1959

*Jun. 17, 18
Nov. 30

WESTERN LEASEHOLDS LIMITED ...APPELLANT;

AND

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

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Taxation—Income tax—Capital gain or income—Company—Powers under memorandum of association—Moneys received for options to purchase oil rights—Moneys received when options exercised—Moneys received for leases—The Income War Tax Act, R.S.C. 1927, c. 97, ss. 3, 4—The Income Tax Act, 1948 (Can.), c. 52, ss. 3, 4, 127(1).

In 1944, the appellant company and Western Minerals Ltd. (see *infra* p. 24) were incorporated and were at all relevant times owned and controlled by the same shareholders and directors. The declared objects of each company included, *inter alia,* the carrying on of the business of drilling for, producing and marketing oil, and the acquiring by purchase, lease, concession or licence mineral properties or any interest therein and selling and disposing of or otherwise dealing with the same or any interest therein. Western Minerals Ltd. acquired the freehold mineral rights in some 496,000 acres, and the appellant company acquired the right to lease or sublease these rights on a 10 per cent. royalty basis.

In 1946, the appellant company, by arrangement with Western Minerals Ltd., granted to Shell Oil Co. an option to purchase the mineral rights in a certain acreage in consideration of the sum of $30,000. In 1947, the appellant received $250,000 from Imperial Oil Ltd. for a similar option. In 1949, and 1950, Imperial Oil Ltd. exercised its option and paid the appellant a sum of nearly $2,000,000. In 1949, the appellant received over $900,000 in respect of a leasing agreement made by Western Minerals Ltd. with a group called the Barnsdall Group.

The Minister treated all these amounts received by the appellant as income from a business. The Minister's assessment was upheld by the Exchequer Court.

Held: The payments received by the appellant company were taxable as income.

It was contemplated that by granting subleases, reservations or options or otherwise turning to profitable account the rights held by the appellant under its contract with Western Minerals Ltd., moneys might be realized which would enable the appellant eventually to produce and market oil. Consistently with one of its declared objects, the appellant carried on the business of dealing with the rights it had acquired with a view to profit. The moneys it received were all profits realized from the business of dealing in the mineral rights. *Anderson Logging Company v. The King,* [1925] S.C.R. 45, applied.

*PRESENT: Taschereau, Locke, Martland, Judson and Ritchie JJ.

APPEAL from a judgment of Cameron J. of the Exchequer Court of Canada[1], affirming an assessment made by the Minister of National Revenue. Appeal dismissed.

H. H. Stikeman, Q.C., and *J. A. Robb*, for the appellant.

D. W. Mundell, Q.C., *A. L. DeWolf* and *K. E. Eaton*, for the respondent.

The judgment of the Court was delivered by

LOCKE J.:—This is an appeal from a judgment delivered in the Exchequer Court[1] by Cameron J. by which the appeals of the present appellant from assessments for income tax for the taxation years 1946, 1947, 1949 and 1950, except as to certain matters which were disposed of by the consent of the parties at the trial, were dismissed. As to the matters last mentioned the assessments were referred back to the respondent to enable him to make the reassessments necessary to carry out the agreement made. In respect to the taxation years 1946 and 1947 the present appellant had appealed to the Income Tax Appeal Board which, by a decision of the majority, dismissed the appeals and the appeal from that judgment was disposed of by Cameron J.: in respect of the other two years, the appeals were taken direct to the Exchequer Court from the decision of the Minister.

In the year 1943, Eric L. Harvie, a barrister practising in Calgary, acquired the right to a conveyance of the freehold mineral rights in some 496,000 acres of land in Alberta from the British Dominions Lands Settlement Corporation and the interest of Anglo-Western Oils Limited which held a 999-year lease of such mineral rights. The consideration for the purchase was the sum of $10,000 and the covenant of Mr. Harvie to indemnify the said vendors from any liability for taxes upon the property so agreed to be transferred.

After the purchase minority interests in these rights were sold or given by Mr. Harvie to two of his partners in the legal firm of which he was the senior member, a member

[1] [1958] Ex. C.R. 277, [1958] C.T.C. 257, 58 D.T.C. 1128.

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of his office staff, certain members of his family and a geologist by name DeKoch. The majority interest, however, at all times remained in him.

