of section 7(*c*) of the said Act and is therefore not deductible;

(*b*) that the portion of the said sum alleged to have been paid by National System of Baking of Alberta Limited to officers or employees, who it is alleged were shareholders of the appellant, is a payment by the appellant to shareholders of the appellant by way of salary, interest or otherwise and is not deductible under the provisions of said section 7(*c*):

the appellant says:

(*a*) the sum of $6,359.50 paid by appellant to National System of Baking of Alberta Limited is not a payment to a shareholder by way of salary, interest or otherwise within the meaning of the Excess Profits Tax Act, 1940, but is a payment made by appellant to National System of Baking of Alberta Limited by way of reimbursement to the latter

of expenses incurred by the said company for services performed by it for the appellant; it is not in any event a payment by way of salary, interest or otherwise;

(*b*) if any portions of the said sum were paid by National System of Baking of Alberta Limited to shareholders of the appellant by way of salary, interest or otherwise, which is denied, such payments were not payments by the appellant to its shareholders, but payments by National System of Baking of Alberta Limited to shareholders of the appellant and are therefore not precluded from deduction under the provisions of said section 7(*c*).

In his statement of defence the respondent admits that the appellant is an incorporated company with its head office at the city of Calgary, province of Alberta, denies the other allegations of the statement of claim and pleads specifically:

the appellant is not exempt from tax under the provision of paragraph (*c*) of section 7 of the Excess Profits Tax Act, 1940, because its profits in the taxation year 1940 were in excess of $5,000 before providing for any payments to proprietors, part owners or shareholders by way of salary, interest or otherwise within the meaning of the said paragraph.

A statement of facts agreed upon by counsel and signed by them was filed as exhibit 1. It reads thus:

1. The Appellant is a Company incorporated under the Companies Act of the Province of Alberta, with Head Office at the City of Calgary. In the taxation year 1940, it operated a retail baking business in the City of Edmonton, in the said Province.

2. The Appellant's shareholders in the year 1940 were the following:

P. A. Carson	1 share
F. J. Heagle	1 share
National System of Baking of Alberta Limited	148 shares

3. In the year 1940, the Appellant had an income of $4,586.14 as assessed under the Income War Tax Act.

4. National System of Baking of Alberta Limited performed certain services for the Appellant in the way of management, supervision, purchase and delivery of commodities, bookkeeping and other services for which the Appellant paid said National System of Baking of Alberta Limited, the sum of $6,359.50.

5. National System of Baking of Alberta Limited performs similar services for seven other companies, namely:

Lethbridge National System of Baking Limited.
Medicine Hat National System of Baking Limited.
Regina National System of Baking Limited.
Ontario National System of Baking Limited.
Drumheller National System of Baking Limited.
National System of Baking (Ottawa) Limited.
National System of Baking Limited.

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6. National System of Baking of Alberta Limited set up in its books a total charge of $48,860.60, made up of the following items:

Executive salaries—		
E. A. Heagle	$7,500.00	
H. A. Heagle	7,000.00	
W. D. Heagle	7,000.00	
F. J. Heagle	6,100.00	
E. E. Heagle	4,800.00	
P. A. Carson	2,100.00	
		$34,500.00
Executive travelling expenses		4,512.51
Office salaries and Eastern office expense		4,762.44
Audit fees		1,200.00
Office rent		600.00
Office supplies and printing for stores		1,701.38
Telegrams and telephones		169.38
Postage and excise		510.00
Business tax		45.60
Travelling expenses, etc., of employees		234.46
Insurance, fire		5.80
Workmen's Compensation Board		90.00
Corporation tax—proportion		60.00
Depreciation of furniture and fixtures		31.65
Interest on bank loans		32.19
Bank charges for exchange on remittances, etc.		405.27
		$48,860.68

7. The said total charge was allocated to the various companies on the basis of the net operating profit of each company before allowing for depreciation, the said allocation being as follows:

Lethbridge National System of Baking Limited	$ 1,884.34
Medicine Hat National System of Baking Limited	1,111.27
Regina National System of Baking Limited	3,720.27
Ontario National System of Baking Limited	3,142.69
Drumheller National System of Baking Limited	3,450.55
National System of Baking (Ottawa) Limited	11,118.36
National System of Baking Limited	11,549.74
National System of Baking of Alberta Limited	6,523.96
Edmonton National System of Baking Limited	6,359.50
	$48,860.68

8. National System of Baking of Alberta Limited absorbed $6,523.96 by reason of the fact that it operates two stores of its own in the City of Calgary, and this amount was arrived at by the method set out in paragraph 7.

9. In the year 1940 the common shareholders of National System of Baking of Alberta Limited were the following:

P. A. Carson	36 shares
Mrs. J. Carson	30 shares
E. A. Heagle	38 shares
H. A. Heagle	39 shares
W. D. Heagle	9 shares
	152 shares

10. The Respondent's position is that paragraphs 5 to 9 inclusive hereof are irrelevant, immaterial and inadmissible.

11. The Appellant filed its return showing income of $4,586.14, which amount is not in dispute, and claimed it was not liable to excess profits tax by virtue of Section 7(c) of the Act, its income being less than $5,000. The Minister in his decision recited that the said profit of $4,586.14 was arrived at after payment of management expenses of $6,359 50 and affirmed the assessment on the ground that Section 7(c) "provides for exemption from tax under the Act if the profits of the taxpayer are not in excess of $5,000 in the taxation year before providing for any payments to shareholders by way of salary, interest or otherwise; that as the taxpayer's profits exceed $5,000 before providing for payment to its shareholders the taxpayer is not entitled to the exemption provided by the said paragraph and therefore, by reason of the said Section 7(c) and other provisions of the Act in that respect made and provided the assessment is affirmed as being properly levied".

I think that the facts stated in paragraphs 5 to 9 are admissible in evidence as they are not extraneous but give a full account of the relations existing in 1940 between National System of Baking of Alberta Limited and the various National System of Baking companies and are liable to help the Court to ascertain what were then the business connections between them.

A brief resume of the evidence seems expedient.

John David Williams, chartered accountant, of Calgary, connected with the firm of Williams and Williams since 1926 and a member thereof since 1932, testified that since 1932 the firm acted as auditors for the appellant and that he prepared the income tax return of appellant for the year 1940.

He declared that an arrangement between National System of Baking of Alberta Limited and the various National System of Baking companies has existed since 1923, that it has not always been on the same basis, but has varied from year to year with a different method of distributing office and management expense and that a final arrangement was effected in 1934 which prevailed in 1940.

Williams stated that the charge made by National System of Baking of Alberta Limited was forty-eight thousand and some odd dollars in 1940, $48,751 in 1939 and $46,991 in 1938. He asserted that the company made no profits on its dealings with the various National System of Baking companies but merely got back its expenses.

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He said that National System of Baking of Alberta Limited operates two stores in Calgary and that in 1940 it also managed all the National System of Baking companies, kept their books, bought supplies, generally supervised the operation of the stores and made the expenditures indicated in the statement (exhibit 1).

Speaking of the practice followed in connection with the purchase of commodities, he declared that flour was purchased in carload lots in order to supply the various stores at one time and, for that reason, they got a better price.

According to him the books of all the companies in 1940 were kept in Calgary by National System of Baking of Alberta Limited, which was part of its services to the companies.

