1965

Mar. 29-31, Apr. 1

Apr. 15

BETWEEN:

CANADIAN GYPSUM COMPANY, LIMITED ..... APPELLANT;

AND

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

*Revenue—Income—Income tax—Exemption from tax—Meaning of "mine" and "quarry"—Characteristics of a mine—Construction of exempting provisions in taxing statute—Income Tax Act, R.S.C. 1952, c. 148, ss. 83(5) and (6)*

This is an appeal from the assessment of the appellant by the respondent for the year 1959, whereby the appellant's claim for tax exemption with respect to its mining profits pursuant to s. 83 of the *Income Tax Act* was denied.

Before trial the parties signed an "Agreement as to Issues of Fact in Dispute" wherein it was agreed that the issues of fact in dispute were: (1) Is the operation of a "stone quarry" within the meaning of s. 83(6) of the *Income Tax Act,* and (2) If not, is the operation a "mine" within the meaning of s. 83(5) of the *Income Tax Act?* However, before argument, counsel for the respondent conceded that the operation under review, being that conducted by the appellant on its property at Miller's Creek, Nova Scotia, was not a "stone quarry" within the meaning of s. 83(6)(*a*) of the *Income Tax Act.*

*Held:* That "mines" and "minerals" are not definite terms: "they are susceptible of limitation or expansion according to the intention with which they are used".

2. That the Miller's Creek operation of the appellant clearly evinces the characteristics of a mine and this conclusion follows from the vast and constantly expanding proportions of the development area in depth, width or circumference, the costly and powerful equipment at work, a labour force of about 175 men and the assignment of one or two professional engineers and of two geologists in a permanent testing laboratory.

3. That the nominal exclusion of a "stone quarry" in the definition of the noun "mine", coupled with the admission that the Miller's Creek operation is not a stone quarry, must, irresistibly lead to the deduction that, legally speaking at the very least, it is a mine.

4. That the appeal is allowed.

APPEAL under the *Income Tax Act.*

The appeal was heard by the Honourable Mr. Justice Dumoulin at Toronto.

*George D. Finlayson, Q.C., William L. Latimer* and *Mrs. P. D. C. McTavish* for appellant.

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*D. A. Keith, Q.C.* and *S. Silver* for respondent.

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

DUMOULIN J. now (April 15, 1965) delivered the following judgment:

Canadian Gypsum Ltd., of the City of Toronto, Province of Ontario, a company incorporated under the laws of Canada, has uninterruptedly operated mines in Canada for about 40 years. Its objects are, in part, to use and develop lands containing Gypsum, ores or other deposits.

In 1955, the appellant acquired in the province of Nova Scotia certain properties containing gypsum ore. A section of these, known as the Miller's Creek property, consists of 647 acres in Hants County near Windsor, N.S., on which exploratory work was performed, it is stated, both before and after the lands were obtained.

A so-called gypsum "mine" was developed at Miller's Creek; the first shipment of ore to the parent company, United States Gypsum, at the latter's plants along the Atlantic coast, took place in May of 1957, with production in reasonable commercial quantities said to have begun in April, 1959.

The Miller's Creek gypsum deposits are operated as an open-pit employing 175 men more or less under the direction of two engineers. Two professional geologists are regularly at work in a permanent laboratory built on the site as reported by Michael E. King, and Dr. Frank Beales, the former, a mining engineer, works manager of Canadian Gypsum and Fundy Gypsum, the latter a lecturer in geology at the University of Toronto and also a consulting engineer.

A very substantial stock of mobile equipment is affected to the workings of these gypsum beds and is detailed in a list, exhibit A-4, produced by Mr. King, to a cost price sum of $2,880,688, although this witness agreed that such machinery could serve in the construction industry and was not exclusively designed for mining purposes. On exhibit A-5 appear the following bulk expenditures incurred in relation to the Miller's Creek undertakings:

1. Cost of development work approximately ....$ 280,000
2. Cost of stripping overburden to March, 1962 ..$1,271,636
3. Cost of capital equipment (as of 12-31-61) ..$2,960,500

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Before relating at greater length the operational features of this property, it is apposite to deal with the conflicting claims submitted in the Notice of Appeal and the respondent's Reply.

