ALEXANDER FREW & CO., LTD. *v.* THE COMMISSIONERS OF INLAND REVENUE.

No. 806.—COURT OF SESSION, SCOTLAND (FIRST DIVISION).—10TH, 11TH AND 27TH JUNE, 1930.

HOUSE OF LORDS.—7TH DECEMBER, 1931.

1. THE COMMISSIONERS OF INLAND REVENUE *v.* A. & G. ANDERSON[1].

2. ALEXANDER FREW & CO., LTD. *v.* THE COMMISSIONERS OF INLAND REVENUE[1].

Income Tax, Schedule D—Succession—Falling short of profits—Specific cause—Income Tax Act, 1918 (8 & 9 *Geo.* V, *c.* 40), *Schedule D, Cases* I *and* II, *Rule* 11.

The taxpayers in these cases succeeded to businesses early in 1927 *and were assessed to Income Tax, Schedule D, for* 1927–28 *on the profits of the respective businesses for the year ended* 31*st December*, 1926. *In each case the coal strike of* 1926 *had enabled large profits to be made during that year and the cessation of the conditions which had obtained during the strike was alleged as a "specific cause" in support of a claim under Rule* 11 *for* 1927–28.

Held, *that the cause alleged was a "specific cause" within the meaning of Rule* 11.

CASES.

(1) *The Commissioners of Inland Revenue* v. *A. & G. Anderson.*

CASE.

At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts, held on 10th July, 1929, for the purpose of hearing appeals, Messrs. A. & G. Anderson, hereinafter called the Respondents, appealed against an assessment to Income Tax on the estimated sum of £168,000 for the year ending 5th April, 1928, made upon them by the Additional Commissioners of Income Tax for the Middle Ward of the County of Lanark under the provisions of the Income Tax Acts.

(1) Reported 1930 S.C. 860 and (H.L.) 1932 S.L.T. 26.

I. The following facts were admitted or proved :—

(1) The Respondents are an unlimited company incorporated under the Companies Acts on 3rd January, 1927. By a vending agreement, dated 29th March, 1927, they acquired as from 1st April, 1927, a business of coal masters and coal merchants which had previously been carried on for many years by a partnership firm bearing the same name. The former partners in the firm, with the exception of one who died in January, 1927, are directors of and own all the shares in the company.

(2) In the year ending 31st December, 1926, in consequence of the coal strike, the demand for coal for consumption in this country far exceeded the available supplies and coal prices rose to abnormal figures. In normal times the firm to whose business the Respondents succeeded was principally engaged in the purchase and sale of Scottish coal in Scotland. In 1926 the firm supplemented its diminished native supplies by importing large quantities of foreign coal which it was able to sell at an exceptionally high rate of profit, with the result that the net profit of the merchanting business for the year 1926, as adjusted for the purposes of Income Tax, amounted to £162,043, or about eight times the average amount of such profits for the preceding five years. In addition, the firm made a profit of £5,767 from the sale of coal from its own collieries.

(3) During the year ending 31st March, 1928, which was the first year of the Respondents' ownership of the business, they did not import any foreign coal owing to the resumption of the collieries in this country on the termination of the strike and they had not the opportunity of making profits on the scale of those on which the assessment was based. The supply of coal in the United Kingdom far exceeded the demand. During the strike, Poland and Germany had captured British markets abroad and the exports of coal from Scotland in 1927 amounted only to £1,649,188 as compared with £2,346,051 in 1925, with the result that there was a surplus of coal in Scotland, prices fell, and, in March, 1928, coal owners in Scotland thought it necessary to introduce a scheme for the restriction of output. The Respondents' merchanting profits for the year ending 31st March, 1928, amounted to £2,167 only and they sustained a loss on the working of their collieries.

(4) A statement is attached hereto, and forms part of this Case, of summarised particulars of the merchanting business of the Respondents and their predecessors from

March, 1921, to 31st December, 1926, and for the year ending 31st March, 1928. By way of comment upon some of the figures contained therein, it may be observed that during the coal strike which occurred in this country from 1st April to 30th June, 1921, coal was imported from America and that, from time to time, coal has been exported to America and the continent, more especially on the occasion of coal strikes in America. In addition to the tonnage of coal shown in the statement as purchased, there have been sales of between 80,000 and 100,000 tons of coal a year sold from the collieries belonging to the concern, of which no particulars are included.

II. It was contended on behalf of the Respondents :—

(1) That since the Respondents had succeeded to the business, the profits had fallen short from a specific cause, namely, the change in the circumstances of the trade in the year ending 31st March, 1928, in consequence of the cessation of the coal strike, as compared with the year ended 31st December, 1926, on the profits of which the assessment was based.

