Privy Council Appeal No. 98 of 1922.

The Granby Consolidated Mining, Smelting and Power Company, Limited - - - - - - - - *Appellants*

v.

The Attorney-General of British Columbia - - - - *Respondent*

FROM

THE COURT OF APPEAL OF BRITISH COLUMBIA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 26TH JANUARY, 1923.

Present at the Hearing:

VISCOUNT HALDANE.
LORD SHAW.
LORD PARMOOR.
LORD WRENBURY.
LORD CARSON.

[*Delivered by* LORD WRENBURY.]

In this action the appellants, who are taxpayers, sue for a declaration as to their rights and liabilities under the Taxation Act, ch. 222 of the Revised Statutes of British Columbia and the amendments thereto. The question is whether they are entitled to the 10 per cent. discount in respect of income tax allowed by Section 10 of the Act, ch. 222, being the Act of 1911. The writ was issued on the 8th November, 1921. The appellants' rights are to be determined as at that date.

The appellants are a mining company working copper mines in the province, and as such they were, until the year 1917, not subject to income tax. They were taxed at the rate of 2 per cent. on their output.

By virtue of the Taxation Act Amendment Act, 1917, as amended by the Taxation Act Amendment Act, 1918, the appellants became from the year 1917 inclusive liable for income tax, or for the 2 per cent. tax on output, whichever should be

the greater, with a provision that the 2 per cent. tax should be collected quarterly, and if the income tax should prove to be the greater, then the quarterly payments of the 2 per cent. should be treated as part payment of the income tax during the corresponding period.

In respect of the years 1917 and 1918 the appellants duly paid the 2 per cent. tax, but for some reasons which do not appear, but under circumstances for which the respondent admits that the appellants are in no respect to blame, the appellants were not assessed for income tax for those years. The Revenue Authorities seem to have omitted to remember that under the Acts of 1917 and 1918 the appellants had become liable. Matters so continued until the 31st December, or shortly before the 31st December, 1920. The Revenue Authorities then discovered the omission, and on the 12th July, 1921, by what they styled in each case an "Assessment Roll for year 1921," headed with the words "Amended Assessment for 1919" and "Amended Assessment for 1920," respectively, they assessed the appellants for income tax in respect of the years 1917 and 1918. As the incomes to be assessed were those of 1917 and 1918, it would have been more intelligible, from the respondent's point of view, if they had been called Amended Assessments for 1918 and 1919. But it does not matter. In these assessments they deducted the 2 per cent. mineral tax paid in respect of the years in question, and purported to allow a deduction of 10 per cent. discount "if paid before the 20th July, 1921," *i.e.*, within eight days after the assessment. There was no statutory or other ground for assigning the 20th July, 1921, as a date before which payment must be made to obtain a discount.

The question for decision is as to the right of the appellants to the 10 per cent. discount in respect of the taxation which had been overlooked as above stated, and for which they were assessed on the 12th July, 1921. They say that the relevant date for the purpose of Section 10 of the Act of 1911 is the 30th June, 1922. The respondent says it is the 30th June, 1921, although this is a date some two weeks before there was created a debt for the amount of the tax by its assessment on the 12th July, 1921. The question has to be decided upon ascertaining the true construction of some sections in the Taxation Acts.

The scheme of the Act of 1911 is as follows: Section 2 defines "Income" as meaning the amount earned or received "during the twelve months ending the 31st day of December next preceding the date of assessment." It then provides for the appointment of an assessor who is to prepare an annual assessment roll in which he is to show (see Section 7 of the Act of 1917), a description of all taxable income. His jurisdiction and his duty are confined to the income earned or received during the twelve months ending the 31st December next preceding the date when he is making the assessment.

The further statement of the scheme of the Act may perhaps be most clearly made by stating it with reference to some

selected year and explaining what assessment can, under the Acts, be made in the year selected. Take the year 1920. The assessor, who has jurisdiction and duty to assess in 1920, is to prepare a roll showing the income earned or received by the taxpayer in the year 1919. Until Section 103 of the Act (being the section upon which the question arises) is reached, he has no jurisdiction or duty as regards income of any other year. His assessment roll must be completed by the 30th November, 1920 (Section 81 of the Act of 1911), and its revision by the Court of Revision must ("except supplementary assessment rolls") be completed by the 21st December, 1920 (Section 93 of the Act of 1911).

The taxes thus assessed are due and payable on the 2nd January, 1921 (Section 105 of the Act of 1911), and the assessor is to advertise in January, 1921, that the taxes are due (Section 110 of the Act of 1911).

The taxpayer who pays before the 30th June, 1921, is entitled to a discount of 10 per cent. (Section 10 of the Act of 1911). On the following 31st December, 1921, the taxes, if unpaid, become "delinquent" (Section 211 of the Act of 1911), and thenceforward bear interest at 6 per cent. (Section 212 of the Act of 1911).