In paragraphs 9 and 10 of its pleadings, the company alleges compliance with "... all the requirements of Regulation 1900 of the Income Tax ... for the purpose of sub-section 5 of Section 83 of the Act ..." (para. 9); and that "on November 21st, 1961, pursuant to Part XIX of the Income Tax Regulations, (it) filed the prescribed T351 and claimed tax exemption for its mining profits pursuant to Section 83 of the *Income Tax Act*" (para. 10); a request the respondent refused to grant and so informed the appellant by letter, dated April 25, 1963, advising the company "that such property did not qualify under Section 83 of the *Income Tax Act* as a mine". The Minister, therefore, included in appellant's income the Company's net earnings from the "mine" which, for the period April 1, 1959, to December 31, 1959, amounted to $220,655.50.

The reasons urged in support of this appeal are outlined in paragraphs 1 and 2, Part B, of the appellant's plea:

1. The income derived from the Miller's Creek mine is income derived from the operation of a mine within the meaning of sub-sections (5) and (6) of Section 83 of the *Income Tax Act*;

2. The open pit operation is a mine within the meaning of Section 83(6)(*a*) and is not a stone quarry or any other operation specifically excluded from the definition of the term "mine" by Section 83(6)(*a*).

To this contention, the respondent opposes the undergoing flat denial at paragraph 13 of the Reply to the Notice of Appeal; and an alternative submission at paragraph 14.

13. The Respondent says that the income derived from the removal and sale of gypsum rock from the said Miller's Creek Property was income derived from the operation of a stone quarry and, hence, by virtue of paragraph (*a*) of sub-section (6) of Section 83, it is not income derived from the operation of a mine within the meaning of sub-section (5) of Section 83 of the *Income Tax Act* and it is therefore not excluded in the computation of the income of the Appellant.

The alternative in paragraph 14 says that "the gypsum quarry on the ... Miller's Creek property is not a mine within the meaning of Section 83 (5) of the *Income Tax Act* ..." with, necessarily, analogous conclusions to those of paragraph 13.

On March 5 last, the litigants drew up and signed a proceeding labelled "Agreement As To Issues of Fact in Dispute". It reads thus:

The parties are in agreement that the issues of fact in dispute are as follows:

1. Is the operation a "stone quarry" within the meaning of Section 83, Sub-section (6) of the *Income Tax Act*?
2. If the operation is not a "stone quarry" within the meaning of Section 83, Sub-section (6) of the *Income Tax Act*, is the operation a "mine" within the meaning of Section 83, Sub-section (5) of the *Income Tax Act*?

At the conclusion of the hearing and before addressing the Court, counsel for the Minister, Mr. D. A. Keith, Q.C., who declined to call witnesses, made this admission which I took down *verbatim*: "I am prepared to concede that the operation at Miller's Creek is not a stone quarry within the meaning of section 83, subsection (6)(*a*) of the *Income Tax Act*."

A first step towards a solution of the sole remaining question should be the recital of the pertinent statutory enactments, already indicated:

83. (5) Subject to prescribed conditions, there shall not be included in computing the income of a corporation income derived from the operation of a mine during the period of 36 months commencing with the day on which the mine came into production.

(6) In subsection (5)

(*a*) "mine" does not include an oil well, gas well, brine well, sand pit, gravel pit, clay pit, shale pit or stone quarry (other than a deposit of oil shale or bituminous sand); and

(*b*) "production" means production in reasonable commercial quantities.

At this stage, I would note an agreement that the evidence and arguments in this issue, together with the intervening judgment, should be common, *mutatis mutandis*, to appeals A-2181 and A-2182 between the same parties, and to appeal A-2113 between Fundy Gypsum Ltd., and the instant respondent.

Any attempt at fashioning the word "mine" into some exclusive application in our times of uninterrupted and startling scientific innovations might well prove, at my hands at least, a pointless venture. In support of this view, I can quote the authoritative precedent of *Lord Provost and Magistrates of Glasgow v. Farie*[1] wherein Lord Watson and

[1] 13 App. Cas. 657 at 675, 676, 677, 683 and 684.

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Lord Herschell, commenting on the words "mines" and "minerals" (gypsum is a mineral) wrote, the former:

> "Mines" and "minerals" are not definite terms: they are susceptible of limitation or expansion according to the intention with which they are used.