(2) Alternatively, that the specific cause of the falling off of the profits of the business was a profound and unprecedented disturbance of the coal trade in consequence of the capture of foreign markets by Poland and Germany.

(3) That the assessment ought to be reduced under Rule 11 of Cases I and II of Schedule D to the amount of the Respondents' profits for the year ending 31st March, 1928.

Reference was made to the cases of *Stewart & Young* v. *Walker*, 1926 S.C. 883, 11 T.C. 123; and *Kneeshaw* v. *Clay & Horsfall* [1929] 1 K.B. 285, 14 T.C. 295.

III. H.M. Inspector of Taxes (Mr. I. D. M. Lochhead), on behalf of the Crown, contended :—

(1) That the absence during the year of assessment of the abnormal conditions under which exceptionally high profits had been made in the preceding year did not constitute a specific cause of the falling off of profits.

(2) That the profits of the business had not fallen off from any specific cause and the latter part of Rule 11 of Cases I and II of Schedule D was not applicable.

(3) That under the first part of the said Rule the assessment ought to be amended to the sum of £167,810, being the agreed amount of the profits of the business for the year

ending 31st December, 1926, subject to the deduction of the proper allowance in respect of wear and tear of plant or machinery.

IV. We, the Commissioners who heard the appeal, gave our decision in the following terms :—

" From the Respondents' statement of their case it is clear " beyond dispute that substantially the explanation of the " discrepancy between the amount of the assessment and the profits " of the year to which it relates is that during the year 1926, on " which the assessment was based, the coal strike enabled the firm " to make extraordinary profits through the importation and sale " of foreign coal, while during the year of assessment there was no " coal strike, no importation of foreign coal and no opportunity of " making such extraordinary profits.

" I have hitherto considered that a specific cause must be some- " thing operating positively to depress the profits in the year of " assessment and that the mere absence in that year of exceptionally " favourable conditions for profit-making prevailing in the " preceding year would not aptly be described as a specific cause.

" It is probable that in the present case there were factors " positively depressing the profits in the year of assessment, but " the Respondents have only indicated in general terms what they " may have been and no attempt has been made to show exactly " how difficulties experienced by the Scottish coal owners in dis- " posing of their output affected the Respondents' business as " merchants. The bulk of that business consisted in the purchase " and sale of Scottish coal in Scotland, and neither the tonnage " of such ordinary sales nor the rate of gross profit thereon fell " notably short of the average of the five years preceding 1926. " Naturally, as prices were lower, a similar rate of profit on sales " of a similar quantity of coal produced a smaller amount of profit. " Again, a loss was incurred in the subsidiary business of exporting " coal, which was obviously of a speculative and highly variable " nature. Whether either of these circumstances might have " constituted a specific cause was not discussed—the Respondents " did not seem to place much reliance on them.

" It is, however, contended that any unusual, extraordinary and " exceptional change of circumstances between the period on which " the assessment is based and the year of assessment is sufficient " to constitute a specific cause, and it is immaterial whether it is " the conditions of the year of assessment or those of the basis " period that are abnormal. There is some force in this argument " and it may be supported by some passages in the judgments in " *Stewart & Young* v. *Walker*(1) and *Kneeshaw* v. *Clay &* " *Horsfall*(2). If this view be adopted the appeal must clearly

(1) 11 T.C. 123. (2) 14 T.C. 295.

" succeed as there can be no doubt that the conditions obtaining " in the period of basis were altogether abnormal. As my colleague " is of opinion that the appeal should be allowed I cannot feel that " the arguments to the contrary are so strong, especially since the " changes introduced by the Finance Act, 1926, as to justify me " in dissenting and I am prepared to acquiesce in the allowance of " the appeal on the main ground put forward by the Respondents.

" P. WILLIAMSON."

" Broadly speaking, the strike in this case caused an enormous " increase in profits followed by a falling off not nearly counter- " balancing the increase and, apart from the decision in *Kneeshaw's* " case, I should have regarded the Respondents' claim for relief as " absurd. That decision, however, compels me to confine my " attention in the present appeal to the one year of basis and the " one year of assessment and, when I look at the trade of the " Respondents thus, I cannot but say that the cessation of " the strike caused a most tremendous change in the circumstances " of the trade. I must, therefore, allow the appeal.

" W. J. BRAITHWAITE."