He stated that the appellant ran its retail store in Edmonton, hired clerks, paid for its flour and other supplies and looked after its taxes and all its own direct expenses. He added that the same arrangement applied to the other companies.

He said that the appellant pays dividends to National System of Baking of Alberta Limited which, except for the qualification shares, is practically the only shareholder.

In cross-examination, Williams declared that there is no management contract between appellant and National System of Baking of Alberta Limited, that the system aforesaid has been carried on since 1923 and that the shareholders of all the companies have approved the balance sheets each year.

He stated that the appellant does not pay executive salaries to individuals but pays certain management expenses which are distributed through the different companies. He specified that the appellant pays a management charge to National System of Baking of Alberta Limited and that the latter acts as the manager and supervisor of the accounts.

Frank James Heagle, who, in 1940 was the western manager for National System of Baking of Alberta Limited, testified that he was familiar with the arrangement mentioned by Williams. He stated that the appellant bought from 100 to 125 barrels of flour a month and that the object

of the arrangement between National System of Baking of Alberta Limited and appellant was to save money on the purchase of flour. According to him the buying of flour in large quantity meant a saving of from 40c. to 50c. a barrel. He estimated that the annual saving, as far as the appellant is concerned, would run into a very substantial amount and said that the same remark applied to all the companies.

He declared that bakers are trained by National System of Baking of Alberta Limited and supplied to the various stores. He said that a supervisor visits these stores every two or three weeks and that, if a store needs more help, he might spend some time there.

No evidence was adduced on behalf of respondent.

The charging provisions of the Excess Profits Tax Act, 1940, as they stood in 1940, which is the material time herein, being section 3 of the Act, read thus:

> In addition to any other tax or duty payable under any other Act, there shall be assessed, levied and paid upon the annual profits or upon the annual excess profits, as the case may be, of every person residing or ordinarily resident in Canada, or who is carrying on business in Canada, a tax as provided for in the First Part of the Second Schedule to this Act, or a tax as provided for in the Second Part of the said Schedule, whichever tax is the greater.

The second schedule mentioned in this section is worded as follows:

> FIRST PART—
>
> Twelve per centum of the profits of taxpayers before deduction therefrom of any tax paid thereon under the Income War Tax Act.
>
> SECOND PART—
>
> Seventy-five per centum of the excess profits.

Section 7, dealing with the exemptions, contains *inter alia* the following relevant provisions:

> The following profits shall not be liable to taxation under this Act:—
>
> (c) The profits of taxpayers who in the taxation year do not earn profits in excess of five thousand dollars before providing for any payments to proprietors, part owners or shareholders by way of salary, interest or otherwise;

It was urged on behalf of respondent that taxation is the rule and exemption from taxation the exception. Counsel submitted that a statute in order to create an exemption must be clear and explicit and that its language is to be strictly construed. He added that, if its meaning

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is doubtful, the decision of the Courts must be against the exemption. Counsel relied upon the following decisions, which it seems apposite to review succinctly.

In the case of *The Catholic Corporation of Antigonish* v. *The Municipality of Richmond* (1) it was held that The Assessment Act, R.S.N.S. (1900), chap. 73, s. 4, which exempts from taxation "every church and place of worship and the land used in connection therewith, and every churchyard and burial ground", does not extend to lands and buildings not being churches or places of worship, such as glebe houses and lands, rectories, parsonages, etc., occupied and used by the pastors in actual charge of the churches, and not rented to third persons or used otherwise than as a means of aiding in the support of such pastors.

Sir Charles Townshend, C. J., expressed the following opinion (p. 327):

> In *Dillon* on Municipal Corporations, at p. 952, the rule as to exemptions is stated as follows:
>
> "As the burden of taxation ought to fall equally upon all, statutes exempting persons or property are construed with strictness, and the exemption should be denied to exist, unless it is so clearly granted as to be free from fair doubt. Such statutes will be construed most strongly against those claiming the exemption."
>
> These are of course the rules which must be applied here, and it is not possible to construe this section, and hold that the lands in question were clearly intended by the legislature to be exempt from taxation.

In the case of *Les Commissaires d'Ecoles pour la Municipalite du Village de St-Gabriel and Les Soeurs de la Congregation de Notre Dame de Montreal* (2), referred to by Sir Charles Townshend, the appellants brought action against the respondents to recover three years' school taxes imposed on property occupied by the latter as a farm situated in one municipality, the products of which, with the exception of a portion sold to cover the expenses of working and cultivating, were consumed at the Mother House situated in another municipality. It was held (*inter alia*) "that as the property taxed was not occupied by the respondents for the objects for which they were instituted, but was held for the purpose of deriving a revenue therefrom, it did not come within the exemptions from taxation for school rates provided for by sec. 13 of ch. 16, 32 Vic. (P.Q.)."

(1) (1910-12) 45 N.S.R. 320. (2) (1885) 12 S C.R. 45.

At page 54 of the report we find these remarks by Taschereau, J.:

> With the evidence on the record, and bearing in mind that exemptions are to be strictly construed and embrace only what is within their terms, I am of opinion that this property is not held by the respondents for the purposes for which they were instituted, but is held by them as a source of revenue or income.

In the case of *The King* v. *The Trustees of School District No. 1, in the Parish of Madawaska and the Town of Edmundston, ex parte Fraser Companies, Limited* (1) the facts were briefly as follows:

School District No. 1, in the Parish of Madawaska, was established under the provisions of the Schools Act before the incorporation of the town of Edmundston. The school district, when established, included the land covered by the town of Edmundston. Since its incorporation the town had not come under the provisions of section 105 of the Schools Act, which provides for the management of schools in the towns of Saint John and Fredericton, provision being made in section 108 for the application of its provisions to any town thereafter incorporated, provided that the town council determines in favour of the adoption of such provisions and certifies the same to the Lieutenant-Governor in Council. The school district in question was therefore a separate corporation from the town, embracing the territory covered by the town within its jurisdiction. The affairs of the schools under the Schools Act are managed by a board of trustees, selected by the people in the ordinary way, and the school taxes are collected and handled by the school trustees apart from the taxes levied for town purposes and collected through the officers of the Town Council.

Some time previous to 1912 and during that year the Fraser Companies, then known as Fraser, Limited, contemplated the erection of a pulp and paper mill, involving the expenditure on capital account of a large sum of money in the town of Edmundston. An application was made to the Legislature for the fixing of a maximum valuation upon its property in the said town for taxation purposes for a period of 25 years. By chapter 104 of 2 George V, 1912, it was provided that the valuation of the real and

(1) (1918-19) 46 N.B.R. 506.

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personal property of Fraser, Limited, or its assigns, situate or to become situate within the town of Edmundston, legally liable or to become liable for assessment for rates or taxes within the said town, including any additions thereto, should not exceed the sum of $200,000, nor be less than $55,000, for the purpose of assessment for rates and taxes within the said town for a period of 25 years from the ordering of the next annual assessment. Another section of the Act authorized the Town Council to order that the valuation of the property aforesaid for the purpose of assessment for rates and taxes within the said town should be fixed for a definite amount during the said period of 25 years, such amount not to exceed $200,000 or be less than $55,000 and, upon such order being made by the Town Council, it was provided that it should be the duty of the Town Clerk to notify the assessors of the town of such order and enter the valuation in the assessment book and assess said Fraser, Limited, or its assigns, upon the same. There was also a provision that in any valuation for *county purposes* to be made during the period in which the Act was made to apply the total valuation should not exceed the sum mentioned in paragraph 1 of the Act until fixed by the Town Council under paragraph 2 of the Act, after which time the valuation should be the amount so fixed by the Town Council. There were also provisions to the effect that the Act should not apply to dwelling houses afterwards erected or acquired or any land appurtenant thereto.