With reference to the judicial interpretation of an old statute of the realm, bearing some relation to mines and minerals, the Act 43 Eliz., c. 2, of 1601, the eminent jurist said:

> ...the Courts gave a restricted meaning to the word "mine" and decided that in the sense of the Act of Elizabeth it must be taken to be a subterranean excavation. It was accordingly held that persons who worked lead, freestone, limestone, or even clay by means of a shaft and underground levels were not liable to be rated in respect of their occupancy; whilst others who worked the same substances by means of excavations open to the light of day were held to be liable as occupiers of land; I do not suggest that the Courts erred in limiting so far as they could the exemption which for some reason or other had been established; *but I may venture to express a doubt whether any such exemption or distinctions with regard to the mode of working would have been recognized if the Act of 1601 had not become law until the year 1847.* (italics added throughout these notes)

And the learned Lord continues:

> I am unable to assent to the appellants' argument that in sect. 18 of the Waterworks Clauses Act (a statute of 1847 then submitted for interpretation) "mines" must be understood in the same sense which it has been held to bear in the statute of Elizabeth. Such may have been its original meaning, but it appears to me to be beyond question that for a very long period that has ceased to be its exclusive meaning, and that the word has been used in ordinary language to signify either the mineral substances which are excavated or mined, or the excavations, *whether subterranean or not,* from which metallic ores and fossil substances are dug out.

Next, further down page 677, we find that:

> The fact is of sufficient notoriety to be noticed here, that, although in the extreme south-west of the island slate is obtained by subterraneous workings, the reverse is the rule in North Wales and in Scotland, where it is quarried. The word "quarry" is, no doubt, inapplicable to underground excavations; *but the word "mining" may without impropriety be* used to denote some quarries. Dr. Johnson defines a quarry to be a stone mine...

Page 678, last paragraph, affords the conclusion:

> I am accordingly of opinion that, in these enactments, the word "mines" must be taken to signify all excavations by which the excepted minerals may be legitimately worked and got.

Lord Herschell, at pages 683 and 684 of the report, sets forth a corroborative opinion in these terms:

What, then, is the interpretation to be put upon the word "mines"? I think the primary idea suggested to the popular mind by the use of the word is an underground working in which minerals are being or have been wrought. It is certainly often used in contrast to "quarry" as indicating an underground working as opposed to one open to the surface. But to limit it in the enactment we are construing to an underground cavity, in which minerals are being or have been wrought, would be obviously inadmissible... The word "mines" is, I think, in a secondary sense, very frequently applied to a place where minerals commonly worked underground are being wrought, *though in the particular case the working is from the surface.*

In the case of *N.S.W. Associated Blue-Metal Quarries Limited and Federal Commissioner of Taxation*[1], Mr. Justice Kitto of the High Court of Australia seems to have accurately summed up the problem in concise language. I would draw, before quoting those lines, particular attention to the importance the learned trial judge attached to "context and subject matter" which, according to the wording or particular nature of the case, does affect even the judicial meaning. Let it be remembered that "context" in the issue at bar is s. 83, s-ss. 5 and 6(*a*) of our *Income Tax Act* 1952 R.S.C., c. 148 and the stringent construction of a taxing statute; whilst the "subject matter" consists in the physical, industrial and scientific factors attaching to the Miller's Creek operations. This reminder had, the excerpt from Justice Kitto's speech goes thus:

The meaning of the word "mine" and "mining" like the word "minerals" *is by no means fixed and is readily controlled by context and subject matter.* Few words have occasioned the courts more difficulty than "minerals" but in some degree that is because in legal instruments it is seldom, if ever, used in its accurate or scientific sense and yet the word possesses no secondary meaning at once accepted and definite. *No doubt the word "mine" has also proved a source of difficulty,* but the difficulties have been fewer and less persistent. *The word seems always to have been somewhat indefinite in its application.* Judicially, however, its *primary meaning unaffected by context* is taken to refer to underground workings and not open-cast workings or quarrying.

According to a revolutionized mining technique, the noun "mine" in Black's Law Dictionary 1951 Fourth ed., p. 1146 is defined as:

"Mine". An excavation in the earth from which ores, coal or other mineral substances are removed by digging or other mining methods, and in its broader sense it denotes the vein, lode, or deposit of minerals. *It may include open cut, strip or hydraulic methods of mining.*

The Encyclopaedia Britannica referred to by counsel for the appellant at the word "Quarrying", of no practical

[1] 94 C.L.R. 509 at 522.

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assistance in this suit, otherwise affords useful indications on the topics of "Mining" and "Open Cut-Mining" 1954 ed., vol. 15 hereunder reproduced:

> Mining, Metalliferous: the winning of metals and their ores from the ground... The broad classification of these methods, which is used by the American Institute of Mining and Metallurgical Engineers, *divides metalliferous mining into two main fields; open cut mining and underground mining.*
>
> Open-Cut Mining: the working of metalliferous deposits which either outcrop at the surface of the ground or are covered by a shallow overburden or capping which must be removed before the ore can be mined... *Large deposits of copper and iron ores are worked by open-cut mining,* usually by the bench method. The depth of capping varies from a few feet up to 300 feet.