In April 1944, Mr. Harvie caused to be incorporated two companies, Western Leaseholds Limited, the present appellant, (hereinafter referred to as "Leaseholds") and Western Minerals Limited (hereinafter referred to as "Minerals"). Each of these companies was incorporated by a Memorandum of Association under the provisions of *The Companies' Act,* R.S.A. 1942, c. 240, and were companies limited by shares. The Memorandum of Association and the Articles of Association adopted by each was identical and each was authorized to issue 50,000 Class "A" common shares and 50,000 Class "B" common shares without nominal or par value.

The objects stated in the Memorandum of Association of the appellant are to be considered. These were stated with particularity and at considerable length. They included the objects of acquiring by purchase, lease, concession or licence mineral properties, reservations, concessions or any interest therein and to lease, place under licence, sell, dispose of and otherwise deal with the same or any interest therein; to prospect for and develop, *inter alia,* petroleum and natural gas properties and to sell or otherwise dispose of the same or any part thereof and to produce and deal in petroleum products. In view of the wide powers vested in a company limited by shares by s. 19 of *The Companies' Act,* except such as may be expressly excluded by the Memorandum, the objects of the company might have been expressed with much greater brevity and this was the view of Mr. E. D. Arnold, one of Mr. Harvie's partners, who drafted the Memorandum and who acquired an interest in the properties. However, on the direction of Mr. Harvie, the objects were stated at length, including the above mentioned specific matters.

By an agreement dated July 7, 1944, made between Mr. Harvie and Minerals, he transferred to that company all his right, title and interest in and to the mineral rights purchased by him as aforesaid. Minerals, on its part, agreed to assume the obligations of Mr. Harvie under his agreement with the former owners, except the payment of taxes

against any of the said lands, and to grant to him at his request an option to his nominee in a form then agreed upon.

On the same date he entered into an agreement with Leaseholds by which he assigned to it the rights acquired by him under his agreement with Minerals, except as to the shares allotted to him, in consideration of the allotment to him or his nominees of all its authorized capital, perpetual redeemable debentures of the face value of $250,000 and the performance by it of all its obligations under a document referred to as a "Document for Leases" which was made bearing the same date between Minerals, described as the "Owner" and Leaseholds, described as the "Operator".

By this last mentioned agreement Minerals granted to Leaseholds the right to acquire leases of the said minerals in a form agreed upon, each lease to be for such term as should be specified by Leaseholds, provided that the term of any lease so granted should not extend beyond December 31, 2940. The agreement provided that Leaseholds might operate under any lease granted to it either on its own behalf or by subleasing the minerals to others. The royalty payable to Minerals was 10 per cent. of the current value of the production.

In January 1945, the British Dominions Lands Settlement Corporation on the direction of Mr. Harvie conveyed the title to the mineral rights direct to Minerals and in due course certificates of title were obtained in the name of that company. In the case of the majority of the lands the certificates showed Minerals to be the owner of an estate in fee simple in all mines and minerals other than gold and silver which might be found to exist within, upon or under the lands described. In the case of some of the titles, however, there were specific reservations of other minerals, such as coal. The leasehold rights of Anglo-Western Oils Limited were apparently also transferred or surrendered to Leaseholds at the same time.

In the result, at the time of the transactions hereinafter referred to which took place prior to December 31, 1950, Minerals was the registered owner of an estate in fee simple

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of the mineral rights and Leaseholds entitled to obtain leases of such rights or any part thereof in its own name upon the agreed terms.

It is necessary for the determination of the question as to the liability of the appellant to taxation in these years to examine with some care the business actually carried on by it.

On October 4, 1944, the firm of Harvie & Arnold wrote to A. E. Verner of Innisfree, Alberta, saying that they had been instructed by Leaseholds to say that in consideration of the sum of $1,146.35 the company would, up to June 1, 1945, refrain from leasing the petroleum or natural gas rights in 14 quarter sections of land in Alberta which were described and that upon application by Verner at any time up to the date mentioned and upon his submitting evidence that he had actually spudded in and was drilling a well on any quarter section of the said land grant to him a lease of such rights upon such land upon the terms and conditions usually contained in such leases by the Canadian Pacific Railway Company in respect to its lands, the royalty reserved to be 12½ per cent and an annual rental of $1 a year. The letter further stated that if the option to obtain a lease of a quarter section was exercised before June 1, 1945, the company would, in consideration of a further payment, refrain from leasing the petroleum and natural gas rights for a further period, and in the event of this option in turn being exercised in respect of any quarter section, upon consideration of a further payment, to extend the option to June 1, 1946.