It will have been noticed that Section 93 had mentioned "supplementary assessment rolls." Further, Section 37 had contemplated that it might be "necessary . . . . for the assessor to make any supplementary roll during any year." And Section 82 had provided that "the assessor may from time to time, either before or after a revision of the roll, or of any separate or supplementary roll in respect of any assessment or tax," do certain things including "place thereon the amount, or balance of any amount, of tax for which any person is liable, which has not been entered in any previous roll or which has not been previously demanded." The respondent has argued that the separate or supplementary roll mentioned in these sections includes a roll which shall include not only taxation overlooked in respect of the "twelve months ending the 31st day of December immediately preceding the date of assessment" (Section 2), but taxation overlooked in previous years. Their Lordships do not so read the Act. The definition in Section 2 dominates the situation. The assessor acting, say, in 1920, must draw the line and include only taxation for income earned or received in 1919. If he has overlooked any income falling within that year he may, notwithstanding time expired, make a supplementary roll of income in that year, but he cannot do more.

In the present case taxation of income earned or received in 1917 and 1918 had been overlooked until December, 1920. The Act provides means for remedying the oversight. It is found in Section 103. The question is as to the construction of that section. It gives the assessor authority to make a supplementary roll for the current year, upon which he can assess and tax for the amounts omitted, but for a period limited to ten years preceding the date of such supplementary roll. At this point the Act has

departed from the limit imposed by the definition in Section 2. The assessor may put upon his roll any income within the ten years. Thus in the present case he need not make one supplementary roll for 1917 and another for 1918. He might settle one supplementary roll including both years. The section styles this a "supplementary roll for the current year," but that obviously does not mean a supplementary roll for the taxation of income earned or received in the last preceding year. It is a roll altogether different. The words "for the current year" do not mean for taxation attributable to the current year, but give authority in "the current year," *i.e.*, the year in which the assessor is acting, to make a roll in respect of income of years which are past, not current, and with which but for this section he would have no concern. An endeavour was made to give a different meaning to the expression "current year" by pointing to the initial words of Section 103, and saying that the expression must bear the same meaning in each of the two places in which it is found in the Section. Their Lordships do not feel pressed with any difficulty in this respect. The word "current" necessarily speaks as at some point of time. It may in one place speak as at one point of time and in another place as at another point of time. In their opinion, the initial words mean that the revision of any roll appropriate to that year which was current when the assessment was made is not to be conclusive, that, although the time has expired within which an assessment roll would, under the earlier provision of the Act, be closed, there is given authority to make a supplementary roll and pick up any stitches dropped in previous years. This supplementary roll is to be a supplementary roll for the year current at the time when the assessment is made under the authority given by the Section. Section 103, in their Lordships' judgment, is a section under which an assessment made in July, 1921, was not "attached to" (an expression used in the judgments below) nor part of, nor an enlargement of, nor an addition to the annual roll of 1920. It did not enlarge anything that was, and did not add anything that ought to have been, in the annual roll. It was altogether a separate and different roll, and is a roll not of 1920 but of 1921, the year current when it was made, and in fact it is so styled in the assessment.

The debt in respect of a tax first attaches when an assessment is made. There was no debt in respect of these taxes until the 12th July, 1921. Moreover, having regard to Section 6 of the Act of 1919, until the Minister had, in his discretion, fixed the allowance to be made for depreciation, there was no liquidated or ascertained sum at all attributable to the taxpayer's income.

The view thus expressed as to the meaning of Section 103 is, in their Lordships' opinion, the only possible view, having regard to Sections 104 and 105 of the Act of 1911. By Section 104 the taxes are to be deemed to be due and collected under the roll revised during the previous year, and by Section 105 are to be

deemed to be due and payable on the 2nd January in each year. A roll cannot be revised before it is made. This roll was made in 1921. The "previous year" in the present case therefore is 1921. and the tax is therefore to be collected in 1922, and if payment was made before the 30th June, 1922, the taxpayer was entitled to the discount of 10 per cent.

Their Lordships will humbly advise His Majesty that this appeal ought to be allowed, and the declaration made by the Judge of first instance restored.

It is, perhaps, well to add, lest it should be thought to have been overlooked, that no reliance was placed by the respondent on the word "arrears" in Section 10, and rightly so. The taxes in question only became a debt when they were assessed. They are not "arrears" by reason of the fact that they are due in respect of income of 1917 and 1918. They become "arrears" only when the 31st December, 1922, has been passed, and they have become "delinquent" under Section 211.

The respondent will pay the costs of the appeal.

In the Privy Council.

THE GRANBY CONSOLIDATED MINING, SMELTING AND POWER COMPANY, LIMITED,

v.

THE ATTORNEY-GENERAL OF BRITISH COLUMBIA.

DELIVERED BY LORD WRENBURY.

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