As may be seen, the Act makes reference to assessments for rates and taxes within the town and to taxes for county purposes, but makes no mention of taxes for school purposes.

In December, 1916, an agreement was entered into between Fraser, Limited, and the town of Edmundston and an Act confirming said agreement was passed by the Legislature at its session of 1917 (8 George V, chap. 65). The agreement provided that the valuation for assessment purposes should be fixed at $100,000, with the exception of dwelling houses and lands appurtenant thereto, and that in the case of such, while owned by Fraser, Limited, the valuation of said dwelling houses and lands appurtenant

thereto during the period of 25 years should not exceed sixty per cent of the cost thereof. Under the legislation and the agreement entered into by the town and Fraser, Limited, the latter was liable for a period of 25 years for assessment in the town of Edmundston on a valuation of $100,000 and in addition to sixty per cent of the value of the dwelling houses and lands apurtenant thereto. The question arose as to the valuation of these properties for assessment purposes in School District No. 1, in the parish of Madawaska, and the question which the Court was asked to determine was as to whether or not for school purposes the property of Fraser, Limited, was to be assessed on the same valuation as it was assessed for municipal purposes or, in other words, if the property which, according to the assessors, was worth more than $1,000,000 was to be assessed for school purposes on a valuation of $100,000, plus whatever the sixty per cent for the dwellings will amount to, and the schools of the town shall be thus deprived of the taxes which would be available for these purposes if no such exemption had been granted by the Legislature.

Sir J. D. Hazen, C.J., who delivered the judgment of the Court, made the following observations (p. 511):

It is laid down very clearly in the text-books and in cases that have been decided on the question that as taxation is the rule and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms, and it cannot be taken to have been intended when the language of the statute on which it depends is doubtful or uncertain. Taxation, it is said, is an act of sovereignty to be performed as far as it conveniently can be with justice and equity to all, and exemptions no matter how meritorious are of grace and must be strictly construed. In Cooley on Taxation, 2nd ed., p. 205, it is stated that it is a very just rule that when an exemption is found to exist it shall not be enlarged by construction. On the contrary it ought to receive a strict construction for the reasonable presumption is that the state has granted in express terms all it intended to grant at all, and that unless the privilege is limited to the very terms of the statute the favour will be extended beyond what is meant.

After referring to *Matter of Mayor, etc., of New York* (1) and quoting an extract from the judgment and reproducing a passage in *Maxwell on Statutes,* 5th edition, which is quite pertinent, the learned judge concludes (p. 513):

Even if such statutes were not regarded in the light of contracts, they would seem to be subject to strict construction on the same ground

(1) (1814) 11 Johns 77.

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as grants from the Crown, to which they are analogous, are subject to it. As the latter are construed strictly against the grantee on the ground that prerogatives, rights and emoluments are conferred on the Crown for great purposes and for the public use, and are therefore not to be understood as diminished by any grant beyond what it takes away by necessary and unavoidable construction, so the Legislature in granting away in effect the ordinary rights of the subject shall be understood as granting no more than passes by necessary and unavoidable construction.

Reference was made to *Rex and Provincial Treasurer of Alberta* v. *Canadian Northern Railway Company et al.* (1), an action for the recovery of taxes and penalties. We find in the reasons of Harvey, C.J. who delivered the judgment of the Appellate Division of the Supreme Court of Alberta (Harvey, Stuart and Beck, JJ., the latter dissenting in part), which reversed the judgment of Hyndman, J., the following statement, which is in the nature of an *obiter dictum* (p. 1183):

> Then I think the rule of construction of taxing statutes is scarcely applicable in the sense applied because what we are construing is not a provision imposing a tax but one exempting from the general imposition and the rule in that case would be rather against the one claiming the exemption. See *Rex* v. *S. D. of Madawaska; Ex parte Fraser Co.*, 49 D.L.R. 371.

In the case of *George Hope* v. *Minister of National Revenue* (2), Mr. Justice Audette made the following comments (p. 162):

> Then in 1920, by 10-11 Geo. V, ch. 49, sec. 3, it was enacted that:
>
> Dividends declared or shareholders' bonuses voted after the 31st December, 1919, shall be taxable income of the taxpayer *in the year in which they are paid or distributed.*
>
> * * * *
>
> The plain intention of this section 5, subsec. 9 (14-15 Geo. V, ch. 46) is that dividends made up of undistributed profits and paid or payable after 1921 as under the circumstances of the case, are liable to tax. The Act primarily imposes a tax upon all incomes made up of profits and gain and that is intended to be taxed in this case. And failing to come within any of the statutory exemptions, the appellant must pay. The wording of subsec. 9 of sec. 5 is clear and unambiguous in its grammatical meaning and that should be adhered to. Clear language would have to be found to support the contention that, notwithstanding the dividend is paid in 1926 when the section is in full force and effect, the section would not apply because some of the moneys forming part of that dividend were earned before that date and should be exempted. In so finding one would have to add to or to distort the plain meaning of the section. There is no reason and no right to assume that there

(1) (1921) 1 W.W.R. 1178. (2) (1929) Ex. C.R. 158.

is any governing object which the taxing Act is intended to attain other than that which it has expressed. *Tennant* v. *Smith*, (1892) A.C. 150, at p. 154.

In the matter of *Ville de Montreal-Nord and La Commission Metropolitaine de Montreal, intervenant, appellants* v. *Muncipalite Scolaire de St-Charles* (1) it was held by the Court of King's Bench, Appeal side, affirming the judgment of the Circuit Court of the District of Montreal, that exemptions of taxes must be interpreted strictly in the absence of clear and precise terms. The reasons of Surveyer, J., sitting *ad hoc* (p. 455), are directly to the point and are worth consulting.

In the case of the *City of Halifax* v. *Sisters of Charity* (2), an action brought to recover a sum claimed to be due by the defendant corporation for taxes on real and personal property, the headnote, fairly accurate and complete, reads thus:

Although the general rule is that statutes of exemption should be strictly construed, the rule is not applicable where the work performed is charity and involves the assumption of a portion of the burden that would otherwise fall upon the public.

Where the purpose of a statute is to exempt educational and charitable institutions, the statute should not be strictly construed, but should be interpreted in such manner as to exempt all institutions of this nature that can fairly be brought within its language.

Russell, J. expressed the following opinion (p. 485):

In the case of the *Association for the Benefit of Coloured Orphans* v. *Mayor, Aldermen and Commonalty of New York*, 104 N. Y. 586, Peckham, J., referring to the rule that statutes of exemption should be strictly construed, said the court believed in adhering to that principle,

"But such a case as this we do not regard as coming within the principle. The plaintiff is performing a work of pure charity, and is taking upon its shoulders a portion of the burden that would otherwise fall upon the public. It is doing this good work by the express permission of the Legislature, and through its aid, by reason of its incorporation, and, in the language of Mr. Justice Davis, in the case of the Swiss Benevolent Society, above cited, the Legislature cannot intend to tax the means by which the relator performs the duty for which it was incorporated, that of taking a portion of a public burden upon its own shoulders".