On October 10, 1945, Leaseholds wrote to George Cameron of Vermilion, Alberta, saying that in consideration of the payment of a sum of $682.30 it agreed to refrain for a period of 9 months from October 1, 1945, from leasing the petroleum or natural gas rights in 7 designated sections of land in Alberta, and that upon application of any time during the said period the company would cause Minerals to grant leases of these rights in the said lands or any part of them upon the terms and conditions contained in that company's Standard Form of Petroleum and Natural Gas Lease.

The rights given by these two letters are referred to in the evidence as reservations and at some time, apparently in the year 1944, Leaseholds granted to Rusylvia Oils Limited, a company, all the shares of which were owned by Mr. Harvie, a reservation on some 20,000 acres of the lands in question. The evidence does not disclose what amounts, if any, were paid by this company for this reservation or its exact nature, but the auditor's report of June 21, 1948, dealing with the accounts of the company as at December 31, 1947, stated that there was an account payable by Rusylvia Oils Limited of $1,059.05.

The profit and loss account for the company as shown in the auditor's report shows for the year 1944 income from reservations of lands, $1,228.92: for 1945, $1,185.24 and for 1946, $639.68 in addition to an amount of $79.60 referred to as "income from lease". For the year 1947 nothing is shown as having been received from reservations, but $4,228.59 was shown as "income from oil royalties" and $3,137.70 from "gravel lease and royalties". The amounts shown received from these 4 years were simply carried into the general accounts of the company as receipts from its operations which in each year showed a loss.

By an agreement dated May 15, 1946, Minerals and Leaseholds granted to Shell Oil Company of Canada Limited the right to purchase in fee the petroleum and natural gas and related hydrocarbons other than coal in 299,948.87 acres of the lands referred to. The arrangement had theretofore been negotiated by Leaseholds with the Shell Company, and as the fee of the mineral rights was in Minerals and the Shell Company wished to have an option to purchase the said rights outright, it was necessary for Minerals to join in the agreement. The option to purchase was given in consideration of the payment of $30,000 and was for the balance of the calendar year 1946, but provided for an extension for 4 further years upon the making of further payments and provided the price per acre to be paid for rights purchased during the term of the option. This option was not exercised and the rights of the Shell Company terminated on December 31, 1946. The amount so paid by it was shown in the balance sheet of the company for 1946 as capital surplus.

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Contemporaneously with the making of this agreement, Minerals and Leaseholds entered into a further agreement, reciting the circumstances under which the agreement was to be made with the Shell Company and stipulating that in the event of that company purchasing any mineral rights under the agreement, Minerals should receive out of the purchase price $2 per acre in full settlement of its interest and that Leaseholds should be entitled to any balance.

On November 1, 1946, Leaseholds granted a lease of the petroleum and natural gas rights in 3 quarter sections of land in the vicinity of Leduc, Alberta, to Imperial Oil Limited. This lease was for a term of 10 years certain at a yearly rental of $1 per acre and a royalty of 12½ per cent. of any production obtained. The lease obligated the lessee to commence drilling at some point on the leased area within 6 months, and unless production was obtained to drill certain further wells with the details of which we are not concerned.

On the same date Minerals granted to Leaseholds a lease of these 3 quarter sections for a term of 10 years certain which might be extended in certain events and which reserved a royalty of 10 per cent. of any production to Minerals.

The auditors report for the year 1947 does not give any detail of the amounts, if any, received in respect of this lease, a lump sum being shown for the royalties received, and it does not appear that any amount was paid to the company in consideration of granting the lease. The report gives certain particulars of the amounts shown as received from gravel leases, however, $2,000 being shown as received from Albert Gaumont as settlement for the years 1944, 1945 and 1946 in respect to gravel taken from the properties leased by the company, and a further sum of $977.70 as royalty for gravel taken in 1947. This amount was said to have been allocated 4/5ths to Minerals and 1/5th to Leaseholds.