Although gypsum does not belong to the metalloid class, the purport of the quotation above is that open cut methods are industrially considered mining operations irrespective of whichever substance is being mined. To this there would be one exception only, that of a stone quarry.

Let us now revert to the oral and literal evidence. Engineer Michael E. King, previously mentioned, described the manifold aspects of the company's enterprise at Miller's Creek. The exploited area is, first of all, submitted to intensive diamond drilling in numerous "centers" of 800 or 400 feet, next reduced to 200 and even 50 feet holes, to test the ore contents. Then comes the checking of the overburden whose depth ranges from 140 feet to a negligible layer. Controlled blasting is resorted to in order to extract the daily quantity of mineral, averaging 12,000 tons.

The top grade ore, once extracted, goes straight to a primary crusher to reduce the material to 10-inch pieces, and from the latter machine a conveyor belt hurries it to a scraper and a secondary crusher grinding it to strips of minus six inches in size; thence it is shipped to the U.S. plants.

Crushing and sorting by screening constitutes the mode of separating the usable product from adhering impurities.

The top grade should be at the very least 85% free of slag, whilst the secondary type of gypsum would prove from 82% to 85% pure.

Each year, 2,250,000 tons of overburden are scraped away and dumped to waste; the total annual stripping reaches 3,000,000 tons, yielding 1,500,000 tons of true gypsum or calcium sulfate ($2H_2O$). A number of chemical tests are

carried out at the Miller's Creek laboratory, since the marketable ore must, as said, be 85% gypsum with no more than one half pound of salt (sodium) per ton. It is expedited in blocks to the American finishing plants.

From a technical standpoint, states Mr. King, "an operation such as that we are talking about here, is an open pit mine. Quarries, on the other hand, are generally connected with 'aggregates', gravel or building stone for instance, that do not require alteration or change before utilization. Minerals necessitating preliminary treatment to become usable are won from mines".

Replying to a question of the opposing counsel, the witness explains that crushed limestone for the fabrication of steel does not undergo preliminary treatment before it is fused into the steel making process nor when affected to construction purposes.

Dr. Frank Beales, a Toronto consulting engineer and professional geolgist, lecturer in geolgy at the University of Toronto, a Ph.D. from the latter institution of higher learning, and holder of a Master of Arts degree from Cambridge, England, visited the Miller's Creek and adjacent Wentworth properties in the late summer of 1964. Dr. Beales has reached a definite conclusion, thus testified to: "I would qualify without hesitation the Miller's Creek workings as those of a mine." This definite assertion is predicated, in the witness' experience, upon the existence of several characteristic traits of most mines. These ear-marks would consist in the extent of the diamond drilling explorations; the complex engineering control; one or two resident engineers and two permanent geologists; the development work necessary; a minute quality supervision indispensable to the continual extension of the property; selective mining; the beneficiation of the ore from "pit to shipment" and, lastly, the large size of the "mine" albeit, as yet, in its inceptional stages only.

We are told that "no one item other than underground mining can qualify a development as being a mine; but this is by no means a unique or exclusive feature". As far back as the last decades of the 19th century, open cast operations have become a safer and less expensive method of mining.

"Nonetheless", continues the witness, "and for the reason just stated, absence of underground mining, I do not object

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to the layman's appellation of such deposits as a quarry, thereby differentiating open pit mining from underground mining."

Answering a question mine, Dr. Beales is of the opinion that even though in certain instances gypsum deposits might be regarded as quarries, it could well happen, as it actually does, on account of particular conditions, that gypsum workings undisputably constitute true mines. "I know of no stone quarry keeping any manner of staff comparable to that which is maintained at Miller's Creek. It is most unusual to find in stone quarries an engineer permanently employed on the site, whilst two specialized geologists are on the regular personnel at Miller's Creek", concludes the witness.

This conviction, shared by the last expert heard, Dr. Max Frohberg, a mining engineer and geologist, mining consultant to the Toronto Stock Exchange and Ontario Securities Commission, who testified that "an experienced foreman would suffice to direct the operations of a stone quarry and that keeping an engineer and two geologists for such purposes would be ruinous", coupled with the main trend of expert evidence, induced respondent's counsel to concede the exploitation at Miller's Creek was not a stone quarry within the meaning of the excluding clause, namely s-s. 6(*a*) of s.83.

