

70, 1939

In the Privy Council

ON APPEAL FROM THE SUPREME COURT OF CANADA

BETWEEN:

PIONEER LAUNDRY & DRY CLEANERS
LIMITED,

Appellant,

AND:

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Record of Proceedings

MESSRS. GRIFFIN, MONTGOMERY & SMITH,
Vancouver, B.C.,
Solicitors for the Appellant.

MESSRS. WILLIAM A. CRUMP & SON,
London Agents.

W. S. FISHER, ESQ.,
Ottawa,
Solicitor for Respondent.

*Messrs. Charles Russell & Co
London Agents.*

I.
INDEX

No.	DESCRIPTION OF DOCUMENT	Date	Page
PART I.			
1	Statement of Case.....		1
2	Notice of Appeal to Minister of National Revenue.....	Mar. 9, 1935.....	2
3	Decision of Minister of National Revenue.....	May 30, 1935.....	4
4	Appellant's Notice of Dissatisfaction.....	June 24, 1935.....	5
5	Reply of Minister of National Revenue.....	Nov. 28, 1935.....	7
6	Certificate.....	Dec. 3, 1935.....	9
7	Statement of Claim.....	Jan. 11, 1936.....	10
8	Statement of Defence.....	Feb. 27, 1936.....	17
9	Reply and Joinder of Issue.....	Mar. 6, 1936.....	19
10	Judgment—Angers, J.....	Nov. 4, 1937.....	20
11	Reasons for Judgment of Angers, J.....	Nov. 4, 1937.....	21
12	Notice of Appeal to Supreme Court of Canada.....	Nov. 29, 1937.....	42
13	Order, Maclean, J., re list being part of Exhibit No. 18.....	Jan. 6, 1938.....	43
14	Order dispensing with printing certain exhibits.....	Jan. 21, 1938.....	44
15	Agreement as to Contents of Case.....	Jan. 21, 1938.....	45
16	Registrar's Certificate.....		47
17	Certificate certifying Case.....		48

II.

INDEX—*continued*

No.	DESCRIPTION OF DOCUMENT	Date	Page
	SUPREME COURT OF CANADA		
20	Judgment.....	Dec. 12, 1938.....	67
21	Reasons for Judgment: The Chief Justice and Davis, J.....		68
22	Reasons for Judgment: Crocket, J. and Hudson, J.....		74
23	Reasons for Judgment: Kerwin, J.....		76
24	Registrar's Certificate.....	Apr. 25, 1939.....	104
25	<i>Order in Council</i> APPELLANT'S EVIDENCE	<i>May 5, 1939</i>	<i>105</i>
18	Wm. Henry Cotter: In Chief.....	Sept. 8, 1936.....	49
	Cross-Examination.....	Sept. 8, 1936.....	55
	RESPONDENT'S EVIDENCE		
19	Geo. Wm. Thompson: In Chief.....	Sept. 8, 1936.....	64
	PART II—EXHIBITS		
1	Agreement, Home Service Co. Ltd. and Pioneer Laundry & Dry Cleaners Ltd.....	Apr. 1, 1932.....	89
2	Appellant's Income Tax Return for year ending.....	Mar. 31, 1933..... (Inserted in Pocket)	—
3	Department of National Revenue, Circular No. 20, with schedule of rates attached.....	Aug. 30, 1918.....	79

III.
INDEX—*continued*

No.	DESCRIPTION OF DOCUMENT	Date	Page
4	Appendix to Circular No. 20.....	May, 11, 1927.....	84
5	Department of National Revenue Circular.....	May 15, 1933.....	93
6	Department of National Revenue Circular.....	Nov. 25, 1933.....	94
7	Notice of Assessment, No. 347.....	Feb. 19, 1935..... (Inserted in Pocket)	—
8	Notice of Appeal to Minister of National Revenue.....	Mar. 9, 1935..... (see No. 2, in Part I.)	2
9	Letter, Commissioner of Income Tax to Martin Griffin, K.C.....	Mar. 21, 1935.....	94
10	Letter, Commissioner of Income Tax to Pioneer Laundry & Dry Cleaners Ltd.....	May 30, 1935.....	95
11	Decision of Minister of National Revenue.....	May 30, 1935..... (see No. 3, in Part I.)	4
12	Appellant's Notice of Dissatisfaction.....	June 24, 1935..... (see No. 4, in Part I.)	5
13	Reply of Minister of National Revenue.....	Nov. 28, 1935..... (see No. 5, in Part I.)	7
14	Regulation of Minister of Finance.....	Aug. 1, 1919.....	81
15	Regulation of Minister of Finance.....	Aug. 2, 1919.....	83
16	Paragraph 8 of Mutual Admission (See No. 23, Exhibit "A").....	Apr. 4, 1936.....	95
17	Department of National Revenue Circular No. 218.....	Dec. 11, 1928.....	85

IV.

INDEX—*continued*

No.	DESCRIPTION OF DOCUMENT	Date	Page
18	Department of National Revenue Circular No. 39 and list attached.....	Sept. 8, 1931.....	85
19	Invoice, Consolidated Motor Co. Ltd. to Pioneer Laundry & Dry Cleaners Ltd.....	May 17, 1932.....	92
20	Invoice, Consolidated Motor Co. Ltd. to Pioneer Laundry & Dry Cleaners Ltd.....	Nov. 22, 1932.....	93
21	Invoice, Pioneer Equipment Ltd. to Pioneer Laundry & Dry Cleaners Ltd.....	July 31, 1932.....	92
22	Notice of Appointment of C. S. Walters, Esq., as Commissioner of Income Tax.....	Apr. 16, 1927.....	83
"A"	Memo. of Mutual Admissions.....	Apr. 4, 1936.....	96
"B"	Letter, Dugald Donaghy to Martin Griffin.....	Sept. 2, 1936.....	99
"C"	Letter, Martin Griffin to Dugald Donaghy.....	Sept. 3, 1936.....	99
"D"	Delegation of Minister of National Revenue.....	Dec. 6, 1933.....	100
"E"	Delegation of Minister of National Revenue.....	Aug. 15, 1935.....	100
"F"	Delegation of Power from Minister of National Revenue to Commis- sioner.....	Oct. 25, 1935.....	101
"G"	Agreement, W. H. Cotter and Home Service Co. Ltd.....	Apr. 1, 1932.....	101

In the Supreme Court of Canada
 ON APPEAL FROM THE EXCHEQUER COURT
 OF CANADA

RECORD
 In the
 Supreme Court
 of Canada
 No. 1
 Statement of
 Case

IN THE MATTER OF THE INCOME WAR TAX ACT

BETWEEN:

PIONEER LAUNDRY & DRY CLEANERS LIMITED,

Appellant,

AND:

THE MINISTER OF NATIONAL REVENUE,

Respondent.

10

PART I

No. 1

STATEMENT OF CASE

This is an appeal from the Judgment of the Honourable Mr. Justice Angers rendered on the 4th day of November, A.D. 1937, dismissing the Appellant's appeal from the decision of the Honourable the Minister of National Revenue rendered on the 30th day of May, A.D. 1935.

RECORD
 In the
 Exchequer Court
 of Canada

No. 2

IN RE THE INCOME WAR TAX ACT

No. 2
 Notice of
 Appeal to
 Minister of
 National
 Revenue
 Mar. 9, 1935

AND:

PIONEER LAUNDRY & DRY CLEANERS LIMITED,
 of 910 Richards Street, Vancouver, British Columbia,

Appellant.

NOTICE OF APPEAL TO MINISTER OF
 NATIONAL REVENUE

NOTICE OF APPEAL IS HEREBY GIVEN from the Assessment bearing date the 19th day of February 1935 wherein 10 a tax in the sum of \$1611.66 is levied in respect of income for the taxation year ending the 31st day of March, 1933.

1. STATEMENT OF FACTS

In the Return made by the Appellant in respect of the taxation or fiscal year in question the Appellant claimed as a deduction from its income certain sums in a total of \$17,775.55 representing depreciation of its machinery, delivery equipment, furniture and fixtures, at the usual and customary rates or percentages allowed for depreciation in respect of such assets respectively for taxation purposes. The amounts so claimed and the rates or percentage 20 applied in respect of such amounts respectively were as follows:

	Horses and Wagons	Delivery Trucks	Furniture and Fixtures	Machinery
Rate claimed	10%	20%	10%	10%
Amount of Depreciation claimed	135.25	2935.08	574.07	14131.15

2. REASONS FOR APPEAL

The Commissioner of Income Tax has improperly disallowed to the extent of the sum of \$2680.00 the said amount claimed for 30 depreciation of the Appellant's delivery trucks, allowing in

respect thereof only the sum of \$255.08 and has improperly dis-
allowed the whole of the said amounts claimed for depreciation of
the Appellant's Horses and Wagons, Furniture and Fixtures and
Machinery respectively.

DATED this 9th day of March A.D. 1935.

PIONEER LAUNDRY & DRY CLEANERS LIMITED

by its Solicitor

"Martin Griffin"

RECORD

In the
Exchequer Court
of Canada

No. 2
Notice of
Appeal to
Minister of
National
Revenue
Mar. 9, 1935
(Contd.)

The address of the said MARTIN GRIFFIN Solicitor for
10 the Appellant is in care of the firm of GRIFFIN MONT-
GOMERY & SMITH, Barristers and Solicitors, 609 Bank of
Nova Scotia Building, 602 Hastings St. West, Vancouver, B.C.

RECORD

*In the
Exchequer Court
of Canada*No. 3
Decision of
Minister of
National
Revenue
May 30, 1935

No. 3

DECISION OF MINISTER OF NATIONAL REVENUE

WHEREAS the Taxpayer did on the 31st July 1933 file an Income Tax Return showing its income for the year ended 31st March 1933.

AND WHEREAS in assessing the taxpayer, there was disallowed as a deduction and added back to profits the sum of \$20,147.82 being Income Tax Assessments \$2,525.35, excess Depreciation \$17,520.47, Club Dues \$92.00 and excess Donations \$10.00 and a tax was assessed by Notice of Assessment dated the 19th February 1935. 10

AND WHEREAS a Notice of Appeal was received from the Solicitor for the taxpayer dated the 9th March 1935 in which objection is taken to the assessed tax for the reasons therein set forth and in particular that Depreciation has been improperly disallowed.

AND WHEREAS during the year 1932, Pioneer Investment Company Limited who owned and controlled Pioneer Laundry & Dry Cleaners Limited, disposed of its interests to Home Service Company Limited. 20

AND WHEREAS the shareholders of Home Service Company Limited are identical with that of Pioneer Investment Company Limited as at date of liquidation of the latter company.

AND WHEREAS Home Service Company Limited incorporated the original assets of Pioneer Laundry & Dry Cleaners Limited into the records of the taxpayer at appreciated values.

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 while the company was incorporated and commenced 30 operations during the year 1932 there was no actual change in ownership of the assets purchased or taken over from Pioneer Investment Company Limited by Home Service Company Limited (of which the taxpayer is a subsidiary) and set up in the books of the taxpayer at appreciated values; that in the exercise of the statutory discretion, a reasonable amount has been allowed for Depreciation and that the assessment is properly levied under the provisions of the Income War Tax Act.

Notice of such decision is hereby given in accordance with Section 59 of the said Act.

DATED at Ottawa this 30th day of May, A.D. 1935.

R. C. Matthews,
Minister of National Revenue
per "C. F. Elliott"
Commissioner of Income Tax.

TO:

10 Pioneer Laundry & Dry Cleaners Ltd.,
910 Richards Street, Vancouver, B.C.

AND TO:

Martin Griffin, Esq.,
609 Bank of Nova Scotia Bldg.,
602 Hastings St. West, Vancouver, B.C.

Its Solicitor herein.

RECORD
In the
Exchequer Court
of Canada

No. 3
Decision of
Minister of
National
Revenue
May 30, 1935
(Contd.)

No. 4

NOTICE OF DISSATISFACTION

20 The above named Appellant is dissatisfied with the Decision of The Minister herein dated the 30th day of May 1935 whereby he affirmed the disallowance by the Commissioner of Income Tax of the sum of \$17520.47 claimed by the Appellant as a proper deduction from its income, and affirmed the assessment of income tax against the Appellant.

The Appellant desires its appeal to be set down for Trial.

DATED this 24th day of June A.D. 1935.

Pioneer Laundry & Dry Cleaners Limited
by its Solicitor

"MARTIN GRIFFIN"

No. 4
Notice of
Dissatisfac-
tion
June 24, 1935

FINAL STATEMENT BY THE APPELLANT

30 In addition to the statements contained in the Notice of Appeal herein dated the 9th day of March 1935 the Appellant says as follows:

RECORD
 In the
 Exchequer Court
 of Canada
 No. 4
 Notice of
 Dissatisfac-
 tion
 June 24, 1935
 (Contd.)

1. Section 5 of The Income War Tax Act provides in part as follows:

“Income” as hereinbefore defined shall for the purposes of this Act be subject to the following exemptions and deductions:

(a) Such reasonable amount as the Minister in his discretion may allow for depreciation.

2. In the Return made by the Appellant in respect of its taxation or fiscal year ending the 31st day of March 1933 the Appellant claimed as a deduction from its income certain sums 10 in a total of \$17,775.55 representing depreciation of its machinery, delivery equipment, furniture and fixtures at the usual and customary rates or percentages allowed for depreciation in respect of such assets respectively for taxation purposes. Particulars of the amounts so claimed are set out in the Notice of Appeal herein.

3. The said deductions (save as to the extent of the sum of \$255.08) have improperly been disallowed on the grounds set out in the Decision of The Minister herein dated the 30th day of May 1935.

4. The said Decision of The Minister was not an exercise of 20 the discretion conferred upon him by the Statute but was a refusal, on grounds not allowed by the statute, of the Appellant's right to an allowance by way of depreciation from its taxable income.

5. The Appellant is not the same company as Pioneer Laundry & Dry Cleaners Limited which is referred to in the Decision of The Minister, the latter company having gone into voluntary liquidation on the 30th day of March 1932.

The Appellant was incorporated on the 23rd day of March 1932 and on the 1st day of April 1932 it purchased the assets in question herein from Home Service Company Limited, a com- 30 pany incorporated on the 23rd day of March 1932.

DATED this 24th day of June A.D. 1935.

Pioneer Laundry & Dry Cleaners Limited
 by its Solicitor

“MARTIN GRIFFIN.”

No. 5

REPLY OF THE MINISTER

RECORD
 In the
 Exchequer Court
 of Canada

No. 5
 Reply of the
 Minister of
 National
 Revenue
 Nov. 28, 1935

A Notice of Dissatisfaction with the decision of the Minister having been received from the Pioneer Laundry & Dry Cleaners Ltd. in respect of the Appeal from the assessment levied upon the said Pioneer Laundry & Dry Cleaners Ltd. for the year ended the 31st March, 1933, and security for costs having been duly furnished as required by the said Act, the Honourable the Minister of National Revenue, having further considered the Notice of Appeal
 10 and the Notice of Dissatisfaction, replies thereto as follows:

1. That by S. 5, ss. 1 (a) of the said Act, income shall be subject to a deduction of "such reasonable amount as the Minister, in his discretion, may allow for depreciation."

2. That having been appraised of the facts in regard to the Appellant Taxpayer, this discretionary power was exercised in a reasonable and fair manner in accordance with the said S. 5, ss. 1 (a) and a sum of \$255.08 was allowed to the said Taxpayer as a deduction for depreciation for the year in question.

20 3. That the discretion so exercised was a discretion in the determination of a question of fact.

4. That the discretion so exercised, having been exercised in accordance with provisions of S. 5, ss. 1 (a) of the said Act, was properly exercised and since it was so properly exercised, there remains no jurisdiction in a Court of law to inquire whether or not the deduction for depreciation so allowed to the Appellant Taxpayer herein in respect to the year in question is reasonable or not.

30 5. That if the discretion so exercised should be subject to review by the Court notwithstanding what has been said above, then it is asserted that the allowance so made is reasonable in view of the facts and having regard to the total of the amounts allowed in previous years for depreciation in respect to the same assets, even though such assets were previously held by a different legal entity, since from the facts it appeared that the ultimate beneficial ownership of such assets had not changed hands with the change of ownership from one corporate entity to another, but had remained with the same shareholders.

RECORD
 In the
 Exchequer Court
 of Canada

No. 5
 Reply of the
 Minister of
 National
 Revenue
 Nov. 28, 1935
 (Contd.)

And the Honourable the Minister of National Revenue hereby confirms the assessment appealed against, for the reasons set forth herein, and set forth in the "Decision of the Minister," dated the thirtieth day of May A.D. 1935, and for such other and further reasons as may be deemed advisable.

DATED at Ottawa this 28th of November A.D. 1935.

"J. L. ILSLEY,"
 Minister of National Revenue
 per "C. F. ELLIOTT,"
 Commissioner of Income Tax. 10

TO:

The Pioneer Laundry & Dry Cleaners Ltd.
 Vancouver, B.C.
 and

TO:

Griffin, Montgomery & Smith,
 609 Bank of Nova Scotia Bldg.
 Vancouver, B.C.
 Solicitors to the Taxpayer herein.

In the Exchequer Court of Canada

RECORD
 In the
 Exchequer Court
 of Canada

IN THE MATTER OF the Income War Tax Act,
 being Chapter 97 of the Revised Statutes of Canada
 1927, and Amendments thereto:

No. 6
 Certificate
 Dec. 3, 1935

and

IN THE MATTER OF the Appeal of Pioneer
 Laundry & Dry Cleaners Limited, of the City of
 Vancouver, in the Province of British Columbia,

BETWEEN:

10 PIONEER LAUNDRY & DRY CLEANERS LIMITED,
 Appellant,

AND:

THE MINISTER OF NATIONAL REVENUE,
 Respondent.

No. 6

CERTIFICATE

The Honourable the Minister of National Revenue, in pursu-
 20 ance to Section 63 of Chapter 97 of the Revised Statutes of
 Canada, 1927, transmits herewith to the Registrar of the Ex-
 chequer Court of Canada, copy of the following documents:

1. The Income Tax Return of the taxpayer for the year 1933.
2. The Notice of Assessment appealed from.
3. The Notice of Appeal.
4. The Decision of the Minister.
5. The Notice of Dissatisfaction.
6. The Reply of the Minister.

DATED at Ottawa, this 3rd day of December, A.D. 1935.

(Sgd.) "C. F. ELLIOTT,"
 Commissioner of Income Tax.

STATEMENT OF CLAIM OF APPELLANT

Filed January 11th, 1936

No. 7
 Statement of
 Claim
 Jan. 7, 1936

1. The Appellant is a Corporation duly incorporated on the 23rd day of March 1932 under the provisions of the Companies Act of British Columbia, being Chapter 11 of the Statutes of British Columbia, 1929, and Amending Acts, and having its office and principal place of business at 900 Richards Street in the City of Vancouver in the said Province.

2. The Appellant at all times material carried on and still carries on a Laundry and Dry Cleaning business in the said City of Vancouver and elsewhere in the Province of British Columbia. 10

3. The machinery, delivery equipment, furniture and fixtures which are in question in this action were acquired by the Appellant as follows:

(a) All the said machinery, delivery equipment, furniture and fixtures (save and except the items hereinafter described) were acquired by the Appellant from Home Service Company Limited (a Company incorporated under the the Companies Act of British Columbia) for the sum of \$162,032.83. The said machinery, delivery equipment, furniture and fixtures had formerly been the property of Pioneer Laundry & Dry Cleaners Limited (a Company other than the Appellant) and had been purchased by Home Service Company Limited aforesaid. 20

(b) The following items had been purchased by the Appellant as follows:

1 Willys-Knight Coupe on 17th May 1932 from Consolidated Motors Ltd. for \$815.00.

1 Truck Body on 14th July 1932 from Pioneer Carriage Co. Ltd., for \$230.75. 30

1 Essex Coupe on 22nd Nov. 1932 from Consolidated Motors Ltd. for \$286.50.

4. In and by Section 5 of the Income War Tax Act (hereinafter called "the Act") being Chapter 97 of the Revised Statutes of Canada 1927 and Amendments thereto, the Minister was empowered to allow (either by way of percentage of cost or otherwise) such amount or amounts as he should consider reasonable for depreciation in value of such assets of the taxpayer as were used in the taxpayer's business, and the Minister was charged with the duty to allow depreciation in a reasonable and fair manner and 40

to allow such amount or amounts as were reasonable in view of the actual diminution in value of such assets during the taxation year so as to carry out the intention of Parliament as set forth in the said Section, and it was the duty of the Minister bona fide to carry out the intention of Parliament, and the said Section did not confer upon the Minister the right (whilst acting in alleged compliance with the said Section) to deprive taxpayers of the right to deduct proper sums of depreciation from their respective incomes.

RECORD
 In the
 Exchequer Court
 of Canada
 No. 7
 Statement of
 Claim
 Jan. 7, 1936
 (Contd.)

10 5. At a date earlier than the incorporation of the Appellant the Minister, in pursuance of the powers conferred upon him by the aforesaid Section 5 and of the duty imposed upon him by said Section, did regularly and customarily allow taxpayers (in the form of annual percentage deductions) on certain of their assets used in their business certain annual allowances for depreciation that is to say:

on Machinery, Plant, etc., 10% of the cost thereof:
 on Furniture and Fixtures 10% of the cost thereof:
 on Motor Cars and Trucks subject to heavy wear:

20 in the 1st year 25% of their cost; and
 in the 2nd, 3rd and 4th years 20% of their cost;
 and in the 5th and subsequent years such further depreciation as might be allowed after reconsideration;

on Horses and Wagons 10% of their cost.

6. Pursuant to the Act the Appellant on or about the 7th day of July 1933 filed with the Inspector of Income Tax at Vancouver, British Columbia, a return in a form prescribed by the Minister of National Revenue (hereinafter called "the Minister") of its total income earned in its fiscal or taxation year ending the 31st day of March 1933.

30 7. In the said return and in the manner indicated therein the Appellant (pursuant to the provisions of the said Act and more particularly Section 5 thereof) claimed as deductions from its income certain sums in a total of \$17,775.55 as and for and representing depreciation of its machinery, delivery equipment, furniture and fixtures, at rates not exceeding the rates or percentages theretofore fixed by the Minister as aforesaid, and claimed that it had no taxable income for the said fiscal or taxation year.

40 8. The amounts so claimed by the Appellant and the rates or percentages applied by it in respect to such amounts respectively were as follows:

RECORD
 In the
 Exchequer Court
 of Canada
 No. 7
 Statement of
 Claim
 Jan. 7, 1936
 (Contd.)

	Rate claimed	Amount of depreciation claimed
Horses and Wagons	10%	\$ 135.25
Delivery Trucks	20%	2935.08
Furniture and Fixtures	10%	574.07
Machinery	10%	14131.15
		<hr/> \$17775.55 <hr/>

9. On or about the 19th day of February 1935 the Commissioner of Income Tax for the Dominion of Canada acting in purported compliance with Section 54 of the Act sent to the Appellant a notice of assessment altering the amount of the tax as estimated by the Appellant in its said return. 10

10. In and by the said notice of assessment the Commissioner of Income Tax improperly disallowed the sum of \$17,520.47 of the amounts claimed by the Appellant for depreciation, to wit: the whole of the said sum of \$135.25 claimed for depreciation of the Appellant's horses and wagons, and the whole of the said sum of \$574.07 claimed for depreciation of the Appellant's furniture and fixtures, and the whole of the sum of \$14,131.15 claimed for depreciation of the Appellant's machinery, and allowed the sum of \$255.08 as depreciation of the Appellant's assets referred to in Paragraph 3 (b) hereof, and improperly disallowed the sum of \$2680.00 being the balance of the said sum of \$2935.08 claimed for depreciation of the Appellant's delivery trucks, and wrongly and improperly asserted that the Appellant's taxable income for the said fiscal year was the sum of \$12,893.30, and wrongly and improperly assessed the Appellant with the sum of \$1611.66 as the tax on said purported income of \$12,893.30. The said allowance of \$255.08 above referred to was estimated as follows: 20 30

25% for 10 months on \$815.00	\$186.77
25% for 8 months on 230.75	38.46
25% for 5 months on 286.50	29.85
	<hr/> \$255.08 <hr/>

11. The Appellant objected to the amount at which it was assessed and on or about the 9th day of March 1935, (pursuant to the provisions of Section 58 of the Act) duly appealed from the said assessment in so far as the said disallowance of the sum of \$17,520.47 claimed for depreciation was concerned. 40

12. On or about the 30th day of May 1935 the Minister (pursuant to the provisions of Section 59 of the Act) made a Decision in which he affirmed the assessment so appealed against upon the grounds as set out in the said Decision that:

“WHEREAS during the year 1932 Pioneer Investment Company Limited who owned and controlled Pioneer Laundry & Dry Cleaners Limited disposed of its interests to Home Service Company Limited:

RECORD
In the
Exchequer Court
of Canada

AND WHEREAS the shareholders of Home Service Company Limited are identical with that of Pioneer Investment Company Limited as at date of liquidation of the latter company:

No. 7
Statement of
Claim
Jan. 7, 1936
(Contd.)

