BETWEEN:

1953

Jan. 19
Mar. 14

THE MINISTER OF NATIONAL REVENUE ..... APPELLANT;

AND

SIMPSON'S LIMITED ..... RESPONDENT.

*Revenue—Income Tax—Income War Tax Act, R.S.C. 1927, c. 97, ss. 5(a), 6(b), 6(n)—Minister's discretion to allow depreciation deductions—Hearing of appeal from Income Tax Appeal Board a trial de novo—Presumption of validity of assessment on appeal by Minister from decision of Income Tax Appeal Board—When Minister may base allowance of depreciation deductions on costs of assets to former owner—Minister's discretion under s. 6(n) administrative.*

The respondent acquired land and buildings from a company in which it had a controlling interest and claimed a deduction in respect of the depreciation of the buildings based on the cost of the buildings to it. The Minister allowed a deduction of less than this amount basing his allowance on the cost of the buildings to their former owner and on his assessment added the difference to the respondent's taxable income. The Income Tax Appeal Board allowed the respondent's appeal from this assessment and the Minister appealed from this decision.

*Held:* That the hearing of an appeal from a decision of the Income Tax Appeal Board to this Court is a trial *de novo* of the issues of fact and law that are involved and the hearing in this Court must proceed without regard to the case made before the Board or the Board's decision.

2. That on an appeal to this Court from a decision of the Income Tax Appeal Board, whether the taxpayer or the Minister is the appellant, the assessment under consideration carries with it a presumption of its validity until the taxpayer establishes that it is incorrect either in fact or in law and the onus of proving that it is incorrect is on the taxpayer, notwithstanding the fact that the Income Tax Appeal Board may have allowed an appeal from it. Statement in *Goldman* v. *Minister of National Revenue* [1951] Ex. C.R. 274 at 282 corrected.

3. That it is for the Minister in the exercise of his discretion, and not for the Board, to determine not only the rate of deduction in respect of depreciation, if any, that should be allowed but also the amount, whether of cost or of value, to which such rate should be applied.

4. That the first proviso to section 6(*n*) of the Act set a top limit to the total amount of deductions in respect of depreciation that could be allowed in the case of assets acquired under the circumstances of controlling interest specified in it and while it does not direct the Minister to base his allowance of deductions in respect of the depreciation of such assets on their cost to their former owner there is nothing in the proviso or elsewhere that precludes him from using such a base.

5. That the discretion vested in the Minister by section 6(*n*) of the Act is an administrative discretion rather than a quasi-judicial one.

6. That the Minister's action was in accord with the proper exercise of his discretion.

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APPEAL from a decision of the Income Tax Appeal Board.

The appeal was heard before the President of the Court at Toronto.

*T. Z. Boles* and *F. R. Duncan* for appellant.

*R. M. Sedgewick* for respondent.

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

The PRESIDENT now (March 14, 1953) delivered the following judgment:

This is an appeal from the decision of the Income Tax Appeal Board (1), dated September 6, 1951, allowing the respondent's appeal from its income tax assessment for its taxation year ending January 8, 1947, on the ground that the Minister had not properly exercised his discretion under section 6(*n*) of the Income War Tax Act, R.S.C. 1927, chapter 97.

The appeal relates to the nature and extent of the discretion vested in the Minister to allow deductions in respect of depreciation from what would otherwise be taxable income. So far as relevant to the appeal section 6(*n*) reads as follows:

> 6. In computing the amount of the profits or gains to be assessed, a deduction shall not be allowed in respect of
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> (*n*) depreciation, except such amount as the Minister in his discretion shall allow, including
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> . . .
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> Provided, however, that the Minister shall not allow a deduction in respect of depreciation of assets owned by an incorporated taxpayer from the income of the said taxpayer if he is satisfied that the said taxpayer directly or indirectly had or has a controlling interest in a company or companies previously the owner or owners of the said assets or that the said previous owner (which term shall include a series of owners) directly or indirectly had or has a controlling interest in the said taxpayer or that the said taxpayer and the previous owner were or are directly or indirectly subject to the same controlling interest and that the aggregate amount of deductions which have been allowed to the said taxpayer and/or the said previous owner in respect of the depreciation of such assets is equal to or greater than the cost of the said assets to the said previous owner or to the first of the previous owners where more than one;

(1) (1951-52) 5 Tax A.B.C. 45.