Dr. Frohberg, who impressed me as a highly competent scientist, totally unbiased (similar credit is due to the other witnesses) inspected the company's property on March 3, 4 and 5 of the current year. Beyond any reasonable doubt the workings at Miller's Creek, an open pit mining undertaking, are those of a mine. This expert mentions as the differentiating criterion between a quarry and a mine, something especially noticeble here, "the technical know-how continuously required to conduct operations at Miller's Creek". Present in Court during the trial, he acknowledges his unreserved agreement with the whole of the evidence.

Some time past, Dr. Frohberg visited the manganese mines in Mexico, worked by open pit methods, and could point at no appreciable difference between those and the appellant's gypsum mine in Nova Scotia.

Mr. Donald C. McConkey, a chartered accountant serving in the dual capacity of Secretary to Canadian Gypsum and

Secretary-Treasurer of Fundy Gypsum Company, Ltd., (appellant in suit number A-2113) testified that separate books of accounts were kept for the operations at Miller's Creek during the entire period of 36 months as prescribed by s. 83 (5) and Regulation 1900, Part XIX of the Act.

This company official filed exhibit A-7, a bundle of 36 sheets of records, one for each of the 36 months of the statutory tax exemption solicited, closing on March 31 of the material years, i.e., 1959, 1960, 1961, regarding Canadian Gypsum Ltd., and for the duration 1st October, 1961, to 31st December, same year, in the case of Fundy Gypsum Co. Ltd., which, on October 1, 1961, "acquired from the Appellant (Canadian Gypsum Ltd) all its rights, title and interest in respect of the Miller's Creek property and mine". (cf. Notice of Appeal, para. 8)

Mr. McConkey swore that all these bookkeeping vouchers "were examined here, in Toronto, by an auditor of the local branch of the Income Tax Department" and found in satisfactory compliance with the prescriptions of the statute.

As for s. 17 (2) of the Act, concerning the fixation of a fair market price between persons not dealing at arm's length, this official declares it was settled with the Department on the basis "of production costs, plus an arbitrary allowance of 25c per ton of marketable material".

The respondent abstained from calling witnesses and relied on a searching but ineffectual cross-examination of the scientists whose opinions were reviewed above. One line of tentative contradiction was tested which, we shall see, culminated in little better than a play on words. Donald McConkey, for one, was asked to explain the mention, in exhibit A-7, the bundle of accounting sheets, of the expressions "mine or quarry" and those of 4A quarry, white quarry, dark quarry, and the capital letters MC.

The answer was that the initials MC related to Miller's Creek and the other designations referred to properties in the Wentworth area having nothing to do with Miller's Creek, the same type or form of office stationery being used for all of them .(cf. p. 25, transcript of Donald C. McConkey's evidence).

A mines manager in the employ of United States Gypsum Company, a professional engineer and member of the Nova

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Scotia Mining Society, Mr. Frank C. Appleyard, in the course of his evidence, was shown by the defending counsel a copy of the Mines Act of this Province, chapter 179 of its 1954 Revised Statutes, wherein gypsum is nominally excluded from the mineral category. Necessarily, Mr. Appleyard could only admit the fact as he similarly subscribed to a retort by Mr. Finlayson, Q.C., on being exhibited a facsimile of chapter 114 of the self-same 1954 Revised Statutes entitled "Gypsum Mining Income Tax Act" of which s. 1, s-ss. (*a*), (*d*) and (*e*) are drawn up as follows:

> 1. In this Act
>
> (*a*) "gypsum" includes any gypsum bearing substance removed from a mine;
>
> (*d*) "mine" includes a quarry or any work or undertaking in which gypsum is extracted or produced;
>
> (*e*) "mining operations" means the extracting or production of gypsum from or in any mine or its transportation to, or any part of the distance to the point of egress from the mine including any processing thereof prior to or in the course of such transportation but not including any processing thereof after removal from the mine.

Previously, the "works manager" of both Canadian Gypsum and Fundy Gypsum, engineer Michael E. King, acquiescing to Mr. Keith's request, had looked at exhibit R-1, the January, 1960, issue of U.S. Gypsum Company's magazine, "Gypsum News" and read these lines from page 25:

> The newest quarry area—and second part of the Windsor operation—is the Miller's Creek area, about 10 miles from the main office. . . . After one of these locations is established for quarrying, the stripping department begins its work of removing the overburden, just like most other quarries. . . . This is certainly true of the brand-new Miller's Creek quarry which went into operation in early 1957.