10 AND WHEREAS Home Service Company Limited incorporated the original assets of Pioneer Laundry & Dry Cleaners Limited into the records of the taxpayer (that is to say the Appellant) at appreciated values:

20 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 while the company (i.e. the Appellant) was incorporated and commenced operations during the year 1932 there was no actual change in ownership of the assets purchased or taken over from Pioneer Investment Company Limited by Home Service Company Limited (of which the taxpayer (i.e. the Appellant) is a subsidiary) and set up in the books of the taxpayer at appreciated values; that in the exercise of the statutory discretion, a reasonable amount has been allowed for Depreciation and that the assessment is properly levied under the provisions of the Income War Tax Act.”

30 13. The Appellant admits that it was incorporated and commenced operations during the year 1932 as alleged in the Decision of the Minister which is set out in Paragraph 12 hereof; but save as aforesaid the Appellant denies each and every allegation of fact set out in the said Decision and in particular denies that Pioneer Investment Company Limited disposed of its assets to Home Service Company Limited and that the shareholders of said two companies are the same and that Home Service Company Limited incorporated the original assets of Pioneer Laundry & Dry Cleaners Limited into the records of the Appellant at appreciated values or any values or at all, and denies that the Minister ever considered the facts set forth in the Appellant's Notice of Appeal and denies that there was no actual change in
40 the ownership of the assets in question in this case when they were purchased by the Appellant, and denies that the said assets were set up in the books of the Appellant at appreciated values, and denies that any reasonable amount has been allowed by the Minister for depreciation (save and except the depreciation on

RECORD
 In the
 Exchequer Court
 of Canada
 No. 7
 Statement of
 Claim
 Jan. 7, 1936
 (Contd.)

the aforesaid items set out in Paragraph 3 (b) hereof) and denies that the Appellant's assessment was properly levied under the provisions of the Act.

14. In the alternative and in further answer to the Minister's Decision set out in Paragraph 12 hereof, the Appellant says that the Minister, having exercised the power conferred upon him by Section 5 of the Act in the manner set out in Paragraph 5 hereof, did not have the power to take away or reduce the allowances given to the Appellant in respect to depreciation after the Appellant had duly claimed said allowances in its income tax return. 10

15. On or about the 24th day of June 1935 the Appellant (pursuant to the provisions of Section 60 of the Act) gave to the Minister a Notice of Dissatisfaction with his Decision and a Final Statement of Facts, Statutory Provisions and Reasons.

16. On or about the 28th day of November 1935 (pursuant to the provisions of Section 62 of the Act) the Minister issued his Reply to the Appellant's Notice of Dissatisfaction and Statement of Facts whereby he again affirmed the said assessment for the reasons set forth in his Decision of 30th May 1935 (set out in Paragraph 12 hereof) and set forth in said Reply in the following words: 20

"1. That by S. 5, ss. 1 (a) of the said Act (the Income War Tax Act) income shall be subject to a deduction of 'such reasonable amount as the Minister, in his discretion, may allow for depreciation.'

2. That having been appraised of the facts in regard to the Appellant Taxpayer, this discretionary power was exercised in a reasonable and fair manner in accordance with the said S. 5 ss. 1 (a) and a sum of \$255.08 was allowed to the said Taxpayer as a deduction for depreciation for the year 30 in question.

3. That the discretion so exercised was a discretion in the determination of a question of fact.

4. That the discretion so exercised, having been exercised in accordance with provisions of S. 5, ss. 1 (a) of the said Act, was properly exercised and since it was so properly exercised, there remains no jurisdiction in a Court of Law to inquire whether or not the deduction for depreciation so allowed to the Appellant Taxpayer herein in respect to the year in question is reasonable or not. 40

5. That if the discretion so exercised should be subject to review by the Court notwithstanding what has been said above, then it is asserted that the allowance so made is reason-

able in view of the facts and having regard to the total of the amounts allowed in previous years for depreciation in respect to the same assets, even though such assets were previously held by a different legal entity, since from the facts it appeared that the ultimate beneficial ownership of such assets had not changed hands with the change of ownership from one corporate entity to another but had remained with the same shareholders.”

RECORD
 In the
 Exchequer Court
 of Canada
 No. 7
 Statement of
 Claim
 Jan. 7, 1936
 (Contd.)

17. In so far as (if at all) the reasons given by the Minister
 10 in his Reply of 28th November 1935 for his decision to affirm the
 assessment are other than the ground given by him in his Decision
 of 30th May 1935, they are unauthorized by the Act and are
 invalid.

18. In further reference to the Minister's Reply of 28th
 November 1935 the Appellant admits that Section 5 of the Act
 provides that income shall be subject to a deduction of such
 reasonable amount as the Minister in his discretion may allow
 for depreciation and admits that the Appellant is a legal entity
 20 different from any other legal entity as alleged in the Minister's
 Reply set out in Paragraph 16 hereof, but save as aforesaid denies
 each and every allegation of fact set forth in the Minister's Reply,
 and in particular denies that the Minister in allowing the Appel-
 lant the sum of \$255.08 as and for depreciation of its machinery,
 delivery equipment, furniture and fixtures exercised a discretion-
 ary (or any) power in a reasonable and fair manner in accordance
 with said Section 5, and on the contrary says that the said sum
 of \$255.08 was an allowance for depreciation in respect only of
 the items referred to in Paragraph 3 (b) hereof and not other-
 wise, and denies that the discretion exercised by the Minister was
 30 exercised solely in the determination of a question of fact and
 denies that it was properly exercised, and denies that the Court
 does not possess jurisdiction to decide whether the deduction for
 depreciation allowed by the Minister to the Appellant was or was
 not reasonable.

19. In further reference to the Minister's Reply of 28th
 November 1935 the Appellant says that the Minister, having, at
 the time and in the manner set forth in Paragraph 5 hereof exer-
 cised the power conferred upon him by Section 5 of the Act,
 did not, after the Appellant had, in its annual income tax return
 40 claimed the depreciation allowances so allowed by the Minister,
 have the power to take away or reduce the said allowances.

THE APPELLANT THEREFORE CLAIMS:

- (1) That its appeal be allowed.
- (2) That the assessment referred to in Paragraphs 8

RECORD
 In the
 Exchequer Court
 of Canada
 No. 7
 Statement of
 Claim
 Jan. 7, 1936
 (Contd.)

and 9 hereof and affirmed by the Minister as set out in Paragraphs 12 and 16 hereof be declared invalid or be disallowed or altered so as to conform to the Appellant's income tax return referred to in Paragraphs 6 and 7 hereof, or as the Court may decide.

(3) A declaration that when the Appellant purchased the assets in question in this action there was an actual change in the ownership thereof.

(4) A declaration that after the Appellant had filed its income tax return referred to in Paragraphs 6 and 7 hereof, the Minister had no power to take away or reduce the allowances for depreciation claimed by the Appellant therein in accordance with the allowances made by the Minister as set out in Paragraph 5 hereof. 10

(5) A declaration that the Minister has not exercised the power given to him in and by Section 5 in a reasonable and fair manner or in accordance with the Act and has wrongly disallowed to the Appellant the depreciation to which the Appellant is by law entitled.

(6) A declaration that the Appellant is entitled to the depreciation allowance referred to in Paragraph 5 hereof or to such reasonable allowances as the Minister may in his discretion when properly exercised allow. 20

(7) Such further and other order as to the Court shall seem meet.

(8) Its costs of this action.

"MARTIN GRIFFIN,"

Solicitor for the Appellant.

DELIVERED this 7th day of January, A.D. 1936 by Martin Griffin, of the firm of Griffin, Montgomery & Smith, Solicitors for the Appellant, whose place of business and address for service is Rooms 608-614, Bank of Nova Scotia Building, 602 Hastings Street West, Vancouver, B.C. 30

No. 8

STATEMENT OF DEFENCE

Filed the 27th day of February, 1936

In answer to the Appellant's Statement of Claim herein, the Respondent:

RECORD
In the
Exchequer Court
of Canada

No. 8
Statement of
Defence
Feb. 27, 1936

1. Admits paragraphs 1 and 2 thereof.

2. Denies paragraph 3 thereof.

10 3. Denies paragraph 4 thereof and in particular denies that he is charged by S. 5, ss. 1 (a), or by any other provision of the Act, with the duty to allow depreciation in any specific manner, but rather is empowered to exercise his discretion in determining what is a reasonable amount to allow in respect to depreciation of the assets of each taxpayer under the Act and in respect of each period of assessment under consideration; and denies further that such statutory provision for depreciation confers any right whatsoever upon the taxpayer to deduct any sum other than such as is allowed in accordance with the provisions of the aforementioned S. 5, ss. 1 (a).

20 4. Denies paragraph 5 thereof and in further answer states that if there was any customary allowance made in previous years to taxpayers in respect to depreciation of certain types of assets, which is not admitted but denied, then the Respondent states that such apparent customary practice is the result of the exercise of the aforementioned discretion in respect to taxpayers of similar conditions and circumstances, and that, irrespective of such practice, the depreciation in each case is the result of the exercise of the aforementioned statutory discretion in the manner stated in paragraph 3 hereof.

30 5. Admits paragraph 6 thereof.

40 6. In answer to paragraph 7 thereof admits that the Appellant in his Return for the year in question claimed the amounts alleged for depreciation but denies that any rates or percentages had previously been fixed in regard to the Appellant or in regard to any taxpayer either in the manner alleged by the Appellant or in any other manner, and further denies that in respect to the Appellant's assessment for the year in question there were any rates or percentages for depreciation fixed or even considered by the Respondent at the time when the Appellant filed his Return.

7. Admits the allegations of fact contained in paragraphs 8 and 9 of the Appellant's Statement of Claim.

RECORD
 In the
Exchequer Court
 of Canada
 No. 8
 Statement of
 Defence
 Feb. 27, 1936
 (Contd.)

8. Denies paragraph 10 thereof, and in further answer states that in disallowing the sum of \$17,520.47 of the amounts claimed by the Appellant for depreciation, the Commissioner of Income Tax as duly authorized delegate of the Minister properly exercised the discretion conferred by S. 5, ss. 1 (a) of the Act.

9. Admits the allegation of fact contained in paragraphs 11 and 12 of the Appellant's Statement of Claim.

10. Denies each and every allegation of fact in paragraph 13 thereof and in answer to the allegation of the Appellant that the Minister did not consider the facts of the case or the facts set forth in the Appellant's Notice of Appeal, states that by S. 75, ss. 2 of the Act the Commissioner may be authorized to exercise such of the powers conferred by the Act upon the Minister as the Minister shall determine and that such authorization was duly given to the Commissioner, who, in accordance therewith, did duly consider the facts and after such consideration did levy the assessment appealed from and did further affirm such assessment by the Decision of the Minister dated May 30th, 1935.

11. Denies paragraph 14 in the Appellant's Statement of Claim and in particular denies that the discretionary power given by S. 5, ss. 1 (a) of the Act was or could have been exercised previous to the assessment of the taxpayer's Return in question and consequently denies that any rights in respect to depreciation could accrue to the taxpayer previous to such assessment; and in further answer denies that the Appellant could in any event acquire any right to a fixed percentage or rate of depreciation by the mere fact that a certain rate or percentage had usually been allowed in previous years to other taxpayers, or the Appellant herein, in respect of similar assets, since income for the purposes of the Act means the annual net profit or gain of a particular taxpayer and such annual income is subject to an annual deduction of such amount for depreciation as is determined in accordance with the aforementioned S. 5, ss. 1 (a).

12. Admits paragraphs 15 and 16 thereof.

13. Denies paragraphs 17 and 18 thereof.

14. Denies paragraph 19 thereof, and in particular denies the allegation or implication of the Appellant that any usual or customary practice of the Respondent in allowing for depreciation at uniform rates as between taxpayers of like conditions and circumstances and in respect of particular

types of assets, did constitute an anticipatory exercise of the discretionary power aforementioned in respect to any particular taxpayer before his Return for any particular year had been assessed.

RECORD
In the
Exchequer Court
of Canada

No. 8
Statement of
Defence
Feb. 27, 1936
(Contd.)

10

15. In answer to the whole of the Appellant's Statement of Claim, the Respondent repeats the affirmation of this assessment as contained in the Reply of the Minister dated the 28th November 1935, viz: that the determination of a reasonable allowance for depreciation in respect to any taxpayer for any year is a matter left to the discretion of the Minister; that such discretion has been properly exercised in regard to the Appellant and an allowance of \$255.08 was made to him in respect of his fiscal or taxation year ending March 31st 1933; that such allowance having been properly made in conformity with the Act, no jurisdiction lies with the Courts to decide upon the amount of such allowance, or the reasonableness thereof; but that, should the Court have such jurisdiction, which is not admitted but denied, then the amount allowed as aforesaid should be confirmed by this Court as reasonable in view of the facts, and this Court should confirm the disallowance by the Minister of any claim for depreciation upon assets which for the purpose of the Act and under its administration have, previous to the claim herein, been already fully depreciated.

20

THE RESPONDENT THEREFORE CLAIMS:

30

- (a) That the Appeal of the Appellant be dismissed;
- (b) That the said assessment be confirmed;
- (c) Payment of the sum of \$1,611.66;
- (d) Interest as provided in the said Act and amendments;
- (e) The costs of this Appeal;
- (f) Such further and other relief as the nature of the case may require.

DATED at Ottawa this 27th day of February, A.D. 1936.

"W. S. FISHER,"
Solicitor for the Respondent

No. 9

REPLY AND JOINDER OF ISSUE

Filed Friday, March 6th, 1936

No. 9
Reply and
Joinder of
Issue
Mar. 6, 1936

1. The Appellant joins issue upon the Defendant's Statement in Defence.

"MARTIN GRIFFIN,"
Solicitor for the Appellant
By his agents Powell, Aylen & MacLaren

RECORD
 In the
 Exchequer Court
 of Canada

No. 10
 Judgment
 Angers, J.
 Nov. 4, 1937

IN THE EXCHEQUER COURT OF CANADA
 Thursday, the 4th day of November, A.D. 1937

PRESENT:

THE HONOURABLE MR. JUSTICE ANGERS

IN THE MATTER OF The Income War Tax Act,
 being Chapter 97, of the Revised Statutes of Canada,
 1927, and Amendments thereto,

and

IN THE MATTER OF The Appeal of Pioneer
 Laundry and Dry Cleaners Limited of the City of
 Vancouver, in the Province of British Columbia,

10

BETWEEN:

PIONEER LAUNDRY & DRY CLEANERS LIM-
 ITED,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

No. 10

JUDGMENT

20

The appeal under the provisions of the Income War Tax Act of the Appellant herein from the Decision of the Minister of National Revenue dated the 30th day of May, 1935, confirming the assessment made on the Appellant by Notice dated the 19th day of February, 1935, having come on for hearing before this Court at the City of Vancouver on the 8th and 9th days of September, 1936, in the presence of counsel both for the Appellant and Respondent; upon reading the papers and documents filed with this Court as required by the said Act, and the pleadings filed, and upon hearing the evidence of witnesses for both parties and what 30 was alleged by counsel aforesaid;

THIS COURT was pleased to direct that the said appeal should stand over for judgment and the same coming on this day for judgment;

THIS COURT doth order and adjudge that the appeal of the Appellant be and the same is hereby dismissed;

AND THIS COURT doth further order and adjudge that the Respondent is entitled to recover from the Appellant his costs of this action forthwith after taxation thereof.

By the Court.

40

(sgd.) "ARNOLD W. DUCLOS,"
 Registrar

No. 11

REASONS FOR JUDGMENT

Angers, J.

Judgment rendered November 4, 1937

This is an appeal under sections 58 and following of the Income War Tax Act (R.S.C. 1927, chap. 97 and amendments) by Pioneer Laundry & Dry Cleaners Limited, a body corporate and politic incorporated under the Companies Act of the Province of British Columbia, from the assessment bearing date the 19th of February, 1935, whereby a tax in the sum of \$1,611.66 was levied in respect of income for the taxation period ending March 31, 1933.

In its return of income for the fiscal year ended March 31, 1933, Pioneer Laundry & Dry Cleaners Limited included as depreciation the following items:

Nature of Article	Year acquired	Cost	Rate per cent. per annum	Depreciation charged off Total previous charged	Amount this year
Machinery & Equipment	1932	\$146,690.00	10	-	\$14,131.15
Automobiles	1932	14,675.00	20	-	2,935.08
Horses & Wagons	1932	1,352.00	10	-	135.25
Furniture & Fixtures	1932	5,740.00	10	-	574.07
forming a total of \$17,775.55.					

In the notice of assessment dated February 19, 1935, sent by the Commissioner of Income Tax to the Company, the following amounts were disallowed:

30	Machinery and equipment	\$14,131.15
	Horses and wagons	135.25
	Furniture and fixtures.....	574.07

As to the amount of \$2,935.08 claimed as depreciation on the automobiles, the Commissioner of Income Tax allowed only \$255.08.

On March 9, 1935, Pioneer Laundry & Dry Cleaners Limited served a notice of appeal upon the Minister of National Revenue, in which it is stated (inter alia):

that in the return made in respect of the fiscal year ending March 31, 1933, the Appellant claimed as a deduction from its income certain sums totalling \$17,775.55 representing depreciation of its machinery, delivery equipment, furniture and fixtures at the usual rates as follows:

RECORD
In the
Exchequer Court
of Canada

No. 11
Reasons for
Judgment
Angers, J.
Nov. 4, 1937

RECORD
 In the
 Exchequer Court
 of Canada

No. 11
 Reasons for
 Judgment
 Angers, J.
 Nov. 4, 1937
 (Contd.)

Rate claimed	Horses & Wagons 10%	Delivery Trucks 20%	Furniture & Fixtures 20%	Machinery 10%
Amount of Depreciation claimed	\$135.25	\$2935.08	\$574.07	\$14,131.15

that the Commissioner has improperly disallowed to the extent of \$2,680. the amount claimed for depreciation of the Appellant's delivery trucks (\$2,935.08), allowing in respect thereof only the sum of \$255.08 and has improperly disallowed the whole of the amounts claimed for depreciation of the Appellant's Horses and Wagons, Furniture and Fixtures and Machinery respectively. 10

On May 30, 1935, the Minister of National Revenue, represented and acting by the Commissioner of Income Tax, affirmed the assessment.

The decision of the Minister reads in part as follows:

"Whereas during the year 1932, Pioneer Investment Company Limited who owned and controlled Pioneer Laundry & Dry Cleaners Limited, disposed of its interests to Home Service Company Limited.

And whereas the shareholders of Home Service Company Limited are identical with that of Pioneer Investment Company Limited as at date of liquidation of the latter Company. 20

And whereas Home Service Company Limited incorporated the original assets of Pioneer Laundry & Dry Cleaners Limited into the records of the taxpayer at appreciated values.

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 while the company was incorporated and commenced operations during the year 1932 there was no actual change in ownership of the assets purchased or taken over from Pioneer Investment Company Limited, by Home Service Company Limited (of which the taxpayer is a subsidiary) and set up in the books of the taxpayer at appreciated values; that in the exercise of the statutory discretion, a reasonable amount has been allowed for Depreciation and that the assessment is properly levied under the provisions of the Income War Tax Act." 30

A notice of dissatisfaction dated July 24, 1935, was sent to the Minister; accompanying this notice was a document entitled "Final statement by the Appellant," in which reference is made 40

to section 5 (a) of the Income War Tax Act and in which it is stated in substance that:

The deductions claimed by the Appellant from its income, save as to the extent of \$255.08, have been improperly disallowed;

The decision of the Minister was not an exercise of the discretion conferred upon him by the statute but was a refusal, on grounds not allowed by the statute, of the Appellant's right to an allowance for depreciation;

10 The Appellant is not the same company as Pioneer Laundry & Dry Cleaners Limited referred to in the decision of the Minister, the latter company having gone into voluntary liquidation on March 30, 1932;

The Appellant was incorporated on March 23, 1932, and on April 1, 1932, it purchased the assets in question herein from Home Service Company Limited, a company incorporated on the 23rd of March, 1932.

The reply of the Minister, dated November 28, 1935, alleges in substance that:

20 By section 5, subsection 1 (a) of the Act, income shall be subject to a deduction of "such reasonable amount as the Minister, in his discretion, may allow for depreciation";

This discretionary power was exercised in a reasonable and fair manner and a sum of \$255.08 was allowed to the taxpayer as a deduction for depreciation;

The discretion so exercised was a discretion in the determination of a question of fact;

30 The discretion having been properly exercised in accordance with the provisions of section 5, subsection 1 (a), there remains no jurisdiction in a Court of law to enquire whether or not the deduction for depreciation allowed to the Appellant is reasonable;

40 If the discretion so exercised should be subject to review by the Court, then it is asserted that the allowance made is reasonable in view of the facts and having regard to the total of the amounts allowed in previous years for depreciation in respect of the same assets, even though such assets were previously held by a different legal entity, since it appeared from the facts that the ultimate beneficial ownership of such assets has not changed hands with the change of ownership from one corporate entity to another, but had remained with the same shareholders.

Pleadings were filed.

RECORD

*In the
Exchequer Court
of Canada*

No. 11
Reasons for
Judgment
Angers, J.
Nov. 4, 1937
(Contd.)

RECORD
 In the
 Exchequer Court
 of Canada
 No. 11
 Reasons for
 Judgment
 Angers, J.
 Nov. 4, 1937
 (Contd.)

Omitting the facts set forth in the Notice of Appeal and Notice of Dissatisfaction, which it is useless to repeat, the Statement of Claim says in substance as follows:

The machinery, delivery equipment, furniture and fixtures in question herein were acquired by the Appellant as follows:

(a) All the machinery, delivery equipment, furniture and fixtures, save the coupes and the truck body, were acquired from Home Service Company Limited for the sum of \$162,032.83; the articles so acquired had 10
 formerly been the property of Pioneer Laundry & Dry Cleaners Limited, a company other than the Appellant, and had been purchased by Home Service Company Limited;

(b) The following items were purchased as follows:
 One Willy-Knight Coupe on May 17, 1932, from Consolidated Motors Limited for \$815.;
 One truck body on July 14, 1932, from Pioneer Carriage Company Limited for \$230.75.;
 One Essex Coupe on November 22, 1932, from Consoli- 20
 dated Motors Limited for \$286.50.;

By section 5 of the Income War Tax Act the Minister was empowered to allow such amount or amounts as he should consider reasonable for depreciation in value of such assets of the taxpayer as were used in its business, and the Minister was charged with the duty to allow for depreciation such amount or amounts as were reasonable in view of the diminution in value of such assets during the taxation year; the said section did not confer upon the Minister the right to deprive 30
 taxpayers of the right to deduct proper sums of depreciation from their respective incomes;

Prior to the incorporation of the Appellant the Minister, in compliance with said section 5, did regularly allow taxpayers in the form of annual percentage deductions, on certain of their assets used in their business, certain annual allowances for depreciation as follows:

on machinery, plant, etc.....10% of the cost;
 on furniture and fixtures.....10% of the cost;
 on motor cars and trucks subject to heavy wear;
 in the first year 25% of their cost; in the second, 40
 third and fourth years 20% of their cost; in the
 fifth and subsequent years such further depreciation as might be allowed after reconsideration;
 on horses and wagons.....10% of their cost;

On or about July 7, 1933, the Appellant filed with the Inspector of Income Tax, a return of its total income earned in the taxation year ending March 31, 1933;

RECORD
In the
Exchequer Court
of Canada

In its return the Appellant claimed as deductions from its income certain sums totally \$17,775.55, representing depreciation of its machinery, delivery equipment, furniture and fixtures, at rates not exceeding the rates theretofore fixed by the Minister;

No. 11
Reasons for
Judgment
Angers, J.
Nov. 4, 1937
(Contd.)