The facts are not in dispute. By an agreement, dated August 1, 1946, the respondent purchased from R. H. Williams & Sons Limited certain lands and buildings in Regina for $850,000, of which $506,000 was for the buildings. The cost of these buildings to R. H. Williams & Sons Limited had been $432,341.42 and the aggregate amount of deductions which had been allowed to it in respect of their depreciation was less than such cost.

It was also admitted than on January 8, 1947, the respondent had a controlling interest in R. H. Williams & Sons Limited and, on the hearing, counsel for the respondent admitted further, but only for the purposes of this appeal, that it had such a controlling interest at all material times.

In its income and excess profits tax return, dated July 8, 1947, for the taxation year under review the respondent claimed a deduction of $5,452 in respect of the depreciation of the buildings which it had purchased from R. H. Williams & Sons Limited but the Minister in his assessment allowed a deduction of only $4,936.05, basing his allowance on the cost of the buildings to R. H. Williams & Sons Limited, and added the difference back to the amount of taxable income reported by the respondent in its return.

The respondent objected to the assessment and appealed against it to the Income Tax Appeal Board. The appeal was heard before Mr. W. S. Fisher Q.C. He followed the decision of the Board in *Stovel Press Limited* v. *Minister of National Revenue* (1) and allowed the appeal for the reasons given in that case, the particular reason being that the Minister, in basing his allowance of deduction in respect of depreciation on the cost of the buildings to R. H. Williams & Sons Limited, their former owner, instead of on their cost to the respondent, their present owner, had not properly exercised his discretion under section 6(*n*) of the Income War Tax Act and referred the assessment back to the Minister for reconsideration and reassessment by allowing depreciation based on the cost of the buildings to the respondent. From this decision the Minister appeals to this Court.

(1) (1950) 4 Tax A.B.C. 359.

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Before I deal with the issue in the appeal I must comment on a preliminary question on which I requested argument by counsel, namely, whether the following statement in *Goldman* v. *Minister of National Revenue* (1) is correct:

> On the other hand, where the Minister is the appellant from the decision of the Income Tax Appeal Board it cannot be said that the appeal to this Court is an appeal from the assessment. There is this further difference, namely, that while the issue in the appeal is the correctness of the assessment, it is for the Minister to establish its correctness in fact and in law. The Board has power under section 83 of the Income Tax Act to vacate or vary the assessment or refer it back to the Minister for reconsideration and reassessment. It is to be assumed that the Minister's appeal is from a decision by which the Board has exercised one of these powers. Consequently, the assessment has been found erroneous by a court of record and the Minister does not come to this Court with any presumption of its validity in its favour. Indeed, the reverse is true. Thus, subject to the same comments on the use of the term onus as those made previously, the onus is on the Minister to establish the correctness of the assessment. Likewise it is the Minister who should be called upon to begin.

The statement is *obiter* and affords another illustration of the danger involved in such a statement in matters that have not been fully argued. On further consideration, I have come to the conclusion that the statement is erroneous in several respects and ought to be corrected. The basic error lies in failure to appreciate the effect of the fact that the hearing of an appeal from a decision of the Income Tax Appeal Board to this Court is a trial *de novo* of the issues of fact and law that are involved. There cannot, I think, be any doubt that this is so where the appeal is by the taxpayer. It must equally be so when the Minister is the appellant. In either event the hearing in this Court must proceed without regard to the case made before the Board or the Board's decision. Consequently, where the Minister appeals from the decision of the Board allowing an appeal from the assessment the fact that the Board found the assessment to be erroneous must be disregarded. To do otherwise would be tantamount to giving effect to the Board's decision which would be inconsistent with the view that the hearing of the appeal from it is a trial *de novo*. Consequently, it was incorrect to say that because the Board found the assessment erroneous the Minister does not come to this Court with any presumption of its validity

(1) [1951] Ex. C.R. 274 at 282.

in his favour and that the onus is on him to establish its correctness. On the contrary, the true position is that on an appeal to this Court from a decision of the Income Tax Appeal Board, whether the taxpayer or the Minister is the appellant, the assessment under consideration carries with it a presumption of its validity until the taxpayer establishes that it is incorrect either in fact or in law. Thus, the onus of proving that it is incorrect is on the taxpayer, notwithstanding the fact that the Income Tax Appeal Board may have allowed an appeal from it. It follows, under the circumstances, that while the Minister, being the appellant, may be called upon to begin he may rest on the assessment so far as the facts are concerned without adducing any evidence. The onus of proving the assessment to be erroneous in fact is on the taxpayer.

