

In the Privy Council.

UNIVERSITY OF LONDON
W.S.I.

No. 46 of 1948. - 9 JUL 1953

ON APPEAL FROM THE SUPREME COURT OF CANADA

INSTITUTE OF ADVANCED
LEGAL STUDIES

BETWEEN—THE PROVINCIAL TREASURER OF
MANITOBA APPELLANT

AND

WM. WRIGLEY JR. COMPANY LIMITED RESPONDENT.

CASE FOR THE RESPONDENT

NOTE: In this Case for the purposes of the marginal references the Appeal Case in the Supreme Court of Canada is referred to as the Record and the Judgments in that Court are cited as reported in 1947 S.C.R. 431.

1.—This is an Appeal by Special Leave granted by His Majesty in Council on the 15th March, 1948, from a Judgment of the Supreme Court of Canada, dated 18th June, 1947, allowing an appeal by the Respondent from a Judgment of the Court of Appeal for Manitoba dated 19th September, 1945, and restoring a Judgment dated 10th March, 1943, of the Court of King's Bench, Manitoba (Major J.) which the Court of Appeal for Manitoba by their said Judgment had reversed.

1947 S. C. R. 431
Record, Vol. I,
pp. 153-195
Record, Vol. I,
pp. 144-151

2.—The litigation in Canada related to the appropriate basis for assessing the Respondent for income tax in the Province of Manitoba for the years 1936, 1937, 1938 and 1939. The applicable Statutes are The Income Tax Act (Statutes of Manitoba 1924 Chapter 91 and amendments) and The Income Taxation Act (Statutes of Manitoba 1937 Chapter 43 and amendments—consolidated in Revised Statutes of Manitoba 1940 Chapter 209). The relevant sections of the latter Statute (which are, except where otherwise indicated, identical with those of the earlier Income Tax Act) are printed as a Schedule to this Case.

3.—The section of The Income Taxation Act primarily in question is Section 24, which reads as follows :—

20 “ 24. (1) The income liable to taxation under this part of
“ every person residing outside of Manitoba, who is carrying on

“ business in Manitoba, either directly or through or in the name
 “ of any other person, shall be the net profit or gain arising from
 “ the business of such person in Manitoba.

“(2) This section shall apply to a taxpayer which is a
 “ corporation or joint stock company carrying on business in
 “ Manitoba and which has not its head office in Manitoba.”

Other sections of the Statute provide for apportionment for taxation purposes of the profit of non-residents and other persons carrying on certain activities in Manitoba and other activities outside the Province (Sections 23, 26, 27 and 27A). The Statute is silent, however, as to any basis or method of apportionment and no regulations have been made or established thereunder as authorized by Section 107. 10

Record, Vol. II,
 p. 24

4.—The Respondent is a Dominion Company with its head office and factory in Toronto, Ontario, and carries on business in Manitoba through a branch office and warehouse in Winnipeg from which merchandise is distributed to customers in Manitoba, Saskatchewan, Alberta and part of northwestern Ontario. The controversy in the Courts below briefly was whether, as contended by the Appellant, the Respondent is liable to income tax on the entire net profit received from all sales made through its Winnipeg branch, or whether, as contended by the Respondent, a portion 20 only of the profits of such sales was taxable in Manitoba, i.e., such portion as can properly be deemed to arise from the business operations carried on by the Respondent in Manitoba.

Record, Vol. II,
 p. 46

Record, Vol. I,
 p. 29, p. 109;
 Vol. II, p. 24

5.—The business of the Respondent Company is the manufacture and sale of chewing gum and the business is organised as follows. At the head office and factory in Ontario the ingredients are purchased, stored, processed, manufactured and packaged ready for sale and all advertising and sales programmes originate and are directed. The Company maintains stocks of manufactured gum at its Winnipeg branch for distribution in the three Prairie Provinces and northwestern Ontario, this merchandise being 30 shipped from Toronto in carload lots. The main purpose in operating this Winnipeg branch is to take advantage of freight rates on carload lot shipments from Toronto to Winnipeg as against smaller shipments at higher rates direct to customers in these Western areas.