10 The amounts so claimed by the Appellant and the rates applied by it in respect thereto were as follows:

	Rate claimed	Amount of depreciation claimed
Horses and wagons	10%	\$ 135.25
Delivery trucks	20%	2,935.08
Furniture and fixtures	10%	574.07
Machinery	10%	14,131.15
		<hr/>
		\$17,775.55

20 On February 19, 1935, the Commissioner sent to the Appellant a Notice of Assessment in which he improperly disallowed the sum of \$17,520.47 of the amounts claimed by the Appellant for depreciation, to wit: the sum of \$135.25 for depreciation of horses and wagons, the sum of \$574.07 for depreciation of furniture and fixtures, the sum of \$14,131.15 for depreciation of machinery and the sum of \$2,680. of the sum of \$2,935.08 for depreciation of delivery trucks, allowing therefor only the sum of \$255.08; and the Commissioner improperly asserted that thhe Appellant's taxable income for
30 said fiscal year amounted to \$12,893.30, and improperly assessed the Appellant with the sum of \$1,611.66 as the tax thereon; the allowance of \$255.08 being estimated as follows:

25%	for 10 months on \$815.00.....	\$186.77
25%	for 8 months on \$230.75.....	38.46
25%	for 5 months on \$286.50.....	29.85
		<hr/>
		\$255.08;

40 On or about March 9, 1935, the Appellant appealed from the assessment and on May 30, 1935, the Minister made a decision affirming said assessment on the grounds previously set forth;

The Appellant admits that it was incorporated and commenced operations during the year 1932 but, save as aforesaid, denies each and every allegation of fact set out in the said

RECORD
 In the
 Exchequer Court
 of Canada

No. 11
 Reasons for
 Judgment
 Angers, J.
 Nov. 4, 1937
 (Contd.)

decision; it denies in particular: (a) that Pioneer Investment Company Limited disposed of its assets to Home Service Company Limited and that the shareholders of these two companies are the same; (b) that Home Service Company Limited incorporated the assets of Pioneer Laundry & Dry Cleaners Limited into the records of the Appellant at appreciated values or any values at all; (c) that the Minister ever considered the facts set forth in the Notice of Appeal; (d) that there was no actual change in the ownership of the assets herein when they were purchased by the Appellant; (e) that the said assets were set up in the books of the Appellant at appreciated values; (f) that any reasonable amount has been allowed by the Minister for depreciation; 10

In the alternative, the Appellant says that the Minister, having exercised the power conferred upon him by section 5, had no power to take away or reduce the allowances given to the Appellant in respect to depreciation after the Appellant had claimed said allowances in its return;

On or about June 24, 1935, the Appellant sent to the Minister a Notice of Dissatisfaction; on November 28, 1935, 20 the Minister issued his Reply to the said Notice whereby he again affirmed the said assessment;

In so far as the reasons given by the Minister in his Reply differ from those given by him in his Decision, they are unauthorized by the Act and are invalid;

In further reference to the Minister's reply the Appellant admits that section 5 provides that income shall be subject to deduction of such reasonable amount as the Minister in his discretion may allow for depreciation; it admits that the Appellant is a legal entity different from any other legal 30 entity as alleged in said Reply; save as aforesaid, it denies each and every allegation of fact set forth in said Reply and in particular denies that the Minister, in allowing the Appellant the sum of \$255.08 as depreciation, exercised a discretionary power in a reasonable manner; on the contrary it says that the sum of \$255.08 was an allowance for depreciation in respect only of the coupes and truck body; it denies that the discretion exercised by the Minister was exercised solely in the determination of a question of fact and that the Court has no jurisdiction to decide whether the deduction for depreciation 40 tion allowed by the Minister was or was not reasonable;

The Minister, having exercised the power conferred upon him by section 5, did not, after the Appellant had in its income tax return claimed the depreciation allowances allowed by the Minister, have the power to take away or reduce the said allowances.

The Statement of Defence contains, among others, the following allegations:

RECORD
 In the
 Exchequer Court
 of Canada
 No. 11
 Reasons for
 Judgment
 Angers, J.
 Nov. 4, 1937
 (Contd.)

10 The Respondent is not charged by section 5, subsection 1 (a), with the duty to allow depreciation in any specific manner, but rather is empowered to exercise his discretion in determining what is a reasonable amount to allow in respect of depreciation of the assets of each taxpayer; such statutory provision for depreciation does not confer any right upon the taxpayer to deduct any sum other than that allowed under said section; if there was any customary allowance made in previous years to taxpayers in respect to depreciation of certain types of assets, which is not admitted, such apparent customary practice is the result of the exercise of the Minister's discretion in respect to taxpayers of similar conditions and circumstances;

The Respondent admits that the Appellant in its return claimed the amounts alleged for depreciation but denies that any rates had previously been fixed in regard to the Appellant or to any taxpayer;

20 In disallowing the sum of \$17,520.47, the Commissioner, duly authorized delegate of the Minister, properly exercised the discretion conferred by section 5, subsection 1 (a);

30 In answer to the allegation that the Minister did not consider the facts of the case, the Respondent states that by section 75, subsection 2, the Commissioner may be authorized to exercise such of the powers conferred upon the Minister as the latter may determine and that such authorization was duly given to the Commissioner who, in accordance therewith, considered the facts and levied the assessment appealed from and further affirmed such assessment by the decision of the 30th of May, 1935;

40 The Respondent denies that the discretionary power given by section 5, subsection 1 (a) was or could have been exercised previous to the assessment of the taxpayer's return and consequently that any rights in respect to depreciation could accrue to the taxpayer previous to such assessment; the Respondent further denies that the Appellant could in any event acquire any right to a fixed rate of depreciation by the fact that a certain rate had usually been allowed in previous years to other taxpayers or to the Appellant in respect of similar assets, since income for the purposes of the Act means the annual net profit or gain of a particular taxpayer and such annual income is subject to an annual deduction of such amount for depreciation as is determined in accordance with section 5, subsection 1 (a);

RECORD
 In the
 Exchequer Court
 of Canada
 No. 11
 Reasons for
 Judgment
 Angers, J.
 Nov. 4, 1937
 (Contd.)

The Respondent denies the allegation or implication of the Appellant that any customary practice of the Respondent in allowing for depreciation at uniform rates as between taxpayers of like conditions and in respect of particular types of assets did constitute an anticipatory exercise of the discretionary power aforesaid in respect to any particular taxpayer before his return had been assessed;

The determination of a reasonable allowance for depreciation is a matter left to the discretion of the Minister; such discretion has been properly exercised in regard to the Appellant and an allowance of \$255.08 was made in respect of the taxation year ending March 31, 1933; such allowance having been made in conformity with the Act, no jurisdiction lies with the Court to decide upon the amount thereof; but, should the Court have such jurisdiction, the amount allowed should be confirmed as reasonable in view of the facts; and the Court should confirm the disallowance of any claim for depreciation upon assets which, for the purpose of the Act, previous to the claim herein, had already fully depreciated. 10

A memorandum of facts upon which the parties agreed, dated April 4, 1936, was filed as exhibit; counsel for the Appellant declared that he desired to file clause 8 of this memorandum and clause 8 was put in as exhibit 16; counsel for the Respondent, on the other hand, said that he wanted to file the balance of the memorandum and clauses 1 to 7 inclusive were produced as exhibit A. It seems to me convenient to quote this memorandum in extenso: 20

"1. Pioneer Investment Co., Limited was incorporated prior to inception of the Income War Tax Act, and went into voluntary liquidation on 7th April, 1932. Immediately prior to liquidation the said Pioneer Investment Co., Ltd., owned directly or through nominees all the outstanding share capital of its subsidiary operating companies listed in paragraph 3 herein below, and including the Appellant company. 30

2. Pioneer Laundry & Dry Cleaners Limited by Special Resolution dated 30th March, 1932, went into voluntary liquidation. All its shares were owned by the Pioneer Investment Co., Limited, (some of these shares held in the names of nominees).

3. On 23rd March, 1932, a new company was incorporated under the name of Home Service Company Limited. The said last mentioned company on 1st April, 1932, acquired all the physical assets of the following companies, that is to say: 40

Pioneer Laundry & Dry Cleaners Limited, Cascade Laundry & Dry Cleaners Limited, Dominion Laundry & Dry Cleaners Limited, B.C. Clean Towel Supply Limited, Vancouver Towel Service Company Limited, Family Service Laundry Limited, Empire Cleaners Limited.

The said Home Service Company Limited also acquired all the assets of Pioneer Investment Company Limited save and except

- (a) Shares owned by that Company, and
 10 (b) Amounts owing to that Company by its shareholders.

4. On 23rd March, 1932, a new Company was incorporated under the name of Pioneer Laundry & Dry Cleaners Limited (the Appellant herein) and that Company acquired from the Home Service Company Limited certain machinery, furniture and fixtures and delivery equipment which had formerly been owned by the first Pioneer Laundry & Dry Cleaners Limited (but not all the machinery, furniture and fixtures and delivery equipment of the original Pioneer Laundry & Dry Cleaners Limited) and also acquired certain other machinery or delivery equipment owned by one or more of the other Companies named in Clause 3 hereof.

5. In addition to the assets which the Appellant acquired in the manner indicated in Paragraph 4, the Appellant acquired the following:

	1 Willys-Knight Coupe bought from Consolidated Motors, Limited	\$815.00
	1 Truck Body from Pioneer Carriage Company Limited	230.75
30	1 Essex Coupe from Consolidated Motors, Limited	286.50

6. That all the machinery, furniture and fixtures and delivery equipment of the original Pioneer Laundry & Dry Cleaners Limited and some but not all of the similar assets of the other Laundry Companies referred to in Paragraph 3 hereof were fully written off by depreciation by those Companies and the Appellant is claiming an allowance for depreciation in respect to the aforesaid machinery, furniture and fixtures and delivery equipment, which it acquired in the manner aforesaid, all of which assets being among those fully depreciated as aforesaid.

7. That the capitalization of the Home Service Company Limited is \$1,000,000.00 divided into 10,000 shares par value

RECORD
 In the
 Exchequer Court
 of Canada
 No. 11
 Reasons for
 Judgment
 Angers, J.
 Nov. 4, 1937
 (Contd.)

RECORD
 In the
 Exchequer Court
 of Canada

No. 11
 Reasons for
 Judgment
 Angers, J.
 Nov. 4, 1937
 (Contd.)

\$100.00 each and that all such shares except forty were issued or sold to the liquidators of the operating subsidiary companies of the Pioneer Investment Company, Limited in consideration for the transfer of the assets of such operating companies to the Home Service Company, Limited; that the said shares on the winding-up of the said operating companies were distributed to the parent company, the Pioneer Investment Company, Limited, and on the winding-up of that company were distributed to its own shareholders; and that the result is that the shareholders of the Home Service Company Limited are the same as were the shareholders of the Pioneer Investment Company, Limited and their respective holdings in the new company are the same or substantially the same as were their respective holdings in the old company. The 40 shares referred to in this clause were allotted to Pioneer Investment Co. Ltd. in part payment of the assets referred to at the end of clause 3 hereof. 10

8. That the sum of \$255.08 which was allowed by the Department as depreciation on autos was part of the sum of \$2935.08 claimed by the Pioneer Laundry & Dry Cleaners Limited as depreciation on their delivery trucks and was calculated as follows: 20

25% for 10 months on \$815.00 being the cost of one Willys-Knight Coupe purchased by Pioneer Laundry & Dry Cleaners Limited from Consolidated Motors Ltd., on or about the 17th day of May, 1932.....	\$186.77	
25% for 8 months on \$230.75 being the price of one truck body purchased by Pioneer Laundry & Dry Cleaners Limited from Pioneer Carriage Company Ltd. on 14th July, 1932.....	38.46	30
25% for 5 months on \$286.50 being the price paid by Pioneer Laundry & Dry Cleaners Limited to Consolidated Motors Ltd. on 22nd November, 1932 for one Essex Coupe.....	29.85	
	<hr/>	
	\$255.08''	

William Henry Cotter, a chartered accountant, of the firm of Riddell, Stead, Hodges and Winter, auditor for the Appellant company, was examined as witness on behalf of the Appellant. He prepared the income tax return of the company for the fiscal year ending March 31, 1933, filed as Exhibit 2; the balance sheet and profit and loss statement annexed to this return were pre- 40

pared by the company's bookkeeper; the witness, however, and his partner Winter checked and approved the balance sheet (dep. Cotter, p. 34).

Questioned with regard to the account in the books of the company relating to depreciation, Cotter gave the following information (dep. p. 34):

- 10 "Q. Did the Appellant Company, for that year, for the fiscal year ending the 31st March, 1933, have a special account in the books for depreciation on the machinery, horses, automobiles and furniture? A. Yes.
- Q. Are these the correct accounts. You may use this tax return, machinery and equipment \$14,131.15? A. Yes.
- Q. Being at the rate of 10% of the cost price? A. Right.
- Q. Automobiles \$2,935.08, being at the rate of 20% of the cost price? A. Yes.
- Q. Horses and wagons \$135.25, being at the rate of 10%? A. Yes.
- Q. Furniture and fixtures \$574.07, being at the rate of 10%? A. Yes.
- 20 Q. Making a total of \$17,775.55? A. Yes.
- Q. Was this depreciation duly entered in their books in the regular and customary manner of making them up for the year? A. Yes."

The witness said that he became aware of the percentages which the Department of Income Tax allowed to be deducted for the purpose of fixing taxable income by interviews he had with the Department on various occasions; in addition there were certain rules and regulations issued in a circular (No. 20) dated August 30, 1918, to which was appended a schedule of depreciation rates and another appendix to the same circular dated May 11, 1927, dealing with depreciation on automobiles; I shall deal with this circular and these appendices in a moment.

Asked if he could produce a list of the machinery and equipment, automobiles, horses and wagons mentioned in the return, Cotter replied that he could, but that it was not available at the moment (dep. p. 35).

I may note here that the machinery and equipment, horses and wagons and furniture and fixtures, to wit all the articles involved in the present appeal with the exception of the automobiles, 40 were acquired by the Appellant, together with other assets, from Home Service Company Limited, a corporation having its office in the City of Vancouver, by means of an agreement entered into between the said Home Service Company Limited and the Appellant on April 1, 1932, which was filed as Exhibit 1.

RECORD
 In the
 Exchequer Court
 of Canada
 No. 11
 Reasons for
 Judgment
 Angers, J.
 Nov. 4, 1937
 (Contd.)

RECORD
 In the
 Exchequer Court
 of Canada
 No. 11
 Reasons for
 Judgment
 Angers, J.
 Nov. 4, 1937
 (Contd.)

By this agreement the Appellant acquired from Home Service Company Limited the following assets, alleged to be owned by the vendor by virtue of its having purchased them from the liquidator of Pioneer Laundry & Dry Cleaners Limited, referred to in the deed as the "old company", namely:

The goodwill of the business heretofore carried on in the City of Vancouver and elsewhere in the Province of British Columbia by Pioneer Laundry & Dry Cleaners Limited, now in liquidation;

All the plant, machinery, office furniture, fixtures, trucks, automobiles and other goods and chattels owned by the "old company";

All the book debts and other debts and accounts due to the "old company" in connection with the said business;

The full benefit of all pending contracts to which the "old company" might be entitled;

All cash in hand and in bank and all bills and notes in connection with the said business;

All unexpired insurance and all other personal property owned by the "old company".

The consideration for this sale was: (a) the sum of \$170,549.70, stipulated payable as to the sum of \$10,000. by the allotment to the vendor or its nominees of 100 fully paid shares of the capital stock of the purchaser of the par value of \$100. each and as to the balance (\$160,549.70) in cash at any time or times when the payment of the same or any part thereof is demanded by the vendor; (b) the assumption by the purchaser of all the debts, liabilities and obligations of the "old company" as of the date of the agreement.

The deed provides that the portion of the purchase price payable in cash on demand or any balance thereof at any time remaining unpaid shall carry interest at such rate (not to exceed 8% per annum) and for such periods and payable on such date or dates as the vendor may determine and demand.

The amount of the debts of the "old company" was said to be \$10,277.23 (dep. Cotter, p. 41). The total consideration was accordingly \$180,826.93.

Home Service Company Limited had acquired the assets aforesaid from William H. Cotter, liquidator of Pioneer Laundry & Dry Cleaners Limited (hereinabove referred to as the "old company") in virtue of an agreement also dated April 1, 1932, a copy whereof was filed as Exhibit G. This agreement included, in addition to these assets, all the right, title and interest of Pioneer Laundry & Dry Cleaners Limited in liquidation in and

to the parcels of land and premises, situate in the City of Vancouver, in the Province of British Columbia, known as lots one (1) to four (4) inclusive in Block seventy-five (75) in the subdivision of District lot five hundred and forty-one (541) Group one (1) New Westminster District.

The consideration stipulated in the agreement Exhibit G is as follows:

10 (a) The sum of \$327,000 payable by the allotment to the vendor of 3,270 fully paid shares in the capital stock of the purchaser of a par value of \$100;

(b) The assumption by the purchaser of all the debts, liabilities and obligations of Pioneer Laundry & Dry Cleaners Limited in liquidation as of the date of the agreement.

20 The Willys-Knight Coupe was purchased by the Appellant from Consolidated Motor Company Limited on May 17, 1932, for \$815. (Exhibit 19); the Essex Coupe was purchased from Consolidated Motor Company Limited on November 22, 1932, for \$285 in cash and a 1927 used Essex Coupe (Exhibit 20); and the truck body was purchased from Pioneer Carriage & Truck Tire Limited in July 1932 for \$275.40 (Exhibit 21).

Cotter said that the Willys-Knight Coupe, the Essex Coupe and the truck body were purchased new (dep. p. 36). The other articles were not new; they had been in use some years by other companies (dep. p. 37).

30 Asked on what basis the values for the articles other than the Willys-Knight and Essex Coupes and the truck body were fixed, Cotter answered that they were fixed by means of an appraisal made on February 12 (dep. p. 36); the year is not mentioned but the witness evidently refers to February 1932. Cotter added that it is on this appraisal that the purchase price mentioned in the agreement Exhibit 1 was fixed.

Speaking of the practice of accountants regarding the depreciation of used articles, Cotter stated that the "principle of depreciation is applied identically the same whether the article is new or second hand" (dep. p. 37).

Cotter was examined in relation to certain statements contained in the decision of the Minister; I believe it is apposite to cite the witness' answers in this connection (dep. p. 42):

40 "No, the valuable assets of Pioneer Investments Limited were in the shares of seven subsidiary companies. None of these were held by Home Service Company or disposed of by Pioneer Investment Company in any way."

RECORD
In the
Exchequer Court
of Canada
No. 11
Reasons for
Judgment
Angers, J.
Nov. 4, 1937
(Contd.)

RECORD

*In the
Exchequer Court
of Canada*No. 11
Reasons for
Judgment
Angers, J.
Nov. 4, 1937
(Contd.)

and further on (ibid.):

“ . . . The Home Service Company Limited have (had) nothing whatever to do with incorporating the assets of Pioneer Laundry & Dry Cleaners into its own records. The Pioneer Laundry & Dry Cleaners itself controlled all entries into its own records in relation to the assets acquired.”

The following questions and answers dealing with the assets purchased by the Appellant company and the entries relating thereto in the latter's books at alleged appreciated values and the right of ownership therein had better be quoted textually (dep. 10 p. 42):

“Q. There is a suggestion in the Minister's statement where he speaks of the Pioneer Laundry & Dry Cleaners Limited having had entries made for them at appreciated values. It would appear to be a suggestion that the Appellant company watered its capital by adding something to the actual cost. Was any such thing done?”

A. No, the assets were recorded in their books at the actual and original cost price to them.

Q. The Minister says that the assets were taken over 20 by the Home Service Company from the Pioneer Investment Company. Is that true, that is, these assets we are dealing with in this case?

A. No, none of these assets were taken over by Home Service Company Limited.

Q. The Minister makes the statement that there was no actual change in ownership. Is that a correct statement of the transaction between Home Service Company and the Appellant? A. No.

Q. In other words, so far as you are able to express the 30 view, was there an absolute and complete change of ownership?

A. There was.”

In cross-examination Cotter was asked the following question (dep. p. 47):

“Q. Now, is it true that the value shown in the books of the predecessor of this Appellant and in its income tax returns were greatly increased when transferred into the books of this Appellant and into its balance sheet accompanying its income tax return?” 40

Counsel for the Appellant raised an objection on the ground that what any company, which formerly owned the machinery in question, did would not govern the Appellant and that there was no contractual relationship between the “old company” and the

Appellant; I admitted the evidence under reserve of the objection; after considering the matter I have come to the conclusion that the question is legal; the answer given by the witness was in affirmative (dep. p. 47).

10 Cotter, in cross-examination, admitted that the holding company of the shares of the Appellant was Home Service Company Limited and that the shareholders of this company are the same persons as were the shareholders of the previous holding company, namely Pioneer Investment Company Limited (dep. p. 48). The witness further admitted that the Appellant company is a subsidiary of Home Service Company Limited as the "old company" was a subsidiary of Pioneer Investment Company Limited (dep. p. 49).

Cotter stated that the predecessor in title of the assets herein concerned was Home Service Company Limited and that the predecessor in title of the latter, as regards the majority of these assets, was the former Pioneer Laundry & Dry Cleaners Limited, now in liquidation (dep. p. 50).

20 Before closing his cross-examination of the witness Cotter, counsel for the Respondent reverted to the matter of appreciation of the assets acquired by the Appellant from Home Service Company Limited under the agreement Exhibit 1; I think I ought to quote a few questions and answers on the subject, which, to my mind, are material (dep. p. 52, in fine):

"Mr. Donaghy: Q. And you have already said that those assets are set up on the books of the present Appellant at a greatly appreciated value over and above what they were on the books of the old Pioneer Laundry & Dry Cleaners Limited?"

30 "A. I must correct you. I don't think I have already said that. I agreed to your former question, that the assets of the present Appellant company are at a much greater valuation than those assets were in the books of the earlier and former Pioneer—the Pioneer Laundry & Dry Cleaners Limited."

Then on page 53:

"Q. Let us not split hairs about it.

A. I would prefer to say that they are in the books of the Pioneer Laundry & Dry Cleaners Limited—

40 Q. Which one?

A. The Appellant.

Q. Yes.

A. —at a much greater—or at a greater valuation than in the books of the predecessor, or the Pioneer Laundry & Dry Cleaners Limited now in liquidation."

RECORD
In the
Exchequer Court
of Canada

No. 11
Reasons for
Judgment
Angers, J.
Nov. 4, 1937
(Contd.)

RECORD
 In the
 Exchequer Court
 of Canada
 No. 11
 Reasons for
 Judgment
 Angers, J.
 Nov. 4, 1937
 (Contd.)

George William Thompson, who qualified himself as income tax specialist, was called as witness by the Respondent. He was shown circular No. 20 and the schedule of rates attached thereto (Exhibit 3) and was asked if the rules contained therein were adhered to in all cases; counsel for the Appellant objected to the question and the objection was maintained. The Respondent adduced no other oral evidence.

Two letters were filed by the Respondent, one from Respondent's solicitor to Appellant's solicitor dated September 2, 1936, and the other from Appellant's solicitor to Respondent's solicitor 10 dated September 3, 1936.

The first one, marked as Exhibit B, reads as follows:

"Will you please advise me if you will admit for the purposes of the trial of this appeal that during the fiscal year ended March 31st, 1933, the shareholders of the Appellant, Pioneer Laundry & Dry Cleaners Limited, were as follows, namely:—

Home Service Company Limited.....	97 shares	
Charles H. Wilson	1 share	
Mary E. Stewart.....	1 share	20
Thomas H. Kirk.....	1 share	
	<hr/>	
	100 shares	
	<hr/>	

and that the three persons above named were during such fiscal year shareholders of the Home Service Company Limited."

The second one, filed as Exhibit C, reads thus:

"Yours of the Second received. We are instructed that the answer to the question you put is 'Yes'." 30

The proof shows that the Minister delegated his powers to the Commissioner, as authorized by section 75 of the Act: see Exhibits 14, 15, D, E and F.

The point in controversy is governed by the first provision of paragraph (a) of subsection 1 of section 5 of the Income War Tax Act. The material provisions of subsection 1 read as follows:

" 'Income' as hereinbefore defined shall for the purposes of this Act be subject to the following exemptions and deductions:

(a) Such reasonable amount as the Minister, in his 40 discretion, may allow for depreciation, . . . "

It was submitted on behalf of the Appellant that the Minister had exercised his discretion in issuing on August 30, 1918, a circular, numbered 20, reading in part as follows:

RECORD
In the
Exchequer Court
of Canada

RE: DEPRECIATION

No. 11
Reasons for
Judgment
Angers, J.
Nov. 4, 1937
(Contd.)

“In dealing with all Income Tax claims for depreciation, the following general rules should be observed. Any special circumstances which seem to warrant variation from these rules must be submitted to this office for approval.

