

1945

Oct. 17
Oct. 23

BETWEEN:

BURNS AND JACKSON LOGGING }
COMPANY LIMITED..... } APPELLANT;

AND

THE MINISTER OF NATIONAL }
REVENUE } RESPONDENT.

*Revenue—Income—Income War Tax Act R.S.C. 1927, c. 97, s. 5 (1) (a)
—Minister's exercise of discretion—Logging "operators"—Logging
"operations"—Exception from special allowance for exhaustion of
timber limits.—Appeal dismissed.*

Appellant is a logging operator and sells on the open market the logs produced by it. For some years part of such logs were sold by it to the B.C. Pulp and Paper Company Limited for pulp-wood purposes.

On February 19, 1942, the Minister of National Revenue by means of a letter addressed to the B.C. Loggers Association decided to make a special allowance for the exhaustion of timber limits for the 1941 taxation year. Such special allowance was not to be granted in respect of pulp-wood and fuel wood operations.

Appellant claimed an allowance for all logs produced by it regardless of the ultimate use of such logs. The Minister disallowed part of this claim on the ground that Appellant was not entitled to any allowance on logs sold for conversion into pulp-wood. An appeal was taken to this Court.

Held: That the discretion vested in the Minister by the Income War Tax Act, R.S.C. 1927, c. 97, s. 5 (1) (a) was exercised by him in the manner indicated in his letter of February 19, 1942, and such discretion was properly exercised.

2. That a logger engaged in general logging operations is not entitled to the special allowance for exhaustion of timber limits for that portion of his output sold to a pulp-mill.

APPEAL under the provisions of the Income War Tax Act.

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

C. H. Locke, K.C. and C. M. O'Brian, K.C. for Appellant.

W. S. Owen; K.C. and J. G. McEntyre for Respondent.

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

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SIDNEY SMITH, Deputy Judge, now (October 23, 1945) delivered the following judgment:

The controversy in this appeal falls within a very narrow compass: the conclusions I have reached and my reasons therefor may be stated with corresponding brevity.

Under Sec. 5 (1) (a) of the Income War Tax Act, R.S.C. 1927, ch. 97, and amendments, the Minister of National Revenue is empowered in determining income derived from timber limits, to "make such an allowance for the exhaustion of timber limits as he may deem just and fair." Upon representations made to him by the logging industry of British Columbia, with the avowed object of obtaining a concession in income tax in return for increased depletion of their timber reserves, the Minister decided to make a special allowance for the 1941 taxation year. This decision was embodied in the terms of a letter from the Minister to the B.C. Loggers Association, dated 19 February, 1942. The letter in question simply adopted certain recommendations made in a report by the Timber Depletion Committee set up to study the matter. One such recommendation was to the effect "that the special allowance be not granted in respect of pulp-wood and fuel wood operations."

The Appellant is a logging operator producing its logs from Crown Granted and Crown owned timber lands in British Columbia, and selling them on the open market. It has for some years past sold part of its logs to the B.C. Pulp & Paper Company Limited for pulp-wood purposes. In its return for the taxation year 1941 it claimed an allowance of \$8,398.40 for all logs produced, regardless of the ultimate use of the logs. Of this amount the Minister disallowed \$2,096.63 upon the ground that the Appellant was not entitled to any allowance on logs sold to the B.C. Pulp & Paper Company Limited during the aforesaid taxation year, such logs so sold being for conversion into pulp-wood. These figures are not disputed.

The sole questions before me are whether the Min-

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ister exercised his discretion as to this allowance in the terms of his letter of 19 February, 1942; and if so, whether he is right in his contention that the Appellant is not entitled to the special allowance for such of its logs as were sold to the B.C. Pulp & Paper Company Limited.

I have no doubt that the Minister exercised, and properly exercised, his discretion in this matter in the manner indicated in his letter of 19 February, 1942. It was argued by the Respondent that such letter was nothing more than an indication of the way in which the discretion would be exercised, and that the final exercise of the discretion was not, and could not be made until returns from the individual logging companies had been filed, and the circumstances of each particular case came for decision before the Minister. In my opinion this view is untenable. Indeed, the contrary seems to be the case; for in *Gardner v. Jay* (1) quoted in support of it, Bowen L.J. refers to the undesirability of laying down any particular grooves in which discretion should run, and I take this also to mean the time when it should be exercised. That the Minister himself thought that he was exercising his discretion in his letter of 19 February, 1942, is, I think, clear from the concluding words, viz.: "Assessments will be reported and approved on the above basis."

The question then is simply this—does the provision that the special allowance will not be granted "in respect of pulp-wood.....operations" disentitle a logger from the benefit of the special allowance for so much of his output as he may sell to a pulp-mill? The issue between the parties rests on these few words.

There is not much guidance to be had from the context. Para. 1 says "that in respect of timber cut in the taxation year.....operators be given a special allowance". Para. 5 says "that the special allowance be not granted in respect of pulp-wood.....operations". Para. 1 uses the word "operators"; para. 5 the word "operations". It is evident that out of general logging operations an exception of pulp-wood operators is made. But it seems to me that the contrast is not in

the nature of the operations, but in the nature of the product. Out of the generic term timber, the exception pulp-wood is carved.

I do not know precisely what is meant by a pulp-wood operation, and have been unable to find any clear guide from the evidence in this regard. Important clauses, such as these before me, do not find their way into such reports casually or by accident. They are usually the fruit of negotiation, consideration, compromise. None the less, I think the words "pulp-wood operations" were used herein in a general sense, perhaps even loosely, and are not to be construed too literally or too technically. If they were intended to mean operations which produced logs exclusively for pulp, then I doubt whether there are any such operations in British Columbia. Even in the case of pulp licences and wood-pulp leases owned by pulp companies, timber, other than that used for pulp, is logged and gathered in. Because I take it from the evidence that stands of timber are not all of a piece, but are composed of many kinds of lumber. Hemlock is used for pulp and may also be used for saw-logs; the other species are converted into saw-logs. If, then, a pulp-wood operation produces logs for timber, as well as logs for pulp, I think the more reasonable construction is that the allowance is not intended to apply to logs that are converted into pulp-wood, and that this is so irrespective of the operation whence they originate.

There was evidence led with respect to the general atmosphere in which the negotiations took place, as an available guide to the general policy of the Minister in framing this provision. It was pressed upon me that this evidence indicated an intention on the part of the Minister to accelerate the production of logs generally, by the grant of this special allowance to all operators producing logs and selling them on the open market for whatever purpose; that the only exception was in the case of wood-pulp operations. I need not speculate too closely upon this. But a re-reading and a reconsideration of this portion of the evidence leads me to think that the purpose of the Minister was to expedite the production of logs for lumber; that he was not concerned with the production of logs for pulp; and that his intention

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was to grant the special allowance only to producers of the former, to the extent of their production thereof, and quite regardless of whether they were general logging operators, pulp-wood operators, or otherwise. I think that this is the plain common-sense of the matter, and that it ought to have been apparent that it was so, to all those engaged in the logging industry, from a consideration of the language used in the light of the surrounding circumstances.

The appeal must be dismissed with costs.

Judgment accordingly.