Record, Vol. I,
 pp. 23, 43, 98
 Vol. II, p. 26,
 pp. 52-7

All sales made from the Winnipeg branch are made only to jobbers on a list approved from time to time by the head office in Toronto, and this office likewise fixes the price and terms of credit to these jobbers as well as the prices to retailers and the ultimate consumers. The price to the approved jobbers is fixed to allow the latter 10c. per box under the fixed retail price. For instance, slab gum, the price of which to retailers is 40 69c. per box (20 packages), is sold to the jobbers at 59c. per box including sales tax. The Company has in Canada no “ distributors ” who would

Record, Vol. I,
 pp. 23-8,
 pp. 109-11
 Record, Vol. I,
 p. 122

in turn sell to jobbers, but in Newfoundland it sells its product through such a distributor who operates on the basis of a net return to him of 3c. per box.

A staff of two salesmen or "detail men" is maintained in each of the three Prairie Provinces to contact retailers and encourage them to place orders through the approved jobbers, and also to solicit orders to the Respondent Company from these jobbers. These salesmen are directed by and report to the Sales Manager at Toronto although they are supervised to some extent by the Manager of the Winnipeg branch.

Record, Vol. I,
pp. 21-6,
pp. 98-100

10 The Winnipeg branch receives orders from approved jobbers within their credit limits, ships gum to fill these orders, sends out invoices therefor to the purchasers and reports all sales with duplicates of the invoice to head office at Toronto. The latter office sends out monthly statements direct to the customers, collects all payments in Toronto for goods sold, and keeps all controlling books of account. The Winnipeg branch only keeps a cash imprest account to take care of the expenses of the warehouse and office, the prepayment of freight from Winnipeg to destinations, and the salaries and expenses of the salesmen and warehouse employees. The Branch Manager's salary is paid direct from Toronto. All vouchers for payment out of this imprest account are sent to head office at Toronto at the end of each month and a cheque is then sent to Winnipeg for the amount of these vouchers, thus restoring this imprest account.

Record, Vol. I,
pp. 96-7,
pp. 102-3

Record, Vol. I,
pp. 32-3;
Vol. II, p. 27

6.—Since the incorporation of the Respondent Company, its set-up at Toronto has included a Factory Division and a Selling Division, and for many years, for the purpose of enabling comparisons to be made of costs and sales in successive periods, it has been the practice of the Company to charge the Selling Division on the books in Toronto with certain arbitrary prices—(28c. per package for slab gum and 33.6c. for candy coated gum)—"at the shipping door," i.e., upon completion of manufacture. It is admitted that this set-up and charge is purely a matter of internal accounting convenience. Unfortunately, as the Respondent's books are kept on this basis and exhibits extracted therefrom were put in evidence, some of the Judges in the Court of Appeal for Manitoba mistakenly concluded that the Respondent contended it had a right to deduct this so-called "manufacturing profit" before arriving at the profit taxable in Manitoba.

Record, Vol. I,
pp. 39-41—
pp. 111-113,
pp. 119-120

Record, Vol. I,
p. 154, l. 17;
p. 167, l. 1;
p. 181, l. 41

7.—The assessments made by the Province of Manitoba for the years in question are shown in Exhibits 7, 8, 9 and 10. The Company duly appealed therefrom to the Provincial Treasurer who affirmed the assessments. The Respondent Company thereupon appealed to the Court of King's Bench (Major J.).