I now come back to the issue in this appeal. There are, in my judgment, several reasons for allowing it. In the first place, it was not within the competence of the Board when it referred the assessment back to the Minister for reconsideration and reassessment to direct him to allow depreciation based on the cost of the buildings to the respondent. This was an arrogation by it of a decision that only the Minister could make. It was for him in the exercise of his discretion, and not for the Board, to determine not only the rate of deduction, if any, that should be allowed but also the amount, whether of cost or of value, to which such rate should be applied. On this ground alone the appeal from the decision *a quo* must be allowed to the extent of varying the terms of the reference back to the Minister if any reference is required.

But there is a stronger reason for allowing the appeal. Counsel for the respondent submitted that the Minister based his depreciation allowance on the cost of the buildings to their former owner because he considered that the proviso in section 6(*n*) was applicable, that he was mistaken in this view since it was not applicable by reason of the fact that the aggregate amount of the deductions which had been allowed in respect of their depreciation was not equal to their cost to the former owner, that in considering the proviso applicable when it was not he had taken an irrelevant matter into account and had not acted on proper principles and that under the authority of the

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decision in *Pioneer Laundry and Dry Cleaners Limited* v. *Minister of National Revenue* (1) the assessment appealed against must be referred back to the Minister. A similar submission had found favour with the Income Tax Appeal Board which gave effect to it. There Mr. Fisher, following the earlier decision by the Board in the *Stovel Press Limited* case (*supra*), considered that the *Pioneer Laundry* case (*supra*) supported his decision. I am unable to agree.

Under the circumstances, it is important to set out the facts of the *Pioneer Laundry* case (*supra*) in their relation to the law that was then in force and then analyze what it really decided. The facts may be summarized briefly. The appellant company in that case had acquired certain machinery and equipment from Home Service Company Limited at a price fixed by an independent appraisal. The latter Company had acquired all the assets of seven companies including the original Pioneer Laundry and Dry Cleaners Limited which had gone into voluntary liquidation. These assets included the machinery and equipment in question which had previously belonged to the original Pioneer Laundry and Dry Cleaners Limited. While they were in this ownership they had been fully written off by depreciation. Moreover, it was also established that the appellant company was in fact controlled by the same shareholders who formerly controlled the original company. At this time the provisions of the Act relating to the allowance of deductions in respect of depreciation were contained in sections 5 and 6. Section 5(*a*) read as follows:

> 5. "Income" as hereinbefore defined shall for the purposes of this Act be subject to the following exemptions and deductions:—
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> (*a*) Such reasonable amount as the Minister, in his discretion, may allow for depreciation, . . .

And section 6(*b*) provided:

> 6. In computing the amount of the profits or gains to be assessed, a deduction shall not be allowed in respect of
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> (*b*) any outlay, loss or replacement of capital or any payment on account of capital or any depreciation, depletion or obsolescence, except as otherwise provided in this Act; . . .

In its income tax return for its taxation year ending March 31, 1933, the appellant company claimed deductions in respect of the depreciation of the machinery and equip-

(1) [1940] A.C. 127.

ment but the Minister, through the Commissioner of Income Tax, disallowed the deductions on the grounds, put briefly, that the machinery and equipment had already been fully depreciated and there had really been no change of ownership of them and on the assessment the Minister added the amount of the deductions back to the amount of taxable income reported by the appellant company in its return. From this assessment the appellant company appealed first to the Minister and then to this Court, which dismissed its appeal. An appeal to the Supreme Court of Canada was also dismissed (1) by a majority of the Court, but its decision was reversed by the Judicial Committee of the Privy Council. Lord Thankerton, who delivered its judgment, held that under section 5(*a*) the taxpayer had a statutory right to an allowance in respect of depreciation during the accounting year in which the assessment in dispute was based and that the Minister had a duty to fix a reasonable amount in respect of that allowance. And in that respect he adopted the statement of Davis J. in the Supreme Court of Canada, at page 5;

> The appellant was entitled to an exemption or deduction in "such reasonable amount as the Minister, in his discretion, may allow for depreciation." That involved, in my opinion, an administrative duty of a quasi-judicial character—a discretion to be exercised on proper legal principles.

Lord Thankerton held further, in effect, that the Minister could not look behind the facade of the transaction by which the machinery and equipment had been acquired with a view to determining whether there was any real change in their ownership. As he put it, the Minister was not entitled to disregard the separate legal existence of the appellant company and to inquire as to who its shareholders were and its relation to its predecessors. The taxpayer was the company and not its shareholders. Thus he found two errors on the part of the Commissioner of Income Tax, one being that he had failed to appreciate that the appellant was not the same taxpayer as the shareholders but had a separate legal existence, and the other that the taxpayer had a statutory right to a reasonable depreciation allowance and that it was not within the power of the Commissioner to refuse it. For these reasons Lord Thankerton held that

(1) [1939] S.C.R. 1.