If my memory does not do me any disservice, Mr. King explained that magazine style lays no claim to strict technical language when one expression is as readily understood as another by prospective clients, adding this assertion, written in my notes, "I think, technically, this is a mine".

Again, this was checkmated by exhibit A-6, a report by R. K. Collings of the Mineral Processing Division, published by the Department of Mines and Technical Surveys, Ottawa, labelled "Mines Branch Information Circular 1C114-The Canadian Gypsum Industry".

This survey of the Gypsum industry in Canada leads the reader to hold that the terms "mine" and "quarry" are both

suitable and interchangeable in relation with the winning of this mineral, though, at page 16, the author specifies that "Gypsum is obtained from surface or near surface deposits by quarrying. Gypsum deposits that occur at depth are developed by underground mining". A paragraph on page 17 says that:

> Underground gypsum deposits are mined by standard room and pillar methods with 20 to 25 ft rooms and 15 to 20 ft. pillars. The width or depth of gypsum mined is dependent on the thickness and purity of the seam. At Hagersville, in southern Ontario, a 4 ft. seam is mined; at Caledonia, near Hagersville, the seam is 9 ft.; and at Amaranth, in Manitoba, both a 10 ft. and a 20 ft. seam of gypsum are mined.

If depth of ore deposits should be indicative of a mine, an overburden of 140 ft. at certain spots, satisfies this requirement, irrespective of how the product is extracted. Underground mining, according to Dr. Beales, is gradually superseded in mining fields by the safer and less expensive process of open pit or open-cast operations.

Another passage of this departmental publication, at pages 23 and 24, is headed "The Canadian Gypsum Industry—Early History" and relates that:

> Historical records reveal that the Canadian gypsum mining industry had its beginning during the latter part of the eighteenth century. Most of the mining activity was confined to Nova Scotia, where gypsum was quarried as early as 1770 for use as a fertilizer and for export to the United States.

I cannot but renew my assent to the "dicta" of Lord Watson and Justice Kitto, that "mines" and "minerals" are not definite terms: "they are susceptible of limitation or expansion, according to the intention with which they are used" (Lord Watson); and "The meaning of the words 'mine' and 'mining' like the word 'minerals' is by no means fixed and is readily controlled by context and subject matter". (Kitto, J.)

The vast and constantly expanding proportions of the development area in depth, width or circumference, the costly and powerful equipment at work, a labour force of about 175 men, the assignment of one or two professional engineers and of two geologists in a permanent testing laboratory, convince me that Miller's Creek clearly evinces the characteristics of a mine.

Exhibit A-11, a lot of 22 photos of the site (11a to 11v) fully substantiate such a conclusion as to the material facts of the problem.

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The respondent's admission that Miller's Creek was not a "stone quarry" has greatly simplified the legal aspect of the case. Section 83 (5), cited *supra*, is an exempting provision "at large", restricted only by the excluding clause of 83 (6), specifically disqualifying from the exemption benefit a "stone quarry".

In a fiscal statute, the age-long maxim *"inclusio unius est exclusio alteruis"* finds its fullest justification. I could well agree with Mr. Finlayson's argument, on appellant's behalf, that "the nominal exclusion of a 'stone quarry' in the definition of the noun 'mine', coupled with the admission that Miller's Creek is not a stone quarry, must, irresistibly, lead to the deduction that, legally speaking at the very least, it is a mine".

In conclusion and with reference to the construction of taxing statutes, I might refer, as a permissible reminder, to some lines from Wheatcroft's valuable treatise on "The Law of Income Tax, Surtax and Profits Tax" 1962 ed., pp. 1036, 1037.

> The general principles can be stated shortly. The onus is on the Crown to show that a taxing statute clearly imposes a charge on the person sought to be taxed; but once this onus has been discharged a taxing statute must be construed strictly by reference to its actual words without regard to what might be expected to be found in it.

The author then quotes a passage from Lord Cairn's pronouncement in *Partington* v. *Attorney General*[1]:

> If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute.

For all the reasons above, the Court doth decide and order that this appeal should be allowed and the record of the case referred to the Minister of National Revenue, respondent, for re-assessment as herein prescribed of appellant's 1959 income tax, during the period April 1, 1959 to December 31, 1959. The appellant will recover its costs after taxation.

[1] (1869) L.R. 4 H L 122.