MANNING TIMBER PRODUCTS LTD....APPELLANT; 1952

*June 10
*June 30

AND

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

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA.

Taxation—Revenue—Excess Profits Tax—The Excess Profits Tax Act, 1940, (Can.) c. 32, 1940 2nd Sess. as amended, s. 3—"substantial interest",—meaning of.

Held: that "substantial interest" in s. 3 of *The Excess Profits Tax Act, 1940,* as amended, does not mean a "majority" or a "controlling interest." The only possible meaning that it can be given is "large quantity", "considerable amount of shares." Moreover, in the French version of s. 3, which must be read with the English one, *(Authors & Publishers* v. *Western Fair* [1951] S.C.R. 596), the translation for "substantial" is "important."

Per: Cartwright J. In this case the ownership of 49 per cent of the shares of the appellant constituted a substantial interest within the meaning of the words in s. 3.

Judgment of the Exchequer Court [1951] Ex. C.R. 338, affirmed.

APPEAL from a decision of Sidney Smith, Deputy Judge of the Exchequer Court of Canada (1) dismissing the appeal of the appellant from the respondent's assessment against it for the year 1947 under *The Excess Profits Tax Act, 1940.*

D. K. MacTavish Q.C. and *G. Perley-Robertson* for the appellant. There are no facts in dispute and this whole case turns on the meaning of "substantial interest" in the proviso to s. 3 of The Excess Profits Tax Act. The Crown contends 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 says that whatever meaning would be given the term "substantial interest" if it had no context, still the context here shows that in s. 3 "substantial interest" must mean "main interest" according to all established canons of construction. The Oxford Dictionary and the Century Dictionary both give one of the recognized meanings of "substantial" as being "main" or "in the main". Such phrases as "substantial justice", "substantial completion" show that this meaning

*PRESENT: Kerwin, Taschereau, Kellock, Locke and Cartwright JJ.

(1) [1951] Ex. C.R. 338.

1952

MANNING TIMBER PRODUCTS LTD. v. MINISTER OF NATIONAL REVENUE

is quite common. The Crown conceded this at the hearing, though it denied that that was the meaning here. The proviso to s. 3 itself uses the term "substantially" in two places and it is also found in ss. 4(2), 4A (1) (*a*) (*i*), and 5(4). "Substantially" being so used, this is decisive on the authorities to show that the proviso to s. 3 uses the word "substantial" as meaning "main" there being nothing to exclude this meaning. *Re National Savings Bank Association* (1); *R.* v. *Poor Law Commissioners: Re St. Pancras* (2); *R.* v. *Poor Law Commissioners: Re Holborn Union* (3); *Brace* v. *Abercarn* (4); *Victoria (City)* v. *Bishop of Vancouver* (5); *Wolfe Co.* v. *R.* (6).

Since this is a taxation statute, some line must be found: and the only line that can be drawn is that between a major and a minor interest, between a controlling and a minority interest, which the Privy Council in *M.N.R.* v. *Wrights Canadian Ropes Ltd.* (7) fixed definitely at the 50 per cent mark.

Not only is the term "substantial interest" capable of more than one meaning but despite popular usage, the factors that point to the legislature's meaning "main interest" in s. 3 outweigh any factors that point the other way. The appellant also relies on the principle that a taxing measure capable of more than one meaning must be construed in favour of the taxpayer. *The King* v. *Crabbs* (8); *Kent* v. *The King* (9).

W. R. Jackett Q.C. and *F. J. Cross* for the respondent. The appellant made it clear at the hearing before the trial judge that the only point in issue is whether a 49 per cent interest was a "substantial interest" within the meaning of the proviso to s. 3 of *The Excess Profits Tax Act, 1940.* The word "substantial" has a number of quite different senses depending on the context in which it is used. This appears from an examination of the word as an adjective in the Shorter Oxford English Dictionary and the illustrations of its various uses given therein. Used with the indefinite article it is clear that it means "Of ample or considerable amount", or "having substance; not imaginary,

(1) (1866) L.R. 1 Ch. 547 at 549, 550.
(2) (1837) 6 A. & E. 1 at 7.
(3) (1838) 6 A. & E. 56 at 68.
(4) [1891] 2 Q.B. 699 at 705.
(5) [1921] 2 A.C. 384 at 390.
(6) [1921] 63 Can. S.C.R. 141 at 154.
(7) [1947] A.C. 109 at 118.
(8) [1934] S.C.R. 523.
(9) [1924] S.C.R. 388 at 396.