Record, Vol. II,
pp. 17-20

Record, Vol. II,
p. 21

Record, Vol. II,
p. 38

Record, Vol. II,
p. 39

Record, Vol. I,
pp. 147-151

8.—Major J. in the reasons for his Judgment delivered on the 10th March, 1943, considered that the case turned upon the interpretation

of the words in Section 24 of The Income Taxation Act as to—"the net profit or gain arising from the business of the Company in Manitoba," and in his view the opinions expressed by Duff C. J. C. (concurring in by Davis and Taschereau JJ.) in the case of *International Harvester Company v. The Provincial Tax Commission (Sask.)* (1941) S.C.R. 325, at p. 330, disposed of this question in the Respondent's favour, the relevant section of the Saskatchewan Act there dealt with being identical with Section 24 of the Manitoba Act. He considered that the majority Judgment of the Supreme Court in that case turned on the validity of the regulations in question there, and accordingly did not deal with the point considered by Duff C.J.C. He, therefore, concluded that a portion of the Respondent's profit realized from sales and shipments through the Winnipeg branch must be allocated to the head office and factory in Ontario and that such portion was not subject to tax in Manitoba. Accordingly he allowed the Appeal and set aside the original assessments. 10

In default of any statutory method of apportionment of profit, Major J. adopted a basis or formula put forward by Mr. Walter J. MacDonald, a Chartered Accountant called as a witness by the Respondent, namely, to allocate to Manitoba that proportion of this profit which the Company's expenditures in Manitoba bore to its total expenditure to produce such profit. 20

When Counsel for the Appellant and Respondent came to settle the Judgment of Major J., they agreed that Mr. MacDonald should be asked to prepare statements showing the application of this formula to the Respondent Company's business and these statements when prepared were marked by consent as Exhibits 35A and B in the case. On the basis of these statements the formal Judgment at the trial was taken out declaring certain specific amounts to be assessable income for each of the years in question.

Record, Vol. II,
pp. 91-3
Record, Vol. I,
pp. 144-5

9.—On appeal by the Provincial Treasurer of Manitoba the Court of Appeal for Manitoba by a majority reversed the Judgment of Major J. and restored the original assessments. 30

Record, Vol. I,
pp. 153-195

Chief Justice McPherson (with whom Dennistoun J.A. concurred giving no reasons) differed from the views expressed by Duff C.J.C. in the *International Harvester case* (supra) as he considered the latter relied upon *Commissioner for Taxation v. Kirk* (1900) A.C. 588, where the statutory clauses were in his opinion entirely different and not applicable. He discussed a number of cases dealing with the question of where a trade or business is carried on, and emphasized the point that no profit is realized until the goods are sold. In the result he considered that all the profits from sales made through the Winnipeg branch were taxable in Manitoba, and that the Provincial Treasurer's appeal should be allowed. 40

Record, Vol. I,
pp. 159-60

Record, Vol. I,
pp. 156-9

Bergman J.A. considered that the *Kirk case* (supra) was dealing with a different problem and under different statutory provisions and employed the principle of apportionment solely because the Statute there expressly required this to be done. For this reason and because Duff C.J.C. based his Judgment on the *Kirk case*, he considered the latter's Reasons in the *International Harvester case* not to be applicable. He refers to decisions to the effect that manufacture does not earn income and that income is earned when the goods are sold, and in conclusion holds that Section 24 neither provides for nor contemplates an apportionment of the profit.

Record, Vol. I,
p. 179, ll. 19-44

Record, Vol. I,
pp. 181-5

- 10 Dysart J. (dissenting) considered that by expressly confining the taxable income of non-residents to the net profit arising from business carried on inside Manitoba, the Statute impliedly excludes from taxation any profits arising from the business of such persons carried on outside Manitoba—in other words, the Manitoba Act impliedly declares in this respect what was expressly declared in the Saskatchewan Statute in the *International Harvester case*. He referred to Sections 23 and 26 which, in his opinion, recognized that profits may be earned by or arise from operations carried on outside of Manitoba leading up to sale there and that such profits are not taxable. In his view Section 24—“quite clearly
- 20 “confines that taxation to such portion of the entire net profits as in fact “arise from, or may be reasonably attributed to, the Manitoba share of “the entire business of the Company”—and he held that this involved determination of a question of fact, namely, “what profit actually arose “from the business in Manitoba?”

