Kilmarnock Equitable Co-operative Society, Ltd.

v.

Commissioners of Inland Revenue(1)

Kilmarnock Equitable Co-operative Society, Ltd.

v.

Commissioners of Inland Revenue(2)

Income Tax, Schedule D—Profits Tax—Capital allowances—Industrial building or structure—Building for screening and packing coal—Whether coal subjected to a process—Whether building used for purpose ancillary to a retail shop—Income Tax Act, 1952 (15 & 16 *Geo.* VI & 1 *Eliz.* II, *c.* 10), *Section* 271.

The Appellant Society, which carried on business as general merchants, did a substantial trade inter alia *in the sale of coal in bulk. It also sold coal in* 28-*lb. paper packets retail through its grocery branches and in its self-service stores and wholesale to other co-operative societies; it had hoped to develop a substantial wholesale business in these packets but at the material times the retail sales were the larger. In the year to March*, 1962, *the Society incurred capital expenditure on the erection of a building at its coal depot to house machinery to pre-pack coal. The coal was conveyed by conveyor belt from wagons in the yard into a hopper near the roof, fed down a chute through a vibratory screen where dross was removed, passed by conveyor belt to the weighing point, packed into* 28-*lb. bags, and deposited at floor level to await disposal.*

On appeal against assessments to Income Tax under Case I *of Schedule D for the year* 1963–64 *and to Profits Tax for the chargeable accounting period of twelve months to* 9*th March*, 1963, *the Society claimed that it was entitled to capital allowances in respect of expenditure on the building as an industrial building within Section* 271, *Income Tax Act*, 1952. *The General Commissioners found that the screening and packing of the coal was not a process within Section* 271 *and that the building was used for a purpose ancillary to those of a retail shop.*

Held, *that the Society was entitled to the allowances claimed.*

CASES

(1) *Kilmarnock Equitable Co-operative Society, Ltd.* v. *Commissioners of Inland Revenue*

CASE

Stated by the Commissioners for the General Purposes of the Income Tax for the Division of Cuninghame in the County of Ayr under Section 64 of the Income Tax Act, 1952, for the opinion of the Court of Session as the Court of Exchequer in Scotland.

1. At a meeting of the Commissioners for the General Purposes of the Income Tax for the Division of Cuninghame in the County of Ayr held at Royal Bank Buildings, The Cross, Kilmarnock, on 7th September, 1964, Kilmarnock

(1) Reported 1966 S. L.T. 224. (2) Profits Tax.

Equitable Co-operative Society, Ltd. (hereinafter called " the Society"), appealed against an assessment made upon it under Case I of Schedule D for the year 1963–64 in the sum of £100,000 less capital allowances of £13,500.

2. The question for our decision was whether the Society, under Part X, Chapter I, Sections 265, 266 and 271 of the Income Tax Act, 1952, and Section 16 and 2nd Schedule to the Finance Act, 1954, was entitled to deduct from its assessable profits initial, annual and investment allowances amounting to £97 in respect of certain expenditure incurred by it on a building at its coal depot in Forge Road, Kilmarnock.

3. Evidence was given before us on behalf of the Society by Mr. Stewart James Wallace, its managing secretary, and Mr. Robert Niven, its transport and fuel department manager.

4. The following facts were proved or admitted:

(*a*) The Society carries on business as general merchants in Kilmarnock and district and its objects include manufacturing of all kinds.

(*b*) The Society's annual turnover exceeds £2,500,000 of which not more than £40,000 is wholesale business.

(*c*) The Society does a substantial trade in the sale of coal in 1-cwt. bags and in bulk. This coal is distributed to its customers by lorry from the Society's coal yard or depot.

(*d*) The Society also sells coal in 28-lb. paper packets retail through its grocery branches and in its self-service stores and wholesale to other co-operative societies.

(*e*) In introducing the sale of 28-lb. paper packets of coal the Society had hoped to develop a substantial wholesale business but in fact their hopes have not thus far been fulfilled. For the year to March, 1963, the Society sold rather more packeted coal in its shops or stores than it did wholesale, and for the year to March, 1964, it sold twice as much coal retail in shops as it did wholesale

(*f*) During the year to March, 1962, expenditure amounting to £1,533 18*s*. was incurred by the Society on the erection of a building at its coal depot at Forge Road, Kilmarnock, to house machinery to pre-pack coal. No claim for allowances was made for the year 1962–63 as the Society had not then thought that the expenditure might qualify for the allowances now claimed. In the year to March, 1963, further expenditure totalling £391 15*s*. 6*d*. was incurred on the building making in total the sum of £1,926 13*s*. 6*d*. spent on building. Machinery costing £1,760 was installed in the building. Coal sold in 1-cwt. bags or in bulk was not handled in this building.