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the Minister had not exercised his discretion and referred the assessment back to the Minister for exercise of it.

The decision of the Judicial Committee was given on October 13, 1939, and as soon as it was possible for Parliament to do so it amended the law. By section 10 of chapter 34 of the Statutes of 1940 paragraph (*a*) of section 5 of the Act was repealed and by section 16 of the same amending Act paragraph (*n*) was added to section 6 so that it read as follows:

> 6. In computing the amount of the profits or gains to be assessed, a deduction shall not be allowed in respect of
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> (*n*) depreciation, except such amount as the Minister in his discretion may allow, including such extra depreciation as the Minister in his discretion may allow in the case of plant and equipment built or acquired to fulfil orders for war purposes;

The amendments were assented to on August 7, 1940, and made applicable to the 1940 taxation period and fiscal periods ending therein and to all subsequent periods. The proviso to section 6(*n*) came later. It was enacted by section 7 of chapter 14 of the Statutes of 1943, assented to on May 20, 1943, and made applicable on passing.

It is plain that after these changes there was a fundamental change in the law from that which obtained at the time of the *Pioneer Laundry* case (*supra*). In the first place, the statutory right which the former section 5(*a*) gave to every taxpayer to have a reasonable allowance for depreciation has been taken from him. Now he has no statutory right to any deduction in respect of depreciation except that which the Minister in his discretion may allow to him. And, secondly, the Minister, far from being forbidden to look behind the facade of the transaction by which the assets were acquired, is specifically required to do so in order to determine whether there was a controlling interest between the owner of the assets and their former owner.

Thus it seems clear that if the present law had been in force at the time the *Pioneer Laundry* case (*supra*) was before the Courts it would not have been possible to take a valid objection to the action of the Commissioner of Income Tax for it would clearly have been permissible and proper. Moreover, it seems apparent that the change in the law was deliberately made to render the decision in the

*Pioneer Laundry* case (*supra*) inapplicable in the future in the case of circumstances similar to those that then existed and to enable the Minister, in such circumstances, to do exactly what the Judicial Committee of the Privy Council had said he could not do under the law then in force. By this change in the law Parliament cured by legislation a defect which the Commissioner had unsuccessfully tried to overcome by administrative action.

Thus the situation now under consideration is very different from that which Lord Thankerton found in the *Pioneer Laundry* case (*supra*). The errors which he attributed to the Commissioner of Income Tax in that case do not exist here. Here there is no denial by the Minister of a statutory right to a deduction in respect of depreciation as there was held to be in that case. Nor has there been any failure on the part of the Minister to recognize the separate legal existence of the two companies, the former and the present owner of the buildings under consideration. Indeed, in my opinion, the decision in the *Pioneer Laundry* case (*supra*) has no applicability in the present case.

In support of his submission that the Minister, in basing his allowance of a deduction in respect of the depreciation of the buildings on their cost to the previous owner, had not exercised his discretion on proper principles counsel for the respondent relied strongly on a letter written on behalf of the Director General of the Corporation Assessments Branch of the Taxation Division of the Department of National Revenue to the respondent, dated April 29, 1950, in which the following statement relating to depreciation in respect of the buildings appears:

> The question has received careful consideration and it has been concluded that the first proviso to section 6(1) (*n*) of the Income War Tax Act is applicable. Therefore, the depreciation allowances will be based on depreciated cost in the hands of the vendor corporation as indicated to you by the Toronto Office of this Division. Your attention is directed in particular to the words "had or has a controlling interest". Although Simpson's Limited did not necessarily have a controlling interest in the vendor corporation at the time the buildings were purchased, it had a controlling interest in 1947 and 1948 and the use of the word "has" in the quotation given above makes the proviso effective.