By letter dated February 4, 1947, signed by Leaseholds and Minerals the two companies granted to Imperial Oil Limited an option exercisable at any time up to December 31, 1951, to purchase the petroleum and natural gas rights and related hydrocarbons other than coal in 193,135

acres of the lands which were particularly described in an attached schedule. The option payments were to be $50,000 annually with the privilege to the optionors to require prepayment of all of such payments on or before June 1, 1947. The price to be paid per acre and the royalty reserved, without any drilling commitment, which varied in each year, were stipulated and it was provided that all taxes and other carrying charges were to be paid by the optionee during the term of the option in respect to acreage covered in the option and in lands purchased. Prepayment of the 5 years' option payments was required by the optionors and the sum of $250,000 paid and shown in Leaseholds' accounts for 1947 as capital surplus.

By a letter dated December 31, 1947, addressed by Leaseholds to Minerals and approved by that company, it was stated that the parties had agreed that Leaseholds was entitled to retain the sum of $250,000 option money paid by Imperial Oil Limited in advance and that as the royalties payable in respect of any rights purchased by Imperial Oil Limited were less than the 10 per cent. royalty payable by Leaseholds under its agreement with Minerals, Leaseholds was given the exclusive option of purchasing from time to time up to 7 per cent. of any such royalty as might become payable upon defined terms.

By an agreement dated January 1, 1949, made between Minerals and the Barnsdall Oil Company and three other companies, to be referred to hereafter as the "Barnsdall group", the latter acquired certain rights in the petroleum, natural gas and related hydrocarbons in 146,279 acres of the lands. The negotiations leading up to this agreement had apparently been carried on by Leaseholds but the Barnsdall group wished to have their agreement direct with the registered owner of these rights and Minerals entered into the agreement at the request of Leaseholds.

By the agreement entered into which was referred to thereafter by the appellant as a "lease", Minerals granted to the Barnsdall group the exclusive right and privilege to explore by geological, geophysical and other means and to drill, produce and remove from the lands the petroleum substances the property of the owner which might be found to exist therein. The agreement was expressed to be for

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a primary term of 20 years from December 31, 1948 and for extended terms thereafter upon defined conditions. The expressed consideration payable by the lessees was the sum of $10, but as the evidence disclosed, the Barnsdall group paid to Leaseholds a further sum of $914,243.75 as consideration for the granting of the lease. The rights leased were not for a solid block of land but were for individual parcels which, throughout the area, immediately adjoined parcels in which Minerals retained the petroleum rights. There was no covenant in the agreement binding the lessees to drill for oil other than a covenant which appeared under a subheading "offsets" whereby the lessees agreed that in the event a well was drilled on an offset location and petroleum substances were produced the lessees were obligated to drill a well on the unit contiguous to the drill site from which production was being taken to a depth sufficient to penetrate any zone within the same geological period from which the offset well has obtained production. The lessees further agreed to pay a royalty of $12\frac{1}{2}$ per cent. of all petroleum substances taken from the lands or the proceeds of the sale thereof.

Presumably it was agreed as between Minerals and Leaseholds at the granting of the Barnsdall lease as to the disposition to be made of the large cash payment to be made by that group, but this was not reduced at the time to writing.

Imperial Oil Limited, by a series of letters dated respectively February 2, 1949, July 26, 1950, October 3, 1950, and November 29, 1950, exercised its option to purchase the mineral rights in approximately 6,000 acres of the lands and by letters bearing these dates made the payments stipulated for by the agreement of February 4, 1947, and requested conveyances to it of the said rights. By a letter dated December 29, 1950, the company exercised its option upon the balance of the rights and requested a conveyance. The $250,000 which had been paid as consideration for the granting of the option was by the terms of the agreement applicable upon the purchase price and the balance remaining payable upon the exercise of the option on December 29, 1950 was $1,902,041.65 which was then paid.

While Imperial Oil Limited had requested conveyances of the mineral rights in each of these letters, that company apparently decided that it was preferable to obtain a lease from Minerals, this was agreeable to the appellant and such a lease for the entire area in respect of which the option had been given and which was determined to be 193,137.79 acres in extent was granted bearing date December 30, 1950. Such lease was for a term of 979 years at a yearly rent of $1 and royalties of 9 per cent. of the petroleum and natural gas produced reserved and a like royalty upon what were referred to as "plant products". Other terms of this lease, of importance to the parties, have no relevance to the matter under consideration.

