1936
Sept. 8.
1937
Nov 4

BETWEEN:

PIONEER LAUNDRY & DRY CLEANERS LIMITED ..... APPELLANT;

AND

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

Revenue—Income tax—Income War Tax Act, s. 5, ss. 1 (a)—Depreciation—Computation of amount deductible for depreciation—Value.

Appellant by agreement in writing purchased, through an intermediary company, the assets of a company bearing the same name as appellant and referred to as the "old" company. Appellant claimed a deduction in its income for depreciation on the assets purchased from the "old" company. The Minister of National Revenue refused to allow such deduction on the ground that the "old" company had already been allowed full depreciation on such assets and that the appellant company had taken over those assets at an appreciated, rather than true, value. Appellant appealed from the Minister's decision.

Held: That depreciation as provided for in s. 5, ss. 1 (*a*) of the Income War Tax Act, is to be computed on the real value of the articles concerning which depreciation is claimed, and not on the cost of such articles to the taxpayer.

APPEAL under the provisions of the Income War Tax Act from the decision of the Minister of National Revenue.

The appeal was heard before the Honourable Mr. Justice Angers, at Vancouver.

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W. Martin Griffin, K.C. and *J. S. Shakespeare* for appellant.

Dugald Donaghy, K.C. for respondent.

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

ANGERS J., now (November 4, 1937) delivered the following judgment:

This is an appeal under sections 58 and following of the Income War Tax Act (R.S.C., 1927, chap. 97 and amendments) by Pioneer Laundry & Dry Cleaners Limited, a body corporate and politic incorporated under the Companies Act of the Province of British Columbia, from the assessment bearing date the 19th of February, 1935, whereby a tax in the sum of $1,611.66 was levied in respect of income for the taxation period ending March 31, 1933.

In its return of income for the fiscal year ended March 31, 1933, Pioneer Laundry & Dry Cleaners Limited included as depreciation the following items:

Nature of article	Year acquired	Cost	Rate per cent per annum	Depreciation charged off Total previous charged	Amount this year
Machinery & equipment.	1932	$146,690	10	——	$14,131 15
Automobiles.	1932	14,675	20	——	2,935 08
Horses & wagons. .	1932	1,352	10	——	135 25
Furniture & fixtures.	1932	5,740	10	——	574 07
forming a total of $17,775 55.					

In the notice of assessment dated February 19, 1935, sent by the Commissioner of Income Tax to the company, the following amounts were disallowed:

Machinery and equipment..	$14,131 15
Horses and wagons..	135 25
Furniture and fixtures..	574 07

As to the amount of $2,935.08 claimed as depreciation on the automobiles, the Commissioner of Income Tax allowed only $255.08.

On March 9, 1935, Pioneer Laundry & Dry Cleaners Limited served a notice of appeal upon the Minister of National Revenue, in which it is stated (*inter alia*):

that in the return made in respect of the fiscal year ending March 31, 1933, the appellant claimed as a deduction from its income certain sums totalling $17,775.55 repre-

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senting depreciation of its machinery, delivery equipment, furniture and fixtures at the usual rates as follows:

	Horses and wagons	Delivery trucks	Furniture and and fixtures	Machinery
Rate claimed	10%	20%	10%	10%
Amount of depreciation claimed.	$135 25	$2,935 08	$574 07	$14,131 15

that the Commissioner has improperly disallowed to the extent of $2,680 the amount claimed for depreciation of the appellant's delivery trucks ($2,935.08), allowing in respect thereof only the sum of $255.08 and has improperly disallowed the whole of the amounts claimed for depreciation of the appellant's Horses and Wagons, Furniture and Fixtures and Machinery respectively.

On May 30, 1935, the Minister of National Revenue, represented and acting by the Commissioner of Income Tax, affirmed the assessment.

The decision of the Minister reads in part as follows:

Whereas during the year 1932, Pioneer Investment Company Limited who owned and controlled Pioneer Laundry & Dry Cleaners Limited, disposed of its interests to Home Service Company Limited.

And whereas the shareholders of Home Service Company Limited are identical with that of Pioneer Investment Company Limited as at date of liquidation of the latter company.

And whereas Home Service Company Limited incorporated the original assets of Pioneer Laundry & Dry Cleaners Limited into the records of the taxpayer at appreciated values.

The Honourable the Minister of National Revenue, having duly considered the facts as set forth in the Notice of Appeal and matters thereto relating hereby affirms the said assessment on the ground that while the company was incorporated and commenced operations during the year 1932 there was no actual change in ownership of the assets purchased or taken over from Pioneer Investment Company Limited, by Home Service Company Limited (of which the taxpayer is a subsidiary) and set up in the books of the taxpayer at appreciated values; that in the exercise of the statutory discretion, a reasonable amount has been allowed for depreciation and that the assessment is properly levied under the provisions of the Income War Tax Act.