(*g*) What happens in the building is that the coal, which is bagged from wagons in the coal yard or depot, is conveyed by conveyor belt and is deposited in a hopper near the roof of the building. It is then fed down a shute through a vibratory screen where dross is removed. The coal is then passed by conveyor belt to the weighing point where it is filled into paper packets. Immediately the set weight of 28 lbs. is registered on the weighing machine the machinery is cut off and the filled packet is removed from the machine and is closed by stitching. The packet is then placed on a gravity conveyor to floor level where it awaits disposal.

5. Mr. Wallace, the managing secretary of the Society, explained that the purpose of erecting the building and installing the machinery was not only to provide packeted coal to the members of the Society but also to endeavour to develop a trade in packeted coal with other coal merchants in the Kilmarnock area and possibly with other neighbouring co-operative societies. Packeted coal was on sale in thirty of the Society's shops.

6. Mr. Niven, the transport and fuel department manager of the Society, explained that customers did not resort to the coal depot but that the normal practice was for customers who bought packeted coal to take delivery personally at the retail shop at which they normally trade. There were no facilities for receiving customers at the coal depot nor was it sited in a district where there were other retail shops.

7. Mr. William K. Geddes, chartered accountant, made reference on behalf of the Society to Section 271 Sub-sections (1)(*c*), (2), (3) and (5) of the Income Tax Act, 1952, and contended that the coal was being subjected to a process, i.e. the breaking of bulk, separating of dross and packeting. He pointed out that the subjection to any process was a wider term than manufacturing and while he did not contend that the whole of the trade qualified for an allowance under the said Section he claimed that the Society was entitled to an allowance for that part of its trade which consisted of subjecting the goods to a process. He contended that the coal depot was not a retail shop, that there was no display and that there were no customers present and that the extent of the trade in packeted coal was not relevant. He summarised his contentions by stating that the Society was entitled to an allowance under the said Section, (1) because the operations in the coal depot were carried on by machinery and the goods were subjected to a process, and (2) because the building was not a retail shop.

8. It was agreed between the Society and the Inland Revenue that if we allowed the Society's appeal the revised amount of the assessment would be £99,531 less capital allowances of £13,871, whereas if we dismissed the appeal and refused the allowances totalling £97 as aforesaid the revised amount of the assessment would be £99,531 less capital allowances of £13,774.

9. Mr. J. Rankin, H.M. Inspector of Taxes, contended on behalf of the Crown (*inter alia*):

(1) that the coal packeting building was not an industrial building or structure within the definition contained in Section 271, Income Tax Act, 1952;

(2) that the building was not in use for the purposes of a trade which consisted in the manufacture of goods or materials or the subjection of goods or materials to any process;

(3) that the building was in use for a purpose ancillary to the purposes of a retail shop;

(4) that no allowances were due in respect of the expenditure on the coal packeting building.

10. We, the Commissioners who heard the appeal, decided as follows:

(1) that on the evidence we were not satisfied that the separation of the coal from the dross and the filling of the coal into paper bags was a process as envisaged by Section 271;

(2) that on the evidence we were satisfied that even if this were to be regarded as a process the building was being used for a purpose ancillary to the purposes of a retail shop.

Consequently we dismissed the appeal and determined the assessment in the sum of £99,531 less capital allowances of £13,774.

11. The Society immediately after the determination of the appeal declared its dissatisfaction therewith as being erroneous in point of law and in due course requested us to state a Case for the opinion of the Court of Session pursuant to Section 64 of the Income Tax Act, 1952. This we now do.

12. The question of law for the opinion of the Court is whether, on the facts stated, we were right in dismissing the appeal on the ground that the Society's expenditure on the coal packeting building did not qualify for any allowance under Chapter I of Part X of the Income Tax Act, 1952.

R. W. Blackwood
MacAndrew
J. N. Howie
M. Lamont
Wm. Neil

Commissioners for the General Purposes of the Income Tax for the Cuninghame Division of the County of Ayr.

---

(2) *Kilmarnock Equitable Co-operative Society, Ltd.* v. *Commissioners of Inland Revenue*

This Case related to an assessment to Profits Tax for the chargeable accounting period of twelve months to 4th March, 1963.

The facts, the contentions of the parties and the decision of the Commissioners were the same as those in the Income Tax Case.