10 1. The value and character of the asset on which depreciation is claimed must be stated in each case.

2. The value to be stated must be the cost value to the taxpayer.

3. The rates of depreciation on various classes of assets mentioned in the hereto annexed schedule must be strictly adhered to as the maximum rates to be allowed by Inspectors, except on special authority from this office. Where lower rates are claimed by the taxpayer in the returns they, of course, are not to be disturbed.”

A copy of this circular was filed as Exhibit 3.

20 An appendix to circular No. 20 was issued by the Commissioner of Income Tax on May 11, 1927; it reads thus:

“DEPRECIATION ON AUTOMOTIVES

30 Cases have arisen from time to time in which claims are made for a greater allowance than as presently prescribed, as a deduction from profits for wear and tear of automobiles and motor trucks used exclusively in the businesses of manufacturing, transportation, merchandising and commercial concerns of a general nature. The grounds of complaint in most cases are similar and refer generally to various forms of rough usage to which cars are subjected: consequently new cars have to be purchased before the full value of the old car is fully depreciated on the books of the concern.

As a result, it has now been decided to modify the rates heretofore allowed and to institute a more even spread of the useful life of automobiles, notwithstanding any ruling to the contrary contained in circular No. 20, or other instruction issued by this Department relating to depreciation.

The following rates in regard to all cases so far not disposed of are effective:

RECORD
 In the
 Exchequer Court
 of Canada

No. 11
 Reasons for
 Judgment
 Angers, J.
 Nov. 4, 1937
 (Contd.)

For the first year a rate may be allowed up to 25% on the cost price, and thereafter a rate of 20% in each year up to 85% of the total cost, when the question of further writing off will be reconsidered . . .”

A copy of this appendix was filed as Exhibit 4.

On May 15, 1933, an appendix to circular No. 189 (not filed) was issued by the Commissioner, worded as follows:

“DEPRECIATION

The maximum depreciation allowable in any period shall be the amount incorporated in the profit and loss, surplus or similar account in the usual books of record of the taxpayer on the statutory date for filing returns, provided the said amount shall not exceed the amount allowable under the regulations issued by the Department. 10

* * * * *

This ruling applies to assessments for the fiscal periods ending in 1932 and subsequent thereto and any prior rulings are modified accordingly.”

A copy of this appendix was filed as Exhibit 5.

Another appendix to circular No. 189 was issued by the Commissioner on November 25, 1933, changing the year “1932” to the year “1933” in the last paragraph of the appendix of May 15, 1933: see Exhibit 6. 20

I may note incidentally that a copy of circular No. 218, dated December 11, 1928, and a copy of an appendix to circular No. 239, dated September 8, 1931, were filed respectively as Exhibits 17 and 18; I do not think that they have any relevance to the question at issue.

The right of the taxpayer to the allowance is statutory; the discretion of the Minister exists merely in respect of the amount of the deduction; the rate of the depreciation is to be fixed by the Minister. 30

The Minister has determined the rates of allowances for depreciation by circular No. 20 and the schedule attached thereto (Exhibit 3) and the appendix to said circular (Exhibit 4). The Minister was entitled to change these rates whenever he saw fit, but he did not do it and the rates fixed by circular No. 20, the schedule thereto and the appendix of May 11, 1927, were still in force and effect during the fiscal year ending March 31, 1933, and were binding upon the Minister. 40

It was urged on behalf of the Respondent that the rules and regulations contained in the circulars, appendices and schedules are merely intra-departmental instructions for the guidance of officials of the department and are not destined to the public; counsel for the Respondent, on this ground, challenged their admissibility in evidence and objected to their production. I am not inclined to adopt this view. A taxpayer is, as I think, entitled to know the rates of allowances for depreciation so as to be in a position to determine the amount of his net revenue for any taxing

10 period. These circulars, appendices and schedules are not only for the direction of income tax inspectors but are also for the guidance of the public. I do not think that, if a taxpayer enquired from the income tax inspector of his district the rate or percentage of the amount allowed for depreciation, the income tax inspector could rightfully refuse to give him the information asked for.

The Minister, as I have already said, is, under paragraph (a) of subsection 1 of section 5, bound to exercise his discretionary powers in determining the rate or percentage to be allowed for

20 depreciation in a reasonable manner. A number of cases were cited dealing with the exercise of discretion by the courts, by Ministers of the Crown, by corporations and by other public bodies which are not in *pari materia* and which offer no particular interest.

Has the Minister, in the present instance, exercised his discretion in a reasonable manner? The objection to the admissibility in evidence of the circular, schedule and appendix aforesaid being overruled, this is the main, not to say the sole, question arising for determination.

Regarding the Willys-Knight Coupe, the Essex Coupe and

30 the truck body, Cotter admitted that the sum of \$255.08 was a fair and reasonable allowance for depreciation (dep. p. 43). In fact it is somewhat over the rate fixed by the Minister: 25% for 10 months on \$815 is \$169.79 and not \$186.77 as mentioned. The question in dispute concerns the depreciation of the articles acquired from Home Service Company Limited in virtue of the agreement Exhibit 1.

It was submitted on behalf of Appellant that there is no provision in the statute stipulating that a taxpayer is debarred from a right of depreciation because some other person owning

40 the same article has previously obtained depreciation on that article, even to its full value. Counsel for Appellant submitted that every taxpayer is entitled to his depreciation.

In support of his argument counsel relied on sections 9 and 5 of the Act. Section 9 says (*inter alia*):

RECORD
 In the
Exchequer Court
 of Canada
 No. 11
 Reasons for
 Judgment
 Angers, J.
 Nov. 4, 1937
 (Contd.)

RECORD
 In the
 Exchequer Court
 of Canada
 No. 11
 Reasons for
 Judgment
 Angers, J.
 Nov. 4, 1937
 (Contd.)

“There shall be assessed, levied and paid upon the income during the preceding year of every person

(a) Residing or ordinarily resident in Canada during such year;

* * * * *

a tax at the rates applicable to persons other than corporations and joint stock companies set forth in the First Schedule of this Act upon the amount of income in excess of the exemptions provided in this Act: Provided that the said rates shall not apply to corporations and joint stock companies.

10

2. Save as herein otherwise provided, corporations and joint stock companies, no matter how created or organized, shall pay a tax upon income at the rate applicable thereto set forth in the First Schedule of this Act.”

Section 5, as we have seen, stipulates that “ ‘income’ as hereinbefore defined shall for the purposes of this Act be subject to the following exemptions and deductions:

(a) Such reasonable amount as the Minister, in his discretion, may allow for depreciation.”

From this counsel for Appellant concludes that we have the 20 express statement of the legislature that every person is entitled to his proper deduction for depreciation on his income tax and that there is no distinction to be drawn between a person who owns second hand articles and one who owns new articles.

It is indisputable, and it is not in fact disputed, that every person, who is liable to pay a tax on his income, is entitled to the deductions provided for in section 5. The question, however, is to determine whether, under section 5, the Appellant has the right to claim a deduction on its income for depreciation of its assets, having regard to the particular conditions and circum- 30 stances in which these assets were acquired and appraised by the Appellant.

According to Appellant’s contention, the depreciation is to be computed on the cost to the taxpayer of the articles allegedly depreciated; this statement is, in my judgment, too broad and inexact; the depreciation must be estimated on the real value of the articles. Basing the depreciation on the cost to the taxpayer would mean opening the door to all kinds of fraud. What seems to me difficult to understand is why the Respondent did not take the means of having an appraisal made of the articles in question 40 and of adducing evidence to establish their value. However that may be, I have to decide the case on the evidence of record. This

evidence, particularly the admissions (Exhibits 16 and G) and the testimony of Cotter, establishes that, although the Appellant is strictly speaking a different legal entity from the old Pioneer Laundry & Dry Cleaners Limited, it is in reality the successor of the "old company": same name, same shareholders, same assets with a few exceptions. A thing which surprises me is that the new company was incorporated on the 23rd of March, 1932, when the "old company" was still in existence; the resolution in virtue of which the "old company" went into voluntary liquidation was
 10 only passed on the 30th of March, 1932.

The fact that the transfer from the "old company" to the new company was effected through the intervention of another company, also incorporated on the 23rd of March, 1932, viz. Home Service Company Limited, whose shareholders are the same as those of the Appellant, does not regularize the position.

The new company cannot claim more allowance for depreciation than its predecessor could have done, had it not gone into voluntary liquidation and transferred its assets to Home Service Company Limited, which in turn transferred them to the Appel-
 20 lant. The "old company" was granted all the allowance for depreciation provided for by the statute and the rules and regulations; I do not think that it could have claimed more.

For these reasons I have reached the conclusion that the appeal must fail.

There will be judgment dismissing the appeal with costs.

RECORD
 In the
 Exchequer Court
 of Canada

No. 11
 Reasons for
 Judgment
 Angers, J.
 Nov. 4, 1937
 (Contd.)

RECORD

*In the
Supreme Court
of Canada*

IN THE SUPREME COURT OF CANADA

BETWEEN:

No. 12
Notice of
Appeal
Nov. 29, 1937

PIONEER LAUNDRY & DRY CLEANERS LIMITED,
Appellant,

AND:

THE MINISTER OF NATIONAL REVENUE,
Respondent.

No. 12

NOTICE OF APPEAL

TAKE NOTICE that the above named Appellant is appealing 10
to the Supreme Court of Canada and did on Monday the 29th
day of November, 1937, pay \$50.00 into the Supreme Court of
Canada as security for costs.

DATED at Ottawa the 29th day of November, 1937.

Powell, Aylen & Maclaren,
Ottawa Agents for
Griffin, Montgomery & Smith
Appellant's Solicitors.

To:

The Minister of National Revenue
The Registrar of the Exchequer Court.

20

IN THE EXCHEQUER COURT OF CANADA

RECORD
*In the
Exchequer Court
of Canada*
No. 13
Order re
Exhibit No. 18
Jan. 6, 1938

BEFORE THE PRESIDENT }
IN CHAMBERS: }

BETWEEN:

PIONEER LAUNDRY & DRY CLEANERS LIMITED,
Appellant,

AND:

THE MINISTER OF NATIONAL REVENUE,
Respondent.

10

No. 13

ORDER

UPON the application of the Appellant, and upon hearing Counsel for the Appellant and the Respondent,

IT IS ORDERED that the list referred to in exhibit number Eighteen shall be added to the said exhibit.

DATED at Ottawa, this Sixth day of January, A.D., 1938.

“RALPH M. SPANKIE,”
Deputy Registrar

LAW STAMP

20 50c

RECORD
 In the
 Supreme Court
 of Canada

IN THE SUPREME COURT OF CANADA
 Before the Registrar in Chambers

No. 14
 Order
 Dispensing
 with Printing
 Certain
 Exhibits
 Jan. 21, 1938

IN THE MATTER OF THE INCOME WAR TAX ACT
 BETWEEN:
 PIONEER LAUNDRY & DRY CLEANERS LIMITED,
 Appellant,
 AND:
 THE MINISTER OF NATIONAL REVENUE,
 Respondent.

No. 14

10

ORDER DISPENSING WITH PRINTING
 CERTAIN EXHIBITS

UPON the application of the Appellant and upon the consent of the Respondent and upon hearing Counsel for both the Appellant and the Respondent,

IT IS ORDERED that the printing of Exhibit number 2, being Appellant's Income Tax Return for the year ending March 31st, 1933 and Exhibit number 7 being Notice of Assessment number 347, dated February 19th, 1935 be dispensed with:

IT IS FURTHER ORDERED that ten copies of the said 20
 Income Tax Return and ten copies of the said Notice of Assessment be filed for use of the Court.

IT IS FURTHER ORDERED that the following Exhibits filed in the Court below and being number 8—Notice of Appeal to the Minister of National Revenue dated March 9th, 1935; number 11—Decision of the Minister of National Revenue dated May 30th, 1935; number 12—Appellant's Notice of Dissatisfaction dated June 24th, 1935; number 13—Reply of Minister of National Revenue dated November 28th, 1935 be dispensed with in the printing of the Exhibits in Part II of the Case, the same 30
 being printed and appearing in Part I of the Case as part of the Record.

IT IS FURTHER ORDERED that the printing of Exhibit number 16, being Paragraph 8 of mutual admissions dated April 4th, 1936 be dispensed with, the same appearing in full in Exhibit "A" filed in the Court below and printed as an Exhibit in this case.

IT IS FURTHER ORDERED that the costs of this application shall be costs in the cause.

DATED this 21st day of January, A.D. 1938.

"J. F. SMELLIE,"

Registrar

10

LAW STAMP

\$2.00

RECORD
 In the
 Supreme Court
 of Canada
 No. 14
 Order
 Dispensing
 with Printing
 Certain
 Exhibits
 Jan. 21, 1938
 (Contd.)

No. 15

AGREEMENT AS TO CASE

No. 15
 Agreement
 as to Case
 Jan. 31, 1938

The parties hereto agree upon the following case in appeal:

- | | | |
|----|--|---------------|
| | 1. Statement of Case. | |
| | 2. Notice of Appeal to Minister of
National Revenue | Mar. 9, 1935 |
| 20 | 3. Decision of Minister of
National Revenue..... | May 30, 1935 |
| | 4. Appellant's Notice of Dissatisfaction..... | June 24, 1935 |
| | 5. Reply of Minister of
National Revenue..... | Nov. 28, 1935 |
| | 6. Certificate..... | Dec. 3, 1935 |
| | 7. Statement of Claim..... | Jan. 11, 1936 |
| | 8. Statement of Defence..... | Feb. 27, 1936 |
| | 9. Reply and Joinder of Issue..... | Mar. 6, 1936 |
| | 10. Judgment, Angers J..... | Nov. 4, 1937 |
| | 11. Reasons for Judgment of Angers J..... | Nov. 4, 1937 |

RECORD
 In the
 Exchequer Court
 of Canada
 No. 15
 Agreement
 as to Case
 Jan. 31, 1938
 (Contd.)

12. Notice of Appeal to
 Supreme Court of Canada.....Nov. 29, 1937
13. Order, Maclean J. re list
 being part of Exhibit No. 18.....June 6, 1938
14. Order dispensing with
 printing certain exhibits.....Jan. 21, 1938
15. Agreement as to Contents of Case.
16. Registrar's Certificate.
17. Certificate certifying Case.

APPELLANT'S EVIDENCE

10

18. Wm. Henry Cotter:
 - In Chief.....Sept. 8, 1936
 - Cross-examination.....Sept. 8, 1936

RESPONDENT'S EVIDENCE

19. Geo. Wm. Thompson:
 - In Chief.....Sept. 8, 1936
20. All the Exhibits being number 1 to 22 in-
 clusive and "A" to "G" inclusive, as filed
 in the Exchequer Court.

DATED this 31st day of January, A.D. 1938.

20

"MARTIN GRIFFIN,"

Solicitor for Appellant

"D. DONAGHY,"

Counsel for Respondent

IN THE SUPREME COURT OF CANADA
ON APPEAL FROM THE EXCHEQUER COURT
OF CANADA

RECORD
In the
Supreme Court
of Canada
No. 16
Registrar's
Certificate

IN THE MATTER OF THE INCOME WAR TAX ACT

BETWEEN:

PIONEER LAUNDRY & DRY CLEANERS LIMITED,
Appellant,

AND:

THE MINISTER OF NATIONAL REVENUE,
Respondent.

10

No. 16

CERTIFICATE OF REGISTRAR

I, the undersigned, Registrar of the Exchequer Court of Canada, do hereby certify that the foregoing printed documents from page 1 to 91, inclusive is the case stated by the parties pursuant to Section 68 of the Supreme Court Act and the rules of the Supreme Court of Canada in an appeal to the said Supreme Court of Canada in this cause.

IN WITNESS WHEREOF I have hereunto subscribed my
20 hand and affixed the seal of the Exchequer Court of Canada this
day of A.D. 1938.

Registrar, Exchequer Court
of Canada

RECORD

In the
Supreme Court
of Canada

No. 17
Certificate
as to Case

IN THE SUPREME COURT OF CANADA

BEFORE THE REGISTRAR IN CHAMBERS

IN THE MATTER OF THE INCOME WAR TAX ACT

BETWEEN:

PIONEER LAUNDRY & DRY CLEANERS LIMITED,
Appellant,

AND:

THE MINISTER OF NATIONAL REVENUE,
Respondent.

No. 17

10

CERTIFICATE AS TO CASE

I, GORDON FORIN MACLAREN, of the City of Ottawa, in the Province of Ontario, hereby certify that I have personally compared the annexed print of the case in appeal to the Supreme Court of Canada with the originals and that the same is a true and correct reproduction of such originals.

DATED at Ottawa, this day of March, A.D., 1938.

Agent for Martin Griffin
Solicitor for the Appellant.

In the Exchequer Court of Canada

RECORD
 In the
 Exchequer Court
 of Canada

No. 18
 Appellant's
 Case
 W. H. Cotter
 Direct Exam.
 Sept. 8, 1936

IN THE MATTER OF THE INCOME WAR TAX
 ACT, being Chapter 97 of the Revised Statutes of
 Canada, 1927, and amendments thereto;

AND IN THE MATTER of the APPEAL of
 PIONEER LAUNDRY AND DRY CLEANERS
 LIMITED, of the City of Vancouver, in the Prov-
 ince of British Columbia,

Appellant,

10

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

PROCEEDINGS AT TRIAL

No. 18

WILLIAM HENRY COTTER, a witness on behalf of the Appel-
 lant, being first duly sworn, testified as follows:

Mr. Griffin: I propose to lead on the unimportant matters.

DIRECT EXAMINATION BY MR. GRIFFIN:

- Q. You are a chartered accountant? A. Yes.
- 20 Q. Of the firm of Riddell, Stead, Hodges & Winter? A. Yes.
- Q. How long has that firm carried on its profession in the
 City of Vancouver? A. Since 1909.
- Q. When did you become a chartered accountant? A. March
 14th, 1923.
- Q. And you had a period of apprenticeship of how many
 years? A. Approximately five years.
- Q. I believe the firm of Riddell, Stead, Hodges & Winter
 are the auditors for the Appellant Company? A. Yes.
- Q. And that your firm attended to their affairs or that you
 30 yourself attended to their affairs with the assistance, from time
 to time, an occasion required of the senior partner of the firm,
 Mr. G. E. Winters? A. Yes.
- Q. And you prepared the income tax return in question
 in March, 1933, that is, Exhibit 2? A. I prepared the return,
 but the balance sheet, and profit and loss statement was prepared
 by the company's book keeper. I checked and approved the
 balance sheet and Mr. Winter approved and signed it.

RECORD
 In the
 Exchequer Court
 of Canada

No. 18
 Appellant's
 Case
 W. H. Cotter
 Direct Exam.
 Sept. 8, 1936
 (Contd.)

Q. Did the Appellant Company, for that year, for the fiscal year ending the 31st March, 1933, have a special account in the books for depreciation on the machinery, horses, automobiles and furniture? A. Yes.

Q. Are these the correct accounts. You may use this tax return, machinery and equipment \$14,131.15? A. Yes.

Q. Being at the rate of 10% of the cost price? A. Right.

Q. Automobiles \$2,935.08, being at the rate of 20% of the cost price? A. Yes.

Q. Horses and wagons \$135.25, being at the rate of 10%? 10
 A. Yes.

Q. Furniture and fixtures \$574.07, being at the rate of 10%?
 A. Yes.

Q. Making a total of \$17,775.55? A. Yes.

Q. Was this depreciation duly entered in their books in the regular and customary manner of making them up for the the year? A. Yes.

Q. On what basis were these percentages applied to these various articles? A. The amounts were based upon the percentages which were customarily in use by the Department, and 20 were used by the auditors in determining depreciation.

Q. In what manner did you as an auditor become informed of the percentages which the Department would permit to be deducted for the purpose of fixing taxable income? A. I became aware of the percentages by various interviews I had with the Department of Income Tax on various other occasions, and in addition there were certain rules and regulations issued in a printed circular 20, dated August 30th, 1918, to which was appended a schedule of depreciation rates, and another one dated the 11th May, 1927 which dealt with depreciation on automobiles. 30

Q. Can you produce a list of machinery and equipment, automobiles, horses and wagons dealt with in this return? A. I can produce a list, but it is not available at the moment here.

Q. You have a complete list of everything? A. I have.

Q. In particular, will you produce a list of three articles mentioned in opening, bought from persons other than Home Service Company? A. I can produce the actual purchase invoices. That is the invoice covering the purchase of the Willys-Knight.

Mr. Griffin: I tender invoice dealing with purchase of 40 Willys-Knight coupe, the depreciation on which forms part of the \$255.00.

(INVOICE MARKED EXHIBIT No. 19)

The Witness: This relates to the purchase of the Essex coupe.

Mr. Griffin: I now tender as Exhibit 20 the invoice and documents relating to the purchase of the Essex coupe.

(INVOICE MARKED EXHIBIT No. 20)

Q. I now tender the document relating to which? A. The truck body.

Q. The purchase of the truck body? A. Yes.

(INVOICE MARKED EXHIBIT No. 21)

Q. Now, you said you had available, if necessary, a complete list of all machinery and equipment, automobiles, horses and wagons, furniture and fixtures, which this case deals with, over and above the three mentioned, in a book of some kind? A. That is right.

Q. That is available if required? A. Yes.

Q. And on what basis were the values fixed for those articles? A. They were fixed by means of an independent appraisal made on February 12th.

Q. And it is on that appraisal that the purchase price referred to in Exhibit 1, that is the purchase price of the goods from the Home Service Company to the Appellant was fixed? A. That is the basis, yes.

Q. Were those three, the Willys-Knight, the Essex cars, and the truck body, all new? A. Yes, all purchased new.

Q. Were the other articles new articles, or second hand? A. No, they had been in use some years by other companies.

Q. Referring to the practice of accountants and auditors regarding used articles, is the principle of depreciation to be applied in the same manner as to new articles purchased by the taxpayer? A. The principle of depreciation is applied identically the same whether the article is new or second hand. The life of a new article naturally would have greater length than a similar article used, but with a modification to cover that particular circumstance. The principle of depreciation is identical in both cases.

Q. Now, you have heard the question raised in regard to the allowance of \$255.08 as depreciation on automobiles which the Department have allowed. Is this deduction apparent from the notice of assessment. Is the nature of the taxation or the article upon which it is granted . . . can it be deduced or discovered from the notice of assessment itself? A. No, it could not.

Q. How then can it be discovered what the actual deduction was for? A. Only by a knowledge of the practice in use by the Department of determining depreciation on that type of article.

Q. How did you become aware of it? A. I became aware of it on various occasions in which the same question arose. In this particular case I obtained the information from the staff of the Inspector of Income Tax.

RECORD
 In the
 Exchequer Court
 of Canada
 No. 18
 Appellant's
 Case
 W. H. Cotter
 Direct Exam.
 Sept. 8, 1936
 (Contd.)

RECORD
 In the
 Exchequer Court
 of Canada

No. 18
 Appellant's
 Case
 W. H. Cotter
 Direct Exam.
 Sept. 8, 1936
 (Contd.)

Mr. Donaghy: I submit that any statement made by any member of the staff of the Income Tax Department cannot be treated as an admission by the Crown.

Mr. Griffin: I would argue that a statement from the local inspector of taxation in regard to the business carried on by them in their ordinary duties would be binding on the Crown as the information given. I would not argue that the ruling would be binding, but the information given would be binding.

Q. I refer to the notice of assessment. Is it possible to discover from that notice of assessment, and income tax return whether or not the whole of the depreciation was refused in respect of machinery and equipment? A. Yes, you can determine it by comparing the amount disallowed as shown by the notice of assessment that the entire machinery depreciation list was disallowed. 10

Q. Horses and wagons? A. The entire claim was disallowed.

Q. Furniture and fixtures? A. The same, likewise.

Q. In respect of autos, the amount claimed was \$2935.08?

A. Yes.

Q. And the amount allowed? A. \$255.08. 20

Q. Is it possible to deduce the amount allowed on automobiles? A. It is shown as \$255.08.

Q. And that is in respect of what particular article?

Mr. Donaghy: Q. How do you know? A. I knew the principle under which the depreciation was applied by the Department, and in fact when I applied the principle to the figures, I found the Department had applied that principle.

Q. By an inspection of the company's own books and records? A. Yes.

Q. Did you verify that deduction from the Departmental officers? A. Yes, I did. 30

Q. It is before us that the amount of those three articles mentioned were not allowed for the full yearly period, but only for a portion of the yearly allowance. Will you explain that?