Record, Vol. I,
p. 187

Record, Vol. I,
p. 188, l. 32

Record, Vol. I,
p. 188, l. 36—
p. 189, l. 6

- Dysart J. referred to and relied upon the Judgment of Duff C.J.C. in the *International Harvester case* and the Judgment in the *Kirk case*, and, in his opinion, none of the other cases cited in the argument in any way destroyed or weakened the applicability of these Judgments to the present case. He would therefore have dismissed the Provincial Treasurer's
- 30 Appeal.

Record, Vol. I,
pp. 191-3

Trueman J.A. gave short Reasons in support of his view that the appeal to the Court of Appeal should be dismissed.

Record, Vol. I,
pp. 164-5

10.—The Respondent Company then appealed to the Supreme Court of Canada who by a majority reversed the Judgment of the Court of Appeal for Manitoba, and restored the Judgment of Major J.

1947 S.C.R. 431

- Rinfret C.J.C. and Taschereau J. held that the definition of “income” in Section 3, which includes income derived “from sources within Manitoba or elsewhere,” does not apply to Section 24 where the tax is limited to the net profit or gain arising from the business in Manitoba. In this respect
- 40 they agreed with the opinion of Duff C.J.C. in the *International Harvester case* (1941 S.C.R. 325, at p. 351), that the effect of the limitation in the Saskatchewan section corresponding to Section 24 was to delete from the

1947 S.C.R. 431,
435

- definition of "income" in Section 3, the words "or elsewhere." They also agreed with the views expressed in the *International Harvester case* (1941 S.C.R. 325, at p. 334), that what is taxable is, not the profit arising from the Company's manufacturing operations in Ontario and its operations in Manitoba taken together, but the profit arising from the Company's operations in Manitoba. They likewise relied upon the Judgment in the *Kirk case* and considered that the words in Section 24—"arising from the "business in Manitoba"—mean "what is attributable to the business in Manitoba," or "profits derived from sources in Manitoba," and do not mean "derived from contracts entered into in Manitoba." 10
- 1947 S.C.R. 431, 436
- 1947 S.C.R. 431, 438-9
- Estey J., who concurred in the result and delivered separate Reasons, pointed out that business may be carried on in different places and by operations quite apart from the making of contracts, that under Section 24 the business may be wholly or partially carried on in Manitoba, and that the legislature no doubt had both these factors in mind in enacting this section. He emphasised that the Respondent Company's business of manufacturing and selling gum is a unit, that every operation contributes to the ultimate profit, and that, though the profit is realized but once and only through the medium of sales that does not determine the meaning of the words in Section 24 as to what is the net profit or gain arising from 20 the business in Manitoba. He then proceeded to discuss the effect of Sections 26, 27 and 27A, and of Section 4 (m) (prior to the 1940 amendments) providing for apportionment in certain specific circumstances, and considered that these sections did not exclude the application of apportionment under Section 24. He considered that the Saskatchewan Statute dealt with in the *International Harvester case* (supra) was for all practical purposes identical, and he relied upon the Judgments of Duff C.J.C. in that case and of the Judicial Committee in the *Kirk case*. He pointed out that the latter is of particular significance because the Judgment was written by Lord Davey (who was one of their Lordships in *Grainger & Sons v. Gough* 30 (1896) A.C. 325, and other English tax cases) and distinguished decisions on the English Income Tax as differing in language, and to some extent in aim, from the Acts before their Lordships in the *Kirk case*. In the result, Estey J. held that from the Statute itself it appears, both with respect to residents carrying on business outside of Manitoba, and with respect to non-residents carrying on business in the Province, that a separation or segregation of the business carried on within the Province is contemplated, and that Section 24 should be construed as taxing only the net profit arising out of that portion of the business which a non-resident carries on in Manitoba. 40
- 1947 S.C.R. 431, 453-4
- 1947 S.C.R. 431, 454
- 1947 S.C.R. 431, 454-5
- 1947 S.C.R. 431, 455
- Rand J., who dissented from the majority view, considered that, while the sales in Manitoba are the final step in an overall business embracing manufacture and sale, they and their clustered elements are a segregated and distinct business in themselves; that, in the statutory conception, ownership, possession and disposal of the goods in Manitoba
- 1947 S.C.R. 431, 439