The case came before the First Division of the Court of Session (the Lord President (Clyde) and Lords Guthrie, Migdale and Cameron) on 15th February, 1966, when judgment was reserved. On 16th February, 1966, judgment was unanimously given against the Crown, with expenses.

Mr. J. P. H. Mackay, Q.C., and Mr. A. M. Grossart appeared as Counsel for the Society and the Lord Advocate (Mr. Gordon Scott, Q.C.), and Mr. C. K. Davidson for the Crown.

The following cases were cited in argument in addition to those referred to in the judgments: *Moon* v. *London County Council*, [1931] A.C. 151; *Hines* v. *Eastern Counties Farmers' Co-operative Association, Ltd.*, *Turpin* v. *Middlesbrough Assessment Committee*, *Sedgwick* v. *Watney*, *Combe*, *Reid & Co., Ltd.*, [1931] A.C. 446; *George Wimpey & Co., Ltd.* v. *John*, [1951] 1 All E.R. 307; *Assessor for Perth* v. *Shields Motor Car Co., Ltd.*, 1956 S.C. 186; *Gordon & Blair, Ltd.* v. *Commissioners of Inland Revenue*, 40 T.C. 358; *Sweetway Sanitary Cleansers, Ltd.* v. *Bradley*, [1962] 2 Q.B. 108; *Strathleven Bonded Warehouses, Ltd.* v. *Assessor for Dunbartonshire*, 1965 S.L.T. 345.

The Lord President (Clyde).—This is a Case stated by the General Commissioners for the opinion of the Court of Session. The issue is whether a certain building erected by the Appellants, the Kilmarnock Equitable Co-operative Society, Ltd., is an industrial building or structure within the meaning of Section 271 of the Income Tax Act, 1952, so that the Society would be entitled to deduct from its assessable profits certain initial, annual and investment allowances on the buildings.

The Society amongst its other activities carries on a substantial business in the sale of coal in 1-cwt. bags and in bulk. For this purpose it owns a coal depot. The Society recently decided to introduce the sale of coal in 28-lb. paper bags. For this purpose it erected a separate building at its coal

(The Lord President (Clyde))

depot to house machinery to screen and pack the coal in paper bags. This building, which is the subject matter of the present case, is solely used for screening and packing the coal in these paper bags. The coal is conveyed by a conveyor belt to a hopper in the roof of the building and fed down a chute through a screen for the purpose of there removing the dross. Thereafter the cleaned coal is passed by a conveyor belt to a weighing machine where it is filled into paper bags. When 28 lbs. of coal have passed into a bag the belt stops and the bag is stitched up. The Society's purpose in erecting this building was to develop a trade in packeted coal with other coal merchants in the area, and possibly with other co-operative societies, and also to provide packeted coal for sale in the Society's own shops to its members. They have some thirty of these shops. Although the Society hoped to develop a substantial wholesale business in this activity, their hopes have not yet been fully realised. In the first year of operation the Society sold rather more packeted coal in its shops than it did wholesale. For the second year it sold twice as much coal retail in its shops as it did wholesale.

The first question which falls to be determined is whether the building in which the operation of the breaking-up of bulk, separating out the dross from the coal by screening and packeting the coal in bags of 28 lbs. each in weight, is an industrial building or structure within the meaning of Section 271(1)(*c*) of the Income Tax Act, 1952. To fall under paragraph (*c*) it must be a

> " building or structure in use for the purposes of a trade which consists in the manufacture of goods or materials or the subjection of goods or materials to any process ".

Clearly this provision contemplates that an industrial building may connote something other than a place where goods or materials are manufactured: it may include within the category of an industrial building a place where goods or materials are subjected to a process which falls short of the manufacturing of a new article. In my opinion the breaking of bulk coupled with the separating out of the dross by screening and the subsequent packaging of the coal into paper bags involves a " process " within the meaning of Section 271(1)(*c*). The General Commissioners reached an opposite conclusion, and in my opinion in so doing they wrongly interpreted the paragraph in question. I do not find it necessary to elaborate this aspect of the matter, as the Crown conceded before us that a process as envisaged by the paragraph was in fact going on in these premises.

