1959
Sept. 22
1960
May 17

BETWEEN:

ROLLAND PAPER COMPANY LIMITED ..... APPELLANT;

AND

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

Revenue—Income tax—Income Tax Act R.S.C. 1952, c. 148, s. 12(1)(a)—"An outlay or expense . . . made or incurred by the taxpayer for the purpose of gaining or producing income from property or a business of the taxpayer"—Legal expenses incurred in prosecuting appeal from a conviction under the Criminal Code for engaging in illegal trade practices are deductible in ascertaining income—Appeal allowed.

Appellant incurred expenses in prosecuting an appeal to the Ontario Court of Appeal from a judgment of the Ontario High Court finding it guilty of illegal trade practices. In its tax return for the fiscal year ended December 31, 1955, appellant claimed these legal expenses as deductions from income. The respondent disallowed these deductions and an appeal was taken to this Court.

Held: That the appellant's trade practices in the operation of its business were used and followed for the purpose of earning income from its business, and legal fees and costs incurred or made in defending such practices till a final decision on their legality or illegality was reached, were made for the purposes of their trade and for the purposes of earning income and are deductible in ascertaining appellant's taxable income within the meaning of s. 12(1)(*a*) of the *Income Tax Act*, R.S.C. 1952, c. 148.

APPEAL under the *Income Tax Act*.

The appeal was heard before the Honourable Mr. Justice Fournier at Montreal.

H. Heward Stikeman, Q.C. and *Jean Monet* for appellant.

Guy Favreau, Q.C. and *Roger Tassé* for respondent.

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

FOURNIER J. now (May 17, 1960) delivered the following judgment:

This is an appeal from the Income Tax assessment for the taxation year 1955 of Rolland Paper Company Limited of the city of Montreal, in the province of Quebec, dated April 26, 1957, wherein the Minister of National Revenue disallowed the appellant's claim for deduction of certain legal costs paid in 1955.

The facts material and relevant to the issues involved in this appeal have been agreed upon by the parties and a statement to that effect has been filed and now forms part of the record before the Court. I shall summarize the statement.

The appellant, a corporation established under the laws of Canada, carries on business in Canada of manufacturing and selling fine paper. In 1953, the appellant and others engaged in the above business were charged under s. 498(1)(*d*) of the *Criminal Code* as in force prior to November 1, 1952 on an indictment reading in part as follows:

> During the period from 1933 to the 31st day of October 1952, both inclusive . . . did unlawfully conspire, combine, agree or arrange together and with one another and with . . . to unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation or supply . . . of articles or commodities which may be the subject of trade or commerce, to wit, book papers including general printing and converting papers, fine papers including rag content and sulphit writing paper, coated papers, miscellaneous fine papers including blotting and bristols, groundwood and other fine papers and thereby commit an indictable offence contrary to the provisions of the Criminal Code, section 498(1)(*d*).

On June 4, 1954, the appellant and the other parties named in the indictment were found guilty as charged by the Ontario High Court and sentenced to pay a fine of $10,000. The Ontario Court of Appeal dismissed the appeals of the appellant and the other parties against this conviction on the above charges. An appeal of this last decision to the Supreme Court of Canada by the appellant and one of the other parties on certain specific questions of law was dismissed on May 13, 1957.

During its 1955 taxation year, the appellant paid legal fees amounting to $5,948.27 as its share of the legal costs of appealing against the judgment of the Ontario High Court finding the appellant and others guilty of illegal trade practices. In its tax return for the fiscal year ended December 31, 1955, the appellant claimed these legal expenses as deductions from income. By notice of assessment dated April 26, 1957, the respondent disallowed the appellant's claim for deduction of the legal costs *supra*. The appellant duly

1960

ROLLAND PAPER CO. LTD. v. MINISTER OF NATIONAL REVENUE

Fournier J.

objected to the disallowance but the Minister, by notification dated October 4, 1957, confirmed the assessment appealed from, on the ground that

> Legal fees amounting to $5,948.27 claimed as deductions from income were not outlays or expenses incurred by the taxpayer for the purpose of gaining or producing income within the meaning of s. 12(1)(*a*) of the Act.