This eminently reasonable language of Peckham, J., who is now an Associate Justice of the Supreme Court of the United States, and was then speaking for the Court of Appeals in New York, seems to warrant me in taking a liberal rather than a restricted view of the statute under consideration.

(1) (1927) Q.R. 43 K.B. 453. (2) (1884-1907) 40 N.S.R. 481.

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See also *Rex* v. *Assessors of Bathurst-Ex parte Bathurst Company* (1).

In *Maxwell, Interpretation of Statutes,* seventh edition, we find the following relevant observations (p. 252):

> Acts which establish monopolies (*Reed* v. *Ingram,* 3 E. & B. 899; *Direct U. S. Cable Co.* v. *Anglo-American Co.,* 2 App. Cas. 394), or confer exceptional exemptions and privileges, correlatively trenching on general rights, are subject to the same principle of strict construction (See ex. gr. *R.* v. *Hull Dock Co.,* 3 B. & C. 516; *Brunskill* v. *Watson,* L. R. 3 Q.B. 418).

Further on the author states (p. 257):

> Enactments of a local or personal character which confer any exceptional exemption from a common burden (*Williams* v. *Pritchard* (1790), 2 R. R. 4 Term Repts. 310; *Perchard* v. *Heywood* (1800), 53 R. R. 128; 8 Term Repts. 468; *Sion College* v. *London* (*Mayor*), (1901) 1 K. B. 617; 70 L.J.K.B. 369, distinguished in *Netherlands Steamboat Co.* v. *London* Corp. (1904), (68 J.P. 377, C. A.), or invest private persons or bodies, for their own benefit and profit with privileges and powers interfering with the property or rights of others, are construed against those persons or bodies more strictly, perhaps, than any other kind of enactment.

After declaring that the Courts take notice that statutory powers are obtained on petitions framed by their promoters and, in construing them, regard them as contracts between those persons, or those whom they represent, and the Legislature on behalf of the public and for the public good, Maxwell continues thus (p. 258):

> Even if such statutes were not regarded in the light of contracts (See *R.* v. *York & N. Midland Ry. Co.,* 22 L.J.Q.B. 41), they would seem to be subject to strict construction on the same ground as grants from the Crown, to which they are analogous, are subject to it. As the latter are construed strictly against the grantee on the ground that prerogatives, rights, and emoluments are conferred on the Crown for great purposes and for the public use and are, therefore, not to be understood as diminished by any grant beyond what it takes away by necessary and unavoidable construction (per Lord Stowell, *The Rebeckah,* 1 Rob. c. 230), so the Legislature, in granting away, in effect, the ordinary rights of the subject, should be understood as granting no more than actually passes by necessary and unavoidable construction.

In *Craies' Treatise on Statute Law,* fourth edition, at page 107 we read:

> Express and unambiguous language appears to be absolutely indispensable in statutes passed for the following purposes: (1) Imposing a tax or charge;

Note (*n*) at the bottom of page 107 broadens the scope of paragraph (1) by adding thereto the words "also exempting from a tax or rate". The note then contains a brief

(1) (1928) 54 N.B.R. 265.

excerpt from Lord Selborne's judgment in *Mersey Docks* v. *Lucas* and refers to three other cases. I deem it convenient to recite this note verbatim:

(*n*) Also exempting from a tax or rate. "Duties given to the Crown", said Lord Selborne in *Mersey Docks* v. *Lucas* (1833), 8 App. Cas. 891, 902, "taxes imposed by the authority of the Legislature, by public Acts for public purposes, cannot be taken away by general words in a local and personal Act * * *" As to whether the exemption is limited to taxes existing at the date of the Act, see *Stewart* v. *Thames Conservancy*, (1908) 1 K.B. 893. As to exemption from rates, see *Sion College Case*, (1901) 1 K.B. 617; *Mayor, etc., of London* v. *Netherlands Steamboat Co.*, (1906) A.C. 262, 268.

It was urged on behalf of respondent that the appellant cannot bring itself within the exemption provided by section 7(*c*) of the Act because it paid to its shareholder, National Systeṃ of Baking of Alberta Limited, the sum of $6,359.50, the whole, or alternatively the principal part, of which was a payment of salary. Counsel for respondent pointed out that "salary" is an elastic term and that it has been defined as a certain annual stipend payable to an official for the performance of his duty. In support of his contention counsel relied on Corpus Juris, vol 54, pages 1120-1125, where we find (*inter alia*) the following statements:

On page 1121—"Salary" has been defined as an agreed compensation for services, payable at regular intervals; annual compensation for services rendered; annual or periodical wages or pay; compensation for services rendered by one to another; compensation paid for a particular service, or stipulated to be paid for services; fixed and periodical remuneration for services; fixed, annual, or periodical payment for services, depending upon the time and not upon the amount of services rendered; fixed regular wages, as by the year, quarter, or month; fixed sum paid to a person for his services, yearly, half-yearly, or quarterly; hire; payment or recompense for services; periodical allowance made as compensation to a person for his official or professional services or for his regular work; periodical compensation due to men in official and other situations; periodical payment made for regular employment; periodical payment of a certain value, in money, for work and labour done; recompense or consideration, made to a person for his pains and industry in another man's business, or stipulated to be paid to a person periodically for services, recompense, reward, or compensation for services performed or rendered; remuneration for services rendered in the course of employment; reward or recompense paid for personal services; stipend; stipulated periodical recompense; sum of money periodically paid for services rendered; wages. Perhaps "salary" is more frequently applied to annual employment than to any other.

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References are noted after each definition; they are interesting but they add little, if anything, to the definitions.

On page 1124—The term "salary" implied a contract of employment. It imports a specific contract for a specific sum for a certain period of time; and hence its use may import a factor of permanency, or permanency of employment. It is said to contain three elements, all required to round out and complete the thought, namely, the dignity in popular estimation of the duty involved, a fixed term, and compensation by contract. Further, it is said to have four characteristics—first, that it is paid for services rendered; secondly, that it is paid under some contract or appointment; thirdly, that it is computed by time; and fourthly, that it is payable at a fixed time. Examples are given in the subjoined notes of what the term has been held to include and not to include.

Here again there are several references which may be consulted with benefit but which in fact merely confirm the author's statements.

"Salary" is also defined in Wharton's Law Lexicon, 14th ed., p. 896. The definition therein reads as follows:

> Salary, a recompense or consideration generally periodically made to a person for his service in another person's business; also wages, stipend, or annual allowance.

Definitions are also found in American cases reported in *Pope, Legal Definitions,* volume 2, under the word "salary" and in *Words and Phrases,* volume 38, page 38.

All these definitions are fundamentally equivalent to the ones previously quoted.

A definition of the word "salaire", substantially similar, is contained in *Capitant, Vocabulaire Juridique,* volume 6, page 440.

