BETWEEN:

1951 Oct. 9 Nov. 16

MANNING TIMBER PRODUCTS LIMITED .... APPELLANT;

AND

MINISTER OF NATIONAL REVENUE .... RESPONDENT.

Revenue—Excess Profits Tax—Excess Profits Tax Act, 1940, s. 3—"Substantial interest" not a majority interest—Appeal dismissed.

Held: That "substantial interest" in s. 3 of the Excess Profits Tax Act, 1940, does not mean controlling or majority interest.

APPEAL under the Excess Profits Tax Act.

The appeal was heard before the Honourable Mr. Justice Sidney Smith, Deputy Judge of the Court, at Victoria.

D. M. Gordon, K.C. for appellant.

J. G. Ruttan and *F. J. Cross* for respondent.

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

SIDNEY SMITH D.J. now (November 16, 1951) delivered the following judgment:

This appeal is taken under Section 14 of the Excess Profits Tax Act, which makes Sections 40-87 of the Income War Tax Act apply to Excess Profits Tax. Sections 60-63 of the latter Act govern appeals. Appellant was assessed for 1947 tax under Section 3 of the Excess Profits Tax Act. Section 3 makes all corporations subject to tax; but the proviso thereto exempts from tax during their first year of operations companies that (1) Carry on a substantially new business with substantially new assets; or (2) Began business after the 26th June, 1944 (as the appellant did) *unless* the Company continued a previous business (as the appellant did) *and* some person or persons had a "substantial interest" both in the previous business and in the new business.

The appellant first began business in 1947 and so was exempt under the latter provision unless caught by both the exceptions to the exemption. Admittedly the appellant is caught by the exception dealing with continuous business, so the question is: Is it also made out that someone had a "substantial interest" both in its business and in the business that it continued?

The case set up by the Crown is that one Fred Manning and his wife held all the shares but one in Manning Lumber Mills Ltd., (whose business appellant continued) and that the Mannings and the Lumber Company held 49 per cent of the shares in the appellant company. Appellant concedes that the Mannings had a "substantial interest" in the old Company, but denies that the holders of 49 per cent in the new (appellant) company had a "substantial interest" in it within the meaning of the proviso to Section 3. Appellant says that whatever meaning would be given

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the term "substantial interest" if it had *no* context, the context here shows that in Section 3 "substantial interest" must mean "main interest" according to all established canons of construction, and by "main interest" appellant means controlling or majority interest, i.e., over 50 per cent of the shares.

I have given appellant's powerful argument my best consideration but I am simply unable to see that there is any context here which would enable me to construe "substantial" as "majority". I am fortified in this view by the following passage from the speech of Viscount Simon in *Palser* v. *Grinling* (1):

What does "substantial portion" mean? It is plain that the phrase requires a comparison with the whole rent, and the whole rent means the entire contractual rent payable by the tenant in return for the occupation of the premises together with all the other covenants of the landlord. "Substantial" in this connection is not the same as "not unsubstantial", i.e., just enough to avoid the de minimis principle. One of the primary meanings of the word is equivalent to considerable, solid or big—It is in this sense that we speak of a substantial fortune, a substantial meal, a substantial man, a substantial argument or ground of defence. Applying the word in this sense, it must be left to the discretion of the Judge of fact to decide as best he can according to the circumstances in each case, the onus being on the landlord. If the judgment of the Court of Appeal in Palser's case were to be understood as fixing percentages as legal measure, that would be going beyond the powers of the judiciary. To say that everything over 20 per cent of the whole rent should be regarded as a substantial portion of that rent would be to play the part of a legislator. If Parliament thinks fit to amend the Statute by fixing percentages, Parliament will do so. Aristotle long ago pointed out that the degree of precision that is attainable depends on the subject matter. There is no reason for this Court to differ from the conclusion reached in these two cases that the portion was not substantial, but this conclusion is justified by the view taken on the facts, not by laying down percentages of general application.

If I were to accede to appellant's argument I would be doing precisely what Lord Simon says I must not do, viz., playing the part of a legislator.

It seems to me I have no alternative but to dismiss the appeal with costs.

Judgment accordingly.

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(1) (1948) 1 All E.R. 1 at 11.