Section 12(1)(*a*) reads as follows:

> Section 12(1) In computing income, no deduction shall be made in respect of
>
> (*a*) an outlay or expense except to the extent that it was made or incurred by the taxpayer for the purpose of gaining or producing income from property or a business of the taxpayer.

This subsection, which provides for an exception to the general rule that in computing income no deduction shall be made in respect of an outlay or expense, should be read in relation to ss. 3 and 4 of the *Income Tax Act*.

> 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 employment.
>
> 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.

These sections deal with the income from a business or property and not with taxable income which is the taxpayer's income for the year minus the deductions permitted by the Act among which are the outlays or expenses contemplated in s. 12(1)(*a*). The principle laid down in s. 4 of the Act is that income from a business is the profit therefrom; and it has been repeatedly held by the courts that this profit is the surplus by which the receipts from the business exceed the expenditure made for the purpose of earning these receipts. This rule is in conformity with the commercial and accounting practices followed by trading and business enterprises in establishing their balance sheet of operations.

The question to be determined is whether the legal expenses paid by the appellant in the amount of $5,948.27 in the year 1955 were made and incurred for the purpose of gaining income from its business and deductible in computing income within the meaning of s. 12(1)(*a*).

The appellant submits that these legal expenses were made in accordance with the ordinary principles of commercial trading and well accepted principles of business practice. It urged that they were made in the course of its business and incurred for the purpose of defending its day to day trade practices which gave rise to income and were directly related to the earning of its income.

On the other hand, the respondent contends that the amount sought to be deducted was the amount of the legal costs incurred for the purpose of defending against an accusation made under the provisions of the *Criminal Code* and that in such cases these expenses, from the point of view of the law, are not to be deemed to have been made or incurred for the purpose of earning income. They relate to the cost of unsuccessfully defending a criminal action and from the point of view of strict business practices and within the framework of the law such expenses could not be admitted as deductions.

At the opening of the trial the parties filed a Supplementary Statement of Facts dealing with the activities of the appellant which lead to its convicion under s. 498(1)(*d*) of the *Criminal Code*. It is in evidence before the Court. Here are some extracts from this document:

2. The appellant together with the other accused supplied at least 90% of the fine paper manufactured in Canada.

"It will be seen, therefore, that the accused mills did supply by far the greatest bulk of the fine paper manufactured in Canada and also supplied by far the greatest bulk of the fine paper used in Canada and the figure of 90% is a conservative average to use in each case."

3. From the year 1933 at least the appellant and the other accused mills together with the fine paper merchants entered into agreement covering their trade.

"I find as a fact that well before the year 1933 these seven accused companies and the J. R. Booth Company had entered into a firm agreement to control and fix prices and deal with the many other elements, to which I shall refer particularly, and that agreement has continued from then until the end of the period charged in the indictment, October 31, 1952."

4. The agreements referred to above included the controlling and fixing of prices; various services connected with the trade; classification of customers; loyalty and quantity discounts; tenders; disposal of odd lots; sectional division of Canada; miscellaneous.

1960

ROLLAND PAPER CO. LTD. v. MINISTER OF NATIONAL REVENUE

Fournier J.

These extracts contain the findings of the trial judge relating to the agreements entered into by the appellant and others and the merchants covering their trade and the various services connected with the trade. The series of findings concern the practices agreed to and followed by the appellant in its business operations. These practices were found to be illegal in that they unduly prevented or lessened competition in the production, manufacture, purchase and sale of their product. These activities being part of their trade, it may be said that they applied to the day to day operations of the appellant's business.