It was submitted by counsel that the Wartime Salaries Order (P.C. 9298 and amendments thereto) defines "salary" in part as follows:

> Salary shall include wages, salaries, bonuses, gratuities, emoluments, or other remuneration including any share of profits or bonuses dependent upon the profits of the employer * * *

Counsel concluded that it is clear from the statement of facts agreed upon, as clarified by the cross-examination of Williams and Heagle, that the sum of $6,359.50, or alternatively the major portion thereof, was a payment by appellant to its shareholder by way of salary.

If the respondent's contention is to be maintained, the payment made by appellant to National System of Baking of Alberta Limited must either fall under "salary" or come

within the scope of the words "or otherwise". The payment in question cannot, in my opinion, be considered as "interest".

After due consideration of the facts and the law I am satisfied that the payment by appellant to National System of Baking of Alberta Limited is merely a reimbursement to the latter of moneys disbursed by it for services performed for the appellant. As intimated by counsel for appellant, if the Crown's contention is correct, any payment made by a taxpayer to a shareholder for reimbursement of expenditures incurred by the shareholder would fall within the purview of subsection (*c*) of section 7. It seems clear, however, that such expenditures would not be profit within the meaning of subsection (*f*) of section 2 of the Act and that, if a tax was imposed on such a payment, it would be a tax not on a profit but on an expense.

Counsel for appellant submitted that, according to respondent's argument, a company would not be in a position to pay to a shareholder any sum expended by him for any of the objects of the company. He declared that such an interpretation would imply: (*a*) that a company taxpayer would lose its exemption by paying to a shareholder money legitimately spent by the latter for the benefit of the company; (*b*) that the words "salary, interest or otherwise" would be interpreted in the broadest possible sense to include a payment of any nature whatever made to a shareholder. He added that this interpretation would fail to explain the apparent intention of Parliament to restrict the meaning of subsection (*c*) by the use of the words "salary" and "interest". Counsel suggested that the intention of the Act was to prevent a company taxpayer from converting money in its hands, which might be profit and therefore taxable, into money in the hands of a shareholder which would not be subject to the 12 per cent tax provided for in the second schedule of the Act.

The problem with which we are faced narrows down to the interpretation of the expression "any payments to proprietors, part owners or shareholders *by way of salary, interest or otherwise*" contained in subsection (*c*) of section 7. The amount paid by appellant to National System of

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Baking of Alberta Limited is obviously not, in my judgment, a salary. According to the evidence adduced on behalf of appellant, which is unchallenged, it seems clear that the said payment is nothing more than the reimbursement by appellant to National System of Baking of Alberta Limited of moneys paid by the latter for services rendered by it to the appellant. The payment in question is certainly not interest. Does it come within the scope of the very general and indefinite words "or otherwise", too often used in statutes by legislators who have not a clear and precise notion of the subject treated? However that may be, the Courts must interpret the statutes as drawn and attribute to them a reasonable as well as a legal meaning.

The interpretation of the words "or otherwise" brings up the rule *ejusdem generis*. The effect of this rule has been expounded in *Price Brothers and Company and the Board of Commerce of Canada* (1) and in *Hirsch et al. and Protestant Board of School Commissioners of Montreal et al.* (2).

In the first case, Price Brothers and Company appealed from an order of the Board of Commerce of Canada, dated February 6, 1920, purporting to have been made by the Board in the exercise of jurisdiction conferred on it by The Board of Commerce Act and The Combines and Fair Prices Act and of jurisdiction formerly exercised by one R. A. Pringle, K.C., as Paper Controller, which the Governor in Council purported to vest, in a modified form, in the Board of Commerce.

The Board, after declaring newsprint to be a "necessary of life", (*a*) by clause 1 of its order prohibited the appellant from taking any price exceeding $80 per ton for newsprint and declared that any price in excess thereof would be deemed to include unfair profit, (*b*) by clause 2 forbade the appellant accumulating and withholding from sale any quantity of newsprint beyond an amount reasonably required for the ordinary purposes of its business, (*c*) by clause 4 required the appellant to furnish at certain times and at fixed prices defined quantities of newsprint to designated purchasers.

(1) (1920) 60 S.C.R. 265. (2) (1926) S.C.R. 246.

Dealing with the *ejusdem generis* rule, Anglin J. expressed the following opinion (p. 283):

> On the other hand, general words must be restricted to the fitness of the subject matter (*Bacon's Maxims*, No. 10) and to the actual apparent objects of the Act (*River Wear Commissioners* v. *Adamson*, Q.B.D. 546; 2 App. Cas. 743, at pp. 750-1, 757-8), following the intent of the Legislature to be "gathered from the necessity of the matter and according to that which is consonant to reason and good discretion". *Stradling* v. *Morgan* (Plowden 199); *Cox* v. *Hakes* (15 App. Cas. 506, at pp. 517-8).
>
> Where general words are found, especially in a statute, following an enumeration of persons or things all susceptible of being regarded as specimens of a single genus or category, but not exhaustive thereof, their construction should be restricted to things of that class or category (*Reg.* v. *Edmundston*, 28 L.J.M.C. 213), unless it is reasonably clear from the context or the general scope and purview of the Act that Parliament intended that they should be given a broader signification.
>
> Recent applications of the rule last stated, and usually known as the *ejusdem generis* rule, are to be found in the judgments in the House of Lords in *Stott (Baltic) Steamers, Ltd., v. Marten*, (1916) 1 A.C. 304, and the judgment of Sankey J. in *Attorney General* v. *Brown* (36) Times L.R. 165).

The case of *Hirsch et al. and Protestant Board of School Commissioners of Montreal et al.* concerned an appeal from a decision of the Court of King's Bench, appeal side, province of Quebec, to which had been referred for hearing and decision a series of questions relating to the educational system in Montreal. In 1903 the Quebec legislature passed an Act (3 Ed. VII, chap. 16) entitled "Act to amend the law concerning education with respect to persons professing the Jewish religion". The occasion for this legislation was the refusal of the Protestant Board of School Commissioners of the city of Montreal to recognize the right claimed by persons professing the Jewish religion to have their children educated at the schools under the control of school corporations established by law, to which Jewish parents had theretofore sent their children. Section 1 of the said Act provides that "in all the municipalities of the province, * * * persons professing the Jewish religion shall, for school purposes, be treated in the same manner as Protestants, and for the said purposes shall be subject to the same obligations and shall enjoy the same rights and privileges as the latter". Sections 2, 3, 4 and 5 deal with school revenues and taxation and provide that such taxation payable by persons professing the Jewish religion and revenue for school purposes derived from them or from

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their properties shall go to the support of the Protestant schools, where they exist. Section 6, so far as material, reads as follows: " * * * children of persons professing the Jewish faith shall have the same right to be educated in the public schools of the province as Protestant children and shall be treated in the same manner as Protestants for all school purposes".