V. H.M. Inspector of Taxes, immediately after the determination of the appeal, declared to us his dissatisfaction therewith as being erroneous in point of law and, having duly required us to state and sign a Case for the opinion of the Court of Session as the Court of Exchequer in Scotland, this Case is stated and signed accordingly.

VI. The question of law for the opinion of the Court is whether the change in circumstances in the year ending 31st March, 1928, as compared with the year ending 31st December, 1926, constituted a specific cause of the falling off of profits within the meaning of Rule 11 of the Rules applicable to Cases I and II of Schedule D of the Income Tax Act, 1918.

P. WILLIAMSON,
W. J. BRAITHWAITE,
} Commissioners for the Special Purposes of the Income Tax Acts.

York House,
23, Kingsway,
London, W.C.2.

24th February, 1930.

APPENDIX.

PARTICULARS OF MERCHANTING BUSINESS of A. & G. ANDERSON and their predecessors from March, 1921, to 31st December, 1926, and for the year ending 31st March, 1928.

Period ended.		Tonnage.	Purchases.	Sales.	Gross Profit.	Percentage of Gross Profit to Sales.	Average realised price per ton.	Net Profit as adjusted for Income Tax purposes.
			£	£	£		*s.* *d.*	£
31.12.21. (9 mos.) Year.	Ordinary Sales	299,542	492,755	524,331	31,576	6·0	35 0	29,741
	American Import	53,243	179,530	190,788	11,258	5·9	71 8	
31.12.22.	Ordinary Sales	402,180	435,322	466,034	30,712	6·6	23 2	20,097
	American Export	140,965	209,306	215,883	6,577	3·0	30 7½	
31.12.23.	Ordinary Sales	441,910	507,633	534,458	26,825	5·0	24 2	12,839
	American Exports	5,708	10,597	10,418	179 (loss)	Loss	36 6	
31.12.24.	Ordinary Sales	518,462	571,868	605,040	33,172	5·5	23 4	18,778
	Export	58,598	56,067	62,115	6,048	9·7	21 2½	
31.12.25.	Ordinary Sales	477,190	465,100	497,472	32,372	6·5	20 10	19,608
	American Export	23,281	43,457	46,821	3,364	7·2	40 2½	
	Export	43,679	34,589	35,896	1,307	3·7	16 5½	
31.12.26.	Ordinary Sales	253,571	307,971	330,501	22,530	6·8	26 1	162,043
	Import and Export	527,236	1,221,866	1,373,221	151,355	11·0	52 1	
Year. 31.3.28.	Ordinary Sales	460,463	394,507	417,105	22,598	5·4	18 1½	2,167
	Export	50,450	39,452	37,400	2,052 (loss)	Loss	14 10	

(2) *Alexander Frew & Co., Ltd.* v. *The Commissioners of Inland Revenue.*

CASE.

At a meeting of the Commissioners for the General Purposes of the Income Tax Acts for the Middle Ward District of the County of Lanark held at Hamilton on the eleventh day of April, nineteen hundred and twenty-nine, Alexander Frew and Company, Limited, Brickmakers, Rawyards, Airdrie, hereinafter referred to as " the " Appellants " appealed against an assessment of sixteen thousand one hundred and fifty-four pounds, less an allowance for wear and tear of plant and machinery of five hundred and thirty-four pounds, under Schedule D of the Income Tax Act, 1918, for the year ending fifth April, nineteen hundred and twenty-eight, in respect of the profits of the business carried on by them, the assessment being based upon the accounts of the firm of Alexander Frew and Company for the year ending thirty-first December, nineteen hundred and twenty-six.

The Appellants claimed that under Rule 11 of the Rules applicable to Cases I and II of Schedule D of the Income Tax Act, 1918, the tax payable for the year ending fifth April, nineteen hundred and twenty-eight, should be computed according to the actual profits of the year to thirty-first December, nineteen hundred and twenty-seven, and not according to the profits of the said firm for the year to thirty-first December, nineteen hundred and twenty-six.

I. The following facts were admitted or proved :—

1. The Appellants were incorporated on twenty-ninth March, nineteen hundred and twenty-seven, to take over as from first January, nineteen hundred and twenty-seven, the business of Alexander Frew and Company, owned and carried on by Alexander Frew, who died on nineteenth August, nineteen hundred and twenty-seven.

2. There was no agreement of sale between the Appellants and the said Alexander Frew. The business of Alexander Frew and Company was taken over as a going concern, and there was no cessation in trading as a result of the change of ownership. The profits as from first January, nineteen hundred and twenty-seven, accrued to the Appellants, but for Income Tax purposes the date of succession was twenty-ninth March, nineteen hundred and twenty-seven.