The Crown, however, argued that in this building goods were not " subjected to " a process within the meaning of the Sub-section. This point, so far as appears, was not argued to the General Commissioners—in any event they make no reference to it—but in my opinion the argument is demonstrably unsound. Goods in the form of bulk coal are brought to this building and are subjected to a process which involves the separating of the dross from the coal and the packaging in 28-lb. paper bags of the coal only. The material supplied to the building was altered by the time the coal left the building in these paper bags. Indeed in my view any such alteration is not essential to involve subjecting the goods to a process. To bring the coal under the operation of a process is enough, and in the present case, where the activities in this building do admittedly constitute a process, it seems to me clear that the goods which passed through that process were subjected to it.

The Crown further argued that in any event the building in question was not in use for a trade or part of a trade which consisted in the subjecting of the goods to a process, within the meaning of Section 271(2) of the Act.

(The Lord President (Clyde))

It was therefore disqualified from being an industrial building or structure, so the argument runs, within the meaning of the Sub-section. This contention by the Crown is also not specifically dealt with by the Commissioners, if it was presented to them. The argument was that if the Society's only trade was screening and packing of coal in paper bags then the situation might have been different, but this Society operated a trade of general merchants, and only a small part of their total operations involved paper packaging of screened coal. But the relative proportions of the Society's various activities appear to me to be quite irrelevant. The building in question houses a definitely identifiable part of their industrial operations and a quite separate activity, and that separate activity alone. This is in my view enough to satisfy the requirements of Sub-section (2).

Finally, it was argued by the Crown that Section 271(3) applied to this building and took it out of the definition of industrial building or structure. The relevant part of Sub-section (3) is as follows:

> " ' industrial building or structure ' does not include any building or structure in use as, or as part of, . . . a retail shop . . . or for any purpose ancillary to the purposes . . . of a retail shop ".

It is in my view quite clear that the building in question is not in use as, or as part of, a retail shop. It is quite separate from the Society's retail shops, and the public do not resort to the building or indeed to the depot. Sub-section (3) can only therefore take this building out of being an industrial building or structure if the building is in use for any purpose ancillary to the purposes of a retail shop. There appear to me to be two quite separate reasons why Sub-section (3) does not apply in the circumstances of the present case. In the first place, the material consideration in determining whether Sub-section (3) applies is the purpose of the use of the premises, not the use to which the product is put. The purpose of the use of this building is the dressing and packaging of coal in paper bags. It is of no importance that this is a preliminary operation which precedes some other trading operation. The situation might well have been different if Sub-section (3) had excluded from industrial buildings all structures which are ancillary or subservient to a retail business. But this is not what the Sub-section provides. The purpose of the use of this building, to apply the criteria laid down in Sub-section (3), is a quite separate and independent purpose in itself, just as the purpose of the use of a building for constructing something from a raw material cannot be described as ancillary to the purposes of a retail shop where the finished product is sold to the public. In neither case is the purpose of the use of the building ancillary or subservient to the purpose of the retail shop where the product from the building may ultimately be sold. They are independent purposes the one from the other. But apart from this, in the second place, the purpose of the activity conducted in this building on the facts was the development of a substantial wholesale business. It is true that at the initial stage of this development this purpose has not yet been fully realised, but it may well be in the future. Already a substantial wholesale business has been achieved, and in such circumstances it seems to me impossible to regard the purpose of the use of this building as being subservient to the purposes of a retail shop. If so Sub-section (3) does not apply to it.

On the whole matter in my opinion the question put to us in the Case should be answered in the negative.

Lord Guthrie.—The matter in issue in this case is whether the Appellants are entitled to deduct from their assessable profits initial, annual and investment allowances amounting to £97 in respect of their expenditure on a building at their coal depot in Kilmarnock used for the pre-packing of coal. In holding that the

(Lord Guthrie)

Appellants were not entitled to make the deduction, the General Commissioners decided two points, first, that what was done in the building was not a process as envisaged by Section 271 of the Income Tax Act, 1952, and, second, that even if it were such a process, the building was being used for a purpose ancillary to the purposes of a retail shop.

The General Commissioners have found in fact that what happens in the building is that coal which is bagged from wagons in the Appellants' coal depot is deposited in a hopper in the building. It is then fed down a chute through a vibratory screen where dross is removed. Thereafter the coal is passed by conveyor belt to a weighing point, where it is filled into paper packets each holding 28 lbs. When a packet is filled and closed by stitching, a conveyor takes it to floor level for subsequent disposal.

In Section 271(1) of the Income Tax Act, 1952, " industrial building or structure " is defined as meaning

> " a building or structure in use . . . (*c*) for the purposes of a trade which consists in the manufacture of goods or materials or the subjection of goods or materials to any process ".