A notice of dissatisfaction dated June 24, 1935, was sent to the Minister; accompanying this notice was a document entitled "Final statement by the Appellant," in which reference is made to section 5 (*a*) of the Income War Tax Act and in which it is stated in substance that:

the deductions claimed by the appellant from its income, save as to the extent of $255.08, have been improperly disallowed;

the decision of the Minister was not an exercise of the discretion conferred upon him by the statute but was a

refusal, on grounds not allowed by the statute, of the appellant's right to an allowance for depreciation;

the appellant is not the same company as Pioneer Laundry & Dry Cleaners Limited referred to in the decision of the Minister, the latter company having gone into voluntary liquidation on March 30, 1932;

the appellant was incorporated on March 23, 1932, and on April 1, 1932, it purchased the assets in question herein from Home Service Company Limited, a company incorporated on the 23rd of March, 1932.

The reply of the Minister, dated November 28, 1935, alleges in substance that:

by section 5, subsection 1 (*a*) of the Act, income shall be subject to a deduction of "such reasonable amount as the Minister, in his discretion, may allow for depreciation";

this discretionary power was exercised in a reasonable and fair manner and a sum of $255.08 was allowed to the taxpayer as a deduction for depreciation;

the discretion so exercised was a discretion in the determination of a question of fact;

the discretion having been properly exercised in accordance with the provisions of section 5, subsection 1 (*a*), there remains no jurisdiction in a court of law to enquire whether or not the deduction for depreciation allowed to the appellant is reasonable;

if the discretion so exercised should be subject to review by the Court, then it is asserted that the allowance made is reasonable in view of the facts and having regard to the total of the amounts allowed in previous years for depreciation in respect of the same assets, even though such assets were previously held by a different legal entity, since it appeared from the facts that the ultimate beneficial ownership of such assets had not changed hands with the change of ownership from one corporate entity to another, but had remained with the same shareholders.

Pleadings were filed.

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Omitting the facts set forth in the notice of appeal and notice of dissatisfaction, which it is useless to repeat, the statement of claim says in substance as follows:

the machinery, delivery equipment, furniture and fixtures in question herein were acquired by the appellant as follows:

(*a*) all the machinery, delivery equipment, furniture and fixtures, save the coupés and the truck body, were acquired from Home Service Company Limited for the sum of $162,032.83; the articles so acquired had formerly been the property of Pioneer Laundry & Dry Cleaners Limited, a company other than the appellant, and had been purchased by Home Service Company Limited;

(*b*) the following items were purchased as follows:

one Willys-Knight coupé on May 17, 1932, from Consolidated Motors Limited for $815; one truck body on July 14, 1932, from Pioneer Carriage Company Limited for $230.75; one Essex coupé on November 22, 1932, from Consolidated Motors Limited for $286.50;

by section 5 of the Income War Tax Act the Minister was empowered to allow such amount or amounts as he should consider reasonable for depreciation in value of such assets of the taxpayer as were used in its business, and the Minister was charged with the duty to allow for depreciation such amount or amounts as were reasonable in view of the diminution in value of such assets during the taxation year; the said section did not confer upon the Minister the right to deprive taxpayers of the right to deduct proper sums of depreciation from their respective incomes;

prior to the incorporation of the appellant the Minister, in compliance with said section 5, did regularly allow taxpayers in the form of annual percentage deductions, on certain of their assets used in their business, certain annual allowances for depreciation as follows:

on machinery, plant, etc.. .. .. 10% of the cost;
on furniture and fixtures.. .. .. 10% of the cost;
on motor cars and trucks subject to heavy wear; in the first year 25% of their cost; in the second, third and fourth years 20% of their cost; in the fifth and subsequent years such further depreciation as might be allowed after reconsideration;
on horses and wagons . . .. 10% of their cost·

on or about July 7, 1933, the appellant filed with the Inspector of Income Tax, a return of its total income earned in the taxation year ending March 31, 1933;

in its return the appellant claimed as deductions from its income certain sums totalling $17,775.55, representing depreciation of its machinery, delivery equipment, furniture and fixtures, at rates not exceeding the rates theretofore fixed by the Minister;

the amounts so claimed by the appellant and the rates applied by it in respect thereto were as follows:

	Rate claimed	Amount of depreciation claimed
horses and wagons	10%	$ 135 25
delivery trucks	20%	2,935 08
furniture and fixtures	10%	574 07
machinery	10%	14,131 15
		$17,775 55

on February 19, 1935, the Commissioner sent to the appellant a notice of assessment in which he improperly disallowed the sum of $17,520.47 of the amounts claimed by the appellant for depreciation, to wit: the sum of $135.25 for depreciation of horses and wagons, the sum of $574.07 for depreciation of furniture and fixtures, the sum of $14,131.15 for depreciation of machinery and the sum of $2,680 of the sum of $2,935.08 for depreciation of delivery trucks, allowing therefor only the sum of $255.08; and the Commissioner improperly asserted that the appellant's taxable income for said fiscal year amounted to $12,893.30, and improperly assessed the appellant with the sum of $1,611.66 as the tax thereon; the allowance of $255.08 being estimated as follows:

25% for 10 months on $815	$186 77
25% for 8 months on $230 75	38 46
25% for 5 months on $286 50	29 85
	$255 08;

on or about March 9, 1935, the appellant appealed from the assessment and on May 30, 1935, the Minister made a decision affirming said assessment on the grounds previously set forth;

the appellant admits that it was incorporated and commenced operations during the year 1932 but, save as aforesaid, denies each and every allegation of fact set out in the said decision; it denies in particular: (*a*) that Pioneer Investment Company Limited disposed of its assets to Home Service Company Limited and that the shareholders

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of these two companies are the same; (*b*) that Home Service Company Limited incorporated the assets of Pioneer Laundry & Dry Cleaners Limited into the records of the appellant at appreciated values or any values at all; (*c*) that the Minister ever considered the facts set forth in the notice of appeal; (*d*) that there was no actual change in the ownership of the assets herein when they were purchased by the appellant; (*e*) that the said assets were set up in the books of the appellant at appreciated values; (*f*) that any reasonable amount has been allowed by the Minister for depreciation;

in the alternative, the appellant says that the Minister, having exercised the power conferred upon him by section 5, had no power to take away or reduce the allowances given to the appellant in respect to depreciation after the appellant had claimed said allowances in its return;

on or about June 24, 1935, the appellant sent to the Minister a notice of dissatisfaction; on November 28, 1935, the Minister issued his reply to the said notice whereby he again affirmed the said assessment;

in so far as the reasons given by the Minister in his reply differ from those given by him in his decision, they are unauthorized by the Act and are invalid;

in further reference to the Minister's reply the appellant admits that section 5 provides that income shall be subject to deduction of such reasonable amount as the Minister in his discretion may allow for depreciation; it admits that the appellant is a legal entity different from any other legal entity as alleged in said reply; save as aforesaid, it denies each and every allegation of fact set forth in said reply and in particular denies that the Minister, in allowing the appellant the sum of $255.08, as depreciation, exercised a discretionary power in a reasonable manner; on the contrary it says that the sum of $255.08 was an allowance for depreciation in respect only of the coupés and truck body; it denies that the discretion exercised by the Minister was exercised solely in the determination of a question of fact and that the Court has no jurisdiction to decide whether the deduction for depreciation allowed by the Minister was or was not reasonable;

the Minister, having exercised the power conferred upon him by section 5, did not, after the appellant had in its

income tax return claimed the depreciation allowances allowed by the Minister, have the power to take away or reduce the said allowances.

The statement of defence contains, among others, the following allegations:

the respondent is not charged by section 5, subsection 1 (*a*), with the duty to allow depreciation in any specific manner, but rather is empowered to exercise his discretion in determining what is a reasonable amount to allow in respect of depreciation of the assets of each taxpayer; such statutory provision for depreciation does not confer any right upon the taxpayer to deduct any sum other than that allowed under said section; if there were any customary allowances made in previous years to taxpayers in respect to depreciation of certain types of assets, which is not admitted, such apparent customary practice is the result of the exercise of the Minister's discretion in respect to taxpayers of similar conditions and circumstances;

the respondent admits that the appellant in its return claimed the amounts alleged for depreciation but denies that any rates had previously been fixed in regard to the appellant or to any taxpayer;

in disallowing the sum of $17,520.47, the Commissioner, duly authorized delegate of the Minister, properly exercised the discretion conferred by section 5, subsection 1 (*a*);

in answer to the allegation that the Minister did not consider the facts of the case, the respondent states that by section 75, subsection 2, the Commissioner may be authorized to exercise such of the powers conferred upon the Minister as the latter may determine and that such authorization was duly given to the Commissioner who, in accordance therewith, considered the facts and levied the assessment appealed from and further affirmed such assessment by the decision of the 30th of May, 1935;

the respondent denies that the discretionary power given by section 5, subsection 1 (*a*) was or could have been exercised previous to the assessment of the taxpayer's return and consequently that any rights in respect to depreciation could accrue to the taxpayer previous to such assessment; the respondent further denies that the appellant could in any event acquire any right to a fixed rate of depreciation

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by the fact that a certain rate had usually been allowed in previous years to other taxpayers or to the appellant in respect of similar assets, since income for the purposes of the Act means the annual net profit or gain of a particular taxpayer and such annual income is subject to an annual deduction of such amount for depreciation as is determined in accordance with section 5, subsection 1 (*a*);

the respondent denies the allegation or implication of the appellant that any customary practice of the respondent in allowing for depreciation at uniform rates as between taxpayers of like conditions and in respect of particular types of assets did constitute an anticipatory exercise of the discretionary power aforesaid in respect to any particular taxpayer before his return had been assessed;

the determination of a reasonable allowance for depreciation is a matter left to the discretion of the Minister; such discretion has been properly exercised in regard to the appellant and an allowance of $255.08 was made in respect of the taxation year ending March 31, 1933; such allowance having been made in conformity with the Act, no jurisdiction lies with the Court to decide upon the amount thereof; but, should the Court have such jurisdiction, the amount allowed should be confirmed as reasonable in view of the facts; and the Court should confirm the disallowance of any claim for depreciation upon assets which, for the purpose of the Act, previous to the claim herein, had already fully depreciated.