Though the appellant and others were found guilty as charged in the indictment, and remembering certain arguments made before me, I believe it to be of interest to quote the remarks of the trial judge in *Regina v. Howard Smith Paper Mills Ltd.*[1] Mr. Justice Spence, in rendering sentence, said (p. 519):

> It is true that this Court, although it has found the guilt of the accused, prefers to use the words of Masten J.A. in *R. v. Container Materials Ltd.* [1941] 3 D.L.R. 145 at p. 183, 76 Can. C.C. 18 at p. 61, rather than the much harsher language used by other Judges in registering convictions in other cases which I need not read here but which we have dealt with during the course of the trial. Masten J.A. said: "In considering whether his finding was or was not warranted, I think it would be a mistake for this Court to look upon the appellants as guilty of moral turpitude or a wicked intention. Their directors are honourable men desirous of conducting successfully the affairs of their respective companies, and if in their efforts they have by mistake over-stepped the line set by Parliament and have *unduly* lessened competition they are responsible for their unlawful act . . . Breach of the statute is one thing, moral turpitude is quite another."

So, the trial judge who had found the appellant guilty thought that he should not look upon it as guilty of moral turpitude or of wicked intention. There had been a breach of a statute and the appellant was responsible for its unlawful act. That being the case, it becomes necessary to determine if unlawful acts committed in earning income from the operations of a business or trade are to be considered in computing the income of a taxpayer. The Act clearly states that the income of a taxpayer is his income from all sources. It is a sweeping and positive statement and it has been constantly held that income tax is a tax upon the

[1] [1954] 4 D.L.R. 517.

person measured by his income and that the source of his income should not be looked at when computing a taxpayer's taxable income.

In the case of *Minister of Finance* and *Smith*[1], wherein it was held that upon a literal construction of the Act the profits in question, though by the law of the particular province they are illicit, come within the words employed in s. 3(1), Lord Haldane in his remarks said (p. 197, *in fine*):

> . . . There is nothing in the act which points to any intention to curtail the statutory definition of income, and it does not appear appropriate under the circumstances to impart any assumed moral or ethical standard as controlling in a case such as this the literal interpretation of the language employed. . . .

Then referring to *Inland Revenue Commissioners v. Von Glehn*[2] he added (p. 198):

> Their Lordships have no reason to differ from the conclusion reached in that case, but they must not be taken to assent to any suggestion sought to be based on the words used by the learned Lord Justice, that Income Tax Acts are necessarily restricted in their application to lawful businesses only. . . .

According to the above remarks, it would seem that the income tax provisions are applicable to taxpayers carrying on business by means of unlawful practices as to unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale . . . of articles or commodities which may be subject of trade or commerce, unless specifically prohibited by the *Income Tax Act*. Were it to be otherwise, it would be most difficult to bring within the ambit of the taxation statute taxpayers responsible for such unlawful practices. In the present instance, the appellant, though charged and later found guilty of the unlawful business practice *supra,* did report in its income tax return for its taxation year its income from its business in that year, in compliance with s. 3(*a*) of the Act. But in reporting its income, to arrive at the amount of its taxable income—s. 2(3)—it sought to deduct legal costs incurred and paid in defending its business practices. The only change to the appellant's income tax return made by the respondent was his refusal to allow the above sought deduction. No doubt was ever raised as to the respondent's right to impose and

[1] [1927] A.C. 193.

[2] [1920] 2 K.B. 553, 572, 573.

1960

ROLLAND PAPER CO. LTD. v. MINISTER OF NATIONAL REVENUE

Fournier J.

levy income tax on the appellant's taxable income from its business whether or not the income flowed from unlawful practices. But the tax to be levied is not on the taxpayer's income; it is on his income minus the deductions permitted by the Act. There are two general principles laid out in the Act itself.

In *Cox v. Rabbits*[1] at page 478 of the volume it is said:

> A Taxing Act must be construed strictly; you must find words to impose the tax, and if words are not found which impose the tax, it is not to be imposed. . . .