A. The depreciation allowed was at the rate of 25%. The Department apparently allowed depreciation for 10 months covering the period during which the truck was owned during the fiscal year, and accordingly allowed 10/12ths of the depreciation rate in effect.

Q. They did not allow the full year's depreciation unless the article was owned a year? A. Exactly. 40

Q. As to the practice of accountancy, has it provided for the preparation of balance sheets and profit and loss accounts—for how long a period? A. Since companies first began or possibly before, balance sheets and profit and loss statements have been in regular use.

Q. What is the motive of having it in companies' affairs apart from income tax business? A. Repeat the question, please.

Q. What was the motive of providing depreciation in companies' statements before income tax made it necessary? A. In order to prevent dividends being paid out of capital.

Q. What is the established practice among accountants and auditors in British Columbia with regard to depreciation and so on before the Income Tax Act was enacted? A. The practice among accountants and auditors of providing for depreciation was based upon the general principles of depreciation which have not changed as a result of the enactment of any Income Tax Act, and I would say the rate of depreciation allowed by the Department would be taken as a fair indication of the rate prior to the passing of the Act.

Q. Do you know the circumstances under which Circular Number 20 happened to be issued? A. It is my information—

Mr. Donaghy: Oh, I object.

Mr. Griffin: Unless you were personally concerned, there is no good in it? A. No, I was not.

Q. Are there standard text books on the question of accounting? A. Yes.

20 Q. Are they available? A. Yes.

Q. Do these works discuss the subject of depreciation? A. Yes, particularly P. D. Leeks on depreciation and wasting assets.

Q. Are you familiar with the practice under the local Act in British Columbia? A. Yes.

Q. To what extent, if at all, can you of your own knowledge verify the fact that percentage depreciation claimed in an income tax return fairly represents the exact depreciation of all the articles? A. I know depreciation as I have seen it. I know that wasting assets depreciate with use and age, and I know that the rates used were generally considered reasonable and fair in a case of similar articles. The amount, or the depreciation which had been suffered might be greater or might be less than the actual depreciation or rather less than the rate provided, and the rate can only be taken as an average.

Q. The depreciation on one machine might be more, and on another less than the allowed percentage? A. Yes.

Q. But on the average you regard the percentage as fair? A. Yes.

Q. Exhibit 1 which has been put in, being the contract of sale from the Home Service Company to the Appellant Company, it provides as part of the consideration that certain debts are to be paid. Were those debts afterwards ascertained? A. Yes, they were.

Q. You can have the document. I just want to verify the amount. Can you advise us of the amount of the debts? A. If I may refer to this. The amount of the debts was \$10,277.23.

Q. And if that be added to the named consideration in the

RECORD

In the
Exchequer Court
of Canada

No. 18
Appellant's
Case
W. H. Cotter
Direct Exam.
Sept. 8, 1936
(Contd.)

RECORD
 In the
 Exchequer Court
 of Canada

No. 18
 Appellant's
 Case
 W. H. Cotter
 Direct Exam.
 Sept. 8, 1936
 (Contd.)

Exhibit which is \$170,549.70, it makes a total consideration of \$180,826.93? A. That is right.

Q. Is it necessary, in filing an Income Tax Return, that that paragraph 26 therein should contain the heading of particulars of depreciation with the cost of the articles, the rate of percentage, and that the calculated amount should be filled in in order that the return be available to the Department? A. Yes, it would be regarded as being incomplete if that were not completed or filled in.

Q. I observed in the decision of the Minister which has been 10 filed, and dated the 30th May, 1935, that he makes the statement: "And whereas during the year 1932, Pioneer Investment Company Limited who owned and controlled Pioneer Laundry & Dry Cleaners Limited disposed of its interests to Home Service Company Limited." Is this a correct statement, did the Pioneer Investment Company Limited sell anything to the Home Service Company Limited, anything that we are concerned with at least? A. No, the valuable assets of Pioneer Investments Limited were in the shares of seven subsidiary companies. None of these were held by Home Service Company or disposed of by Pioneer Invest- 20 ment Company in any way.

Q. The Minister makes the following further statement in the same document: "And whereas Home Service Company Limited incorporated the original assets of Pioneer Laundry & Dry Cleaners Limited into the records of the taxpayer at appreciated values." Is this an accurate statement of fact? A. No. The Home Service Company Limited have nothing whatever to do with incorporating the assets of Pioneer Laundry & Dry Cleaners into its own records. The Pioneer Laundry & Dry Cleaners itself controlled all entries into its own records in rela- 30 tion to the assets acquired.

Q. There is a suggestion in the Minister's statement where he speaks of the Pioneer Laundry & Dry Cleaners Limited having had entries made for them at appreciated values. It would appear to be a suggestion that the Appellant Company watered its capital by adding something to the actual cost. Was any such thing done? A. No, the assets were recorded in their books at the actual and original cost price to them.

Q. The Minister says that the assets were taken over by the Home Service Company from the Pioneer Investment Company. 40 Is that true, that is, these assets we are dealing with in this case? A. No, none of these assets were taken over by Home Service Company Limited.

Q. The Minister makes the statement that there was no actual change in ownership. Is that a correct statement of the transaction between Home Service Company and the Appellant? A. No.

Q. In other words, so far as you are able to express the view, was there an absolute and complete change of ownership? A. There was.

Q. Does the Act state that depreciation is to be limited to the—

Mr. Donaghy: That is a matter of going into the Act.

Mr. Griffin: We can find it there.

Q. What has been the regular practice of the Department with respect to second hand articles? A. The owner is allowed
10 the cost of that article regardless of whether the article was purchased at or below the original cost, and subject to the title being verified.

Q. Was the sum of \$255.08 a reasonable and fair sum to allow for the depreciation of those three articles? A. Yes.

Q. Would \$255.08 be a fair and reasonable amount to allow apparently for the year on the automobiles, machinery and equipment, horses and wagons? A. In my opinion it is most fair and reasonable to do so.

Mr. Griffin: Your witness.

20 CROSS-EXAMINATION BY MR. DONAGHY:

Q. You have seen the balance sheet attached to the Income Tax return? A. Yes.

Q. For the fiscal year ending the 31st March, 1933? A. Yes.

Q. Now, you have told my learned friend that the machinery, plant and equipment, buildings and so on that are listed in that balance sheet are the same as are entered in the books of the company in the regular way. Is that right? A. Yes.

Q. The same figures? A. Yes, that is right.

Q. Are you familiar with the Income Tax Return for the
30 fiscal year ending the 31st March, 1932 of this Appellant Company? A. Yes.

Q. The predecessor of this company? A. Yes.

Q. Not this company, it did not exist. Its predecessor had the same name, Pioneer Laundry & Dry Cleaners Limited? A. Yes.

Q. And the Income Tax Return for the fiscal year ending the 31st March, you say you are familiar with that? And the balance sheet forms part of it? A. Yes.

Q. Referring to the balance sheet for that fiscal year accompanying the return for the fiscal year ending the 31st March, 1932,
40 do the figures show the value of the machinery and equipment and other articles as shown in that balance sheet, do they correspond accurately with the figures shown in the books of that company at that time? A. Yes, sir, yes, they do.

Q. Have you that balance sheet which accompanied the return for the fiscal year ending the 31st March, 1932? A. I

RECORD
In the
Exchequer Court
of Canada
No. 18
Appellant's
Case
W. H. Cotter
Direct Exam.
Sept. 8, 1936
(Contd.)

W. H. Cotter
Cross-Exam.
Sept. 8, 1936

RECORD
 In the
 Exchequer Court
 of Canada

No. 18
 Appellant's
 Case
 W. H. Cotter
 Cross-Exam.
 Sept. 8, 1936
 (Contd.)

haven't it here, but I can produce it. I can produce it later.

Mr. Griffin: I am in control of what is produced. I do not see the relevancy of it. I am not making any statement about it now, but will confer with the witness on that point.

Mr. Donaghy: Very good.

Q. Let us turn to the Income Tax Return made by the predecessor of this Appellant for the fiscal year ending the 31st March, 1931. Are you familiar with it? A. I have seen it. I cannot say that I am familiar with it at the moment. I probably had something to do with the preparation of it. 10

Q. Will you say that the statement of the value of the equipment and other articles shown in that balance sheet corresponds accurately with the entries in the books of the company? A. Yes.

Q. Do you believe that general statement would be true regarding the balance sheet attached to the Income Tax Returns of the predecessor of the Appellant for the years to 1931? A. Yes.

Q. And it would be true in regard to their corresponding with the balance sheet? A. Yes.

Q. And all those returns for all the previous years? A. Yes.

Q. Now, is it true that the value shown in the books of the predecessor of this Appellant and in its Income Tax Returns— 20

Mr. Griffin: May I interpose an objection that what any company did which was formerly the owner of this machinery would not govern the Appellant. My friend uses the word predecessor. There was no contractual relationship between the old company and the Appellant Company. There was no contract between, or sale from one to the other, and they were disassociated as any two companies could be. The submission is that what they did either in the books or out of the books would surely be irrelevant, and thereby ought not to be given in cross-examination, and my submission is that what my learned friend is asking as to what they did in another company is not information on which the Court could act. 30

Mr. Donaghy: In answer, I am submitting that the shareholders of the predecessor of the Appellant, which had the same name as the Appellant, had entered the machinery, equipment and other articles of that predecessor in its books and in the balance sheet accompanying the Income Tax Return for the fiscal year ending the 31st March, 1932 at a certain figure. That then a couple of other companies were incorporated to deal with the assets of those two other companies, these same shareholders who now own the Appellant, and who did own its predecessor of the same name, brought it about so as to appreciate the value of this same machinery, equipment, and other articles, and incorporated that appreciated value into the books of this present Appellant, and then made a claim for a depreciation percentage based on this greatly appreciated value it had entered up in the book. This was 40

all done by the same shareholder. That is a matter of law to be argued later on, but in order to be able to argue it, I want to bring out the facts subject to objection, and I ask to be allowed to put the question.

The Court: I will admit it under the objection at the present time.

Mr. Donaghy: Will you read the question.

(Reporter reads: "Q. Now, is it true that the value shown in the books of the predecessor of this Appellant and in its Income Tax Returns—")

10

Mr. Donaghy: Q. —were greatly increased when transferred into the books of this Appellant and into its balance sheet accompanying its Income Tax Return? A. Yes.

Q. Now, we have heard of the incorporation of the present Appellant, and of the decision of the Minister of the 30th of May, 1935, which is filed, where mention is made of the Pioneer Investment Company Limited, and I take it you say that was a holding company, a share holding company? A. Yes, it would be regarded as such.

20

Q. A share holding company—and it held the shares of the predecessor of this Appellant? A. Yes.

Q. The predecessor of the same name? A. Yes.

Q. Who holds the shares of this Appellant which now holds the same machinery and equipment of its predecessor—who holds its shares? A. The Home Service Company.

Q. Holding now? A. Yes, or nominees.

Q. It holds the shares of the Appellant. The Appellant owns the former assets in the way of machinery, furniture and equipment? A. Not all. It not only holds some of the assets of the predecessor of the same name, but also holds assets, although located in the same building as its predecessor owned, they did not apparently belong to the predecessor. These were included in the purchase price.

30

Q. The holding company now of the shares of the Appellant is the Home Service Company? A. Right.

Q. And the shareholders of the Home Service Company Limited are the same persons as were the shareholders of the other holding Company, the Pioneer Investment Company Limited? A. That is true, identical.

40

The Court: It is now one o'clock. I think we had better adjourn until 2.30.

(1.00 P.M. COURT THEREUPON ADJOURNED UNTIL 2.30 P.M.)

I hereby certify the foregoing to be a true and accurate report of the said proceedings.

"M. S. Bryan"

Deputy Official Stenographer

RECORD
In the
Exchequer Court
of Canada

No. 18
Appellant's
Case
W. H. Cotter
Cross-Exam.
Sept. 8, 1936
(Contd.)

Vancouver, B.C., 8th September, 1936, 2.30 p.m.

RECORD

*In the
Exchequer Court
of Canada*

No. 18
Appellant's
Case
W. H. Cotter
Cross-Exam.
Sept. 8, 1936
(Contd.)

(COURT RESUMED PURSUANT TO ADJOURNMENT)

WILLIAM HENRY COTTER, resumed the stand.

CROSS-EXAMINATION CONTINUED BY MR. DONAGHY:

Q. You were asked by my friend whether or not the statement was correct which is contained in the decision of the Minister of the 30th May, 1935, that the assets of the Appellant were taken over from the Pioneer Investment Company Limited by Home Service Company Limited. Of course, they were not. That is true, is it not? A. That is right. 10

Q. Yes. It is true, though, as said in the Minister's answer, that the Appellant is a subsidiary of Home Service Company Limited? A. That is true.

Q. That is quite true; and it is true that the predecessor of the Appellant—the predecessor which had the same name was a subsidiary of the Pioneer Investment Company Limited? A. That is true.

Q. Yes, and it is true that in the final essence the assets of the Appellant was owned by the same persons beneficiary as were the assets of its predecessor in title of the same name? 20

Mr. Griffin: Now, I am interposing an objection. That is just exactly what my friend objected to this morning when I was endeavoring to draw from this very witness an answer, that it was really a conclusion of law from certain facts. My friend objected and I at once bowed to the objection. Now, I think the same applies to him. He is inviting this witness to draw a conclusion of law from certain facts. In other words, would it be of any value if my friend even gets it, because it is after all, according to his statement, he should not be asked to answer it.

Mr. Donaghy: Well, to save argument, I will just leave out the facts. 30

Q. Shortly, the predecessor having the same name as this Appellant, speaking of these others who follow it—the Pioneer Investment—

Mr. Griffin: I object to my friend making an assertion.

Mr. Donaghy: Q. Is that correct?

Mr. Griffin: No, I submit that one is a predecessor and the other is wrong—the purchaser is at least a person, which has the same relationship to the successor. There is no relationship be-

tween one Pioneer Company and the other—none whatever. If my friend describes it as previous ones then I would have no objection, but describing it as predecessors is inaccurate and misleads the witness as to their position.

Mr. Donaghy: I am not speaking of the legal effect, I am just trying to get the real facts.

Mr. Griffin: I have no objection to the real facts.

Mr. Donaghy: Q. The predecessor in title of these assets, you would understand that, witness, wouldn't you? A. Yes.

10 Q. Was what? A. The predecessor in title was Home Service Company Limited.

Q. Yes, and the predecessor of the Home Service Company Limited in these assets was what? A. In the majority of the assets it was the Pioneer Laundry & Dry Cleaners Limited, now in liquidation.

Q. Yes, the company which I call the predecessor of the present one—having the same name as the present one? A. Having the same name as the present one.

20 Q. Yes, quite right. Now, its shares, that is the company—I will call it the predecessor without putting any technical meaning to it, you see the predecessor, the person I mean having the same name, these shares were held by the Pioneer Investment Company Limited. Is that right? A. That is right.

Q. Yes, and the shares of the Pioneer Investment Company Limited were held by certain persons. That is true, is it not? A. That is true.

30 Q. Yes. Now, the assets, since they have been transferred to the present Appellant, being in its name, of course, all the shares in the present Appellant are held by— A. Home Service Company Limited.

Q. Home Service Company Limited, and the shares in Home Service Company Limited are held by the same persons who hold the shares in the other holding company, the Pioneer Investment Company Limited. Is that true? A. Quite true.

Q. All right; and is it true that what really took place by the incorporation of the Home Service Company, the incorporation of the present Appellant, they are both now incorporations, aren't they? A. Yes.

Q. Conceived and carried out in 1932? A. Yes.

40 Q. Yes, the Home Service Corporation really takes the place of the old Pioneer Investment Company Limited, doesn't it, as a holding company? A. It is the holding company of the present Appellant, yes.

Q. Yes, quite right; and the present Appellant for all practical purposes of ownership of assets takes the place of the old Pioneer Laundry & Dry Cleaners Limited, isn't that true?

Mr. Griffin: That is a conclusion of law entirely again.

RECORD
In the
Exchequer Court
of Canada

No. 18
Appellant's
Case
W. H. Cotter
Cross-Exam.
Sept. 8, 1936
(Contd.)

RECORD
 In the
 Exchequer Court
 of Canada
 No. 18
 Appellant's
 Case
 W. H. Cotter
 Cross-Exam.
 Sept. 8, 1936
 (Contd.)

Mr. Donaghy: No, that is a question of fact as to who owns the assets.

Mr. Griffin: No, it is a conclusion of law as to what is meant by taking somebody's place. Is my friend achieving anything, and if your lordship agrees with me, is it not really a deduction from certain facts? If it is his own deduction, my friend has the advantage of it, if it is sound; if it is unsound he has gained nothing.

Mr. Donaghy: It is simply a question of fact: Does not the present Appellant own the assets of the old Pioneer Laundry & Dry Cleaners Limited? What is your answer? 10

The Court: Yes, that is right.

A. Yes, amongst other assets, yes.

Mr. Donaghy: It is true it does not own the other assets—I think we have that cleared up.

Mr. Griffin: I have no objection to that.

Mr. Donaghy: Q. And you have already said that those assets are set up on the books of the present Appellant at a greatly appreciated value over and above what they were on the books of the old Pioneer Laundry & Dry Cleaners Limited? A. I must 20 correct you. I don't think I have already said that. I agreed to your former question, that the assets of the present Appellant company are at a much greater valuation than those same assets were in the books of the earlier and former Pioneer—the Pioneer Laundry & Dry Cleaners Limited,

Q. Let me put it this way: Isn't it true that they are set up in the books of the present Appellant and in its present balance sheet filed with its return at a greatly appreciated value over and above what those same assets were set up in the books of the old Pioneer Laundry & Dry Cleaners Limited, and in its balance sheet 30 and income tax returns? What is your answer? A. I don't quite understand your word appreciate. It indicates a contrast between two figures, one more and another less. I would prefer to answer—

Q. Let us not split hairs about it. A. I would prefer to say that they are in the books of the Pioneer Laundry & Dry Cleaners Limited—

Q. Which one? A. The Appellant.

Q. Yes. A: —at a much greater—or at a greater valuation than in the books of the predecessor, or the Pioneer Laundry & Dry Cleaners Limited now in liquidation. 40

Mr. Donaghy: Quite right. That is all I asked you.

Mr. Griffin: That is all, thank you.

(WITNESS ASIDE).

Mr. Griffin: I wish to put in—I haven't got it here, my lord, but I can get it in a moment—the Gazette of the 2nd April, 1927, at page 3139.

The Court: April 2nd—

Mr. Griffin: April 2nd, 1927.

The Court: 1927, yes.

Mr. Griffin: Where you will find on page 3139 a notice of appointment of Chester Samuel Walters as Commissioner of Income Tax. That is merely to support in connection with one of these rulings or regulations, and I haven't got a copy for the moment, but—

Mr. Donaghy: That may be put in later.

10 Mr. Griffin: It can be put in later, I presume.

(DOCUMENT MARKED EXHIBIT No. 22)

Mr. Griffin: But the resume of it, which will be Exhibit 22, to take the place—so we will have a complete copy as soon as I have had time to transcribe it.

Mr. Donaghy: Very good.

Mr. Griffin: That, my lord, is the case for the Appellant.

Mr. Donaghy: My lord, I apply to amend a technical error—a typographical error really in paragraph 11 of the Statement of Defence. It refers to section 55, and it should be section 5, and
20 I ask to have the correction made.

The Court: What paragraph is it?

Mr. Donaghy: Paragraph 11 of the Statement of Defence. I pointed this out to my friend—just a typographical error.

The Court: Third line.

Mr. Donaghy: The third line, it should be 5.

The Court: It should be, instead of 55?

Mr. Donaghy: Yes, my lord. That is an obvious typographical error.

My lord, referring to Exhibit 16 put in by my friend,
30 he put in paragraph numbered 8 of the document. I put in the whole document, including paragraph 8, and I suppose we will call this the next exhibit. That will be Exhibit 23.

The Registrar: Exhibit A.

(DOCUMENT MARKED EXHIBIT "A")

The Court: That is your exhibit?

Mr. Donaghy: Yes.

The Court: That will be Exhibit "A" then.

Mr. Donaghy: Exhibit "A"; very good then. This is a memorandum of facts upon which the Appellant and the Respondent herein agree. This has been prepared to obviate the necessity of calling witnesses on several things that we all agree were correct. I shall read it, with your lordship's permission.
40

The Court: Yes.

Mr. Donaghy: (reading Exhibit "A".) You see, my lord, there is an admission there they were fully depreciated before

RECORD
 In the
 Exchequer Court
 of Canada

Proceedings
 at Trial
 Sept. 8, 1936
 (Contd.)

(continuing reading). Also, my lord, I wish to put in as the next exhibit a letter from D. Donaghy to Martin Griffin, K.C., dated September 2nd, 1936, reading as follows (reading letter).

(LETTER MARKED EXHIBIT "B")

Mr. Donaghy: And the answer is the next exhibit, a letter dated September 3rd, 1936, from Mr. Griffin to D. Donaghy, reading as follows (reading letter).

(LETTER MARKED EXHIBIT "C")

Mr. Donaghy: My lord, the next exhibit which I desire to tender is an order made by R. C. Matthews, Minister of National Revenue, dated December 6th, 1933, published in the Canada Gazette of December 16th, 1933, at page 1224, reading as follows (reading order). 10

(DOCUMENT MARKED EXHIBIT "D")

Mr. Donaghy: The next exhibit, my lord, is a similar notice dated the 15th August, 1935, signed by J. Earl Lawson, Minister of National Revenue, and published in the Gazette of August 24th, 1935, at page 546, reading as follows (reading order).

(DOCUMENT MARKED EXHIBIT "E")

Mr. Donaghy: And a similar notice, my lord, signed by J. L. Ilsley, Minister of National Revenue, dated 25th October, 1935, and published in the Canada Gazette of December 7th, 1935, at page 1483. I will not trouble your lordship reading that. It is similar to the last one. 20

The Court: To the same effect?

Mr. Donaghy: To the same effect, yes—practically the same wording.

Mr. Griffin: I take the formal objection so as not to make the record look odd, that these appointments in 1935, if of any value, it must be totally irrelevant to events taking place in 1933. 30

The Court: I think anything posterior to 1933 is entirely irrelevant, is it not?

Mr. Donaghy: That will depend upon the date of the assessment.

Mr. Griffin: I know the date.

Mr. Donaghy: What date is it?

Mr. Griffin: It was in February, 1935.

Mr. Donaghy: Well, then, that was posterior to 1933, you see.

Mr. Griffin: The return is made in the month of July, 1933. 40
 Nothing happening after that could have any effect on the matter whatever.

Mr. Donaghy: Well, of course, an act by the Commissioner or Minister happening after that could have some legal effect when he made assessment.

Mr. Griffin: All right, I have made my objection.

Mr. Donaghy: The assessment, my lord, you see, was made for 1933, and apparently made by the Commissioner.

The Court: The assessment was in 1935.

Mr. Donaghy: Yes, that is why I am putting this in.

10 Mr. Griffin: That doesn't explain it—don't let us cumber up the record with obviously irrelevant things. These documents my friend produces are in August and December, 1935, but the assessment was in February, 1935. That should end it.

The Court: When was the appeal?

Mr. Griffin: The appeal was in March, 1935.

Mr. Donaghy: And the answer—

The Court: And the answer—the reply of the Minister?

Mr. Donaghy: December, 1935, I think, the answer of the Minister.

20 Mr. Griffin: November, so that even on that basis all the documents on the appeal were in before the second of these documents—and the assessment had been completed even before the first one.

Mr. Donaghy: Well, that perhaps applies to the first one. That may be quite correct. Now my friend put in an agreement, my lord—I am just trying to find a reference to it here—oh, yes, Exhibit 1, an agreement of the 1st April, 1932, between Home Service Company and the Appellant. I desire to put in the agreement between William H. Cotter, liquidator of the Pioneer Laundry & Dry Cleaners Limited in voluntary liquidation of the one
 30 part, and Home Service Company Limited of the other part.

Mr. Griffin: I object, my lord, again that that must be an irrelevant thing. No agreement between two parties, neither of whom is the Appellant, could ever be binding on the Appellant, either as a matter of contract or in any other way. The Home Service Company agreed to sell to the Appellant, and the Home Service Company became possessed of the property. The voluntary sale is irrelevant, as we could not take advantage of it, and my friend would be the first to assert if I were to attempt in this case to bring in and offer to your lordship as evidence in favour of
 40 my client an act between two other companies, he would be the first to say *res inter alios acta*.

The Court: No doubt, I believe that his intention is to establish that this company is the same as the old one.

Mr. Donaghy: That is quite right—the same shareholders.