A memorandum of facts upon which the parties agreed, dated April 4, 1936, was filed. It seems to me convenient to quote this memorandum *in extenso:*

1 Pioneer Investment Co. Limited was incorporated prior to inception of the Income War Tax Act, and went into voluntary liquidation on 7th April, 1932 Immediately prior to liquidation the said Pioneer Investment Co, Limited, owned directly or through nominees all the outstanding share capital of its subsidiary operating companies listed in para 3 herein below, and including the appellant company

2. Pioneer Laundry & Dry Cleaners Limited by special resolution dated 30th March, 1932, went into voluntary liquidation. All its shares were owned by the Pioneer Investment Co., Limited (some of these shares held in the names of nominees).

3 On 23rd March, 1932, a new company was incorporated under the name of Home Service Company Limited. The said last mentioned company on 1st April, 1932, acquired all the physical assets of the following companies, that is to say:

Pioneer Laundry & Dry Cleaners Limited,

Cascade Laundry & Dry Cleaners Limited,

Dominion Laundry & Dry Cleaners Limited,
B C Clean Towel Supply Limited,
Vancouver Towel Service Company Limited,
Family Service Laundry Limited,
Empire Cleaners Limited.

The said Home Service Company Limited also acquired all the assets of Pioneer Investment Company Limited save and except

(*a*) shares owned by that company, and

(*b*) amounts owing to that company by its shareholders.

4 On 23rd March, 1932, a new company was incorporated under the name of Pioneer Laundry & Dry Cleaners Limited (the appellant herein) and that company acquired from the Home Service Company Limited certain machinery, furniture and fixtures and delivery equipment which had formerly been owned by the first Pioneer Laundry & Dry Cleaners Limited (but not all the machinery, furniture and fixtures and delivery equipment of the original Pioneer Laundry & Dry Cleaners Limited) and also acquired certain other machinery or delivery equipment owned by one or more of the other companies named in clause 3 hereof.

5. In addition to the assets which the appellant acquired in the manner indicated in paragraph 4, the appellant acquired the following:

1 Willys-Knight coupe bought from Consolidated Motors, Limited..	$815 00
1 truck body from Pioneer Carriage Company Limited . ..	230 75
1 Essex coupe from Consolidated Motors Limited..	286 50

6. That all the machinery, furniture and fixtures and delivery equipment of the original Pioneer Laundry & Dry Cleaners Limited and some but not all of the similar assets of the other laundry companies referred to in paragraph 3 hereof were fully written off by depreciation by those companies and the appellant is claiming an allowance for depreciation in respect to the aforesaid machinery, furniture and fixtures and delivery equipment, which it acquired in the manner aforesaid, all of which assets being among those fully depreciated as aforesaid.

7. That the capitalization of the Home Service Company Limited is $1,000,000 divided into 10,000 shares par value $100 each and that all such shares except forty were issued or sold to the liquidators of the operating subsidiary companies of the Pioneer Investment Company, Limited in consideration for the transfer of the assets of such operating companies to the Home Service Company, Limited; that the said shares on the winding-up of the said operating companies were distributed to the parent company, the Pioneer Investment Company, Limited, and on the winding-up of that company were distributed to its own shareholders; and that the result is that the shareholders of the Home Service Company Limited are the same as were the shareholders of the Pioneer Investment Company, Limited and their respective holdings in the new company are the same or substantially the same as were their respective holdings in the old company. The 40 shares referred to in this clause were allotted to Pioneer Investment Co Limited in part payment of the assets referred to at the end of clause 3 hereof

8. That the sum of $255 08 which was allowed by the Department as depreciation on autos was part of the sum of $2,935 08 claimed by the

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Pioneer Laundry & Dry Cleaners Limited as depreciation on their delivery trucks and was calculated as follows:—

25% for 10 months on $815 being the cost of one Willys-Knight coupe purchased by Pioneer Laundry & Dry Cleaners Limited from Consolidated Motors Ltd., on or about the 17th day of May, 1932..	$186 77
25% for 8 months on $230 75 being the price of one truck body purchased by Pioneer Laundry & Dry Cleaners Limited from Pioneer Carriage Company Ltd. on 14th July, 1932..	38 46
25% for 5 months on $286 50 being the price paid by Pioneer Laundry & Dry Cleaners Limited to Consolidated Motors Ltd on 22nd November, 1932, for one Essex coupe.. ..	29 85
	$255 08

William Henry Cotter, a chartered accountant, of the firm of Riddell, Stead, Hodges and Winter, auditor for the appellant company, was examined as witness on behalf of the appellant. He prepared the income tax return of the company for the fiscal year ending March 31, 1933, filed as exhibit 2; the balance sheet and profit and loss statement annexed to this return were prepared by the company's book-keeper; the witness, however, and his partner Winter checked and approved the balance sheet.