Mr. Justice Duff in *Versailles Sweets Ltd.* and *The Attorney General of Canada*[2] said (p. 468):

> The rule for the construction of a taxing statute is most satisfactorily stated, I think, by Lord Cairns in *Partington v. Attorney General.* Lord Cairns, of course, does not mean to say that in ascertaining "the letter of the law", you can ignore the context in which the words to be construed stand. What is meant is, that you are to give effect to the meaning of the language; you are not to assume: "any governing purpose in the Act except to take such tax as the statute imposes" as Lord Halsbury said in *Tennant v. Smith,* [1892] A.C. 154.

I take these references to mean that when the statute says that taxable income is the income of the taxpayer minus the deductions permitted by the Act, the words cannot be construed as meaning that the taxable income is restricted to the income of a taxpayer from a lawful business nor that he is deprived of the benefit of the deductions permitted by the Act. Therefore income from a business, if taxable, has to be computed with the deductions when the claim comes within the exempting provision.

Thorson P. in *Lumbers v. Minister of National Revenue*[3] held (*inter alia*):

> . . . ; he must show that every constituent element to the exemption is present in his case and that every condition required by the exempting section has been complied with.

In the present instance, were the legal costs of defending a prosecution under the *Combines Investigation Act* claimed as a deduction from income, deductible in the computation of the appellant's taxable income as outlays or expenses incurred by it for the purpose of gainin,; or

[1] (1877-78) 3 A.C. 473. [2] [1924] S.C.R. 466.
[3] [1943] Ex. C.R. 202.

producing income from its business? The respondent disallowed the appellant's claim for deduction and relied on s. 12(1)(*a*) of the Act. This section applies to income from a business or property which section 4 states to be the profit therefrom for the year. There is no doubt that the profit to be assessed, though not defined in the Act, is the net profit contemplated by s. 2(3) and described as taxable income. "Profits and gains", according to Lord Halsbury in *The Gresham Life Assurance Society* and *Styles*[1], must be ascertained on ordinary principles of commercial trading.

When an expenditure is not expressly deductible under s. 11, the proper way to determine the deductibility of such an expenditure is to see if it is deductible according to ordinary principles of commercial trading and accepted business practice.

The President of this Court, discussing the meaning of s. 12(1)(*a*) in *Royal Trust Co. v. Minister of National Revenue*[2], at page 42 said:

> . . . Thus, it may be stated categorically that in a case under the Income Tax Act the first matter to be determined in deciding whether an outlay or expense is outside the prohibition of Section 12(1)(*a*) of the Act is whether it was made or incurred by the taxpayer in accordance with the ordinary principles of commercial trading or well accepted principles of business practice. If it was not, that is the end of the matter. But if it was, then the outlay or expense is properly deductible unless it falls outside the expressed exception of Section 12(1)(*a*) and, therefore, within its prohibition.

And he continues at page 44:

> The essential limitation in the exception expressed in Section 12(1)(*a*) is that the outlay or expense should have been made by the taxpayer "for the purpose" of gaining or producing income "from the business". It is the purpose of the outlay or expense that is emphasized but the purpose must be that of gaining or producing income "from the business" in which the taxpayer is engaged. If these conditions are met the fact that there may be no resulting income does not prevent the deductibility of the amount of the outlay or expense. Thus, in a case under the Income Tax Act if an outlay or expense is made or incurred by a taxpayer in accordance with the principles of commercial trading or accepted business practice and it is made or incurred for the purpose of gaining or producing income from his business its amount is deductible for income tax purposes.

To establish that the legal fees that were incurred and paid by the appellant in 1955 to defend itself in an action taken against it under the *Combines Investigation Act*

[1] [1892] A.C. 309, 316.
[2] [1957] C.T.C. 32.

1960

ROLLAND PAPER CO. LTD. v. MINISTER OF NATIONAL REVENUE

Fournier J.

were incurred and made in accordance with ordinary commercial and accounting practice, an expert witness was heard. He had twenty-seven years' experience as chartered accountant and had dealt with the auditing of accounts of companies manufacturing paper, but had nothing to do with the auditing of books of companies involved in the above litigation. He expressed the opinion that in computing the revenue of the company the legal fees expended by the appellant and the others were properly entered in the loss side of a Profit and Loss Statement. He considered they were ordinary business expenses which under sound accounting and commercial practice would be deducted in the statement of profit and loss as an expenditure for the year. In the commercial context of carrying on the business of a paper industry there would be no material difference in the accounting theory which would prevail in the make up of financial statements of other industries. In general accounting, one endeavours to accept principles which are universal in application.

