Between:—

1927

Nov. 4.
Dec. 28.

O'REILLY & BELANGER, LIMITED......APPELLANT;

AND

MINISTER OF NATIONAL REVENUE..RESPONDENT.

Revenue—Donations—Income—Deductions—Sec. 3, subsection 8 of Income War Tax Act, 1917

Held, that donations made to public, social, charitable and ecclesiastical institutions, at the request of the friends of such institutions as well as amounts paid in the office to casual visitors for tickets to performances, lotteries, etc., under an alleged commercial practice, with the object of benefiting appellant's business, and not for charitable purposes, are not disbursements or expenses "wholly, exclusively and necessarily laid out or expended for the purposes of earning the income," and cannot be deducted from the profits and gains of the company in arriving at its taxable income, under the provisions of subsection 8, section 3 of The Income War Tax Act, 1917, and amendments.

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 Audette, at Ottawa.

N. A. Belcourt K.C. for appellant.

C. F. Elliott for respondent.

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The facts are stated in the reasons for judgment.

Audette J. now this (28th December, 1927) delivered judgment.

This is an appeal, under the provisions of secs. 15 et seq. of The Income War Tax Act, 1917, as more specially amended by sec. 7 of 13-14 Geo. V, ch. 52, from the assessment during the year 1925, of the appellant company's income for its fiscal period ending 31st March, 1925.

Counsel on behalf of the Crown undertook at trial to make the finding in the present case applicable to the years of taxation previous to the year in question herein, in respect to the appellant's income taxes.

The appellant contends that a deduction should be made from the profits or gain realized during that year of the sum of $829.17, for donations made to the persons or parties mentioned in exhibit No. 5.

This deduction is claimed under the provisions of subsec. 8 of sec. 3 of the Act which reads as follows:

(8) In computing the amount of the profits or gains to be assessed, a deduction shall not be allowed in respect of:—

(*a*) disbursements or expenses not wholly, exclusively and necessarily laid out or expended for the purpose of earning the income.

These provisions of the statute, like those of the English Act, do not affirmatively state what disbursements and expenses may be deducted and there is in words no deductions allowed at all unless indirectly. They merely furnish negative information, that is, they direct that after having ascertained the amount of the profits or gain there may be deducted therefrom only such disbursements or expenses as were *wholly, exclusively,* and *necessarily* laid out or expended for the purpose of earning the income.

The taxation is the rule and the exemption is a case of exception which must be strictly construed. *Wylie* v. *Montreal* (1); Endlich, Interpretation of Statutes, No. 356; Cooley on Taxation, 146; *Ville de Montréal-Nord* v. *Commission Métropolitaine de Montréal* (2).

Now the deductions claimed are set out in exhibit No. 5, and range from payments of $100 down to the paltry sum of 25 cents, and were made under an alleged commercial practice with the object of benefiting the appellant's

(1) (1885) 12 S.C.R. 384, at 386. (2) (1927) Q.R. 43 K.B. 453.

business. With respect to the larger amounts paid to public, social, charitable and ecclesiastical institutions, the appellant testified they were paid at the request of friends of such institutions. Some of the small amounts were paid in the office, to a casual visitor, child or grown up person, for tickets of all kinds and descriptions, for some performance, lottery, etc. Some such payments were even made to non-residents of Ottawa. The appellant further testified these payments were not made for charitable purposes.

All of these donations were paid at the discretion, at the will and at the choice of the taxpayer; the expenditure was not in any manner compulsory and was not in the nature of a commercial expenditure or loss. Konstan, 3rd ed. 148. Are they not to be entirely measured by the degree of generosity of each payer or taxpayer? Are they not freely and voluntarily incurred? And if so how can they be classified as *necessarily* expended to earn the income?

The question or policy of making these donations is of a discretionary character and is in no way affected by any legal obligation. The payment is not made *ex debito justitiae.* And in the result, if it were recognized as contended; there would be discrimination in favour of the recipients of these donations in that they would have bought the coal so much cheaper than it was sold to others.

The Canadian Act, it will be noticed, uses the words "wholly, exclusively and necessarily." The English Act uses only the words "wholly and exclusively." Sanders, in his work on Income Tax in England, commenting upon these words (p. 85) says that the constitution of a deductible allowance is left to the operation of the words "wholly and exclusively" laid out or so expended for the purpose of such trade, therefore the issue in practically all questions of deductible expenses is influenced solely by these words. The Crown has advocated a strained interpretation of these words, contending, in effect, that only expenses without which the business could not be carried on are admissible, etc. This argument, he says, would require the words "wholly and exclusively" to read "wholly, exclusively and necessarily": that is the very wording of the Canadian Statute.

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Therefore the Canadian Statute having the word *necessarily,* the narrow interpretation above mentioned would obtain and the expenses deductible would be only such without which the business could not be carried on, and this would deny the present appellant's contention.

The evidence discloses that it was a business practice to make such donations, the extent and volume of which was not however defined and cannot be defined. Is it to be fixed by the merchant himself? He would then become the judge in his own case. Nothing indeed prevents a merchant from following this practice if he sees fit, he can do so *ad libitum.* It is quite voluntary for him to do so or not, but it is not necessary. Are we to approach this question with all the great niceties it would involve and say that a man under a given state of facts should pay so much and another so much. Without a statutory enactment how could a rule be found to be applicable to all cases?

If such donations were to be recognized as a legal practice under the statute to operate as deduction, then it might happen that we would have one person bribing and another receiving a bribe to induce the purchase of goods from some particular merchant. Right thinking men would on no account lend themselves to such a practice and take such moneys to induce them to deal with one merchant in preference to another. It makes for impropriety and is against high business ethics.

With regard to the smaller donations and, among them, referring particularly to the annual payments made to a coloured man from Whitney who had no occasion to buy coal in Ottawa, and the purchase of tickets, etc., they are on a parity with the King Xerxes's order to whip the sea to abate the storm, and are all equally unnecessary and ineffective in the result.

The rule of law upon the construction of all statutes is to construe them according to the plain, literal and grammatical meaning of the words used. Craies, On Statutes, 3rd ed. p. 80. These donations were absolutely voluntary, made at the choice and volition of the appellant, and if they are so voluntarily made, then they cannot be regarded as necessary. In face of so formal a statutory enactment, it is impossible for a court to offer its aid in relieving the

appellant against this express provision. Acts of Parliament are omnipotent and are not to be got rid of by declarations of courts. If we depart from the plain and obvious meaning of the words of the Act, we do not then construe the Act but we alter it. If the words are precise, no more is necessary than to accept these words in their ordinary and natural meaning.

If this taxing Act is to be construed in a manner that will best ensure the attainment of its object, according to its true intent, meaning and spirit (sec. 15 Interpretation Act) it will obviously appear that to make such deductions would wholly nullify the intention of the enactment. Only deductions made on business principles can be recognized under the Statute.

Moreover, the contention that these donations may be of particular service to, and benefit the appellant, is purely conjectural, and unascertainable. Moreover, these donations have been paid out of ascertained profits and not for the purpose of earning the profits.

The appeal is dismissed with costs.

Judgment accordingly.