Questioned with regard to the account in the books of the company relating to depreciation, Cotter gave the following information:

Q. Did the appellant company, for that year, for the fiscal year ending the 31st March, 1933, have a special account in the books for depreciation on the machinery, horses, automobiles and furniture?

A Yes.

Q. Are these the correct accounts. You may use this tax return, machinery and equipment $14,131.15?

A. Yes.

Q Being at the rate of 10% of the cost price?

A. Right

Q. Automobiles $2,935 08, being at the rate of 20% of the cost price?

A. Yes.

Q. Horses and wagons $135 25, being at the rate of 10%?

A. Yes.

Q. Furniture and fixtures $574 07, being at the rate of 10%?

A. Yes

Q Making a total of $17 775 55?

A. Yes.

Q. Was this depreciation duly entered in their books in the regular and customary manner of making them up for the year?

A. Yes.

The witness said that he became aware of the percentages which the Department of Income Tax allowed to be deducted for the purpose of fixing taxable income by inter-

views he had with the Department on various occasions; in addition there were certain rules and regulations issued in a circular (No. 20) dated August 30, 1918, to which was appended a schedule of depreciation rates and another appendix to the same circular dated May 11, 1927, dealing with depreciation on automobiles; I shall deal with this circular and these appendices in a moment.

Asked if he could produce a list of the machinery and equipment, automobiles, horses and wagons mentioned in the return, Cotter replied that he could, but that it was not available at the moment.

I may note here that the machinery and equipment, horses and wagons and furniture and fixtures, to wit all the articles involved in the present appeal with the exception of the automobiles, were acquired by the appellant, together with other assets, from Home Service Company Limited, a corporation having its office in the City of Vancouver, by means of an agreement entered into between the said Home Service Company Limited and the appellant on April 1, 1932, which was filed as exhibit 1.

By this agreement the appellant acquired from Home Service Company Limited the following assets, alleged to be owned by the vendor by virtue of its having purchased them from the liquidator of Pioneer Laundry & Dry Cleaners Limited, referred to in the deed as the "old company," namely:

the goodwill of the business heretofore carried on in the City of Vancouver and elsewhere in the Province of British Columbia by Pioneer Laundry & Dry Cleaners Limited, now in liquidation;

all the plant, machinery, office furniture, fixtures, trucks automobiles and other goods and chattels owned by the "old company";

all the book debts and other debts and accounts due to the "old company" in connection with the said business;

the full benefit of all pending contracts to which the "old company" might be entitled;

all cash in hand and in bank and all bills and notes in connection with the said business;

all unexpired insurance and all other personal property owned by the "old company."

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The consideration for this sale was: (*a*) the sum of $170,549.70, stipulated payable as to the sum of $10,000 by the allotment to the vendor or its nominees of 100 fully paid shares of the capital stock of the purchaser of the par value of $100 each and as to the balance ($160,549.70) in cash at any time or times when the payment of the same or any part thereof is demanded by the vendor; (*b*) the assumption by the purchaser of all the debts, liabilities and obligations of the "old company" as of the date of the agreement.

The deed provides that the portion of the purchase price payable in cash on demand or any balance thereof at any time remaining unpaid shall carry interest at such rate (not to exceed 8% per annum) and for such periods and payable on such date or dates as the vendor may determine and demand.

The amount of the debts of the "old company" was said to be $10,277.23. The total consideration was accordingly $180,826.93.

Home Service Company Limited had acquired the assets aforesaid from William H. Cotter, liquidator of Pioneer Laundry & Dry Cleaners Limited (hereinabove referred to as the "old company") in virtue of an agreement also dated April 1, 1932, a copy whereof was filed as exhibit G. This agreement included, in addition to these assets, all the right, title and interest of Pioneer Laundry & Dry Cleaners Limited in liquidation in and to the parcels of land and premises, situate in the City of Vancouver, in the Province of British Columbia, known as lots one (1) to four (4) inclusive in Block seventy-five (75) in the subdivision of District lot five hundred and forty-one (541) Group one (1) New Westminster District.

The consideration stipulated in the agreement exhibit G is as follows:

(*a*) the sum of $327,000 payable by the allotment to the vendor of 3,270 fully paid shares in the capital stock of the purchaser of a par value of $100;

(*b*) the assumption by the purchaser of all the debts, liabilities and obligations of Pioneer Laundry & Dry Cleaners Limited in liquidation as of the date of the agreement.