The qualifications and experience of the witness have convinced me that his evidence, as an expert in such matters, shoud be accepted. In my view the payments of the legal fees, claimed as deduction by the appellant, were made in accordance with principles of good business practice for a company in the fine paper industry.

Now, were the payments made by the appellant for the purpose of gaining or producing income from its business? Having dealt with the nature of the charge against the appellant and others and the findings of the trial judge and his remarks in rendering sentence, I shall simply add that all the findings relate to business practices agreed to and followed by the parties in their daily operations and activities. They were found to be contrary to the provisions of the *Combines Investigation Act* and unlawful under s. 498(1)(*d*) of the *Criminal Code of Canada*. The claim for the deduction is for the legal costs of appealing against the judgment of the High Court of Ontario which found the appellant guilty of the charge as laid in the indictment.

There are not many decisions of our courts on the question of the deductibility of legal costs in computing taxable income under our *Income Tax Act* in matters similar to

those which are the subject of this litigation. However, the Exchequer Court and the Supreme Court of Canada, in a case wherein a charge laid under the same section of the *Criminal Code* in respect of violations to the Combines regulations, dealt with this problem.

In the case of *Minister of National Revenue v. L. D. Caulk Co. of Canada Ltd.*[1], in 1947, the respondent, a manufacturer of dental supplies, at the invitation of the Commissioner under the *Combines Investigation Act* who was conducting an investigation into an alleged combine in the manufacture and sale of dental supplies in Canada, made representations before him, employing for the purpose solicitors to whom he paid a fee for their services. Later the respondent and others were charged under s. 498 of the *Criminal Code* that they did in fact constitute a combine in the manufacture and sale of dental supplies in Canada. At the trial the respondent was acquitted and an appeal taken by the Crown from such acquittal was dismissed. The respondent in 1948 paid legal fees to its solicitors and counsel who acted at the trial and appeal.

Although the facts dealt with in the dental trade as opposed to those dealt with in the fine paper trade were identical in terms of the indictment and charge, the result in the two instances were different. In the *Caulk* case (*supra*) the charge was dismissed and the company was not found guilty and was not fined. In the *Rolland Paper Co. Ltd.* case, the company was found guilty and fined. So the only difference material to this appeal between this case and the *Caulk* case is the difference between condemnation and acquittal.

Cameron J. held:

That the payments to its solicitors and counsel by respondent were made in the usual course of business and were made with reference to a particular difficulty which arose in the course of the year, namely, the investigation by the Commissioner, the charge laid against the respondent and the unfavourable and damaging publicity which resulted therefrom, and which would have been greatly enhanced had the charge been sustained: the disbursements had nothing to do with the assets or capital of the company but were made in an effort to establish that its trading practices were not illegal, and to enable it to carry on as it had in the past, unimperilled by charges that such practices were illegal. [1952] Ex. C.R. 49.

[1] [1952] Ex. C.R. 49.

1960

ROLLAND PAPER CO. LTD. v. MINISTER OF NATIONAL REVENUE

Fournier J.

The learned judge affirmed the decision of the Income Tax Appeal Board and held that certain legal expenses incurred by the respondent were deductible under the *Income War Tax Act* in ascertaining this taxable income.