The success of the Appellants' contention on the first point in this case depends on whether their building is in use for the purposes of a trade which consists in the subjection of goods or materials to any process. " Process " is a word which has various meanings, some wider than others. I agree with the Lord Advocate that in Section 271(1)(*c*) it does not have the widest significance of " anything done to the goods or materials ". The phrase is " the subjection of goods or materials to any process ", and I do not think that the mere conveyance of goods from one part of the building to another would be their subjection to a process. Subjection to a process involves the treatment of the goods in some way. But in my opinion the separation of the dross from the coal is its subjection to a process, the process of selection from the mass of coal of lumps which are suitable for packing in bags. There is no doubt that at the building the Appellants carry on a trade, a business conducted with a view to profit, which consists of the subjection of the coal to this process. I therefore disagree with the decision of the General Commissioners on the first point.

But even if the Appellants are right on the first point, their claim may be defeated by Section 271(3), which, so far as relevant to this case, enacts that, notwithstanding anything in Sub-section (1), " industrial building or structure " does not include any building in use as, or as part of, a retail shop, or for any purpose ancillary to the purposes of a retail shop. It is clear that the building under consideration is neither a retail shop nor a part of a retail shop. It is only used for the packeting of coal. It is found in fact that customers do not resort to the coal depot where the building is situated. Therefore, the question is whether it is in use for any purpose ancillary to the purposes of a retail shop. The General Commissioners have found in fact that the Appellants sell coal in 28-lb. paper packets by retail in their branches and self-service stores and wholesale to other co-operative societies. The purpose of erecting the building and installing the machinery was, not only to provide packeted coal to their own members, but also to endeavour to develop a trade in packeted coal with other coal merchants in the Kilmarnock area, and possibly with other neighbouring co-operative societies. The Appellants' hopes of developing a substantial wholesale business have not thus far been fulfilled. For the year to March, 1963, they sold rather more packeted coal in their shops and stores than they did wholesale, and for the year to March, 1964, they sold twice as much coal retail as wholesale.

(Lord Guthrie)

Reference was made during the debate to several decisions on Section 3(1) of the Rating and Valuation (Apportionment) Act, 1928, but I have not found these cases of assistance in dealing with the present problem, since the phraseology of that Sub-section is different from the terms of Section 271(3) of the Income Tax Act, 1952. The question raised in the derating cases was whether lands and heritages were primarily occupied and used for the purposes of a retail shop. The question in the present case is, not whether the building is used primarily for the purposes of a retail shop, but whether it is used for any purpose ancillary to the purposes of a retail shop.

For the Crown it was submitted that, if the use of the building was for a purpose ancillary to the sale of the coal by retail in any retail shop, even in shops belonging to other traders, the exception in Sub-section (3) applied. In another case it may be necessary to decide whether a building in use by A for a purpose ancillary to the purposes of a retail shop carried on by B falls within the scope of Section 271(3), or whether " the purposes of a retail shop " refers to one carried on by A. But, when one has regard to the facts of the present case, the contention omits to take into account the finding that the purpose of the Appellants' use of their building was, in part at least, the development of a wholesale trade in packeted coal. The effect of the submission, as applied to the present case, is that the Sub-section excepts, not only use for a purpose ancillary to the purposes of a retail shop, but also use for a purpose ancillary to the purposes of a wholesale business. In my opinion that does violence to the terms of the Sub-section.

Counsel for the Crown also submitted that the purpose of the construction of the building, as stated in the Case, namely, the development of a trade in packeted coal wholesale as well as retail, was irrelevant, and that all that could be considered was the actual use being made of the building. As the actual use of the building was the packeting of coal for subsequent disposal in retail shops, the exception in Sub-section (3) applied. I agree that the actual use being made of the building is important in reaching a decision as to whether the building falls within the exception of Section 271(3), but I think that the contention fails to give effect to the wording of Sub-section (3). The Sub-section requires consideration of the purpose of the use, as well as of the nature of the use, in order to decide whether it is ancillary to the purposes of a retail shop. Therefore I think that it is relevant to have in mind the object of the Appellants in erecting their building and bringing it into use. Further, if the purpose of the use is the development of a wholesale and retail trade in packeted coal, that is not a purpose ancillary to the purposes of a retail shop. "Ancillary " means subservient, and on the findings in fact it appears that the building is actually used with the object to a substantial extent of carrying on and developing a wholesale trade in packeted coal. Now, the development of a wholesale and retail trade in a commodity is a bigger and broader conception than the mere furtherance of the purposes of a retail shop. Accordingly, it cannot be said that the purpose of the use of the building is ancillary or subservient to the purposes of a retail shop. I am therefore of opinion that the decision of the General Commissioners on the second point was wrong.