The Court: That is where the connection comes in.

Mr. Griffin: Yes, you want to show how they transferred it around into the new company. Now he may have some design

RECORD
 In the
 Exchequer Court
 of Canada
 No. 19
 Respondent's
 Case
 G. W. Thomp-
 son
 Direct Exam.
 Sept. 8, 1936
 (Contd.)

of that kind, but can he nevertheless make an act in law a deed— you see, it is not testimony he is giving. It is a document signed as an agreement between A and B. Now how could an agreement between A and B affect C, when C is no party thereto?

The Court: If C is the same as A?

Mr. Griffin: If C is the same as A, legally speaking, it would be so, but as C came into existence long after A, and was not in existence at this time— What is the date of the document?

Mr. Donaghy: Both documents are dated the same date.

Mr. Griffin: I have forgotten the date.

Mr. Donaghy: 1st April, 1932.

Mr. Griffin: Yes.

Mr. Donaghy: This appears in the circular, and they came back into the same shareholders' hands, all these assets, showing the track that that thing took in its travels and getting back to the starting point—the same starting point.

Mr. Griffin: It may be anything it likes, but my submission is simply that a contract of A with B, or B with A cannot be evidentiary as against C. That is my submission.

Mr. Donaghy: Just one moment, my lord. My lord, I call 20
 Mr. George Thompson.

The Court: Has that agreement been put in?

Mr. Donaghy: Yes, I put that in as the last exhibit, my lord.

The Court: I will reserve your objection, but I can see what your friend is driving at. That will be F, is it not?

Mr. Griffin: Yes, F.

(DOCUMENT MARKED EXHIBIT "F")

No. 19

GEORGE WILLIAM THOMPSON, a witness called on behalf of the Respondent, being first duly sworn, testified as follows: 30
 DIRECT EXAMINATION BY MR. DONAGHY:

Q. Mr. Thompson, you have been required by me to appear here as a witness? A. Yes.

Q. What is your business? A. Income tax specialist.

Q. How long have you been engaged in the business of an income tax specialist in Vancouver and British Columbia? A. Approximately 15 years.

Q. Yes. A. Prior to that, three years in the Department of National Revenue.

Q. Yes, and taking any general description of the extent of 40 your practice and volume and the kind of concerns you represent, what would you say as to that? A. Oh, I represent several large companies in British Columbia for the purpose of Dominion and Provincial income tax.

Q. Some of the largest British Columbia corporations? A. I believe so.

Q. Yes, and you have quite a large extent of practice in income tax work? A. Yes.

Q. And have had your dealings with the Department of Income Tax? A. Yes.

Q. During those years? A. Yes.

Q. And in connection with this income tax business you had frequent contact, had you, with the officials of the Department both here and in Ottawa? A. Yes.

10 Q. Yes, quite true. Now I wanted to show you an exhibit that has been put in here. Just a moment and I will get the number—Exhibit 3. Now I show you Exhibit 3 (handing document to witness). It is composed of three sheets, will you just look at them now? I want to ask you something about them. You will notice it bears date August 30th, 1918. A. Yes.

Q. Yes. Just read that over and look at the schedule which is part of the exhibit too, the schedule of percentages of depreciation. A. Yes.

Q. You will observe the first paragraph of that exhibit. Do you? A. Yes.

20 Q. It starts off, "Re Depreciation. In dealing with all income tax claims for depreciation, the following general rules should be observed. Any special circumstances which seem to warrant variation from these rules must be submitted to this office for approval." Now in your practice dealing with the Department of National Revenue, were those rules adhered to rigidly in all cases? A. Which rules do you mean?

Q. That you have in the exhibit there.

30 Mr. Griffin: My lord, how could that—I must object to that. That surely cannot be permissible. If my friend should ask this witness whether the Department adhered to their own regulations, if they did it would be a circumstance natural to suppose; if they did not it would be a circumstance unusual to suppose, but neither would be relevant. If the rules are such, however, that they in some cases adhere to them, that is irrelevant, and that in some cases they do not adhere to them is irrelevant. There are the rules, the public are bound by the rules, they are not bound by the tenacity with which the departmental officers abide by them, or their lack of tenacity. It would be unfair, I submit, to the Appellant, who is bound by the rules, and thereby is bound by law to
40 know the rules, to suggest that he is to be also bound by what departmental officials do. It is only an effort to give testimony as to what they in their official capacity do, and my friend objected to that, your lordship, that it ought not to be given, and I did not do so; but to ask them whether the rules have been rigidly enforced is to my mind to ask something that could not possibly be appropriate to this case, and I ask it to be rejected.

RECORD

*In the
Exchequer Court
of Canada*Respondent's
CaseG. W. Thomp-
son

Direct Exam.

Sept. 8, 1936
(Contd.)

RECORD
 In the
 Exchequer Court
 of Canada
 No. 19
 Respondent's
 Case
 G. W. Thomp-
 son
 Direct Exam.
 Sept. 8, 1936
 (Contd.)

Mr. Donaghy: In answer to my friend's objection, my lord, I might say this is along the same lines as the question he put to the last witness which he had in the box, where the question was put to him as to what the practice of the department was, and also the accountancy practice of chartered accountants was in regard to allowing depreciation. He asked that question, and the witness answered the question as to what the practice of the department was.

The Court: Well, you made no objection.

Mr. Donaghy: No, I did not, but my friend put it in and he 10
 is bound by it. He can't blow hot and cold.

Mr. Griffin: I am not objecting to what I put in.

Mr. Donaghy: No, certainly not, but my friend can't blow
 hot and cold.

The Court: I do not think that what the Department may
 have done on a particular occasion is relevant in the present case.

Mr. Donaghy: Very well, my lord.

The Court: Objection maintained.

Mr. Donaghy: Yes, my lord. That is all.

Mr. Griffin: No questions, thank you.

20

(WITNESS ASIDE).

Mr. Donaghy: That is the case for the Respondent, my lord.

The Court: I assume there is no rebuttal?

Mr. Griffin: No, my lord, no further evidence.

IN THE SUPREME COURT OF CANADA

Monday, the 12th day of December, A.D. 1938.

PRESENT:

The Right Honourable Chief Justice;
 The Honourable Mr. Justice Crocket;
 The Honourable Mr. Justice Davis;
 The Honourable Mr. Justice Kerwin;
 The Honourable Mr. Justice Hudson.

10

IN THE MATTER of the Income War Tax Act; and
 IN THE MATTER of the appeal of The Pioneer Lau-
 dry and Dry Cleaners Limited, of the City of Vancouver,
 in the Province of British Columbia,

BETWEEN:

THE PIONEER LAUNDRY & DRY CLEANERS
 LIMITED,

(Appellant) Appellant,

AND:

THE MINISTER OF NATIONAL REVENUE,

20

(Respondent) Respondent.

JUDGMENT

No. 20

The appeal of the above named Appellant from the Judgment of the Exchequer Court of Canada pronounced in the above cause on the 4th day of November, in the year of our Lord one thousand nine hundred and thirty-seven, confirming the assessment levied by the Respondent in respect of income for the taxation period of the Appellant ending March 31st, 1933, having come on to be
 30 heard before this Court on the 28th and 29th days of April in the year of our Lord one thousand nine hundred and thirty-eight, in the presence of Counsel as well for the Appellant as for the Respondent, whereupon and upon hearing what was alleged by Counsel aforesaid, this Court was pleased to direct that the said appeal should stand over for judgment, and the same coming on this day for judgment;

THIS COURT DID ORDER AND ADJUDGE that the said appeal should be and the same was dismissed; that the said judgment of the Exchequer Court of Canada should be and the same
 40 was affirmed;

AND THIS COURT DID FURTHER ORDER AND ADJUDGE that the said Appellant should and do pay to the said Respondent the costs incurred by the said Respondent in this Court.

Settled Feb. 6th, 1939.
 (Sgd.) "J. F. Smellie"

RECORD

In the
 Supreme Court
 of Canada

No. 20
 Judgment
 Dec. 12, 1938

RECORD

*In the
Supreme Court
of Canada*

No. 21
Reasons for
Judgment
The Chief
Justice and
Davis, J.

No. 21

REASONS FOR JUDGMENT

THE RIGHT HONOURABLE CHIEF JUSTICE

THE HONOURABLE MR. JUSTICE DAVIS

The judgment of the Chief Justice and of Davis, J., was delivered by Davis, J.

The Appellant is a company which was incorporated under the Companies Act of British Columbia on the 23rd day of March, 1932, with its head office and principal place of business in the city of Vancouver, where it carries on a laundry and dry cleaning business. The company is a taxpayer within the definition of that word in the (Dominion) Income War Tax Act, R.S.C., 1927 Chap. 97 and amendments. As in duty bound it made its income tax return to the Government for its fiscal year that ended March 31st, 1933. On the form of return supplied by the Income Tax Department and required to be filled in and returned, the Appellant set out, for the purpose of an allowance for depreciation, the value of the company's machinery at \$146,690.13, furniture and fixtures at \$5,740.74, horses and wagons at \$1,352.50, and automobiles at \$14,675.35; and in its said return the Appellant claimed deductions for depreciation according to the customary percentages which were being allowed by the Department: 10% on machinery, horses and wagons, furniture and fixtures; and 20% on automobiles. The total amount of depreciation claimed amounted to \$17,255.55. The amount was totally disallowed with the exception of \$255.08 in respect of three new motor cars which had been purchased by the Appellant. 10 20

The correctness of values of the machinery and other equipment as set out in the return was not questioned by the Department. By Sec. 80 of the Income Tax Act: 30

“Any person making a false statement in any return or in any information required by the Minister, shall be liable on summary conviction to a penalty not exceeding ten thousand dollars or to six months' imprisonment, or to both fine and imprisonment.”

No fraud or improper conduct was alleged against the Appellant. What was said against the Appellant was that the machinery and other equipment (save and except the three new motor cars) had

been purchased by the Appellant from another company, Home Service Company Limited, and that the latter company in turn had purchased the same from the liquidator of still another company (hereinafter for convenience called "the first company") which had had the same name as the Appellant company, and that the shareholders of the Appellant are the same persons as the shareholders of the first company (which had gone into voluntary liquidation) and that as the first company had been allowed over a period of years, approximately 100% depreciation on its book values of the said machinery and equipment, the present company, Appellant, is not entitled to any deduction for depreciation upon the same machinery and equipment.

Further, it was said against the Appellant that it set up its assets on its books at a greater sum than that at which the same assets had been carried on the books of the first company. The Appellant does not deny that. It was proved in evidence that the figures which the Appellant set up in its books as the value of the assets in question were the same as the prices which had been fixed by an independent appraisal as the purchase price of the machinery and equipment when purchased by the Appellant from the said Home Service Company Limited. The Appellant admitted that these amounts were greater than the amounts at which the same assets had been carried on the books of the first company—but, it said, that was no concern of its. What is suggested is that the first company had carried these assets on its books for years, in fact prior to the coming into existence of a Dominion income tax in 1917, at valuations much below their real value, in consequence of which the allowance for depreciation to that company, on the ordinary percentage basis that had been adopted by the Department, had become exhausted.

The Appellant is a separate legal entity. The Government looks to it as such as a taxpayer and has assessed it for income tax. What then are its rights? It is taxable upon its "income" which by Sec. 3 of the Act means its "annual net profit or gain." Now the annual net profit or gain of a commercial corporation cannot fairly be arrived at without taking into account depreciation in its machinery and equipment due to the ordinary wear and tear during the year. While Sec. 6 (b) of the Act provides that in computing the amount of the profits or gains to be assessed a deduction is not to be allowed in respect of any depreciation, depletion or obsolescence, "except as otherwise provided in this Act," Sec. 5 had provided that

"Income" as hereinbefore defined shall for the purposes of this Act be subject to the following exemptions and deductions:

RECORD

*In the
Supreme Court
of Canada*No. 21
Reasons for
Judgment
The Chief
Justice and
Davis, J.
(Contd.)

RECORD

*In the
Supreme Court
of Canada*No. 21
Reasons for
Judgment
The Chief
Justice and
Davis, J.
(Contd.)

(a) Such reasonable amount as the Minister, in his discretion, may allow for depreciation,

It was under this Sec. 5 that the Minister of National Revenue disallowed entirely the deduction claimed from gross profits in respect of depreciation of the machinery and equipment.

The decision of the Minister was in fact the decision of the Commissioner of Income Tax whom the Minister, purporting to act under and by virtue of the provisions of the Act and particularly Sec. 75 thereof, had authorized to exercise the powers conferred by the said Act upon the Minister as fully and effectively as he could do himself, he being of the opinion that such powers may be more conveniently exercised by the said Commissioner of Income Tax. Counsel for the Appellant took no objection to the fact that the decision was that of the Commissioner and not that of the Minister. 10

The grounds for denying any depreciation on the said machinery and equipment to the Appellant were very frankly and fairly stated in the decision, as follows:

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 while the company was incorporated and commenced operations during the year 1932 there was no actual change in ownership of the assets purchased or taken over from Pioneer Investment Company Limited by Home Service Company Limited (of which the taxpayer is a subsidiary) and set up in the books of the taxpayer at appreciated values; that in the exercise of the statutory discretion, a reasonable amount has been allowed for depreciation and that the assesment is properly levied under the provisions of the Income War Tax Act. 20 30

Notice of such decision is hereby given in accordance with Section 59 of the said Act.

DATED at Ottawa this 30th day of May, A.D. 1935.

“R. C. MATTHEWS,”
Minister of National Revenue

per C. F. Elliott,
Commissioner of Income Tax.

The Appellant was entitled to an exemption or deduction in "such reasonable amount as the Minister, in his discretion, may allow for depreciation." That involved, in my opinion, an administrative duty of a quasi-judicial character—a discretion to be exercised on proper legal principles. Section 60 of the Act entitles a taxpayer, after receipt of the decision of the Minister upon appeal from an assessment, if dissatisfied therewith, to appeal to the Court. The decision is appealable; but the exercise of the discretion will not be interfered with unless it was manifestly against sound and fundamental principles.

RECORD
 In the
 Supreme Court
 of Canada

No. 21
 Reasons for
 Judgment
 The Chief
 Justice and
 Davis, J.
 (Contd.)

The Commissioner of Income Tax put his denial of any amount for depreciation on the said machinery and equipment upon the ground that "there was no actual change of ownership of the assets" and they were "set up in the books of the taxpayer at appreciated values." In my view that was not a proper ground upon which to exercise the discretion that had been vested in the Minister. The Commissioner was not entitled, in the absence of any fraud or improper conduct, to disregard the separate legal existence of the company and to inquire as to who its shareholders were and at what figures these assets had been carried on the books of some other individual, partnership or corporation. In the words of Lindley, J. (as he then was) in *Ryhope Coal Company, Ltd., v. Foyer* ((1881) 7 Q.B.D., 485, at 498:

"This company was incorporated and formed on the 21st of December, 1875, under the Companies Act of 1862, by persons who had for many years previously carried on and worked the colliery which the company was formed to continue to work and carry on. The Income Tax Commissioners have assessed the company upon the principle that the company is in substance, and for legal purposes, the same as the old partners. In my opinion, at starting, that cannot be right in point of law. A company incorporated under the Act of 1862 is for no legal purpose the same as the persons who have become a corporation with distinct rights and distinct liabilities, and whether the shares are bought by those who form it seems to me for that purpose utterly immaterial; and I think, therefore, the principle on which the Commissioners have proceeded from first to last in assessing this corporation of five, six, or seven old partners, is to be regarded as erroneous and fundamentally wrong."

The Appellant was a new owner for all legal purposes and its predecessor's depreciation allowance is immaterial when considering what is a reasonable amount to be allowed for its own depreciation. What is virtually said here against the Appellant is—You are entitled to nothing because the beneficial ownership

RECORD

*In the
Supreme Court
of Canada*

No. 21

Reasons for
Judgment
The Chief
Justice and
Davis, J.

(Contd.)

of your company is the same as the beneficial ownership of another company from which, indirectly, you purchased your machinery and equipment and we are entitled to look right through your legal existence and say that you are entitled to nothing at all for depreciation on your machinery and equipment.

In my view that is not a legitimate exercise of the discretion which Parliament vested in the Minister. I have not the slightest doubt that the Commissioner was as anxious to do justice as I am, but the public have been given the right to appeal to the court from the decision of the Minister and if the court is of the opinion that in a given case the Minister or his Commissioner has, however unintentionally, failed to apply what the court regards as fundamental principles, the court ought not to hesitate to interfere. I confess that I am influenced in this case by the insistence of many great judges upon the full recognition of the separate legal entity of a joint stock company and the impropriety in dealing with its affairs of ignoring its legal status as if it had never been incorporated and organized. And as to the familiar argument that we ought always to look "at the substance" of the thing, I shall only refer to the words of Lord Tomlin in *Inland Revenue Commissioners v. The Duke of Westminster* (1936) A.C. p. 1, at p. 19:

"Apart, however, from the question of contract with which I have dealt, it is said that in revenue cases there is a doctrine that the Court may ignore the legal position and regard what is called 'the substance of the matter,' and that here the substance of the matter is that the annuitant was serving the Duke for something equal to his former salary or wages, and that therefore, while he is so serving, the annuity must be treated as salary or wages. This supposed doctrine (upon which the Commissioners apparently acted) seems to rest for its support upon a misunderstanding of language used in some earlier cases. The sooner this misunderstanding is dispelled, and the supposed doctrine given its quietus, the better it will be for all concerned, for the doctrine seems to involve substituting 'the incertain and crooked cord of discretion' for 'the golden and straight metwand of the law' (4 Inst. 41). Every man is entitled if he can to order his affairs so as that the tax attaching under the appropriate Acts is less than it otherwise would be. If he succeeds in ordering them so as to secure this result, then, however unappreciative the Commissioners of Inland Revenue or his fellow taxpayers may be of his ingenuity, he cannot be compelled to pay an increased tax. This so-called doctrine of 'the substance' seems to me to be nothing more than an attempt to make a man pay notwithstanding that he has so ordered his affairs that the amount of tax sought from him is not legally claimable."

Lord Loreburn in the House of Lords in *Leeds Corporation v. Ryder* (1907) A.C. 420, at 423-424, said that the justices there were acting "administratively, for they are exercising a discretion which may depend upon considerations of policy and practical good sense—and they must, of course, act honestly. That is the total of their duty." But that was a certiorari proceeding and the Licensing Act under consideration "expressly leaves" as Lord Loreburn observed, "to the discretion of the justices whether they will grant licenses or not to persons whom they deem fit and proper persons." That was, of course, quite a different case from the appeal now before us. Here the Minister was to say what was "a reasonable amount" to be allowed for depreciation and he says, in effect—nothing. The statute expressly gives the taxpayer a right of appeal from the Minister's decision. In *The Queen v. Vestry of St. Pancras*, 24 Q.B.D. (1890) 371, a metropolitan vestry had a discretion by a statute not merely as to granting or refusing a superannuation allowance to a retiring officer, but also, if an allowance were granted, as to the amount, subject to the scale of maximum allowance prescribed by the statute. Lord Esher, at p. 375, said:

"If people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion."

The Income War Tax Act gives a right of appeal from the Minister's decisions and while there is no statutory limitation upon the appellate jurisdiction, normally the Court would not interfere with the exercise of a discretion by the Minister except on grounds of law. But here the Commissioner, acting for the Minister, did exercise a discretion upon what I consider to be wrong principles of law and it is the duty of the Court in such circumstances to remit the case, as provided by Sec. 65 (2) of the Act, for a reconsideration of the subject matter, stripped of the application of these wrong principles.

I would therefore allow this appeal, set aside the assessment and the judgment appealed from and refer the matter back to the Minister. The Appellant should have its costs throughout.

RECORD

In the
Supreme Court
of Canada

No. 21
Reasons for
Judgment
The Chief
Justice and
Davis, J.
(Contd.)

RECORD

*In the
Supreme Court
of Canada*No. 22
Reasons for
Judgment
Crocket, J. and
Hudson, J.

No. 22

REASONS FOR JUDGMENT

THE HONOURABLE MR. JUSTICE CROCKET
and
THE HONOURABLE MR. JUSTICE HUDSON

The judgment of Crocket, J. and Hudson, J. was delivered by Hudson, J.

The Appellant company in its income tax return for the fiscal period ending March 31st, 1933, claimed a depreciation allowance of \$17,775.55. The Minister, on an appeal to him, disallowed this claim with the exception of \$255.08, and an appeal from his decision to the Exchequer Court was dismissed. 10

The Appellant contends (1) that under Section 5 (b) of the Income War Tax Act the Minister is obliged to make some allowance for depreciation; and (2) that, in consequence of certain directions issued by him from time to time to inspectors of income tax, such allowance should be on a percentage basis as therein specified.

The Minister, on the other hand, contends that under Section 5 he has an unfettered discretion to allow or disallow any claim in 20 respect of depreciation, and moreover that in the present case the Appellant company, although technically a different legal entity from a former company of the same name, is in reality the alter ego of the old company, having the same name, the same shareholders, the same assets for few exceptions and no new capital, and that the old company had already been allowed a total of 100% depreciation in respect of the assets in question, and under these circumstances that he, the Minister had not acted unreasonably.

The relevant provisions of the Act are as follows: the charging Section is No. 9: 30

“9. There shall be assessed, levied and paid upon the income during the preceding year, of every person (a) residing or ordinarily resident in Canada during such year;

* * *

2. Save as herein otherwise provided, corporations and joint stock companies, no matter how created or organized, shall pay a tax upon income at the rate applicable thereto set forth in the first schedule of this Act.”

Section 3 defines income as the annual net profit or gain.

Section 6 provides:

“6. In computing the amount of the profits or gains to be assessed, a deduction shall not be allowed in respect of

* * *

(b) any outlay, loss or replacement of capital or any payment on account of capital or any depreciation, depletion or obsolescence, except as otherwise provided in this Act.”

Section 5:

10 “5. ‘Income’ as hereinbefore defined shall for the purposes of this Act be subject to the following exemptions and deductions:

(a) Such reasonable amount as the Minister, in his discretion, may allow for depreciation.”

20 Reading these sections by themselves and without reference to any outside authorities, it would seem fairly plain that it was the intention of Parliament that there should be no depreciation allowance unless the Minister, in his sole discretion, decided that there should be. There is nothing anywhere to indicate the principle or basis on which the depreciation allowance is to be ascer-

30 tained. It might vary according to different accounting methods, different economic theories, different general business conditions in the country. Nor is there anything in the statute which denies a right in the Minister to look beyond the legal facade for the purpose of ascertaining the realities of ownership or the possibilities of schemes to avoid taxation, and it would seem to me that it was the intention of Parliament that the Minister, and he alone, could properly estimate these different factors.

The authorities cited on behalf of the Appellant are mostly of statutes, somewhat differently worded from ours, and in effect

30 hold no more than that where the statute gives a discretion to administrative officers and provides an area in time or space for the exercise of such discretion, the Commissioners must take that into account. In the present case, the Minister has exercised his discretion and, as already stated, the statute does not define or limit the field for operation of such discretion.

40 The second point raised by the Appellant need not be discussed. The regulations referred to turned out to be merely directions given to local officers of the department for their general guidance and could not be considered as any general rule binding in any way on the Minister. I would dismiss the appeal with costs.

RECORD

*In the
Supreme Court
of Canada*

No. 22
Reasons for
Judgment
Crockett, J. and
Hudson, J.
(Contd.)

REASONS FOR JUDGMENT

THE HONOURABLE MR. JUSTICE KERWIN

No. 23
 Reasons for
 Judgment
 Kerwin, J.

Kerwin, J.

By Subsection 1 of Section 9 of the Income War Tax Act a tax is to be assessed, levied and paid upon the income during the preceding year of every person therein described. By Section 2 (h) "person" includes any body corporate and politic, and by Subsection 2 of Section 9 corporations and joint stock companies are to pay the tax at the rate applicable, as set forth in the First Schedule. As applicable to this appeal, Section 3 defines "income" as the annual net profit or gain from any trade, manufacture or business. The relevant parts of Section 6 provide: 10

"In computing the amount of the profits or gains to be assessed, a deduction shall not be allowed in respect of

* * *

(b) any outlay, loss or replacement of capital or any payment on account of capital for any depreciation, depletion or obsolescence, except as otherwise provided in this Act;"

The only provision for an allowance for depreciation is contained in Section 5 whereby income, for the purposes of the Act, shall be 20 subject to the following exemptions and deductions:

"(a) Such reasonable amount as the Minister, in his discretion, may allow for depreciation . . . "

In the present case the Minister has made an allowance of \$255.08 (as to which no question arises) and has given his reasons for not allowing the balance of the Appellant's claim for depreciation as appears from the following extract from his decision:

"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 30 assessment on the ground that while the company was incorporated and commenced operations during the year 1932 there was no actual change in ownership of the assets purchased or taken over from Pioneer Investment Company Limited by Home Service Company Limited (of which the taxpayer is a subsidiary) and set up in the books of the tax-

payer at appreciated values; that in the exercise of the statutory discretion, a reasonable amount has been allowed for Depreciation and that the assessment is properly levied under the provisions of the Income War Tax Act.”