Anglin, C.J.C., who delivered the judgment of the Supreme Court, made the following observations (p. 264):

> Section 1 of the Act of 1903 is, no doubt, expressed in the most general terms. It was admitted on all sides at the hearing that the statute was intended to establish the right of Jewish children to be admitted to the Protestant schools, but it was argued that s. 1 went so far as also to sanction the eligibility of persons professing the Jewish religion for appointment to the Boards of Protestant School Commissioners, and therefore to declare that Jews should be considered as Protestants for the purposes of s. 130 of the Consolidated Act of 1861; the argument is founded upon the words:
>
> > persons professing the Jewish religion shall for school purposes be treated in the same manner as Protestants, and, for the said purposes, shall be subject to the same obligations and shall enjoy the same rights and privileges as the latter.
>
> But, assuming that these words by themselves might be interpreted to authorize the admission of Jews to representation upon the Protestant School Board, that interpretation must, we think, be rejected, when, applying the principles enunciated by Lord Blackburn in *River Wear Commissioners* v. *Adamson*, (1877) 2 A.C. 43, at pp. 763-765, the statute is considered as a whole. The provisions of the Act following upon s. 1, and already adverted to, are special or particular enactments, providing for and defining obligations, rights and privileges which seem to be generally comprehended under s. 1. Now by the tenth rule of *Bacon's Maxims "verba generalia restringuntur ad habilitatem rei vel personae";* and he says
>
> > all words, whether they be in deeds or statutes or, otherwise, if they be general, and not express or precise, shall be restrained unto the fitness of the matter or person.

Referring then to *Earl of Kintore* v. *Lord Inverury* (1), *Gunnestad* v. *Price* (2), *Cox* v. *Hakes* (3), *Stradling* v. *Morgan* (4) and *Banbury* v. *Bank of Montreal* (5) and quoting a few extracts from the judgments therein, the learned judge stated (p. 265):

> The rule is thus well established, and this seems to be a case where nothing is lacking to justify its application; and when the preamble of the statute is considered, it becomes reasonably certain that the school

(1) (1865) 4 Macq. 520, 522.
(2) (1875) L.R. 10 Ex. 65, 69.
(3) (1890) 15 A.C. 506, 517.
(4) (1560) 1 Plowd. 199.
(5) (1918) A.C. 626, 691.

purposes referred to in the general provision of s. 1 were not intended to include purposes other than those which are the subject of, or ancillary to, the particular sections which follow.

In the case of *Sandiman against Breach* (1) it was an assumpsit to recover the expense of hiring a post-chaise to convey the plaintiff from Clapton to London, the defendant, who had contracted to take him in his stage-coach, having neglected to do so. At the trial it appeared that on a Sunday the plaintiff sent to a booking-office kept by the defendant, who was proprietor of a stage-coach travelling from Clapton to London, booked himself to be carried to London on that evening and paid half the fare. The defendant afterwards, not having any passenger except the plaintiff, refused to go to London and the plaintiff hired a post-chaise. For the defendant it was contended that the contract was illegal, being in contravention of the statutes, 3 Car. 1. c. 1. and 29 Car. 2. c. 7., and that the defendant was not bound to perform it. The Lord Chief Justice gave the defendant leave to move to enter a non-suit and the plaintiff had a verdict for 13s. In Hilary term a rule for entering a nonsuit was obtained.

Lord Tenterden, C.J., who delivered the judgment of the Court, stated that it was objected that the plaintiff could not recover because the contract, for the breach of which the action was brought, was to have been performed on the Sabbath day. He declared that upon looking into the statutes 3 Car. 1. c. 1. and 29 Car. 2. c. 7. he was of opinion that the case did not come within them. He pointed out that there had been subsequent statutes containing regulations as to hackney coaches, but that they were too ambiguous to be taken as legislative expositions of the former acts. He said that by the first of these, 3 Car. 1. c. 1., it was enacted that "no carrier with any horse, nor waggonman with any waggon, nor carman with any cart, nor wainman with any wain, nor drover with any cattle, shall by themselves, or any other, travel on the Lord's day" and that by 29 Car. 2. c. 7. "no tradesman, artificer, workman, labourer, or other person or persons, shall do or exercise any worldly labour, business, or work of their ordinary callings upon the Lord's day".

(1) (1827) 7 B. & C. 96.

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The learned judge then made the following comments (p. 100):

It was contended, that under the words "other person or persons" the drivers of stage-coaches are included. But where general words follow particular ones, the rule is to construe them as applicable to persons *ejusdem generis*. Considering, then, that in the 3 Car. 1. c. 1. carriers of a certain description are mentioned, and that in the 29 Car. 2 c. 7, drovers, horse-coursers, waggoners, and travellers of certain descriptions, are specifically mentioned, we think that the words "other person or persons" cannot have been used in a sense large enough to include the owner and driver of a stage-coach.

In *Palmer* v. *Snow* (1) it was held:

A barber who shaves customers on Sunday is not a "tradesman, artificer, workman, or labourer, or other person whatsoever" within the meaning of 29 Car. 2, c. 7, s. 1, which prohibits those persons from exercising any wordly labour, business, or work of their ordinary callings upon the Lord's Day (works of necessity and charity only excepted).

The facts in *Larsen and Sylvester & Co.* (2) were briefly as follows: In July 1907 a steamship of the appellant was chartered by the respondents to proceed to Grimsby and there load a cargo of coal. A clause in the charterparty ran thus: "The parties hereto mutually exempt each other from all liability arising from frosts, floods, strikes, lock-outs of workmen, disputes between masters and men and any other unavoidable accidents or hindrances of what kind soever beyond their control either preventing or delaying the working, loading or shipping of the said cargo occurring on or after the date of this charter until the actual completion of the loading."

The ship arrived at Grimsby, but owing to the block of vessels in the harbour was delayed in reaching the loading places. The appellant having sued the respondents for demurrage, the trial judge gave judgment for the plaintiff for the amount claimed. The King's Bench Division reversed that decision and entered judgment for the defendants and their decision was affirmed by the Court of Appeal. The appellant thereupon appealed to the House of Lords. The Order of the Court of Appeal was affirmed and the appeal dismissed.

Lord Loreburn, L.C., dealing with the *ejusdem generis* rule, made the following observations (p. 296):

Then Mr. Hamilton argued that this hindrance was not within the words of the charter, and invoked the doctrine of *ejusdem generis*. The language used is "any other unavoidable accidents or hindrances of what

(1) (1900) 1 Q.B. 725. (2) (1908) A.C. 295.

kind soever beyond their control." Those words follow certain particular specified hindrances which it is impossible to put into one and the same genus. In *Earl of Jersey* v. *Neath Poor Law Union*, (1889) 22 Q.B.D. 555, 566, Fry L.J. referred to words of a similar kind, and indicated that you have to regard the intention of the parties as expressed in their language, and that words such as these, "hindrances of what kind soever," are often intended to mean, as I am sure they are in this case intended to mean, exactly what they say. It is impossible to lay down any exhaustive rules for the application of the doctrine of *ejusdem generis*, but I agree with Fry L.J. that there may be great danger in loosely applying it. It may result, as he says, in "giving not the true effect to the contracts of parties but a narrower effect than they were intended to have".

In *S.S. Knutsford, Limited and Tillmanns & Co.* (1) the summary of the judgment, fairly complete and comprehensive, reads thus:

Goods were shipped on board a steamship for a foreign port under bills of lading providing that if a port should be inaccessible on account of ice, blockade or interdict, or if entry and discharge at a port should be deemed by the master unsafe in consequence of war, disturbance or any other cause, it should be competent for the master to discharge the goods on the ice or at some other safe port or place:

Held that, upon the true construction of the bills of lading, "inaccessible" and "unsafe" must be read reasonably and with a view to all the circumstances; that the words "or any other cause" must be read as being *ejusdem generis* with war or disturbance; and that as a matter of fact the master was not justified under all the circumstances in this case in failing to deliver the goods at the port for which they were shipped merely because that port was at the moment of their arrival inaccessible on account of ice for three days only.