It was argued on the strength of this letter that the Minister had concluded that the proviso was applicable and that since it was not applicable in view of the fact that the aggregate amount of the deductions which had

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been allowed in respect of depreciation of the buildings was less than their cost to their former owner the proviso was irrelevant and that the Minister in taking an irrelevant matter into account had not acted on proper principles. In my opinion, there is no substance in this submission. In the first place, it is plain that the language of the letter is not as precise as it might have been. It is obvious, of course, that the facts of this case do not bring it within the operation of the proviso. Its prohibition against the allowance of any further deduction in respect of depreciation cannot take effect until the Minister is satisfied that two conditions exist, firstly, that there was a direct or indirect controlling interest within the meaning of the proviso and, secondly, that the aggregate amount of the deductions in respect of depreciation which have been allowed is equal to or greater than the cost of the assets to the former owner or owners. It is only when the Minister is satisfied that both of these conditions exist that the proviso applies in the sense that it comes into operative effect which means, of course, that the Minister has no discretion to allow any further deduction. That being so, it is plain that when the writer of the letter said that it had been concluded that the proviso was applicable he could not have meant literally what his letter said, for if it had been so concluded the Minister would not have had any right to allow any further deduction. Since the writer of the letter could not have meant what his words said the true meaning of his letter must be sought. If it is read as a whole it becomes reasonably clear that all that the writer meant to tell the respondent was that since there was a controlling interest of the kind mentioned in the proviso the proviso was "applicable" or "effective" in the sense that the buildings had been acquired by the new owner under circumstances of controlling interest that brought them within the purview of the policy embodied in the proviso and that, therefore, the depreciation allowance would be based on the cost of the buildings to their former owner. I must say that I see nothing irrelevant or improper in this statement or the action that was taken.

It seems to me that after the former section 5(*a*) of the Act was repealed and the opening words of section 6(*n*) were enacted it would have been competent for the Minister,

even if there had not been any proviso, to do exactly what he did. In cases where he found that assets had been acquired under circumstances where there was a controlling interest within the meaning of the proviso he could, even if there had been no proviso, have accomplished through the exercise of his discretion exactly the same policy as that which is embodied in the proviso. If in such cases he had continued to allow only the same deductions in respect of depreciation as he had allowed previously I cannot see how it could reasonably have been argued that his allowances were not within his discretion. Indeed, it seems to me that Parliament deliberately changed the law in order to enable the Minister to take such a course of action as that which he took in this case without running the risk of having it set aside as was done in the *Pioneer Laundry* case (*supra*) under a different state of the law.

That being so, I am unable to find any reason for thinking that after the proviso was enacted the Minister was precluded from doing what he could have done if there had been no proviso.

If the Minister's assessment officers, including the writer of the letter, thought that the existence of a controlling interest within the meaning of the proviso made it obligatory to base the depreciation allowance on the cost of the buildings to their former owner they were in error in so thinking. The proviso gives no such direction to the Minister and does not prescribe any such base or, indeed, any base. It is silent on the matter, which is consistent with the fact that the allowance of deductions in respect of depreciation is expressly left to the discretion of the Minister by the opening words of the section. But the letter does not say that the Minister was bound by the proviso to take the proposed course. To have said that would have implied a denial of the Minister's discretion under the opening words of the section and the substitution of a statutory obligation under the proviso. No such implication should be imputed to the writer of the letter and no such meaning should be read into it. What the letter in effect said was that the proposed action would be taken because of the proviso. That is a different thing from saying that the proviso compelled the proposed action.

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Thus, there is no justification in the letter for finding that the Minister did not exercise his discretion on proper principles.

It is important to appreciate what the proviso did and what bearing it had on the situation under review. It set a top limit to the total amount of deductions in respect of depreciation that could be allowed in the case of assets acquired under the circumstances specified in it. When the aggregate of these deductions reached the cost of the assets to their former owner no further allowance of deductions was to be made and the Minister's discretion to allow deductions came to an end. The proviso clearly embodies a policy deliberately adopted by Parliament to restrict the allowance of deductions in respect of depreciation in the case of assets acquired under the circumstances specified in the proviso to the cost of such assets to their former owner. Thus, while the proviso does not direct the Minister to base his allowance of deductions in respect of the depreciation of such assets on their cost to their former owner there is nothing in the proviso or elsewhere that precludes him from using such a base. Moreover, the fact that the proviso does not apply in this case, in the sense that its prohibition is not operative for the reason already explained, does not mean that it is devoid of effect and must be totally disregarded, as counsel for the respondent contended and Mr. Fisher decided. On the contrary, the Minister must consider the proviso before he deals with a claim for deduction in respect of depreciation. Each year when such a claim is made it is the duty of the Minister to determine whether the proviso applies or not. If he is satisfied that the assets were acquired under circumstances that bring them within the purview of the policy embodied in the proviso he must then determine whether the top limit of the permissible allowances of deduction in respect of depreciation of such assets has been reached. If it has not, he knows that the total amount of depreciation deduction that may still be allowed in respect of such assets is the difference between the aggregate of the deductions which have been allowed and the cost of such assets to their former owner. It is in respect of this balance that he must exercise his discretion. Thus, each year his attention is directed to the policy of the

proviso and he must pay attention to it. Likewise, it seems to me that the Court ought not to adopt any interpretation of the proviso that flouts the policy that underlies it.