The Willys-Knight coupé was purchased by the appellant from Consolidated Motors Company Limited on May 17, 1932, for $815; the Essex coupé was purchased from Consolidated Motor Company Limited on November 22, 1932, for $285 in cash and a 1927 used Essex coupé; and the truck body was purchased from Pioneer Carriage & Truck Tire Limited in July, 1932, for $275.40.

Cotter said that the Willys-Knight coupé, the Essex coupé and the truck body were purchased new. The other articles were not new; they had been in use some years by other companies.

Asked on what basis the values for the articles other than the Willys-Knight and Essex coupés and the truck body were fixed, Cotter answered that they were fixed by means of an appraisal made on February 12; the year is not mentioned but the witness evidently refers to February, 1932. Cotter added that it is on this appraisal that the purchase price mentioned in the agreement exhibit 1 was fixed.

Speaking of the practice of accountants regarding the depreciation of used articles, Cotter stated that the "principle of depreciation is applied identically the same whether the article is new or second hand."

Cotter was examined in relation to certain statements contained in the decision of the Minister; I believe it is apposite to cite the witness' answers in this connection:

No, the valuable assets of Pioneer Investments Limited were in the shares of seven subsidiary companies. None of these were held by Home Service Company or disposed of by Pioneer Investment Company in any way.

and further on:

. . . The Home Service Company Limited have (had) nothing whatever to do with incorporating the assets of Pioneer Laundry & Dry Cleaners into its own records. The Pioneer Laundry & Dry Cleaners itself controlled all entries into its own records in relation to the assets acquired.

The following questions and answers dealing with the assets purchased by the appellant company and the entries relating thereto in the latter's books at alleged appreciated values and the right of ownership therein had better be quoted textually:

Q. There is a suggestion in the Minister's statement where he speaks of the Pioneer Laundry & Dry Cleaners Limited having had entries made for them at appreciated values. It would appear to be a suggestion that

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the appellant company watered its capital by adding something to the actual cost. Was any such thing done?

A. No, the assets were recorded in their books at the actual and original cost price to them.

Q The Minister says that the assets were taken over by the Home Service Company from the Pioneer Investment Company. Is that true, that is, these assets we are dealing with in this case?

A. No, none of these assets were taken over by Home Service Company Limited.

Q. The Minister makes the statement that there was no actual change in ownership. Is that a correct statement of the transaction between Home Service Company and the appellant?

A No.

Q In other words, so far as you are able to express the view, was there an absolute and complete change of ownership?

A There was

In cross-examination Cotter was asked the following question:

Q Now, is it true that the value shown in the books of the predecessor of this appellant and in its income tax returns were greatly increased when transferred into the books of this appellant and into its balance sheet accompanying its income tax return?

Counsel for the appellant raised an objection on the ground that what any company, which formerly owned the machinery in question, did would not govern the appellant and that there was no contractual relationship between the "old company" and the appellant; I admitted the evidence under reserve of the objection; after considering the matter, I have come to the conclusion that the question is legal; the answer given by the witness was in the affirmative.

Cotter, in cross-examination, admitted that the holding company of the shares of the appellant was Home Service Company Limited and that the shareholders of this company are the same persons as were the shareholders of the previous holding company, namely, Pioneer Investment Company Limited. The witness further admitted that the appellant company is a subsidiary of Home Service Company Limited as the "old company" was a subsidiary of Pioneer Investment Company Limited.

Cotter stated that the predecessor in title of the assets herein concerned was Home Service Company Limited and that the predecessor in title of the latter, as regards the majority of these assets, was the former Pioneer Laundry & Dry Cleaners Limited, now in liquidation.

Before closing his cross-examination of the witness Cotter, counsel for the respondent reverted to the matter

of appreciation of the assets acquired by the appellant from Home Service Company Limited under the agreement exhibit 1; I think I ought to quote a few questions and answers on the subject, which, to my mind, are material:

Mr. DONAGHY: Q. And you have already said that those assets are set up on the books of the present appellant at a greatly appreciated value over and above what they were on the books of the old Pioneer Laundry & Dry Cleaners Limited?

A. I must correct you. I don't think I have already said that. I agreed to your former question, that the assets of the present appellant company are at a much greater valuation than those same assets were in the books of the earlier and former Pioneer—the Pioneer Laundry & Dry Cleaners Limited.

Then on page 53:

Q. Let us not split hairs about it.

A. I would prefer to say that they are in the books of the Pioneer Laundry & Dry Cleaners Limited—

Q. Which one?

A The appellant.

Q. Yes.

A. —at a much greater—or at a greater valuation than in the books of the predecessor, or the Pioneer Laundry & Dry Cleaners Limited now in liquidation.