furnish the foundation of the taxable business there conducted and that, in the absence of modifying language, the profit " arising from " that business is the entire profit. He then referred to what he terms " the unambiguous language " of Section 26 as showing distinction between " profits earned in " and " derived from " a locality and pointed out that Lord Darley in the *Kirk case*, while treating " derived " as synonymous with " arising " or " accruing," did not extend that equivalent to " earned " or " produced." He considered that what their Lordships were concerned with in that case was to ascertain what income was " earned " within the Colony and he, therefore, considered their Judgment not applicable to the present case.

Kellock J., who also dissented, stated the question in this case to be " What is the ' business ' in Manitoba the net profit arising from which is taxable ? " He considered that Sections 26 and 27A indicate—" the intention of the legislature that where sale takes place within the province, that is a carrying on of business within the meaning of the Statute without the necessity for any express provision to that effect, as the legislature evidently thought was necessary in the case of operations which do not culminate in sale." In his opinion, therefore, in any case where there is a carrying on of business within the province by reason of the habitual making of contracts of sale therein, Section 24 applies and the entire net profit arising from such sale is taxable and there is no apportionment. Furthermore he considered that the decisions under the English Income Tax Acts were applicable as in his view there was no real distinction between the language of these Statutes and Section 24 of the Manitoba legislation. He could not accept the dissenting Judgment of Duff C.J.C. in the *International Harvester case* and he distinguished the *Kirk case* as being decided on particular statutory provisions not present in the Manitoba legislation.

11.--The Respondent's position in this case is that there is only one profit, i.e., when the goods are sold, the price paid and the profit realized, but that upon the true construction of the Manitoba Statute only a portion of that profit is taxable, namely, " the net profit or gain arising from the " business of the Company in Manitoba " (Section 24). The Appellant, in effect, contends that these words mean—" derived from contracts of sale entered into in Manitoba " whereas the Respondent submits they mean—" arising from or attributable to the Company's operations carried on in Manitoba."

12.--With one exception (which is later referred to) Sections 23 to 28 inclusive are identical with Sections 21 to 25 of the Saskatchewan Statute in which the Judicial Committee, in their Judgment in the *International Harvester case*—" found a scheme for dealing (inter alia) with the taxation " or profits which are earned, or arise, or accrue, or are derived . . . " from the activities of persons or corporations who carry on certain " activities within the province and other activities outside the province."

1947 S.C.R. 431,
446

1947 S.C.R. 431,
447-9

1947 S.C.R. 431,
449-51

As a result, their Lordships in that case considered that Section 21 (a) of the Saskatchewan Statute (identical with Section 24 of the Manitoba Act in question here) should be construed as excluding from taxation—
 “ a proportion of the profit received by the Company in the province as
 “ ‘ arising ’ from its manufacturing business carried on outside the
 “ province.”

The Respondent respectfully submits that this decision completely disposes of the present appeal. As above mentioned, there is only one difference in the wording of the Saskatchewan and Manitoba Statutes. Section 4 (m) of the former reads— 10

“ 4. The following income shall not be liable to taxation
 “ hereunder :—

“ (m) Profits earned by a corporation or joint stock
 “ company, other than a personal corporation, in that part
 “ of its business carried on at a branch or agency outside of
 “ Saskatchewan.”

This appeared in identical words in Section 4 (m) of the Manitoba Statute down to 1940, when sub-section (m) was replaced by the following (S.M. 1940 Ch. 51 Section 4) :—

“ (v) Income earned by a corporation or joint stock company 20
 “ *with its head office in Manitoba* (other than a personal corporation)
 “ in any part of its business carried on outside of Manitoba.”

This amendment would not in any event affect the assessments here in question which were for the years 1936 to 1939 inclusive. However, as has been previously pointed out in this case, and as stated by Sir Lyman Duff C.J.C. in the *International Harvester case*, the effect of the words—
 “ net profit or gain arising from the business of such person in Manitoba ”
 in Section 24 is for the purpose of that section to delete from the definition of “ income ” in Section 3 the words “ or elsewhere.” In other words, the income expressly exempted by Section 4 (m) of the Saskatchewan Act, 30
 and of the Manitoba Act prior to 1940, is impliedly exempted by Section 24.