It appears that the discretion conferred upon him by Section 5 has been exercised without disregarding any statutory provision and I can find no ground upon which his determination may be challenged.

The English cases referred to by counsel for the Appellant
 10 do not appear to me to assist in the determination of the matter.
 I would dismiss the appeal with costs.

RECORD

*In the
 Supreme Court
 of Canada*

No. 23
 Reasons for
 Judgment
 Kerwin, J.
 (Contd.)

PART II
EXHIBIT No. 3

Copy

See Appendix dated 11th May, 1927.

Ottawa, 30th August, 1918.

CIRCULAR No. 20.

D. No. 20.

RE: DEPRECIATION

In dealing with all Income Tax claims for depreciation, the following general rules should be observed.

10 Any special circumstances which seem to warrant variation from these rules must be submitted to this office for approval.

1. The value and character of the asset on which depreciation is claimed must be stated in each case.

2. The value to be stated must be the cost value to the taxpayer.

20 3. The rates of depreciation on various classes of assets mentioned in the hereto annexed schedule must be strictly adhered to as the maximum rates to be allowed by Inspectors, except on special authority from this office. Where lower rates are claimed by the taxpayer in the returns they, of course, are not to be disturbed.

4. The rates given are to be applied to the cost value mentioned in paragraph two above.

5. Failure to write off depreciation in former years does not entitle the taxpayer to any additional allowance during the taxation period.

30 6. Depreciation is allowed only in cases where a decline in value has resulted through use or wear and tear. Decline in value resulting from changes in market value as in the case of land or securities, or from diminished usefulness of the asset are not to be entered under this heading.

7. No depreciation will be allowed on merchandise-in-stock. Decline in value of merchandise-in-stock may be taken into account in the inventory when determining gross profit, provided that the reduced value of the inventory is carried forward in the statement of the following depreciation.

THE FOLLOWING SPECIAL RULES APPLY TO
PARTICULAR CLASSES OF TAXPAYERS

40 First: Taxpayers who keep no regular account of capital assets.

RECORD
*In the
Exchequer Court
of Canada*

Appellant's
Exhibit No. 3
Circular No. 20
Dept. of
National
Revenue
Aug. 30, 1918

8. The cost value of the asset must be inserted in the Income Tax return and carried forward from year to year in the return.

Second: Taxpayers who keep regular and proper accounting records.

9. The actual cost of ordinary repairs to the asset is a proper charge under the heading of expense in addition to the allowance for depreciation.

10. No depreciation will be allowed unless it is actually written off the books of the taxpayer or established as depreciation reserve capable of identification in future years. It is immaterial whether depreciation is established as a reserve or actually written off the capital value of the asset.

“R. W. BREADNER,”

Commissioner of Taxation

SCHEDULE OF RATES OF DEPRECIATION TO BE
APPLIED BY INSPECTORS OF TAXATION
BUILDINGS

5 per cent. per annum on Frame Buildings;	
2½ “ “ “ “ brick or stone or brick veneer	20
building;	
2 “ “ “ “ buildings entirely of re-inforced concrete.	

MOTOR CARS

First year	25%
Second year	15%
Third and subsequent years.....	10%

FARM AND THRESHING MACHINERY

10%

MACHINERY AND PLANT

30

5% to 10% according to character of plant and machinery

OFFICE & STORE FURNITURE & FIXTURES

10%

SHIPS

- (a) Wooden vessels:
1. classed 6%
 2. fishing vessels 8½%
- (b) Steel vessels:
1. steam 4%
 2. sailing 3%

WHARFS & DOCKS

Permanent 3% Temporary 7½ to 10%

HORSES & WAGONS

10%

MEDICAL & PROFESSIONAL INSTRUMENTS
& BOOKS

10%

EXHIBIT No. 14

THE CANADA GAZETTE August 9, 1919

INCOME WAR TAX ACT, 1917

Powers of the Commissioner of Taxation

In the Matter of the Income War Tax Act, 1917, and
Amendments thereto,

and

In the Matter of Regulations empowering the Com-
missioner of Taxation to exercise such of the powers
therein conferred upon the Honourable the Minister
of Finance:

WHEREAS by virtue of an Act of Parliament of the Domin-
ion of Canada passed in the year of our Lord one thousand nine
hundred and seventeen and known as the Income War Tax Act,
1917, 7-8 George V., Chapter 28 and subsequent Amendments
passed thereunto relating;

AND WHEREAS by section 22 of the said Act as amended
by section 9 of 9-10 George V. Chapter 55, certain powers of ad-
ministration control and management were vested in the Honour-
able the Minister of Finance;

RECORD

*In the
Exchequer Court
of Canada*

Appellant's
Exhibit No. 3
Circular No. 20
Dept. of
National
Revenue
Aug. 30, 1918
(Contd.)

Appellant's
Exhibit No. 14
Canada Gazette
Page 407
Aug. 9, 1919

p. 407

10

20

30

RECORD

*In the
Exchequer Court
of Canada*

Appellant's
Exhibit No. 14
Canada Gazette
Page 407
Aug. 9, 1919
(Contd.)

AND WHEREAS by the said section 22 authority was granted to the Honourable the Minister of Finance, to authorize the Commissioner of Taxation to exercise such of the powers conferred by the said Act upon the Minister of Finance as may, in the opinion of the Minister, be conveniently exercised by the Commissioner of Taxation;

Be it hereby known that the Honourable the Minister of Finance has been pleased to make the following regulations and the same are hereby made, and further, to delegate the necessary powers for their proper function to the Commissioner of Taxation 10
in so far as the said Act will permit.

1. Those matters hereinafter referred to by sections wherein the Honourable Minister of Finance has authority, power and discretion, shall be exercised and carried out by the Commissioner of Taxation to the same extent, as fully and effectually as the Honourable the Minister of Finance could do.

Sections, three (3), eight (8), nine (9), and ten (10) of 7-8
George V. Chapter 28.

Sections, two (2), three (3), five (5), six (6) and eight (8) of 9-10 George V, Chapter 55. 20

And the Honourable the Minister of Finance hereby ratifies and confirms whatsoever the Commissioner of Taxation shall lawfully do or cause to be done in the premises by virtue of these presents.

Signed this 1st day of August, in the year of our Lord one thousand nine hundred and nineteen.

“W. T. WHITE”

EXHIBIT No. 15

THE CANADA GAZETTE October 11, 1919

p. 1076

RECORD
*In the
Exchequer Court
of Canada*

DEPARTMENT OF FINANCE

Ottawa, Canada,
2nd August, 1919.Appellant's
Exhibit No. 15
Canada Gazette
Page 1076
Aug. 2, 1919R. W. Breadner, Esq.,
Commissioner of Taxation,
Taxation Branch,
Ottawa, Canada.

10 Dear Sir:

The authority, power and discretion delegated to you by the Honourable Sir Thomas White, recently Minister of Finance, as published in the Canada Gazette, 9th August, 1919, to be exercised and carried out under the provisions of The Income War Tax Act, 1917, and Amending Acts, is hereby confirmed, ratified and continued.

(Signed) "H. L. DRAYTON,"

Minister of Finance

EXHIBIT No. 22

20

CANADA GAZETTE

Issue of April 16, 1927 (1927 Vol. 60 (2) p. 3139)

Appellant's
Exhibit No. 22
Canada Gazette
Page 3139
Apr. 16, 1927DEPARTMENT OF THE SECRETARY OF STATE
OF CANADA

"His Excellency the Governor General has been pleased to make the following appointments, viz:

* * * * *

CHESTER SAMUEL WALTERS, of the City of Hamilton, in the Province of Ontario, Esquire, Inspector of Taxation, to be Commissioner of Income Tax."

RECORD

EXHIBIT No. 4

In the
Exchequer Court
of Canada

Appendix to Circular No. 20

11th May, 1927.

Appellant's
 Exhibit No. 4
 Appendix to
 Circular No. 20
 May 11, 1927

DEPRECIATION ON AUTOMOTIVES

Cases have arisen from time to time in which claims are made for a greater allowance than as presently prescribed, as a deduction from profits for wear and tear of automobiles and motor trucks used exclusively in the businesses of manufacturing, transportation, merchandising and commercial concerns of a general nature. The grounds of complaint in most cases are similar and refer generally to various forms of rough usage to which cars are subjected; consequently new cars have to be purchased before the full value of the old car is fully depreciated on the books of the concern. 10

As a result, it has now been decided to modify the rates heretofore allowed and to institute a more even spread of the useful life of automotives, notwithstanding any ruling to the contrary contained in Circular No. 20, or other instruction issued by this Department relating to depreciation.

The following rates in regard to all cases so far not disposed of are effective: 20

For the first year a rate may be allowed up to 25% on the cost price, and thereafter a rate of 20% in each year up to 85% of the total cost, when the question of further writing off will be reconsidered.

Where, in any case, the depreciated value at any time is more or less than the sale price or exchange value, then the difference is to be considered as an addition to or a deduction from the revenue in the year of the sale or exchange.

It is considered desirable to emphasize that that allowance herein granted is purely to cover the loss arising through depreciation by wear and tear and you will require to exercise care that changes in style or market values as a cause for loss in value are not to be confused with. 30

"C. S. WALTERS,"
 Commissioner of Income Tax.

EXHIBIT No. 17

Circular No. 218

11th December, 1928

RULING RE DEPLETION - COAL COMPANIES

Having regard to Section 5, Subsection 1 (a) of The Income War Tax Act, as amended by Section 4 of 18-19 George V, Chapter 12, you are hereby notified that 10 cents per ton for each mined will be admitted as Depletion to every coal company where the title to the mine is vested in such company.

10 A similar allowance of 10 cents per ton will also be admitted to every coal company operating under a lease where Depletion is not claimed by the owner. If any case develops where Depletion is claimed by both owner and lessee, the relative facts must be submitted to the Department for instructions.

"C. S. WALTERS,"
Commissioner of Income Tax

FILE UNDER
"D"

INDEX UNDER
"C" & "D"

RECORD
In the
Exchequer Court
of Canada
Appellant's
Exhibit No. 17
Circular
No. 218
Dept. of
National
Revenue
Dec. 11, 1928

EXHIBIT 18

20 Appendix to Circular No. 239
(Memo No. 39 - 1931-32).

8th Sept., 1931.

DEPLETION ALLOWABLE ON DIVIDENDS
OF OIL COMPANIES

A revised list of producing oil companies, oil refining or marketing companies and holding companies has been prepared showing depletion allowable on dividends in the case of producing companies. Classification is as per the attached list.

30 Where depletion is allowed on the dividends of a company which maintains a depletion reserve on its books, all disbursements to shareholders from the depletion reserve will be taxable in the shareholders' hands, less allowance for depletion as shown on the attached list.

Where a question of allowance for depletion arises and the company paying the dividend is not shown on the attached list, this office should be communicated with by letter for ruling so that the decision arrived at may be circulated to all Inspectors.

"C. S. WALTERS,"
Commissioner of Income Tax

Appellant's
Exhibit No. 18
Appendix to
Circular
No. 239
Sept. 8, 1931

RECORD

LIST ATTACHED TO EXHIBIT No. 18 AS PER ORDER

*In the
Exchequer Court
of Canada*

January 6, 1938

Appellant's
Exhibit No. 18
Appendix to
Circular
No. 239
Sept. 8, 1931
(Contd.)

List attached to Appendix
to Circular No. 239.

(Memo. No. 39 - 1931-32)

8th Sept., 1931.

DEPLETION ALLOWANCE OIL COMPANIES

Canadian

No Depletion any year

(Refining or marketing Companies)

British American Oil, Ltd.	North Star Oil, Ltd.	10
Canadian Oil Companies Ltd.	Prairie Cities Oil Co. Ltd.	
Imperial Oil, Ltd.	Service Stations, Ltd.	
McCull Frontenac Oil, Ltd.	Supertest Petroleum Co. Ltd.	

20% Depletion 1934 & Subsequent years

25% Depletion 1933 & Prior years

(Producing Companies)

Acme Gas & Oil Co. Ltd.	Petrol Oil & Gas Company	
Admiral Oils Ltd.	Provincial Natural Gas Fuel Co.	
Ajax Gas & Oil Co. Ltd.	of Ontario, Ltd.	
Calgary & Edmonton Corp. Ltd.	Royalite Oil Co., Ltd.	20
Canadian Western Natural Gas	Southern Alberta Exploration	
Light, Heat & Power Co. Ltd.	Co., Ltd.	
Haldimand Gas Fields, Ltd.	Spooner Oils, Ltd.	
Home Oil Co. Ltd.	Sterling Pacific Oil Co. Ltd.	
Hylo Oils Ltd.	Union Gas Co. of Canada, Ltd.	
Maple Leaf Oil Co. Ltd.	(1931 & Subsequent years)	
McLeod Oils, Ltd.	United Oils, Ltd.	
Mercury Oils, Ltd.	Wellington Oil & Gas Co. Ltd.	
Merland Oils, Ltd.	Widney Petroleums, Ltd.	30
Model Oils, Ltd.		

10% Depletion all years

Canadian Royalty Oil Co. Ltd.	Royalties & Standard Shares,
Dominion Royalty Corp. Ltd.	Ltd.
Premier Royalties, Ltd.	Second Standard Royalties, Ltd.
	Standard Royalties, Ltd.

List attached to Appendix
to Circular No. 239.

(Memo. No. 39 - 1931-32)

8th Sept., 1931.

Non-Canadian

No Depletion any year

(Refining and marketing of Holding Companies)

Andian National Corp., Ltd.	Pierce Petroleum Corp.
Anglo American Oil Co., Ltd.	Rio Grande Oil Co.
Apex Oil Corp.	Royal Dutch Co.
10 Atlantic Refining Co.	Seaboard Oil of Delaware
Bishop Oil Corp.	Shell Trans. & Trading Co.

Non-Canadian

No Depletion any year

(Refining and Marketing or Holding Companies)

Borne Scrymser Co.	Petroleum Corp. of America
California Petroleum Co.	Shell Union Oil Corp.
Canadian Eagle Oil Co.	Simms Petroleum Co.
Cities Service Co.	Sinclair Consolidated Oil Corp.
20 Commonwealth Royalties Syn- dicate	Standard Oil Co. of Kentucky
Consolidated Oil Corporation (formerly Sinclair Consoli- dated)	Standard Oil Co. of Kansas
Gulf Oil Corporation	Standard Oil Co. of Nebraska
Indian Refining Co.	Standard Oil Co. of New Jersey
Investors Royalty Co., Inc.	Standard Oil Co. of Ohio
Middle States Petroleum Corp.	Sun Oil Co.
New Bradford Oil Co.	Sun Ray Oil Corp.
Oil Shares Incorporated	Swan-Finch Oil Corp.
30 Pan-American Petroleum Transport Co.	Texas Corp.
Panhandle Producing & Refin- ing Co.	Tide Water Associated Oil Co.
	Tide Water Oil Co.
	Wesson Oil & Snowdrift Co. Inc.
	All Pipe Line Companies

RECORD
In the
Exchequer Court
of Canada

Appellant's
Exhibit No. 18
Appendix to
Circular
No. 239
Sept. 8, 1931
(Contd.)

RECORD

*In the
Exchequer Court
of Canada*

Appellant's
Exhibit No. 18
Appendix to
Circular
No. 239
Sept. 8, 1931
(Contd.)

10% Depletion all years
Non-Canadian
(Producing Companies)

Amerada Corp.	Petroleum Royalties Co. of Oklahoma	
Amerada Dixie Co.	Phillips Petroleum Co.	
Associated Oil Co.	Pierce Oil Corp.	
Barnsdall Corp.	Plymouth Oil Co.	
Burma Oil Co., Ltd.	Prairie Oil & Gas Co.	
Cosden Oil Co.	Producers Royalty Corp.	10
Colonial Beacon Oil Co.	Pure Oil Co.	
Consolidated Royalty Oil Inc.	Richfield Oil Co.	
Continental Oil Co.	Royalty Corp. of America, Inc.	
Donelon Oil Co.	Royalties Management Corp.	
Hargay Oil & Refining Co.	Salt Creek Consolidated Oil Co.	
Houston Oil Co.	Salt Creek Producers Inc.	
Humble Oil & Refining Co.	Skelly Oil Co.	
Independence Oil & Gas Co.	Socony Vacuum Corp.	
International Petroleum Ltd.	Southland Royalty Co.	
Imperial Royalties Co.	South Penn. Oil Co.	20
Jefferson Lake Oil Co. Inc.	Standard Oil of California	
Kirby Petroleum Company	Standard Oil of Indiana	
Lion Oil Refining Co.	Standard Oil of New York	
Louisiana Oil Refining Corp.	Superior Oil Corp.	
Magnolian Petroleum Co.	Texas Pacific Coal & Oil Co.	
Mexican Eagle Oil Co., Ltd.	Transcontinental Oil Co.	
Mid-Continental Petroleum Corp.	Union Oil Co. of California	
Monarch Royalty Corp.	Washington Royalties Co.	
Mountain Producers Corpora- tion	Westland Oil Co.	
Mountain & Gulf Oil Co.	White Oil Co.	30
Ohio Oil Co.	Wileox Oil & Gas Company	
Pacific Oil Co.	Washington Oil Co.	
Petroleum Exploration, Inc.	Vacuum Oil Co.	

EXHIBIT No. 1

THIS AGREEMENT entered into on the first day of April in the year of our Lord one thousand nine hundred and thirty-two.

RECORD
 In the
 Exchequer Court
 of Canada
 Appellant's
 Exhibit No. 1
 Agreement
 April 1, 1932

BETWEEN:

HOME SERVICE COMPANY LIMITED, a corporation having its registered office at 910 Richards Street, in the City of Vancouver in the Province of British Columbia, (Hereinafter called "the Vendor")

OF THE FIRST PART

10 AND:

PIONEER LAUNDRY & DRY CLEANERS LIMITED a Company incorporated under the Companies Act of British Columbia on the 23rd day of March 1932 and having its registered office at 910 Richards Street, in the City of Vancouver aforesaid, (Hereinafter called "the Purchaser")

OF THE SECOND PART

WITNESSETH that in consideration of the mutual covenants and conditions herein contained and for other good and valuable considerations, the said parties hereby covenant, promise and agree to and with each other as follows:

1. The Vendor shall sell and the Purchaser shall purchase the following property and assets all of which at the date hereof are owned by the Vendor by virtue of its having purchased same from the Liquidator of the Company hereinafter referred to as "the Old Company", namely:

30 (a) The goodwill of the business heretofore carried on in the City of Vancouver and elsewhere in the Province of British Columbia by Pioneer Laundry & Dry Cleaners Limited, a Company now in Voluntary Liquidation and which, for the purpose of being distinguished from the above-named Purchaser is hereinafter called "the Old Company," with the sole and exclusive right to the Purchaser to represent itself as carrying on such business in continuation of the said Old Company's business and in succession thereto.

(b) All the plant, machinery, office furniture, fixtures, trucks, automobiles and other goods and chattels of every kind and description heretofore owned by the said Old Company.

RECORD

*In the
Exchequer Court
of Canada*

Appellant's
Exhibit No. 1
Agreement
April 1, 1932
(Contd.)

(c) All the book debts and other debts and accounts heretofore due and owing to the said Old Company in connection with the said business and the full benefit of all and any securities for such debts.

(d) The full benefit of all pending contracts and engagements to which the said Old Company heretofore was or might be entitled in connection with the said business.

(e) All cash in hand and in bank and all bills or notes of the said Old Company in connection with the said business.

(f) All unexpired insurance of the said Old Company in connection with said business. 10

(g) All and any other personal property and rights owned by the said Old Company.

2. The consideration for the said sale shall be as follows, namely:

(a) The sum of \$170,549.70, which shall be paid and satisfied as to the sum of \$10,000.00 by the allotment to the Vendor or its nominees of 100 fully paid shares in the capital stock of the Purchaser of a nominal or par value of \$100.00 each, and as to the balance of the said sum in cash at any time or times when payment of the same or any part thereof is demanded by the Vendor, and 20

(b) The assumption by the Purchaser of all the debts, liabilities and obligations of the said Old Company as of the date of this agreement.

3. The portion of the said purchase price which is payable in cash on demand as aforesaid shall as to so much thereof as from time to time remains unpaid carry interest at such rate (not greater than eight (8%) per cent. per annum) and for such periods and payable on such date or dates as the Vendor in its sole discretion may from time to time determine and demand. The waiver by the Vendor of its right to charge or to be paid interest during or in respect of any one period of time or during or in respect of several different periods of time whether successive or otherwise shall not in any way prejudice, vary or affect the Vendor's right to charge or to be paid interest during or in respect of any other period of time, and the rate of such interest may be varied by the Vendor from time to time at its discretion, but shall not be greater than eight (8%) per cent. per annum. 30

4. The Vendor on behalf of the said Company hereby grants, assigns, conveys, transfers and delivers to the Purchaser each and every one of the properties and assets hereinbefore described together with the full benefit thereof and the full title and ownership thereto and thereof. 40

The said sale and purchase shall be completed with all possible speed and to that end the following matters and things shall be proceeded with and effected as soon as may be.

10 (a) The Vendor shall cause the said Company to execute and deliver all such further conveyances, assignments, transfers and assurances in addition to these presents as may be requisite and necessary to vest in the Purchaser the full title and ownership in, to and of the property and assets here-
 inbefore mentioned and described, and all such other assign-
 ments, transfers and assurances as shall be necessary to give
 to the Purchaser the full benefit of this agreement according
 to the intent thereof and as shall reasonably be required.

(b) The Purchaser shall duly allot to the Vendor the fully paid shares in the capital stock of the Purchaser which are hereinbefore referred to.

20 5. The Purchaser as part of the said purchase price hereby assumes all the debts, liabilities and obligations of the said Old Company as of the date of this agreement and hereby covenants and agrees to pay and discharge the same and every of them punctually as the same may be or become due and payable, and hereby agrees to indemnify the Vendor and the said Old Company and to save them harmless from and against the same and each and every one of them.

6. This agreement and every provision herein contained shall be binding upon and shall enure to the benefit of the parties hereto and their successors and assigns respectively.

30 IN WITNESS WHEREOF the said parties have caused their respective Corporate Seals to be hereunto affixed and these Presents to be signed by their proper officers in that behalf respectively.

The Corporate Seal of Home Service Company Limited was hereunto affixed in the presence of:

"M. E. SHEASGREEN"

(SEAL) of
 Home Service Company
 Limited

40 The Corporate Seal of Pioneer Laundry & Dry Cleaners Limited was hereunto affixed in the presence of:

"M. E. SHEASGREEN"

(SEAL) of
 Pioneer Laundry & Dry
 Cleaners Limited

"THOS. H. KIRK,"
 Pres.

"S. T. CREELMAN,"
 Sec'y

"THOS. H. KIRK,"
 Pres.

"S. T. CREELMAN,"
 Sec'y

RECORD
 In the
 Exchequer Court
 of Canada
 Appellant's
 Exhibit No. 1
 Agreement
 April 1, 1932
 (Contd.)

RECORD
 In the
 Exchequer Court
 of Canada

EXHIBIT No. 19
 CONSOLIDATED MOTOR COMPANY
 Limited

Appellant's
 Exhibit No. 19
 Invoice
 Consolidated
 Motor Co. Ltd.
 May 17, 1932

1230 Georgia Street West
 Vancouver, B. C.

No. 2586

17 May, 1932.

Sold to
PIONEER LAUNDRY & DRY CLEANERS, LTD.,
 900 Richards St., Vancouver. 10
 Your Order No..... Serial No. 151 Motor No. 163
 Description Amount Total
 To: 1 Willys 6-90 4-Pass. Sport Coupe \$815.00
 Licence & Registration 29.25
 _____ \$844.25
 By: Cheque, 20 May, 1932 \$844.25

CERTIFIED TRUE COPY:
 CONSOLIDATED MOTOR CO. LIMITED, 20
 B. GOOD, Secretary

Copy of Invoice

Appellant's
 Exhibit No. 21
 Invoice
 Pioneer
 Equipment
 Ltd.
 July 31, 1932

EXHIBIT No. 21
 GOOD YEAR
 Made in Canada
PIONEER EQUIPMENT LIMITED
 Goodyear Tires and Dominion Trailers
 960 Richards Street,
 Vancouver, B.C.,
 July 31st, 1932. 30

Your Order No.
 Delivery No. ///
 Terms.....
 Sold to **PIONEER LAUNDRY & DRY CLEANERS LTD.,**
 910 Richards Street, Vancouver.
 1932
 July To Building new closed-in Steel Panel Delivery
 Body and attaching same on used Ford Model
 A Chassis \$230.75
 Pioneer Equipment Ltd. 40
 Vancouver, B.C.
 Paid
 Aug. 20/32
 Per V.D.