unreal, or apparent only; true, solid, real". None of the other meanings given can be applied to its use in the context "a substantial interest". This is made clear by reference to the French version where the word used in the present context is "important". Compare para. (*b*) of s. 3 where the words in the French version corresponding to "substantially" in the English version are "sensiblement" and "essentiellement". The French and English versions of the Statute must be read together. *Composers', Authors & Publishers Association of Canada, Ltd.* v. *Western Fair Association* (1). It is a question of fact as to whether an interest is substantial. The word does not require any precise proportion as a matter of law. *Palser* v. *Grinling* (2). That the word in ordinary use in a context such as that here does not mean "majority" or "controlling" as urged by appellant's counsel is shown by the use of the word in the Notice of Appeal where a number of persons are stated each to have had "substantial" investments in the appellant company. In any event the question as to whether the same persons had a substantial interest in the appellant's business and the previous business was entrusted by Parliament to the Minister and he formed the opinion that the same persons had a substantial interest in both businesses. The question is whether "the person or persons who has or have a substantial interest in the business . . . had, in the opinion of the Minister . . . a substantial interest in a previous business." (S. 3). The Minister formed that opinion. There was evidence on which he could and no ground of invalidity has been suggested. *The King* v. *Noxema Chemical Co. of Canada Ltd.* (3). The reason why this question was left for determination by the Minister is probably that Parliament did not find it possible to formulate a more precise test than that contained in the phrase a "substantial interest". It must be remembered that the phrase appears in a provision designed to protect the revenue against evasion by the improper use of an exemption provision in a wartime taxation statute. For the above reasons and for the reasons contained in the reasons for judgment delivered by the trial judge the appeal should be dismissed with costs.

(1) [1951] S.C.R. 596. (2) [1948] A.C. 291 at 316-17.
(3) [1942] S.C.R. 178.

1952

MANNING TIMBER PRODUCTS LTD. v. MINISTER OF NATIONAL REVENUE

The judgment of Kerwin, Taschereau, Kellock and Locke, JJ. was delivered by:—

TASCHEREAU, J.:—In February, 1948, the appellant duly filed an Income and Excess Profits Tax return for the 1947 taxation year, but failed to show any excess profits tax payable. The contention is based on section 3 of *The Excess Profits Tax Act*, which is to the effect that a company is exempt from tax during its first year of operation, provided (*a*) it carried on a substantially new business with substantially new assets, (*b*) has started business after June 26th, 1944, unless it continued a previous business, and (*c*) some person or persons had a *"substantial interest"* both in the previous and in the new business.

It is common ground that the appellant first began business in 1947, year of its incorporation, that it continued a previous business, and it is also conceded that the Mannings who owned nearly all the shares of the previous business, held 49 per cent of the shares of the new company. The only point in issue is therefore whether a 49 per cent interest is a "substantial interest", within the meaning of the Excess Profits Tax Act.

The appellant was assessed in the sum of $29,458.78 and his appeals to the Minister as well as to the Exchequer Court were dismissed. The Honourable Sidney Smith, deputy judge, declined to accept the argument that "substantial interest" meant "majority" or "controlling interest."

I think that this judgment is clearly right. The word "substantial" has a number of quite different senses, all depending on the context in which it is used. In the present case, I agree with the submission of the respondent, that the only possible meaning that it can be given is "large quantity", "considerable amount of shares". When Parliament intended to deal with the standard profits of certain controlled companies, it used the words "a controlling interest", as it did in section 15*a*. Moreover, in the French version of section 3, which must be read with the English one (*Authors & Publishers* v. *Western Fair* (1)), the translation for "substantial" is "important".

The appeal fails and should be dismissed with costs.

(1) [1951] S.C.R. 596.

CARTWRIGHT J.:—The appellant contends that in the phrase "a person or persons who has or have a substantial interest in the business either by ownership of shares in the corporation or joint stock company that operates the business or otherwise," used in section 3 of the Excess Profits Tax Act as amended, the words "a substantial interest" mean "a controlling interest", and therefore in the case of a joint stock company, which the appellant is, "more than half of the issued shares". I am unable to accept this contention. I do not think that in their ordinary meaning the words "substantial interest" are synonymous with the words "controlling interest", and that Parliament did not intend so to use them is indicated by the fact that the latter words are used elsewhere in the same statute.

I agree with the view of the learned Deputy Judge that in this case the ownership of 49 per cent of the shares of the appellant constituted a substantial interest within the meaning of the words in section 3 quoted above.

I would dismiss the appeal with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Crease, Davey, Lawson, Davis, Gordon & Baker.*

Solicitor for the respondent: *F. J. Cross.*