By a document referred to as "Agreement of Settlement and Adjustments" dated December 30, 1950, Minerals and Leaseholds settled and defined their respective interests in the lease of the 3 quarter sections granted to Imperial Oil Limited at Leduc on November 1, 1946, the lease to that company of December 30, 1950, and the Barnsdall lease. This was rendered necessary by the fact that while Leaseholds was entitled to lease all of these lands, the actual leases made had been made at its request by Minerals. As to these three leases it was agreed that Leaseholds should retain all moneys paid by Imperial Oil Limited "as the purchase price for the said lease under the terms of the option letter dated the 4th of February, A.D. 1947" excepting the sum of $234,394.68 which was said to be the amount paid by Leaseholds to Minerals as consideration for reducing the royalty payable under the agreement for leases from 10 per cent. to 9 per cent. As to the Barnsdall lease it was agreed that it had been made by Minerals at the request of Leaseholds and as between the parties was to be considered as a sublease granted by Leaseholds under a further lease to be entered into on that date. It was provided that Minerals would forthwith enter into a new lease in an agreed form covering the petroleum and natural gas rights on approximately 293,568 acres which included the lands covered by the Barnsdall lease. Leaseholds, on its part, agreed to surrender to Minerals all other rights and interests

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under the agreement for leases of July 7, 1944. The other considerations for the granting of the new lease are not relevant to the matters to be considered.

The questions to be determined are as to the liability of the appellant to income tax upon the $30,000 received from Shell Oil Company on May 15, 1946: $250,000 received from Imperial Oil Company Limited on February 4, 1947: $27,606.25 received from that company in 1949: $914,243.75 received from the Barnsdall group on February 22, 1949: and $1,953,771 received from Imperial Oil Company Limited in December of 1950.

The contention of the appellant put briefly is that these amounts were received from the sale of rights which in its hands were a capital asset. The respondent contends that each of the amounts were profits from a business carried on by the taxpayer in each of these years.

The statute applicable to the payments received in 1946 and 1947 is the *Income War Tax Act*, R.S.C. 1927, c. 97, as amended. Section 3 of that statute defines "income" as including the annual net profit or gain from a trade or commercial business or calling.

The payments received in the years 1949 and 1950 are subject to the provisions of *The Income Tax Act* of 1948, c. 52. The following sections are to be considered:

3. The income of a taxpayer for a taxation year for the purposes of this Part is his income for the year from all sources inside or outside Canada and, without restricting the generality of the foregoing, includes income for the year from all

(*a*) businesses

(*b*) property, and

(*c*) offices and employments.

4. Subject to the other provisions of this Part, income for a taxation year from a business or property is the profit therefrom for the year.

Section 127(1):

In this Act,

* * *

(*e*) "business" includes a profession, calling, trade, manufacture or undertaking of any kind whatsoever and includes an adventure or concern in the nature of trade but does not include an office or employment;

The learned trial judge, after reviewing the evidence, said in part:

> In my view, no distinction can be drawn between the five items of profit now under consideration. They are all gains which fall within the test laid down in *California Copper Syndicate v. Harris*, (1904) 5 T.C. 159. . . .
>
> Generally speaking, a business is operated for the purpose of making a profit and the pursuit of profits may be carried on in a variety of ways and by different operations. In the instant case, it seems to me that the business of Leaseholds was carried out in two stages and involved two different operations. While the purpose of ultimately developing its own resources may have been kept in mind throughout, the first operation necessarily consisted of the acquisition and disposition of mineral rights so as to acquire funds with which to enter into the second stage, namely, the drilling for and operation of oil and gas wells on its own account. The possibility of disposition of the mineral rights had been contemplated since the company was formed. In dealing with its mineral rights in this fashion, it did not do so accidentally but as part of its business operations, and although possibly that line of business was not of necessity the line which it hoped ultimately to pursue, it was one which it was prepared to undertake, and, by its charter, had power to undertake.
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> * * *
>
> In my opinion, the profits here in question were gains made in the carrying on or carrying out of a business and in the scheme for profit-making. Those relating to the years 1946 and 1947 are therefore within the definition of income as found in s. 3(1) of the *Income War Tax Act*: . . . Those profits relating to the years 1949 and 1950 fall within the provisions of ss. 3 and 4 of *The Income Tax Act* 1948 and are therefore taxable profits.

These findings of fact as to the nature of the business which the appellant intended to carry on and that actually carried on during the years in question are, in my opinion, completely supported by the evidence.