13.—As to the basis or formula of apportionment adopted by Major J. and confirmed in the Judgment of the Supreme Court of Canada, the Respondent submits that, in the absence of any provision therefor in the Statute and there being no regulations thereunder, Major J. was entitled to and did adopt on the evidence submitted the best available means to ascertain the income of the Respondent arising from its business in Manitoba. Major J.’s finding on this point was a finding of fact and should not be interfered with as it cannot be said he proceeded on a wrong principle of law. The Appellant, who vigorously denied that any apportion- 40
 ment whatsoever should be made, refrained from putting in any evidence

as to any other basis of apportionment and did not, before the Court of Appeal of Manitoba or the Supreme Court of Canada, question the basis adopted by Major J.

14.—The formal Judgment of Major J. finds specific amounts to be taxable income in Manitoba for each of the years in question and properly refers it to the Minister to make his assessments accordingly. These amounts were agreed upon by Counsel for both parties as correctly applying the basis of apportionment adopted by Major J. and were based on Exhibits 35A and 35B put in by consent after the trial.

Record, Vol. I,
pp. 144-5

Record, Vol. II,
pp. 91-3

10 15.—The Respondent accordingly submits that the Judgment in the Supreme Court of Canada is correct and that this appeal should be dismissed with costs for the following among other

REASONS

1. BECAUSE the scheme and intent of the Manitoba legislation as applicable to the Respondent is to tax income arising from or attributable to its operations in Manitoba and not elsewhere.
- 20 2. BECAUSE if, as contended by the Appellant, the intent of the Manitoba legislation is to tax the entire net profit derived from contracts of sale entered into in Manitoba the Statute could clearly have said so, and should have said so clearly.
3. BECAUSE Sections 26, 27 and 27A of the Manitoba Statute show an intent to tax non-residents only upon that portion of their income or profits arising or derived from operations or activities in Manitoba.
- 30 4. BECAUSE apart from the cases covered by Sections 26, 27 and 27A, there is only left the case of a non-resident or foreign corporation carrying on business partly in Manitoba and partly elsewhere, and to such a case Section 24 is expressly made applicable, the section being intended to apply the same principle as Section 4 (v) makes applicable to resident corporations, namely, to tax only the profits arising from that part of the business which is in Manitoba, i.e., the business operations there carried on.
5. BECAUSE Sections 26, 27 and 27A were enacted to cover special cases where a non-resident might be doing things in Manitoba which might not come within the accepted meaning of the term " carrying on business " but which the legislature

in these specific circumstances declares should be “ deemed ” to be carrying on business.

6. BECAUSE, although in these special cases only the Minister is given discretion to apportion profits, this does not deny the principle of apportionment as being applicable to cases under Section 4 (v) or Section 24.
7. BECAUSE the Manitoba Statute contains provisions, such as Section 4, subsections (k) and (v), not in the English Income Tax Act, for exempting in whole or in part income derived from or earned outside Manitoba wherein no method of 10 determining the taxable portion is provided as under Sections 23, 26, 27 and 27A inclusive.
8. BECAUSE the English Income Tax Act differs in scope and language from the Manitoba Statute and the cases thereon are not applicable.
9. BECAUSE the Manitoba legislation is identical in scope and wording with the Saskatchewan Statute considered by the Judicial Committee in the *International Harvester case*, the Judgment in which disposed of this appeal.

EVERETT BRISTOL. 20

STEPHEN CHAPMAN.