Decision of the Court of Appeal, (1908) 2 K.B. 385, affirmed.

In the case of *Stott (Baltic) Steamers, Limited and Marten and others* (2) the report discloses that whilst a boiler was being lowered by a steam crane into the hold of a ship lying in dock, a part of the crane's tackle broke, causing the boiler to fall into the hold of the ship and thereby damaging the hull. The ship was insured under a time policy in the ordinary form with the Institute Time Clauses attached. The perils insured against were "of the seas * * * and of all other perils, losses, and misfortunes that have or shall come to the hurt, detriment, or damage of the said * * * ship, etc., or any part thereof". The policy included the conditions of the Institute Time Clauses, which provide (p. 304):

3. In port and at sea, in docks and graving docks, and on ways, gridirons and pontoons, at all times, in all places, and on all occasions,

(1) (1908) A.C. 406.

(2) (1916) 1 A.C. 304.

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services and trades whatsoever and wheresoever, under steam or sail, with leave to sail with or without pilots, to tow and assist vessels or craft in all situations, and to be towed and to go on trial trips.

7. This insurance also specially to cover (subject to the free of average warranty) loss of, or damage to hull or machinery through the negligence of master, mariners, engineers, or pilots, or through explosion, bursting of boilers, breakage of shafts, or through any latent defect in the machinery or hull, provided such loss or damage has not resulted from want of due diligence by the owners of the ship, or any of them, or by the manager, masters, mates, engineers, pilots, or crew not to be considered as part owners within the meaning of this clause should they hold shares in the steamer.

It was held by the House of Lords, affirming the decision of the Court of Appeal (1), "that the loss was not recoverable under the policy, as it was not caused by a peril of the sea or a peril *ejusdem generis* therewith, and that it was not within clause 3 or 7 of the Institute Time Clauses, inasmuch as clause 3 did not enlarge the character of the risks insured against by the policy, and the risks specifically mentioned in clause 7 were not extended to matters *ejusdem generis* by the general words in the body of the policy."

In *Attorney General* v. *Brown* (2), a case dealing with the interpretation of section 43 of the Customs Consolidation Act, 1876 (39 and 40 Vict., c. 38) and particularly with the meaning of the words "any other goods" therein contained, Mr. Justice Sankey made the following statements (p. 169):

I approach the question whether the doctrine of *ejusdem generis* should be applied to section 43 of the Customs Consolidation Act of 1876.

By this it is meant that general words coming after particular words are restricted to and controlled by the meaning of the particular words.

The simplest statement of this doctrine is to be found in a judgment of Lord Campbell, *Reg.* v. *Edmundson* (28 L.J., M.C., 213), where he says: "I accede to the principle laid down in all the cases which have been cited, that where there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified." The doctrine has been frequently applied to deeds, to charterparties, and to Acts of Parliament. It was recently applied in *In re Stockport Ragged, etc., Schools* (*supra*) to section 62 of the Charitable Trusts Act, 1853, and the words "or other schools" were restricted to the meaning of the particular schools which were named immediately before them, and the Master of the Rolls, Sir N. Lindley, says: "I cannot conceive why the Legislature should have taken the trouble to specify in this section such special schools as cathedral, collegiate, and chapter, except to show the type of school to which they were referring to, and in my opinion 'other schools' must be taken to mean other schools of that type."

(1) (1914) 3 K.B. 1262. (2) (1919) 36 T.L.R. 165.

It is quite unnecessary, and indeed it would be unprofitable, to go through all the cases on this subject—their name is legion—and they will be found conveniently collected in Craies' Statute Law, 2nd edn. (1911) (which is the 5th edn. of Hardcastle on Statutory Law), at p. 182 and onwards.

In re Ellwood (1) it was held that a land drainage rate levied by the River Dee Drainage Board, constituted under the provisions of the Land Drainage Acts, 1861 and 1918, upon an occupier of land within the district of the Board, having become payable within twelve months next before the making of a receiving order against him and still due at that date, is a local rate entitled to preferential payment within the meaning of section 33, subsection 1(*a*) of the Bankruptcy Act, 1914.

Astbury, J., speaking of the application of the *ejusdem generis* rule, made the following observations (p. 461):

The matter, in my opinion, lies within an extremely small compass. I do not propose to discuss the various reasons stated by the learned judge in the Court below for applying the *ejusdem generis* rule. Some of those reasons may be right in themselves, although some I think are not; but they are really not relevant to the matter which, in my opinion, has now to be decided. The words are "All parochial or other local rates". It is not denied that this drainage rate is a local rate and that it has been levied by an authority having statutory power to levy such rates in this particular district, but what is contended is that, in some way or another, which I confess I do not understand, the words "other local rates" must be construed *ejusdem generis* with "parochial rates" in such a manner as to include certain local rates other than parochial rates and yet to exclude other local rates. It is difficult to apply the *ejusdem generis* rule to a sentence or expression having only two limbs. If there is a category followed by general words, it is the common experience of us all that the general words may be construed *ejusdem generis* with the particular category preceding them.

The learned judge then referred to the judgment of Rigby, L.J., in *Anderson* v. *Anderson* (2), citing passages therefrom. The notes of Astbury, J. on this case of *Anderson* v. *Anderson* are interesting and may be consulted with advantage.

Reference may also be made beneficially to the following cases: *Regina* v. *Cleworth* (3); *Fish* v. *Jesson et ux.* (4); *Stradling* v. *Morgan* (5); *Ystradyfodwg & Pontypridd Main Sewerage Board* v. *Bensted* (6); *Parker* v. *Marchant* (7); *Re Morlock and Cline Limited* (8).

(1) (1927) 1 Ch. 455
(2) (1895) 1 Q.B. 749, 755
(3) (1863-64) 4 B. & S. 927.
(4) (1686-1719) 2 Vernon's Ch. Cases 113.
(5) (1560) Plowden 199.
(6) (1907) A.C. 264, 268.
(7) (1842) 62 E.R. 893.
(8) (1911) 23 O.L.R. 165.

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See also *Maxwell* on *Interpretation of Statutes,* 9th ed., pp. 336 et seq.; *Craies, A Treatise on Statute Law,* 4th ed., pp. 165 et seq.; *Bacon's Law Tracts (Maxims of the Law),* p. 70, reg. 10.

It was argued on behalf of respondent that "salary" and "interest" are so different that no category or genus exists and that, if there is no category or genus, there can be no application of the *"ejusdem generis"* rule. In support of his contention, counsel for respondent relied on the decisions in *Tillmanns & Co.* v. *SS. Knutsford, Limited* (1), affirmed (2), and *Anderson* v. *Anderson* (3).

In the first case, Farwell, L.J., of the King's Bench Division of the High Court of Justice, in his reasons for judgment, expressed the following opinion (p. 402):

> Now there is no room for the application of the *ejusdem generis* doctrine unless there is a genus or class or category—perhaps category is the better word, as "class gift" has a technical meaning in wills, and its employment might lead to confusion. Unless you can find a category there is no room for the application of the *ejusdem generis* doctrine, and in *Anderson* v. *Anderson,* (1895) 1 Q.B. 749, there really was no category at all.