George William Thompson, who qualified himself as income tax specialist, was called as witness by the respondent. He was shown circular No. 20 and the schedule of rates attached thereto (exhibit 3) and was asked if the rules contained therein were adhered to in all cases; counsel for the appellant objected to the question and the objection was maintained. The respondent adduced no other oral evidence.

Two letters were filed by the respondent, one from respondent's solicitor to appellant's solicitor dated September 2, 1936, and the other from appellant's solicitor to respondent's solicitor dated September 3, 1936.

The first one, marked as exhibit B, reads as follows:

Will you please advise me if you will admit for the purposes of the trial of this appeal that during the fiscal year ended March 31, 1933, the shareholders of the appellant, Pioneer Laundry & Dry Cleaners Limited, were as follows, namely:—

Home Service Company Limited	97 shares
Charles H. Wilson	1 share
Mary E. Stewart	1 share
Thomas H. Kirk	1 share
	100 shares

and that the three persons above named were during such fiscal year shareholders of the Home Service Company Limited.

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The second one, filed as exhibit C, reads thus:

Yours of the second received. We are instructed that the answer to the question you put is "yes."

The proof shows that the Minister delegated his powers to the Commissioner, as authorized by section 75 of the Act: see exhibits 14, 15, D, E and F.

The point in controversy is governed by the first provision of paragraph (*a*) of subsection 1 of section 5 of the Income War Tax Act. The material provisions of subsection 1 read as follows:

"Income" as hereinbefore defined shall for the purposes of this Act be subject to the following exemptions and deductions:

(*a*) such reasonable amount as the Minister, in his discretion, may allow for depreciation, ...

It was submitted on behalf of the appellant that the Minister had exercised his discretion in issuing on August 30, 1918, a circular, numbered 20, reading in part as follows:

Re: Depreciation

In dealing with all Income Tax claims for depreciation, the following general rules should be observed. Any special circumstances which seem to warrant variation from these rules must be submitted to this office for approval.

1. The value and character of the asset on which depreciation is claimed must be stated in each case.

2 The value to be stated must be the cost value to the taxpayer

3 The rates of depreciation on various classes of assets mentioned in the hereto annexed schedule must be strictly adhered to as the maximum rates to be allowed by Inspectors, except on special authority from this office. Where lower rates are claimed by the taxpayer in the returns they, of course, are not to be disturbed.

A copy of this circular was filed as exhibit 3.

An appendix to circular No. 20 was issued by the Commissioner of Income Tax on May 11, 1927; it reads thus:

Depreciation of Automotives

Cases have arisen from time to time in which claims are made for a greater allowance than as presently prescribed, as a deduction from profits for wear and tear of automobiles and motor trucks used exclusively in the businesses of manufacturing, transportation, merchandising and commercial concerns of a general nature The grounds of complaint in most cases are similar and refer generally to various forms of rough usage to which cars are subjected: consequently new cars have to be purchased before the full value of the old car is fully depreciated on the books of the concern.

As a result, it has now been decided to modify the rates heretofore allowed and to institute a more even spread of the useful life of automotives, notwithstanding any ruling to the contrary contained in Circular No. 20, or other instruction issued by this Department relating to depreciation.

The following rates in regard to all cases so far not disposed of are effective:

For the first year a rate may be allowed up to 25% on the cost price, and thereafter a rate of 20% in each year up to 85% of the total cost, when the question of further writing off will be reconsidered . . .

A copy of this appendix was filed as exhibit 4.

On May 15, 1933, an appendix to circular No. 189 (not filed) was issued by the Commissioner, worded as follows:

Depreciation

The maxium depreciation allowable in any period shall be the amount incorporated in the profit and loss, surplus or similar account in the usual books of record of the taxpayer on the statutory date for filing returns, provided the said amount shall not exceed the amount allowable under the regulations issued by the Department.

* * * * * * * * *

This ruling applies to assessments for the fiscal periods ending in 1932 and subsequent thereto and any prior rulings are modified accordingly

A copy of this appendix was filed as exhibit 5.

Another appendix to circular No. 189 was issued by the Commissioner on November 25, 1933, changing the year "1932" to the year "1933" in the last paragraph of the appendix of May 15, 1933.

I may note incidentally that a copy of circular No. 218, dated December 11, 1928, and a copy of an appendix to circular No. 239, dated September 8, 1931, were filed respectively as exhibits 17 and 18; I do not think that they have any relevance to the question at issue.

The right of the taxpayer to the allowance is statutory; the discretion of the Minister exists merely in respect of the amount of the deduction; the rate of the depreciation is to be fixed by the Minister.

The Minister has determined the rates of allowances for depreciation by circular No. 20 and the schedule attached thereto (exhibit 3) and the appendix to said circular (exhibit 4). The Minister was entitled to change these rates whenever he say fit, but he did not do it and the rates fixed by circular No. 20, the schedule thereto and the appendix of May 11, 1927, were still in force and effect during the fiscal year ending March 31, 1933, and were binding upon the Minister.