SCHEDULE TO RESPONDENT'S CASE

RELEVANT EXTRACTS FROM THE INCOME TAXATION ACT— REVISED STATUTES OF MANITOBA, 1940, CHAPTER 209

Section 3.—For the purposes of this Part, “ income ” means the annual net profit or gain or gratuity, whether ascertained and capable of computation as being wages, salary, or other fixed amount, or unascertained as being fees or emoluments, or as being profits from a trade or commercial or financial or other business or calling, directly or indirectly received by a person from any office or employment, or 30 from any profession or calling, or from any trade, manufacture or business, as the case may be, whether derived from sources within Manitoba or elsewhere ; and includes the interest, dividends or profits directly or indirectly received from money at interest upon any security or without security, or from stocks, or from any other investment,

and, whether such gains or profits are divided or distributed or not, and also the annual profit or gain from any other source including
(Here follow certain specified classes of income)

Section 4.—The following incomes shall not be liable to taxation hereunder :

(k) The income of incorporated companies (except personal corporations)

10 (i) whose business operations are of an industrial, mining, commercial, public utility or public service nature, and are carried on entirely outside of Manitoba, either directly or through subsidiary or affiliated companies, and whose assets (except securities acquired by the investment of accumulated income and such bank deposits as may be held in Manitoba) are situate entirely outside of Manitoba, including wholly owned subsidiary companies which are solely engaged in the prosecution of the business outside of Manitoba of the parent company ;

20 . . . (v) income earned by a corporation or joint stock company with its head office in Manitoba (other than a personal corporation) in that part of its business carried on outside of Manitoba.

Note : This subsection (v) was enacted by S.M. 1940, c. 51 s. 4 replacing subsection (m) of Section 4 of the prior Income Tax Act which read :—

(m) profits earned by a corporation or joint stock company other than a personal corporation in that part of its business carried on at a branch or agency outside of Manitoba.

30 Section 5 (1) “ income ” as hereinbefore defined shall for the purposes of this part be subject to the following exemptions and deductions :

(oo) the amount paid to any country other than the Dominion of Canada for income tax in respect of the income of the taxpayer derived from sources therein if that country allows a similar credit to persons in respect of income derived from sources within Manitoba.

40 Section 6 (4) Where a corporation or joint stock company with its head office in Manitoba, other than a personal corporation, carries on business outside of Manitoba, no losses incurred in respect to that part of its business shall be deducted or taken into account in calculating the amount of income earned in Manitoba.

Section 8.—(1) A taxpayer (*other than a corporation or joint stock company*) shall be entitled to deduct from the tax . . . the amount the taxpayer has paid . . . to any other province for income tax in respect of the income of the taxpayer derived from sources therein . . . if such other province allows a similar credit to persons in receipt of income derived from sources within this province.

Note ; This Section 8 (1) was enacted by S.M. 1940 c. 51 s. 11 replacing subsection 6 of Section 5 of the prior Income Tax Act which was the same except for the above italicised words.

Section 9. (1) There shall be assessed, levied and paid upon the income 10
during the preceding year of every person

- (a) residing or ordinarily resident in Manitoba during such year ; or
- (b) who sojourns in Manitoba for a period or periods amounting to one hundred and eighth-three days during such year ; or
- (c) who is employed in Manitoba during such year ; or
- (d) who, not being resident in Manitoba, is carrying on business in Manitoba during such year ; or
- (e) who, not being resident in Manitoba, derives income for services rendered in Manitoba during such year, otherwise than in the course of regular or continuous employment, for any person 20
resident or carrying on business in Manitoba,

a tax at the rates applicable to persons other than corporations and joint stock companies set forth in the First Schedule upon the amount of income in excess of the exemptions provided in this Part ; but those rates shall not apply to corporations and joint stock companies ;

(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 rates applicable thereto set forth in the First Schedule.

Section 23.—Where any corporation carrying on business in Manitoba 30
purchases any commodity from a parent, subsidiary, or associated corporation at a price in excess of the fair market price, or where it sells any commodity to such a corporation at a price less than the fair market price, the Minister may, for the purpose of determining the income of such corporation, determine the fair price at which such purchase or sale shall be taken into the accounts of such corporation.

Section 24.—(1) The income liable to taxation under this Part of every person residing outside of Manitoba, who is carrying on business in Manitoba, either directly or through or in the name of any other

person, shall be the net profit or gain arising from the business of such person in Manitoba.