I would therefore answer the question in the Case in the negative.

Lord Migdale.—To get the benefit of the initial allowance under Section 265 of the Income Tax Act, 1952, the Appellants must show that they have incurred capital expenditure on the construction of a building which is to be an industrial building occupied for the purposes of a trade carried on by them.

(Lord Migdale)

" Industrial building or structure " is defined in Section 271(1)(*c*). It means a building in use for the purposes of a trade which consists in the subjection of goods or materials to any process. I did not understand it to be disputed that the definition of " trade " in Section 526(1) of the Act is wide enough to cover the activities in this building. The conflict between the parties is in two matters. The first turns on the scope of the words " subjection of goods or materials to any process ", and the second, which arises if the use of this building falls within the terms of Sub-section (1)(*c*), is whether the building lost its status as an industrial building because its use comes within the terms of Sub-section (3). Sub-section (3) provides that " industrial building or structure " does not include " any building . . . in use . . . for any purpose ancillary to the purposes of a . . . retail shop ".

The General Commissioners were not satisfied, firstly, that the separation of the coal from the dross and the filling of the coal into paper bags was a " process " as envisaged by Section 271, and, secondly, they decided that even if this were to be regarded as a " process " the building was being used for a purpose " ancillary to the purposes of a retail shop " and so was not an industrial building. The question of law for the opinion of the Court is whether on the facts stated the Commissioners were right in dismissing the appeal on the ground that the expenditure on the coal packeting building did not qualify for any allowance under Chapter I of Part X of the Income Tax Act, 1952.

Counsel for the Appellants contended on the first question that this was an industrial building because it was in use for the purposes of a trade which consisted in the subjection of the coal to a process. It was cleaned and then packed up in small paper bags which would, because of their convenience, command a ready market. Counsel for the Crown conceded that what went on could be described as a " process " but contended that goods or materials could not be said to have been " subjected to a process " unless that operation resulted in some alteration to the nature of the material itself. All that was done in this building was to pack it into small units. Now I am unable to find any warrant in the Sub-section for requiring that the nature or size of the material must be altered before one can say that it has been subjected to a process. In my opinion, when the coal was cleaned and then packed into containers of a convenient size it was subjected to a process. " Subjected to " means that it went through a process, and " process " means some course of operations. It started this operation or series of operations as a stream of dirty coal but it ended up as clean coal in an attractive wrapping. The nature of the material remained the same but it had been made more marketable and would probably attract a higher price for the same weight than if it had been sold unscreened in a large and dirty sack. I think the Commissioners were wrong on this point.

The second question is whether the building was used for a purpose ancillary to the purposes of a retail shop. Counsel for the Appellants said that the purpose of the use of the building was to produce a marketable package of coal, which was easy to handle and store. True it was designed to appeal to the retail shopper, but so was a tin of beans or a packet of chocolate. The fact that the article was intended to be sold retail at the end of the day was not enough to make the purpose of the use of this building ancillary to the purpose of a retail shop. The purpose in using this building was to produce a saleable article, and so far as this building was concerned it did not matter to the Appellants if the packages went direct to a retail shop or first to a wholesaler as some of it in fact did.

(Lord Migdale)

Counsel for the Crown contended that the purpose of a retail shop was to sell goods over the counter. The purpose of the operation carried on in this building was to prepare the coal so that it could be sold over the counter in a retail shop. It was found in the Case that the bulk of these packages were in fact sent to retail shops, so it could be truly said that the purpose of the use of the building was ancillary to the purpose of the retail shop. I find it difficult to accept this argument. It confuses the purpose of the use of the building with the ultimate destination of those goods. The goods were intended for ultimate retail sale. It was to that end that the coal was put into small packets. The building was in that sense used to produce goods which could be retailed. To be ancillary to the purpose of a shop the purpose of the use of the building would have to be subservient or subordinate to retail selling. It could be said to be subservient only in the sense that both look to the retail buyer but that can be said of nearly all manufacturing operations.