EXHIBIT No. 20
CONSOLIDATED MOTOR COMPANY
Limited

1230 Georgia Street West
Vancouver, B. C.

No. 2673

22 November, 1932.

RECORD
*In the
Exchequer Court
of Canada*

Appellant's
Exhibit No. 20
Invoice
Consolidated
Motor Co.
Ltd.
Nov. 22, 1932

Sold to			
PIONEER LAUNDRY & DRY CLEANERS, LTD.,			
10	910 Richards St., Vancouver.		
	Your Order No.....	Serial No. 1103802	Motor No. 1167552
	Description	Amount	Total
	To: 1 Essex Coupe		
	By: 1 Essex Coupe		
	To: Difference in price of above cars	\$285.00	
	Licence Transfers	1.50	
			\$286.50
20	By: Cheque		\$286.50

CERTIFIED TRUE COPY:
CONSOLIDATED MOTOR CO. LIMITED
B. GOOD, Secretary

EXHIBIT No. 5

Appendix to Circular No. 189
(Memo. No. 11 - 1933-34)

15th May, 1933.

Appellant's
Exhibit No. 5
Appendix to
Circular
No. 189
May 15, 1933

DEPRECIATION

30 The Maximum depreciation allowable in any period shall be the amount incorporated in the profit and loss, surplus or similar account in the usual books of record of the taxpayer on the statutory date for filing returns, provided the said amount shall not exceed the amount allowable under the regulations issued by the Department.

The regulations of the Department regarding depreciation in periods where a loss on operations has been sustained or a small profit made will continue to be in effect.

40 This ruling applies to assessments for the fiscal periods ending in 1932 and subsequent thereto and any prior rulings are modified accordingly.

"C. F. ELLIOTT,"
Commissioner of Income Tax

RECORD

EXHIBIT No. 6

*In the
Exchequer Court
of Canada*Appendix to Circular No. 189
(Memo. No. 48 - 1933-34)

25th November, 1933.

Appellant's
Exhibit No. 6
Appendix to
Circular
No. 189
Nov. 25, 1933

DEPRECIATION

Referring to Memorandum No. 11 (1933-34) sent you on the 15th May last, you will please note that the last paragraph thereof is altered by changing "1932" to "1933".

"C. F. ELLIOTT,"
Commissioner of Income Tax

Appellant's
Exhibit No. 9
Letter
C. F. Elliott,
Esq. to
Martin
Griffin, K.C.
Mar. 21, 1935

EXHIBIT No. 9

10

DEPARTMENT OF NATIONAL REVENUE

Ottawa, 21st March, 1935.

Martin Griffin, Esq.,
c/o Griffin, Montgomery & Smith,
Barristers, Solicitors,
609 Bank of Nova Scotia Bldg.,
602 Hastings St. W.,
Vancouver, B.C.

Pioneer Laundry & Dry Cleaners Ltd.

1933 Assessment

20

Dear Sir:

This will acknowledge Notice of Appeal addressed to the Honourable the Minister of National Revenue in respect of an Income Tax assessment levied against the above Company for the year 1933.

An investigation is being made into this matter and you will be advised further in due course. In the meantime it is suggested that the assessment as levied be paid in order to avoid the accrual of interest under the provisions of the Income War Tax Act subject to a refund to your client at a later date should an adjustment reducing the assessment be subsequently made.

Yours faithfully,

"C. F. ELLIOTT,"
Commissioner of Income Tax

ACF/ECR.

EXHIBIT No. 10

Pioneer Laundry & Dry Cleaners Ltd.,
910 Richards Street,
Vancouver, B.C.

Dear Sirs:

In re: Your 1933 Income Tax Appeal

Enclosed herewith is the Decision of the Minister on your
10 appeal for the year 1933.

Attention is drawn to the provisions of Sections 60 and 61 of the Income War Tax Act which provide that if you intend to proceed with your appeal, you must, within one month from the date of mailing of this Decision of the Minister, forward by registered post to the Minister of National Revenue, a Notice of Dissatisfaction and must also within one month from the date of mailing of your said Notice of Dissatisfaction, file security for costs in the sum of \$400.00.

Section 69 of the Act provides that if your Notice of Dissatis-
20 faction is not forwarded within the time limited by the Act, your appeal shall cease and the assessment shall be valid and binding. A similar provision is contained in Section 61 with regard to the filing of security for costs.

Yours faithfully,

"C. F. ELLIOTT,"

Commissioner of Income Tax

ACF/DO'N
Encl.
Registered

ACF.
May 30th, 1935.

RECORD
In the
Exchequer Court
of Canada

Appellant's
Exhibit No. 10
Letter
C. F. Elliott,
Esq.
to Pioneer
Laundry
May 30, 1935

RECORD

*In the
Exchequer Court
of Canada*Respondent's
Exhibit "A"
Memo of
Mutual
Admissions
Apr. 4, 1936

EXHIBIT A

IN THE EXCHEQUER COURT OF CANADA
IN THE MATTER OF the Income War Tax Act,
being Chapter 97 of the Revised Statutes of Canada
1927, and amendments thereto:

and

IN THE MATTER OF the appeal of Pioneer Laun-
dry & Dry Cleaners Limited, of the City of Van-
couver, in the Province of British Columbia.

BETWEEN:

10

PIONEER LAUNDRY & DRY CLEANERS LIMITED,

Appellant,

AND:

THE MINISTER OF NATIONAL REVENUE,

Respondent.

MEMORANDUM OF FACTS upon which the Appellant and
the Respondent herein agree:

1. Pioneer Investment Co. Limited was incorporated prior to inception of the Income War Tax Act, and went into voluntary liquidation on 7th April, 1932. Immediately prior to liquidation 20 the said Pioneer Investment Co. Ltd., owned directly or through nominees all the outstanding share capital of its subsidiary operating companies listed in paragraph 3 herein below, and including the Appellant company.

2. Pioneer Laundry & Dry Cleaners Ltd. by Special Resolution dated 30th March, 1932, went into voluntary liquidation. All its shares were owned by the Pioneer Investment Co. Limited (some of these shares held in the names of nominees).

3. On 23rd March, 1932, a new Company was incorporated under the name of Home Service Company Limited. The said last 30 mentioned Company on 1st April, 1932, acquired all the physical assets of the following companies, that is to say:

Pioneer Laundry & Dry Cleaners Limited,
Cascade Laundry & Dry Cleaners Limited,
Dominion Laundry & Dry Cleaners Limited,
B.C. Clean Towel Supply Limited,
Vancouver, Towel Service Company Limited,
Family Service Laundry Limited,
Empire Cleaners Limited.

The said Home Service Company Limited also acquired all the assets of Pioneer Investment Company Limited save and except

(a) Shares owned by that Company, and i.e. the shares of the 7 subsidiaries which, by reason of the liquidation, became unsaleable.

(b) Amounts owing to that Company by its shareholders.

4. On 23rd March, 1932, a new Company was incorporated under the name of Pioneer Laundry & Dry Cleaners Limited (the Appellant herein) and that Company acquired from the Home Service Company Limited certain machinery, furniture and fixtures and delivery equipment which had formerly been owned by the first Pioneer Laundry & Dry Cleaners Limited (but not all the machinery, furniture and fixtures and delivery equipment of the original Pioneer Laundry & Dry Cleaners Limited) and also acquired certain other machinery or delivery equipment owned by one or more of the other companies named in Clause 3 hereof.

5. In addition to the assets which the Appellant acquired in the manner indicated in Paragraph 4, the Appellant acquired the following:

1 Willys-Knight Coupe bought from Consolidated Motors, Limited.....	\$815.00
1 Truck Body from Pioneer Carriage Company Limited	230.75
1 Essex Coupe from Consolidated Motors Limited	286.50

6. That all the machinery, furniture and fixtures and delivery equipment of the original Pioneer Laundry & Dry Cleaners Limited and some but not all of the similar assets of the other Laundry Companies referred to in Paragraph 3 hereof were fully written off by depreciation by those Companies and the Appellant is claiming an allowance for depreciation in respect to the aforesaid machinery, furniture and fixtures and delivery equipment which it acquired in the manner aforesaid, all of which assets being among those fully depreciated as aforesaid.

7. That the capitalization of the Home Service Company Limited is \$1,000,000.00 divided into 10,000 shares par value \$100.00 each and that all such shares except forty were issued or sold to the liquidators of the operating subsidiary companies of the Pioneer Investment Company, Limited, in consideration for the transfer of the assets of such operating companies to the Home Service Company Limited; that the said shares on the winding-up of the said operating companies were distributed to the parent

RECORD
 In the
 Exchequer Court
 of Canada
 Respondent's
 Exhibit "A"
 Memo of
 Mutual
 Admissions
 Apr. 4, 1936
 (Contd.)

RECORD
In the
Exchequer Court
of Canada
 Respondent's
 Exhibit "A"
 Memo of
 Mutual
 Admissions
 Apr. 4, 1936
 (Contd.)

company, the Pioneer Investment Company, Limited, and on the winding-up of that company were distributed to its own shareholders; and that the result is that the shareholders of the Home Service Company Limited are the same as were the shareholders of the Pioneer Investment Company, Limited and their respective holdings in the new company are the same or substantially the same as were their respective holdings in the old company. The 40 shares referred to in this clause were allotted to Pioneer Investment Company Ltd. in part payment of the assets referred to at the end of clause 3 hereof. 10

8. That the sum of \$255.08 which was allowed by the Department as depreciation on Autos was part of the sum of \$2935.08 claimed by the Pioneer Laundry & Dry Cleaners Limited as depreciation on their delivery trucks and was calculated as follows:

25% for 10 months on \$815.00 being the cost of one Willys-Knight Coupe purchased by Pioneer Laundry & Dry Cleaners Limited from Consolidated Motors Ltd. on or about the 17th day of May, 1932.....	\$186.77	
25% for 8 months on \$230.75 being the price of one truck body purchased by Pioneer Laundry & Dry Cleaners Limited from Pioneer Carriage Company Ltd. on 14th July, 1932.....	38.46	20
25% for 5 months on \$286.50 being the price paid by Pioneer Laundry & Dry Cleaners Limited to Consolidated Motors Ltd. on 22nd November, 1932 for one Essex Coupe.....	29.85	
	<hr/>	
	\$255.08	
	<hr/>	

4th April 1936.
 Griffin, Montgomery & Smith
 Per Martin Griffin 30

EXHIBIT "B"

Vancouver, B.C.,
Sept. 2nd, 1936.

Martin Griffin, Esq., K.C.,
Messrs. Griffin, Montgomery & Smith,
Vancouver, B.C.

re Pioneer Laundry & Dry Cleaners Ltd.
Income Tax Appeal

Dear Sir:

- 10 Will you please advise me if you will admit for the purposes of the trial of this appeal that during the fiscal year ended March 31st, 1933, the shareholders of the Appellant, Pioneer Laundry & Dry Cleaners Limited, were as follows, namely:

Home Service Company Limited	97 shares.
Charles H. Wilson	1 "
Mary E. Stewart	1 "
Thomas H. Kirk	1 "

100 shares

- 20 and that the three persons above named were during such fiscal year shareholders of the Home Service Company Limited.

Yours truly,
D. Donaghy.

DD/HF.

EXHIBIT "C"

September 3rd, 1936.

D. Donaghy, Esq., K.C.,
Barrister, &c.
630 Rogers Building,
30 Vancouver, B.C.

re Pioneer Laundry appeals

Dear Sir:

Yours of the Second received. We are instructed that the answer to the question you put is "yes".

Yours truly,
GRIFFIN, MONTGOMERY & SMITH,

Per

MG/R.

RECORD

In the
Exchequer Court
of Canada

Respondent's
Exhibit "B"
Letter
D. Donaghy,
K.C. to
Martin
Griffin, K.C.
Sept. 2, 1936

Respondent's
Exhibit "C"
Letter
Martin
Griffin, K.C. to
D. Donaghy,
K.C.
Sept. 3, 1936

RECORD

*In the
Exchequer Court
of Canada*

Respondent's
Exhibit "D"
Canada Gazette
Page 1224
Dec. 6, 1933

EXHIBIT "D"

DEPARTMENT OF NATIONAL REVENUE
CANADA

In the Matter of the Income War Tax Act and Amendments
TO WHOM IT MAY CONCERN:

Be it hereby known that under and by virtue of the provisions of the Income War Tax Act and particularly Section 75 thereof, that I do hereby authorize the Commissioner of Income Tax to exercise the powers conferred by the said Act upon me as fully and effectively as I could do myself, as I am of the opinion that such powers may be the more conveniently exercised by the said Commissioner of Income Tax. 10

DATED at Ottawa, this 6th day of December, A.D. 1933.

R. C. MATTHEWS,
Minister of National Revenue

The Canada Gazette. December 16, 1933, page 1224.

Respondent's
Exhibit "E"
Canada Gazette
Page 546
Aug. 15, 1935

EXHIBIT "E"

DEPARTMENT OF NATIONAL REVENUE
CANADA

In the Matter of the Income War Tax Act and Amendments 20
TO WHOM IT MAY CONCERN:

Be it hereby known that under and by virtue of the provisions of the Income War Tax Act and particularly Section 75 thereof, that I do hereby authorize the Commissioner of Income Tax to exercise powers conferred by the said Act upon me as fully and effectively as I could do myself, as I am of the opinion that such powers may be the more conveniently exercised by the said Commissioner of Income Tax.

DATED at Ottawa, this 15th day of August, A.D. 1935.

(Sgd.) "J. EARL LAWSON," 30
Minister of National Revenue

The Canada Gazette. August 24, 1935, page 546.

EXHIBIT "F"
DEPARTMENT OF NATIONAL REVENUE
CANADA

In the Matter of the Income War Tax Act and Amendments
TO WHOM IT MAY CONCERN:

Be it hereby known that under and by virtue of the provisions of the Income War Tax Act and particularly Section 75 thereof, that I do hereby authorize the Commissioner of Income Tax to exercise the powers conferred by the said Act upon me as fully and effectively as I could do myself, as I am of the opinion that such powers may be the more conveniently exercised by the said Commissioner of Income Tax.

DATED at Ottawa, this 25th day of October, A.D. 1935.

(Sgd.) "J. L. ILSLEY,"
 Minister of National Revenue

The Canada Gazette. December 7, 1935, page 1483.

RECORD
 In the
 Exchequer Court
 of Canada

Respondent's
 Exhibit "F"
 Canada Gazette
 Page 1483
 Oct. 25, 1935

EXHIBIT "G"

This Agreement entered into on the 1st day of April 1932.

BETWEEN:

20 WILLIAM H. COTTER, of 602 Hastings Street West, Vancouver, British Columbia, Liquidator of Pioneer Laundry & Dry Cleaners Limited (In Voluntary Liquidation) and herein called "the said Company"

hereinafter called the Vendor
OF THE FIRST PART.

and

30 HOME SERVICE COMPANY LIMITED, a corporation having its registered office at 910 Richards Street, in the City of Vancouver, aforesaid,

hereinafter called "the Purchaser"
OF THE SECOND PART.

WITNESSETH that in consideration of the mutual covenants and conditions herein contained and for other good and valuable consideration the said parties hereby covenant, promise and agree to and with each other as follows:

Respondent's
 Exhibit "G"
 Agreement
 W. H. Cotter
 and Home
 Service Co.
 Apr. 1, 1932

RECORD

*In the
Exchequer Court
of Canada*

Respondent's
Exhibit "G"
Agreement
W. H. Cotter
and Home
Service Co.
Apr. 1, 1932
(Contd.)

1. The Vendor shall sell and the Purchaser shall purchase the following property and assets namely:

(a) The goodwill of the business heretofore carried on by the said Company in the City of Vancouver and elsewhere in the Province of British Columbia, with the sole and exclusive right to the Purchaser or its Assignee to represent itself as carrying on such business in continuation of the said Company's business and in succession thereto.

(b) All the right, title and interest of the said Company in and to all and singular those certain parcels or tracts of land and premises, situate in the City of Vancouver, in the Province of British Columbia and known and described as Lots One (1) to Four (4) inclusive in Block seventy-five (75) in the Subdivision of District Lot Five hundred and forty-one (541) Group One (1) New Westminster District. 10

(c) All the plant, machinery, office furniture, fixtures, trucks, automobiles and other goods and chattels of every kind and description now owned by the said Company.

(d) All the book debts and other debts and accounts due and owing to the said Company in connection with the said business and the full benefit of all and any securities for such debts. 20

(e) The full benefit of all pending contracts and engagements to which the said Company is or may be entitled in connection with the said business.

(f) All cash in hand and in Bank and all bills and notes of the said Company in connection with the said business.

(g) All unexpired insurance of the said Company in connection with the said business.

(h) All and any other property real or personal and rights which at the date hereof are owned by the said Company. 30

2. The consideration for the said sale shall be as follows, namely:

(a) The sum of Three hundred and twenty-seven thousand dollars (\$327,000.00) which shall be paid and satisfied by the allotment to the Vendor of Thirty-two hundred and seventy (3270) fully paid shares in the capital stock of the Purchaser of a nominal or par value of One hundred dollars (\$100.00) each, and 40

(b) The assumption by the Purchaser of all the debts, liabilities and obligations of the said Company as of the date of this agreement.

3. The Vendor on behalf of the said Company hereby grants assigns, conveys, transfers and delivers to the Purchaser each and every one of the properties and assets hereinbefore described together with the full benefit thereof and the full title and ownership thereto and thereof.

RECORD
In the
Exchequer Court
of Canada

Respondent's
Exhibit "G"
Agreement
W. H. Cotter
and Home
Service Co.
Apr. 1, 1932
(Contd.)

The said sale and purchase shall be completed with all possible speed and to that end the following matters and things shall be proceeded with and effected as soon as may be.

10 (a) The Vendor shall cause the said Company to execute and deliver all such further conveyances, assignments, transfers and assurances as may be required in addition to these presents so as to vest in the purchaser the full title and ownership in, to and of the said properties and assets, and all such further and other instruments as may be necessary to give to the Purchaser the full benefit of this agreement according to the intent thereof and as shall reasonably be required.

20 (b) The Purchaser shall cause to be duly allotted to the Vendor the fully paid shares in the capital stock of the Purchaser which are hereinbefore referred to.

4. The Purchaser, as part of the purchase price, hereby assumes all the debts, liabilities and obligations of the said Company as of the date of this agreement and hereby covenants and agrees to pay and discharge the same and every of them punctually as the same may be or become due and payable and hereby agrees to indemnify the said Company and save it harmless from and against the same and each and every one of them.

30 5. This agreement and every provision herein contained shall be binding upon and shall enure to the benefit of the parties hereto and upon the Successors and assigns of the Purchaser.

IN WITNESS WHEREOF the Vendor has hereunto set his hand and seal and the Purchaser has caused its Corporate Seal to be hereunto affixed and these presents to be signed by its proper officer in that behalf.

Signed, Sealed and Delivered by the Vendor in the presence of: "LIONEL B. KENT" The Corporate Seal of the Purchaser was hereunto affixed in the presence of: "M. E. SHEASGREEN" (SEAL) of Home Service Company Limited	}	"WILLIAM H. COTTER" "THOS. H. KIRK," Pres. "S. T. CREELMAN," Secty.
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IN THE PRIVY COUNCIL

RECORD

*In the
Privy Council*

ON APPEAL FROM THE SUPREME COURT OF CANADA

No. 24
Registrar's
Certificate
Apr. 25 1939

BETWEEN:

PIONEER LAUNDRY & DRY CLEANERS,
LIMITED,

Appellant,

AND

THE MINISTER OF NATIONAL REVENUE

Respondent.

No. 24

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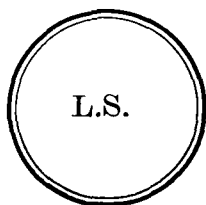
I, the undersigned Registrar of the Supreme Court of Canada,
DO HEREBY CERTIFY that the foregoing printed document
from Page 1 to Page 103 inclusive (together with Appellant's
Income Tax Statement for the year ending March 31, 1933, and
Notice of Assessment No. 347 inserted in pocket) constitutes the
Record of Proceedings in the above cause.

DATED at Ottawa, this 25th day of April, A.D. 1939.

J. L. Smellie

Registrar of the Supreme
Court of Canada

20



105

No 25

RECORD.
In the Privy
Council.
No. 25.
Order in
Council
5th May 1939.

At the Court at Buckingham Palace

The 5th day of May, 1939

Present—

THE KING'S MOST EXCELLENT MAJESTY

MARQUESS OF ZETLAND

SIR JOHN GILMOUR

MR. JAYAKAR

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 24th day of April 1939 in the words following, viz. :—

10

“ WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of the Pioneer Laundry & Dry Cleaners Limited in the matter of an Appeal from the Supreme Court of Canada between the Petitioners Appellants and the Minister of National Revenue Respondent setting forth (amongst other matters) that the Petitioners pray special leave to appeal from a Judgment of the Supreme Court pronounced on the 12th December 1938 dismissing an Appeal of the Petitioners from a Judgment of the Exchequer Court of Canada pronounced on the 4th November 1937 dismissing an Appeal against the decision of the Minister of National Revenue dated the 30th May 1935 affirming an assessment of income tax made upon the Petitioners in respect of income for the taxation year ended the 31st March 1933 : that the Petitioners in filing their income tax return for the year ended 31st March 1933 pursuant to the requirements of Section 33 of the Income War Tax Act Cap. 97, R.S.C. 1927 claimed as a deduction in computing taxable income certain sums amounting in total to \$17,775.55 in respect of depreciation of machinery delivery equipment furniture and fixtures at the usual and customary rates or percentages allowed for depreciation in respect of such assets respectively for taxation purposes : that the Commissioner of Income Tax in making an assessment upon the

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Petitioners in respect of income for the taxation year disallowed the whole of the deduction claimed by the Petitioners save only as to \$255.08 part thereof : that a notice of appeal to the Minister of National Revenue having been given on behalf of the Petitioners upon the ground (in particular) that the Commissioner of Income Tax in making the assessments had improperly disallowed the claim for depreciation the Minister affirmed the assessment upon the grounds thereafter appearing : that the Petitioners appealed to the Exchequer Court : that on the 4th November 1937 the Exchequer Court delivered judgment dismissing the Appeal : that 10 the Petitioners appealed to the Supreme Court : that on the 12th December 1938 the Supreme Court by a majority (the Chief Justice and Mr. Justice Davis dissenting) dismissed the Appeal and affirmed the Judgment of the Exchequer Court : that although the amount directly involved in the Appeal was a sum of \$1,769 only the principle of the decision of the Supreme Court affects the liability of the Petitioners to assessment to income tax for subsequent years during the life of the assets in question : that the principle of the decision directly affects the cases of six other companies the determination of the income tax liabilities of which 20 has by arrangement with the Commissioner of Income Tax been allowed to remain in abeyance pending the final determination of the issues raised in the case of the Petitioners : that the case of the Petitioners has raised issues of far reaching importance related to the income tax liabilities of many other taxpayers in Canada who have purchased for the purposes of their respective trades second-hand assets in respect of which the respective vendors have been allowed depreciation for the purposes of income tax : And humbly praying Your Majesty in Council to grant to the Petitioners special leave to appeal from the Judgment of the Supreme Court 30 of the 12th December 1938 or for such other Order as to Your Majesty in Council may seem fit :

“ THE LORDS OF THE COMMITTEE in obedience to His late Majesty’s said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioners to enter and prosecute their Appeal against the Judgment of the Supreme Court of Canada dated the 12th day of December 1938 upon depositing in the Registry of 40 the Privy Council the sum of £400 as security for costs :

“ And Their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioners upon the hearing of the Petition ought to be accepted

(subject to any objection that may be taken thereto by the Respondent) as the Record proper to be laid before Your Majesty on the hearing of the Appeal.”

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of the Dominion of Canada for the time being and all other persons
10 whom it may concern are to take notice and govern themselves accordingly.

RUPERT B. HOWORTH.