(2) This section shall apply to a taxpayer which is a corporation or joint stock company carrying on business in Manitoba and which has not its head office in Manitoba.

10 Section 25.—The income liable to taxation under this Part of every person residing outside of Manitoba, who derives income for services rendered in Manitoba, otherwise than in the course of regular or continuous employment, for any person resident or carrying on business in Manitoba, shall be the income so earned by such person in Manitoba.

Section 26.—(1) Where a non-resident person produces, grows, mines, creates, manufactures, fabricates, improves, packs, preserves or constructs, in whole or in part, anything within Manitoba and exports the same without sale prior to the export thereof, he shall be deemed to be carrying on business in Manitoba and to earn within Manitoba a proportionate part of any profit ultimately derived from the sale thereof outside of Manitoba.

(2) The Minister shall have full discretion as to the manner of determining such proportionate part.

20 Section 27.—(1) Any non-resident person who lets or leases anything used in Manitoba, or who receives a royalty or other similar payment for anything used or sold in Manitoba, shall be deemed to be carrying on business in Manitoba and to earn a proportionate part of the income derived therefrom in Manitoba.

(2) The Minister shall have full discretion as to the manner of determining such proportionate part.

30 Section 27A.—(1) Any non-resident person soliciting orders or offering anything for sale in Manitoba through an agent or employee, and whether any contract or transaction which may result therefrom is completed within Manitoba or without Manitoba, or partly within and partly without Manitoba, shall be deemed to be carrying on business in Manitoba and to earn a proportionate part of the income derived therefrom in Manitoba.

(2) The Minister shall have full discretion as to the manner of determining such proportionate part.

Section 28.—Nothing in the three last preceding sections shall in any way affect the generality of the term “ carrying on business ” used elsewhere in this Part.

Section 107.—(1) The Lieutenant-Governor-in-Council may prescribe forms for use under this Act and may make regulations for the carrying out of the objects of the Act, and for the purpose of carrying into effect the provisions of the various Parts thereof, and may provide for any proceeding, matter or thing for which express provision is not made in this Act or for which only partial provision is made.

(2) Without thereby limiting the generality of the foregoing subsection the power of the Lieutenant-Governor-in-Council under this Act shall extend to the making of regulations,

- (a) for providing for the joint administration of Parts I and II 10
of this Act or any part or provision of other parts of this Act;
and obviating any doubt as to matters of procedure arising
therefrom ;
- (b) for determining what sections or what provision of any
section of Part I shall apply for the purposes of Part II and
with what exceptions and modifications.

(3) Any regulations made under this section shall have the force of law as if made an integral part of this Act.

Note · This Section 107 replaced Section 30 (1) of the prior Act, 20
which read :

Section 30 (1). The Lieutenant-Governor-in-Council may prescribe forms for use hereunder and may make regulations for carrying out the objects of this Act ; such regulations shall have the same force and effect as if incorporated herein and shall be available for reference by taxpayers.

Section 8 (5) of the prior Act, repealed and not re-enacted in the Consolidation Act of 1937, read as follows :

Section 8 (5). Where the Administrator is unable to determine or to obtain the information required to ascertain the income within the Province of any corporation or joint stock company or of any class 30
of corporations or joint stock companies, the Lieutenant-Governor-in-Council may, on the recommendation of the Minister, make regulations for determining such income within the Province or may fix or determine the tax to be paid by a corporation or joint stock company liable to taxation.

Note ; No regulations existed under either Act applicable to the matters in question.

In the Privy Council.

No. 46 of 1948.

ON APPEAL FROM THE SUPREME COURT OF
CANADA.

BETWEEN
THE PROVINCIAL TREASURER
OF MANITOBA ... APPELLANT
AND
WM. WRIGLEY JR. COMPANY
LIMITED RESPONDENT.

CASE FOR THE RESPONDENT

LEE & PEMBERTONS,
46 Lincoln's Inn Fields,
London, W.C.2.