In my view what has to be looked at is the purpose of the use of this building, and I think this requires me to consider what object the Appellants had in mind when they expended money on the construction and equipment of the building. I would say the object they had in mind was to clean and prepare coal. I agree with the Lord Advocate that the purpose of a retail shop is to display and sell goods, but I am unable to accept the contention that the object which the Appellants had in mind when they constructed this building was subservient to that purpose. When the Appellants constructed this building its object was to produce goods which some machine would bag and some retail store would take over. It is found in the Case that at that time the Appellants hoped to dispose of all the goods to wholesale buyers. The use to which the Appellants intended to put the building when it was constructed was merely to produce goods. On that view I do not see how it can be said that the preparation of these packets of coal was ancillary to the later sale of those packets in a retail shop, nor that when they constructed the building the Appellants had that in view. On the facts found I am satisfied that there was no warrant for the finding by the Commissioners that the purpose of the construction and use of this building was ancillary to the purposes of a retail shop and I would accordingly agree that the Commissioners' decision on this second point is wrong.

I would answer the question of law in the negative.

Lord Cameron.—The questions which arise in this Stated Case are concerned with the proper interpretation of Section 271(1)(*c*) and (3) of the Income Tax Act, 1952, and their application to the facts as found by the Commissioners. The Commissioners have held that what was done by the Appellants was not to subject their goods to a process " as envisaged by Section 271 ". In so doing they have placed a particular interpretation upon that Section but have failed to state what that interpretation was. The words of Section 271(1)(*c*) are perfectly plain, and if interpreted according to that ordinary or everyday meaning are in my opinion apt to cover what was done by the Appellants. It can scarcely be denied that to separate coal and dross by the application of machinery, and thereafter by mechanical means to separate the resultant coal into 28-lb. packages put up in paper bags, is to submit that material to a process, and, if one may accept analogies from authorities concerned with a different statutory code—the Rating and Valuation (Apportionment) Act, 1928—is in itself a process of manufacture. It is, of course, trite law that in statutory interpretation the ordinary meaning of words is to be adopted unless there be good reason for a different or special interpretation. If the words of the Sub-section are given their ordinary and everyday meaning then the Appellants necessarily succeed in their contention

(Lord Cameron)

that the facts admitted or proved demonstrated that the coal was subjected to a process in the building under consideration. What went in as a mixture of coal and dross came out as coal free from dross packaged in 28-lb. paper bags. It seems to me on this basis too plain for argument that this is submitting material to a process. The word " process " in its ordinary connotation seems to me to mean no more than the application of a method of manufacture or adaptation of goods or materials towards a particular use, purpose or end, while " to subject " means no more than to treat in some manner or other.

But, while the Appellants were naturally content to rely on the plain meaning of the language of Sub-section (1), it was maintained for the Crown that the words in their context had a narrower and more specialised meaning than they would ordinarily possess, so that in fact the Sub-section was only applicable to such processes as were processes to which the word " subject " applied, and that word itself was qualified and limited in its meaning. It is essential for the Crown to place some such qualification on the interpretation of the words of the Sub-section, because I do not see how otherwise the conclusion of the Commissioners can be supported on this point. It was conceded by Counsel for the Crown that what was done here, as the findings in fact bear, was to apply a process, but it was contended that the words " any process " did not have their apparent wide generality of meaning but were limited and conditioned by the meaning to be placed on the word " subject ". According to this submission, which, so far as the Stated Case discloses, does not appear to have been advanced before the Commissioners, the word " subject " as here used means to subject by way of conversion of material into a finished article or at least by way of effecting some change in materials or goods. In support of this contention the Crown placed some reliance upon certain well-known authorities concerned with interpretation of Section 3(1) of the Rating and Valuation (Apportionment) Act, 1928, certain of which were also cited in support of their arguments by the Appellants. While these authorities are no doubt important and valuable in matters of valuation and rating, I think there are always dangers in attempting to interpret one Statute by reference to decisions on interpretation of another, even where there are similarities of language in the Statutes, and in this case I confess I do not find these authorities at all helpful in determining what appears to me a perfectly simple question of statutory construction. The question is not to determine the application of such words as " industrial hereditaments " to particular circumstances or operations, but the interpretation of simple English words which do not appear in the Act of 1928 at all. Applying my mind to the language of the Sub-section I can find nothing in it which compels an interpretation of that language different from that which would follow from acceptance of the ordinary everyday meaning of the words that are used. In any event, even if the qualified interpretation of the word " subjection " on which the Crown relied is accepted, I think that what was done by the Appellants falls readily within the scope of that interpretation. I think, therefore, that the Commissioners erred in the first conclusion at which they arrived.