As the evidence discloses, it was at the direction of Mr. Harvie that the Memorandum of Association of the company included among the declared objects the carrying on of the business of drilling for, producing and marketing oil and also the acquiring by purchase, lease, concession or licence mineral properties or any interest therein and selling and disposing of or otherwise dealing with the same or any interest therein. In *Anderson Logging Company v. The King*[1], Duff J., as he then was, said that if the transaction in question belongs to a class of profit-making operations contemplated by the Memorandum of Association, *prima facie* at all events the profit derived from it is a profit

[1] [1925] S.C.R. 45 at 56, 2 D.L.R. 143.

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derived from the business of the company. That presumption may, of course, be negatived by the evidence as was done in the case of *Sutton Lumber & Trading Company v. The Minister of National Revenue*[1]. In the present case, however, the evidence, far from negativing the presumption, appears to me to support it.

The evidence given by the witness Harvie which was accepted by the learned trial judge showed that it was his intention and the intention of his associates that the appellant would carry on the business of drilling for, producing and marketing oil. Before this purpose could be accomplished, it was necessary to determine whether oil was present in the area in paying quantities. It is made manifest by the evidence that it was also contemplated by them that by granting subleases, reservations or options or otherwise turning to profitable account the rights held under its contract with Minerals moneys might be realized which might enable it eventually to produce and market oil.

The area in which these rights were held was some 775 square miles in extent and to adequately explore it to determine whether it contained oil in paying quantities required an expenditure of moneys which was entirely beyond the financial capacity of the appellant. The means adopted to insure the exploration of the large area covered by the options granted to the Shell and Imperial Oil companies and that leased to the Barnsdall group was to require payment of these large amounts for the granting of the options and the lease respectively. The increase in the cost to the optionees of acquiring title to the mineral rights from year to year during the term of the options was designed to insure that the work of exploration would be done with at least a greater degree of expedition than if the price from year to year remained constant.

It is to be remembered that by the agreement for leases made between Minerals and the appellant on July 7, 1944, the appellant was entitled to the grant of leases in its own name and that it was given the privilege of subletting the rights to the others. This appears to me to clearly indicate that it was contemplated that the appellant might turn its

[1] [1953] 2 S.C.R. 77, 4 D.L.R. 801, [1953] C.T.C. 237, 53 D.T.C. 1158.

rights to profitable account by granting subleases for such consideration as it might be able to obtain from others as well as by operating on its own account.

The reservations given to Verner on October 4, 1944, to George Cameron on October 10, 1945, and to Rusylvia Oils Limited and the payments received for these reservations were treated simply as part of the business of the appellant and the moneys received carried into its general accounts and treated as receipts from its business. There had apparently been some prior commitment to Verner by the former owners which Mr. Harvie required the appellant to carry out by granting the reservation but this did not apply to the case of Cameron. The evidence as to the arrangement made with Rusylvia Oils Limited for a reservation of 20,000 acres is rather vague and may have been given in pursuance of a commitment by the former owners of the mineral rights. The payments received from that company, however, were apparently carried into the company's general income as in the case of Verner and Cameron. The royalties received from Imperial Oil Limited under the lease granted by the appellant of November 1, 1946, were similarly treated as part of the company's business receipts. Similarly the $2,000 received from Albert Gaumont for gravel taken from the properties leased during the years 1944, 1945 and 1946 and the further amount paid in 1947 were treated as business receipts of the company.

I agree with the learned trial judge that as regards the liability to taxation there is no sound distinction to be drawn between the five items of profit under consideration. The fact that those controlling the company intended at the outset that its principal or one of its principal activities should be the production and sale of oil does not really touch the question to be decided. Before a start could be made in carrying out that purpose it was necessary to determine the existence of oil. That the appellant, consistently with one of its declared objects, carried on the business of dealing with the rights it had acquired from Minerals with a view to profit appears to me to be demonstrated by the evidence. In my view the moneys received from Verner, Cameron and Rusylvia Oils Limited for the reservations granted to them, from the Shell and Imperial Oil companies

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for the granting of the options, and by the latter company for the granting of the lease and the amount paid by the Barnsdall group were all profits realized from the business of dealing in these mineral rights equally as were the royalties reserved which also formed part of the consideration for the granting of these various rights. The fact that it was intended that the moneys so realized would be utilized to finance the production of oil is an irrelevant circumstance in determining whether what was done was in truth the carrying on of a business for the purpose of making profit.

I would dismiss this appeal with costs.

Appeal dismissed with costs.

Solicitors for the appellant: Stikeman & Elliott, Montreal.

Solicitor for the respondent: A. A. McGrory, Ottawa.