It was urged on behalf of the respondent that the rules and regulations contained in the circulars, appendices and schedules are merely intra-departmental instructions for the guidance of officials of the department and are not

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destined to the public; counsel for the respondent, on this ground, challenged their admissibility in evidence and objected to their production. I am not inclined to adopt this view. A taxpayer is, as I think, entitled to know the rates of allowances for depreciation so as to be in a position to determine the amount of his net revenue for any taxing period. These circulars, appendices and schedules are not only for the direction of income tax inspectors but are also for the guidance of the public. I do not think that, if a taxpayer acquired from the income tax inspector of his district the rate or percentage of the amount allowed for depreciation, the income tax inspector could rightfully refuse to give him the information asked for.

The Minister, as I have already said, is, under paragraph (*a*) of subsection 1 of section 5, bound to exercise his discretionary powers in determining the rate or percentage to be allowed for depreciation in a reasonable manner. A number of cases were cited dealing with the exercise of discretion by the courts, by Ministers of the Crown, by corporations and by other public bodies which are not *in pari materia* and which offer no particular interest.

Has the Minister, in the present instance, exercised his discretion in a reasonable manner? The objection to the admissibility in evidence of the circular, schedule and appendix aforesaid being overruled, this is the main, not to say the sole, question arising for determination.

Regarding the Willys-Knight coupé, the Essex coupé and the truck body, Cotter admitted that the sum of $255.08 was a fair and reasonable allowance for depreciation. In fact it is somewhat over the rate fixed by the Minister: 25% for 10 months on $815 is $169.79 and not $186.77 as mentioned. The question in dispute concerns the depreciation of the articles acquired from Home Service Company Limited in virtue of the agreement exhibit 1.

It was submitted on behalf of appellant that there is no provision in the statute stipulating that a taxpayer is debarred from a right of depreciation because some other person owning the same article has previously obtained depreciation on that article, even to its full value. Counsel for appellant submitted that every taxpayer is entitled to his depreciation.

In support of his argument counsel relied on sections 9 and 5 of the Act. Section 9 says (*inter alia*):

There shall be assessed, levied and paid upon the income during the preceding year of every person

(*a*) residing or ordinarily resident in Canada during such year;

* * * * * * * * *

a tax at the rates applicable to persons other than corporations and joint stock companies set forth in the First Schedule of this Act upon the amount of income in excess of the exemptions provided in this Act: Provided that the said rates shall not apply to corporations and joint stock companies.

2. Save as herein otherwise provided, corporations and joint stock companies, no matter how created or organized, shall pay a tax upon income at the rate applicable thereto set forth in the First Schedule of this Act.

Section 5, as we have seen, stipulates that

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

From this counsel for appellant concludes that we have the express statement of the legislature that every person is entitled to his proper deduction for depreciation on his income tax and that there is no distinction to be drawn between a person who owns second hand articles and one who owns new articles.

It is indisputable, and it is not in fact disputed, that every person, who is liable to pay a tax on his income, is entitled to the deductions provided for in section 5. The question, however, is to determine whether, under section 5, the appellant has the right to claim a deduction on its income for depreciation of its assets, having regard to the particular conditions and circumstances in which these assets were acquired and appraised by the appellant.

According to appellant's contention, the depreciation is to be computed on the cost to the taxpayer of the articles allegedly depreciated; this statement is, in my judgment, too broad and inexact; the depreciation must be estimated on the real value of the articles. Basing the depreciation on the cost to the taxpayer would mean opening the door to all kinds of fraud. What seems to me difficult to understand is why the respondent did not take the means of having an appraisal made of the articles in question and of adducing evidence to establish their value. However that may be, I have to decide the case on the evidence of record. This evidence, particularly the admissions (exhibits 16 and G) and the testimony of Cotter, establishes

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that, although the appellant is strictly speaking a different legal entity from the old Pioneer Laundry & Dry Cleaners Limited, it is in reality the successor of the "old company": same name, same shareholders, same assets with a few exceptions. A thing which surprises me is that the new company was incorporated on the 23rd of March, 1932, when the "old company" was still in existence; the resolution in virtue of which the "old company" went into voluntary liquidation was only passed on the 30th of March, 1932.

The fact that the transfer from the "old company" to the new company was effected through the intervention of another company, also incorporated on the 23rd of March, 1932, viz., Home Service Company Limited, whose shareholders are the same as those of the appellant, does not regularize the position.

The new company cannot claim more allowance for depreciation than its predecessor could have done, had it not gone into voluntary liquidation and transferred its assets to Home Service Company Limited, which in turn transferred them to the appellant. The "old company" was granted all the allowance for depreciation provided for by the statute and the rules and regulations; I do not think that it could have claimed more.

For these reasons I have reached the conclusion that the appeal must fail.

There will be judgment dismissing the appeal with costs.

Judgment accordingly.