In *Anderson* v. *Anderson,* Lord Esher, M.R., in his notes made the following comments (p. 753):

> Nothing can well be plainer than that to shew that *primâ facie* general words are to be taken in their larger sense, unless you can find that in the particular case the true construction of the instrument requires you to conclude that they are intended to be used in a sense limited to things *ejusdem generis* with those which have been specifically mentioned before.

Further on Lord Esher declared (p. 754):

> I entirely adopt the canon of construction which was laid down by Knight Bruce V.C. in *Parker* v. *Marchant,* (1 Y. & C. Ch. 290), and I reject the supposed rule that general words are *primâ facie* to be taken in a restricted sense. The appeal must be dismissed.

Rigby, L.J., in the same case, made these remarks (p. 755):

> The main principle upon which you must proceed is, to give to all the words their common meaning: you are not justified in taking away from them their common meaning, unless you can find something reasonably plain upon the face of the document itself to shew that they are not used with that meaning, and the mere fact that general words follow specific words is certainly not enough. One need not travel beyond the case of *Parker* v. *Marchant* (1 Y. & C. Ch. 290) to find great authority for that proposition—I mean not only the authority of the case itself, which is deservedly high, but other authorities which are cited in it. Lord Eldon, Lord Cottenham, Sir William Grant, Sir John Leach, and Knight Bruce

(1) (1908) 2 K.B. 385.
(2) (1908) A.C. 406.
(3) (1895) 1 Q.B. 749.

V.C. himself, all lay down the rule to the effect which I have stated—you must give the words which you find in the instrument their general meaning, unless you can see with reasonable plainness that that was not the intention of the testator or settler.

It was submitted on behalf of appellant that the following features are common to salary and interest: (*a*) in each case the amount paid is a profit in the hands of the shareholder; (*b*) salaries and interest payments are fixed in amount and do not depend on costs; (*c*) payments of salary and interest are periodical; (*d*) the amounts are easily subject to agreement between the taxpayer and the shareholder. Counsel concluded therefrom that the words "or otherwise" should be restricted to cover only payments similar in nature to salary and interest.

Referring to these four features allegedly common to salary and interest, counsel for respondent put forward the following alternative proposals.

Salary and interest in the hands of a shareholder may or may not be a profit. This, to all appearances, is a truism. Counsel, however, added that the sum paid by appellant to National System of Baking of Alberta Limited would undoubtedly be profit in the hands of the latter, assuming it was not offset by deductible expenses. Counsel claimed that, if the management charge or fee, as it has been called, had been paid to an individual person, the payment would clearly come within the ambit of subsection (*c*) of section 7 and this whether or not the payment was a profit to such person. According to him the ultimate destination of the salary or interest payment is immaterial and, although salary and interest may be profit in the hands of the recipient, it all depends upon the deductible expenses which the latter has to meet. Likewise a management charge or fee, which the payment in question is admitted to be, would generally be a profit in the hands of the shareholder and the fact that the shareholder has offsetting expenses cannot be said to be relevant. Counsel concluded that hence it is self-evident that it is folly to attempt to make a category out of two heads, viz., "Salary" and "interest", on the assumption that each is a profit.

Dealing then with the second feature, to wit that salary and interest payments are fixed in amount and do not depend on costs, counsel for respondent submitted that

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this may or may not be true. He suggested that interest may depend upon profits and that the rate need not be fixed. Counsel averred that if this feature were chosen as the test of whether or not the words "salary, interest or otherwise" make a genus, it would exclude such things as director's fees, which often vary from time to time, payments by way of commission and like payments.

Referring to the third feature, that salary and interest payments are made periodically, counsel for respondent observed that the payment involved in the present appeal was made yearly and that it would therefore qualify under this test.

Speaking of the fourth feature, namely, that the amounts are easily subject to agreement between the taxpayer and the shareholder, counsel declared that the payment in question herein meets this fourth test.

It was suggested on behalf of appellant that some light on the intention of the legislators is supplied by the amendment made to the Excess Profits Tax Act, 1940 by 6 Geo. VI, chap. 26, by the addition of section 7(*a*) reading thus:

> 7A. The following profits shall not be liable to taxation under section three of this Act in accordance with the rates set out in the First and Second Parts of the Second Schedule to this Act:
>
> The profits of a corporation or joint stock company which, in the taxation year, do not exceed the sum of five thousand dollars, or, where the taxation year of any corporation or joint stock company is less than twelve months, do not exceed the proportion of five thousand dollars which the number of days in the taxation year of such corporation or joint stock company, bears to three hundred and sixty-five days, before providing for any payments to shareholders by way of salary, interest, dividends or otherwise.

Appellant's suggestion seems sensible and judicious.

It may be pointed out incidentally that by the same statute subsection (*c*) of section 7 was repealed and the following substituted therefor:

> (*c*) the profits of taxpayers other than corporations or joint stock companies, if such profits do not in the taxation period exceed five thousand dollars before providing for any payment therefrom to proprietors or partners by way of salary, interest or otherwise;

The amendment to subsection (*c*) has no bearing on the question at issue.

As may be noted, section 7(*a*) contains, besides the words "salary" and "interest", the word "dividends". It seems obvious that Parliament did not think that dividends were

covered by the Act as it stood. If one adopts the respondent's submission and agrees that the words "or otherwise" are so broad as to include payments of any nature whatsoever to a shareholder, the amendment was unnecessary.

After a careful perusal of the evidence and of the able and exhaustive argument of counsel and a fairly elaborate review of the doctrine and precedents, I am satisfied that the words "or otherwise" contained in subsection (*c*) of section 7 of the Excess Profits Tax Act, 1940, must be interpreted strictly and that they do not apply to payments made to a shareholder as reimbursement for expenses incurred and services performed, but must be restricted to cover only salaries and interest payments, to which may presumably be added dividends since the enactment of section 7(*a*) by the statute 6 Geo. VI, chap. 26, assented to on August 1, 1942. I have reached the conclusion that the payments made by appellant to National System of Baking of Alberta Limited were not made by way of salary or interest. With mature deliberation I am unable to convince myself that the payments effected by appellant in the conditions disclosed by the evidence come within any of the definitions of "salary" hereinabove quoted or referred to. Unquestionably they cannot be considered as interest payments.

I do not think that the words "or otherwise", however general and broad they may be but vague and indefinite, can comprehend payments of the nature of those involved in the present appeal, which differ essentially from payments by way of salary or interest.

For these reasons there will be judgment in favour of the appellant maintaining its appeal, setting aside the assessment and the decision of the Minister and ordering that the sum of $412 for excess profits tax included in the notice of assessment be struck therefrom.

The appellant will be entitled to its costs against the respondent.

Judgment accordingly.

The appeal of National System of Baking Limited, from the assessment by the Minister of National Revenue (Court Record No. 20342) for excess profits tax was heard

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by the Honourable Mr. Justice Angers at Calgary on the same date as the case reported. The facts were similar to those set forth above and the appeal was allowed by the learned judge whose written reasons for judgment were delivered on the same date as those in the case reported.