On appeal from this decision to the Supreme Court of Canada[1], Rand J., who delivered the judgment, said (p. 56):

> The question here is whether expenses incurred by the respondent company in defending itself against charges of violating the criminal law by combining with others to prevent or lessen unduly competition in the commercial distribution of dental supplies, are deductible in ascertaining taxable income. The agreement or arrangement alleged to have been unlawful purported to regulate day to day practices in the conduct of the respondent's business. It formed no part of the permanent establishment of the business; it was a scheme to govern operations rather than to create a capital asset; and the payment to defend the usages under it was a beneficial outlay to preserve what helped to produce the income. These expenses included legal fees both for appearing before the Commissioner under the *Combines Investigation Act* and at the trial which resulted in acquittal.

After reading carefully the judgments of both Courts from which I have cited extracts, I have come to the conclusion that the facts therein stated are identical to those contained in the Supplementary Statement of Facts which is part of the record in the present case.

In each case, the parties' claim is for the deduction of legal expenses in the computation of their taxable income. Both claimants had been charged and prosecuted under the same section of the *Criminal Code* for having illegally conspired and combined to prevent or lessen competition in their respective trades of manufacturing, selling and distributing their commodities. The agreement or arrangements made or arrived at were to regulate their day to day practices in the conduct of their business activities. Their scheme was one to govern their operations from which they derived their income. The legal expenses were paid to defend their way of doing business and preserve the system under which they operated.

Certain remarks of Cameron J. of the Exchequer Court in his notes and which were concurred in by Kellock J. of the Supreme Court were discussed at length by counsel

[1] [1954] S.C.R. 55.

for both parties. The opinions expressed related to the fact that a conviction on the charge might have made a difference on the decision which was arrived at.

I quote the remarks of Cameron J.:

> . . . In view of the fact that the respondent was acquitted, I do not think that *in this case* the mere fact that the charge against the respondent was made under the Criminal Code has any bearing on the deductibility or otherwise of the expenses incurred in defence of that charge. The result might have been different had the respondent been found guilty of the charge, but as to that I need say nothing. [1952] Ex. C.R. 58.

Mr. Justice Kellock made these observations:

> It must be assumed in the case at bar, by reason of the acquittal, that the trade practices involved were not illegal, and, as pointed out by Cameron J., it is not necessary to consider the situation had the contrary been the case. The difference for present purposes is substantial. [1954] S.C.R. 60.

I do not believe that Mr. Justice Cameron meant to express the opinion that his decision would have been different had the respondent been found guilty. He might have had doubts, but he did not choose to give the reasons for any doubts he may have had because the fact was not an issue in the case submitted to his judgment. As to Mr. Justice Kellock, there is no doubt that he thought the difference would have been substantial had the trade practices been illegal. He also refrained from expanding on this matter because the issue did not call for a decision on that point. I fail to see, in the remarks referred to, the expression of an opinion which could be binding in a case where the trade practices were illegal. In one instance, there was doubt; in the other, there was a statement which, in my view, was made to mean that illegal trade practices would have been considered in a different way than legal trade practices in the computation of the taxpayer's income under the *Income Tax Act*.

In the present case, I am not called upon to decide if the appellant's trade practices were legal or illegal. My duty is to determine whether the legal fees incurred and paid for by the appellant in defending itself on a charge alleging that its trade practices were illegal are deductible as having been incurred and made for the purpose of gaining or producing income from its business. Legal expenses

1960

ROLLAND PAPER CO. LTD. v. MINISTER OF NATIONAL REVENUE

Fournier J.

in the course of a taxpayer's business have been considered by the Supreme Court as being deductible. It is the purpose of the legal expenses which is material in this issue.

It appears from the record that the income tax law, as a fact, applied to the appellant taxpayer. The tax was imposed and levied upon the taxpayer measured by his income. The income was derived from its business operations. Its expenditures were deducted to ascertain its profit. The income and the expenditures were for the taxation year 1955. Among the expenses deducted under the heading "General Expense" were legal and audit, $23,198.27. This amount comprises a sum of $5,948.27, for legal fees and costs involved in this litigation, the deduction of which was disallowed by the respondent in his reassessment. The other legal and audit costs were allowed.