When the Minister after determining that under the proviso there is still a difference between the aggregate amount of deductions in respect of depreciation of the assets in question which have been allowed and their cost to the former owner so that the proviso has not yet operative effect and his discretion to allow deductions is still vested in him up to the amount of the difference how can it possibly be said that he must not base his allowance of a deduction on the cost of the assets to their former owner? To say so is to deny his discretion. Similarly, by what right can the new owner of the assets assert, as Mr. Fisher did, that the allowance must be based on the cost of the assets to him. To admit this is to say, as the Income Tax Appeal Board in effect did, that the Minister's actual exercise of his discretion is reviewable by the Court and that it may substitute its opinion of what should be done, as the Income Tax Appeal Board in effect did, for the Minister's exercise of his discretion. There is no judicial authority of which I have any knowledge that sanctions any such review or substitution.

For the same reason, I am unable to agree with the submission that the Minister in the exercise of his discretion must act in accordance with the requirements of sound accounting practice and, therefore, relate his allowance of deductions in respect of depreciation of the buildings to their cost to the respondent according to its books. This submission really requires no answer for it is tantamount to substituting the accountant's opinion for the Minister's discretion. There is no necessary relationship between the amount of deduction in respect of depreciation of an asset that may be set up in the taxpayer's books and the amount of the deduction from what would otherwise be taxable income that may be allowed. The former is for the accountant and the taxpayer, the latter for the taxing authority under the taxing Act. Thus accounting practice must give way to the discretion that Parliament has vested in the Minister.

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This does not mean that there are no limitations on the Minister's exercise of his discretion. He must not act arbitrarily. This, indeed, is inherent in the concept of discretion itself as was stated by the House of Lords in *Sharp* v. *Wakefield* (1) where Lord Halsbury L.C. said, at page 179:

> "discretion" means when it is said that something is to be done within the discretion of the authorities that that something is to be according to the rules of reason and justice, not according to private opinion: *Rooke's* case (5 Rep. 100, a); according to law, and not humour. It is to be, not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself: *Wilson* v. *Rastall* (4 T.R. at p. 754).

This statement is really a definition of what discretion is. There was nothing in the Minister's action that offended against the precepts of this statement. How could it be said that it was arbitrary, vague or fanciful on the part of the Minister to base his allowance of a deduction in respect of the depreciation of the buildings on their cost to their former owner when Parliament itself enacted that such cost was the top limit of the deductions in respect of their depreciation that could be allowed. If I were called upon to express an opinion on the Minister's actual course of action I would have no hesitation in saying that it was more consistent with the policy of Parliament, as embodied in the proviso, than the action desired by the respondent and approved by the Income Tax Appeal Board would have been. But the Court is not called upon to express any such opinion for Parliament has expressly preferred the opinion of the Minister in the exercise of his discretion. If he has actually exercised his discretion the Court has no right to interfere with it even if it would have come to a different conclusion if the matter had been one for it to decide.

Thus, I see no reason for finding that the Minister acted on wrong principles in exercising his discretion as he did. I do not think that the letter proves that the Minister was mistaken in his interpretation of the proviso. On the contrary, the action taken was in harmony with it. But even if he had been mistaken this would not have made his action an improper one for the Court is concerned with the

(1) [1891] A.C. 173.

question whether what he did was within his discretion to do rather than with why he did it. It is quite possible that the reason for doing a thing may be challenged but the thing done is proper. Many a judgment has been affirmed on appeal although the reasons given for it were erroneous.

Moreover, there are, I think, sound reasons for saying that when Parliament made the changes I have referred to it made the discretion which it vested in the Minister an administrative discretion rather than a quasi-judicial one. In that view, the considerations that may have moved him to the actual exercise of his discretion is not a matter for inquiry by the Court. There are numerous decisions of outstanding authority that establish this principle: *vide*, for example, *Julius* v. *Lord Bishop of Oxford* (1), and, especially, *Allcroft* v. *Lord Bishop of London* (2).

In my judgment, there is no justification for finding that the Minister's action in this case was otherwise than in accord with the proper exercise of his discretion.

For the reasons given, the appeal herein must be allowed with costs and the assessment appealed against restored.

*Judgment accordingly.*