If then the coal was subjected in the Appellants' building to a process to which Section 271(1) applies, they would be entitled to succeed in their claim to the statutory allowance, unless it could be shown that the claim was barred by the operation of Section 271(3), the terms of which have already been quoted by your Lordship in the chair. The Appellants argued that, whether the test was the use to which the building was put or whether you look at the purpose the Appellants had in view, the Appellants should succeed on the facts as found by the Commissioners. The use which deprives the taxpayer of the

(Lord Cameron)

benefit of the allowance is a use which is subordinate or subservient to the purposes of a retail shop. There was no such use here, and therefore their claim was not struck at by Sub-section (3). The Crown's contention to the contrary, put in summary form, was that, once goods are past the stage of manufacture and are being made fit for sale by retail, even though they may be subjected to a process within the meaning of Section 271(1)(*c*), then the processes are ancillary to the purpose of a retail shop. Applying that contention the Crown submitted that it was plain on the facts found that the building in question here was used for purposes ancillary to the purposes of a retail shop. In order to solve the problem posed by these rival contentions I think it is necessary to keep firmly in mind the precise wording of Section 271(3). From this it appears that the first thing to be considered is the use of buildings in so far as they relate to retail shops. These uses are three, (1) as a retail shop, (2) as part of a retail shop, and (3) for purposes ancillary to the purposes of a retail shop. The important words are " use ", " purpose " and " shop ". The building here is of course not being used as a retail shop or part of a retail shop.

What has to be determined is the purpose for which the building is in fact used. It is only if the purpose is one ancillary to the purposes of a retail shop that the Sub-section comes into operation. It is, in my opinion, significant that the words used in the Sub-section are " retail shop " and not " retail business ", as this necessarily narrows the scope of the relevant purpose, and it appeared to me that the arguments for the Crown did not sufficiently differentiate between " shop " and " business ". The purposes are " the purposes of a retail shop ". What are these purposes? It seems to me that the purposes of a retail shop are just to enable members of the public to resort to a place where they may see and purchase goods or materials by retail and to serve as a place of exhibition and sale of a shopkeeper's wares. The purpose for which a building in question is used is, of course, necessarily a question of fact, and from the facts admitted or proved in this case it appears to me that the purpose for which this building is used is to further the Appellants' trade as merchants by using it to process materials so as to enable them to be disposed of to the best commercial advantage whether by wholesale or retail. This is a purpose which may assist the Appellants' retail business, if any, but I do not think it can fairly be said to be one that is ancillary, i.e., subordinate or subservient, to the purposes of a retail shop. The argument for the Crown seems to me to go much too far, and, if accepted, would necessarily lead to the extreme conclusion that to carry out in a building any process, e.g., packaging sweets, which was intended to make the article fit for sale by retail, would be use of the building for a purpose ancillary to the purposes of a retail shop even if a wholesaler intervened between the manufacturer and the retailer. I think it is also significant for the purpose of interpretation that what precedes the words under construction are references to a building in use as a retail shop or part of a retail shop. Such a shop must obviously be that of the taxpayer: why should a wider interpretation be placed on the same words in the same Sub-section in an immediately succeeding phrase? I can see no reason or justification for such a difference, and this circumstance appears to me to fortify the view which I have expressed as to the erroneous and excessive breadth of the Crown's contentions.

In the present case there was no resort by the public to the premises to buy packaged coal; the premises were not contiguous or adjacent to a retail shop, far less to any retail shop owned by the Appellants, unlike the facts in such cases [on the Rating and Valuation (Apportionment) Act, 1928] as *Finn* v. *Kerslake*, [1931] A.C. 446, or *Inland Revenue* v. *Gunn, Collie & Topping*, 1930 S.C. 389. Indeed, it is to circumstances of like nature to those in these

(Lord Cameron)

cases that, in my opinion, the words under construction are directed. Further, in the present case it is found as a fact that in both years under consideration a substantial proportion of the product was disposed of by wholesale, and in addition it is found that in introducing the sale of 28-lb. packets of coal the Appellants hoped to develop a substantial wholesale business, though their hopes have so far not been wholly fulfilled. I cannot see how in these circumstances the Appellants' use of this building was for a purpose which was subservient or subordinate to the purposes of a retail shop as the words appear and are used in the Sub-section. I am therefore of opinion that in light of what I consider to be the proper construction to be placed upon the language of Section 271(3) the Commissioners misdirected themselves in holding upon the facts admitted or proved before them that this building was used for a purpose ancillary to the purposes of a retail shop.

I therefore agree that the questions should be answered as proposed by your Lordship in the chair.

[Solicitors:—Shepherd & Wedderburn, W.S. (for Mackintosh & Bain, Kilmarnock); Solicitor of Inland Revenue (Scotland).]