On the evidence adduced, I have found that the legal fees and costs claimed as deductions had been properly entered in the profit and loss statement in computing the taxpayer's revenue; that according to sound accounting and commercial practice they were to be considered as business expenses; that in the carrying on of a fine paper business there would be no material difference in the accounting theory which would prevail in the make up of financial statements of other industries.

I find that the indictments and charges in this case and the *Caulk* case were identical in terms and based on the same section of the *Criminal Code* and that the facts stated in the judgments of the Exchequer and Supreme Courts are identical to the facts related in the Supplementary Statement of Facts which was filed in the present instance. In my view, there is no material difference between the facts relevant to the appellant in this case and those upon which the Supreme Court of Canada made its decision. The decision as set forth in the headnote of the judgment reads thus:

> The legal expenses incurred by the respondent companies in connection with an investigation into an alleged illegal combine and in successfully defending a charge under s. 498 of the *Criminal Code* regarding the operation of such alleged illegal combine, were deductible in ascertaining taxable income as they were "wholly, exclusively and necessarily laid out or expended for the purpose of earning the income" within the meaning

of s. 6(1)(*a*) of the *Income War Tax Act*, R.S.C. 1927, c. 97 (*Minister of National Revenue v. The Kellogg Company of Canada Ltd.* [1943] S.C.R. 58 followed).

Mr. Justice Rand, commenting on the proper test to be applied in determining the deduction claim in that case, said (p. 56, *in fine*):

> The provisions of the *Income Tax Act* are imposed on the settled practices of commercial accounting, but they create in effect a statutory mode of determining taxable income. Deductions from revenue must have been "wholly, exclusively and necessarily laid out or expended for the purpose of earning the income". Each word of this requirement is significant, and decisions based on different statutory language are strictly of limited assistance.

The provision of the *Income Tax Act* to be considered in this instance is to the effect that deductions from revenue must have been made for the purpose of gaining or producing income from the business, whilst the provision of the *Income War Tax Act* considered in the *Caulk* case limits the disbursements or expenses as shown to have been laid out wholly, exclusively and necessarily for the purpose of earning the income. These terms seem to me to be more restrictive than the terms of s. 12(1)(*a*) which exclude deduction of outlays or expenses that are not made or incurred for the purpose of gaining or producing income from the business. Business purpose remains the test, but need not be exclusive.

In *Bannerman* and *Minister of National Revenue*[1], Chief Justice Kerwin of the Supreme Court of Canada said (p. 564, *in fine*):

> Under s. 12(1)(*a*) of the present Act it is sufficient that an outlay be made or expense incurred with the object or intention that it should earn income, but since in one sense it might be said that almost every outlay or expense was made or incurred for that purpose, a line must be drawn in the individual case depending upon the circumstances and bearing in mind the provisions of s. 12(1)(*b*).

In the *Caulk* case, where the facts were identical in terms of the indictment and charge to those of the present case, both the Exchequer Court and the Supreme Court found that the disbursements of legal expenses incurred to defend its right to use certain trade practices had been laid out for

[1] [1959] C.T.C. 215; [1959] S.C.R. 562.

1960

ROLLAND PAPER CO. LTD. v. MINISTER OF NATIONAL REVENUE

Fournier J.

the purpose of its business and for the purpose of earning the income and were deductible in computing the taxpayer's taxable income.

Believing as I do that the appellant's trade practices in the operations of its business were used and followed for the purpose of earning income from the business, I find that lawful legal fees and costs incurred or made in defending such practices till a final decision on their legality or illegality was reached were made for the purposes of their trade and for the purpose of earning income and were deductible in ascertaining the appellant's taxable income within the meaning of s. 12(1)(*a*) of the *Income Tax Act*, R.S.C. 1952.

Therefore there will be judgment allowing the appellant's claim for the deduction of the legal costs amounting to $5,948.27 paid in the year 1955 and disallowed by the respondent in computing the appellant's taxable income for the taxation year 1955 and referring the assessment back to the Minister for reconsideration and reassessment, with costs to be taxed in the usual way.

Judgment accordingly.