3. The business carried on by the Appellants consists of :—

(1) Manufacture of fire brick and other fireclay goods at Rawyards, Airdrie ;

(2) Manufacture of building bricks at Drumbathie, Airdrie ;

(3) Mining of fireclay at Glentore for the purpose of (*a*) supplying the Rawyards Works, and (*b*) marketing ground fireclay;

(4) Sale of builders' materials at Barracks Depôt, Glasgow;

(5) Agency for the sale of coal at Bothwell Street, Glasgow, discontinued as from 28th May, 1928.

4. The profits made by the various businesses for the four years, 1924–1927, were as follows:—

	1924.		1925.	
	Profit. £ s. d.	Loss. £ s. d.	Profit. £ s. d.	Loss. £ s. d.
Rawyards ...	—	451 0 0	—	666 0 0
Drumbathie ...	637 0 0	—	—	58 0 0
Glentore ...	—	—	—	1,112 0 0
Barracks ...	273 0 0	—	574 0 0	—
Bothwell Street	259 0 0	—	157 0 0	—
	1,169 0 0	451 0 0	731 0 0	1,836 0 0

	1926.		1927.	
	Profit. £ s. d.	Loss. £ s. d.	Profit. £ s. d.	Loss. £ s. d.
Rawyards ...	—	10,681 0 0	978 0 0	—
Drumbathie ...	1,794 0 0	—	116 0 0	—
Glentore ...	—	1,896 0 0	397 3 4	—
Barracks ...	—	28 0 0	394 0 0	—
Bothwell Street	24,411 0 0	—	445 0 0	—
	26,205 0 0	12,605 0 0	2,330 3 4	

The above figures are agreed as being approximately correct, but the exact figure for taxation of the 1927 profits is not adjusted. The total profits for the year 1922 were £2,450, and for the year 1923, £307.

5. In the year 1926 there was a strike of workers in the coal trade which entailed an entire stoppage of all coal mines and pits in Great Britain for the period from May, 1926, to November, 1926, and many pits did not start again until the beginning of 1927. In certain areas in Lanarkshire there were bings of coal dross or gum and other inferior materials which were in normal times unmarketable, but which, in the abnormal circumstances prevailing during and immediately following the strike, were saleable at high prices. There were also shallow areas of inferior coal (outcrop coal) which were easily worked from the surface but which also in normal times were unsaleable. Alexander Frew and Company, as did other merchants during the period of the strike, sold large quantities of these inferior materials and also traded in coal brought from abroad and it is from these sources that practically the whole of the 1926 profit was derived. The business of buying and selling

ordinarily unmarketable outcrop coal, dross and gum was carried on during the period of the coal strike only and stopped immediately coal produced in the ordinary manner came on the market, *i.e.*, early in 1927.

6. The ground of appeal was that under Rule 11 of the Rules applicable to Cases I and II of Schedule D, the profits or gains of the Appellants' trade had fallen short from a specific cause since the succession took place, the specific cause being the abnormal variation in the conditions existing in the coal trade in the year 1927 compared with those existing in the coal trade in the year 1926, which caused the profits of the Appellants' business for the year 1927 to fall very far short of the profits of Alexander Frew and Company for the preceding year.

7. It was agreed that the assessment upon the Appellants should, if based on the 1926 profits, be reduced to £12,884, less allowance for wear and tear £534, £12,350.

II. It was contended on behalf of the Appellants :—

1. That the profits of the year 1927–1928 had fallen short owing to the cessation of the abnormal circumstances which existed during the period of the coal strike, when large profits were made by Alexander Frew and Company.

2. That the alleged cause of the shortage of profits was a specific cause within the meaning of Rule 11 of the Rules applicable to Cases I and II of Schedule D of the Income Tax Acts.

3. That the assessment under appeal ought to be amended by substituting the actual profits of the year to 31st December, 1927, for the sum assessed.

III. H.M. Inspector of Taxes (Mr. H. Luck), on behalf of the Crown, contended :—

1. That the profits had not fallen short within the meaning of Rule 11 of the Rules applicable to Cases I and II of Schedule D in respect that the profits of the year 1927 were higher than the profits of any year since 1922 with the exception of the abnormal year 1926.

2. That the shortage of profits had not been due to a specific cause since the succession took place, or by reason thereof, within the meaning of Rule 11. Abnormal and exceptional circumstances existed during the preceding year 1926 and the absence of such abnormal and exceptional circumstances in the succeeding year could not be a specific cause within the meaning of Rule 11.

The following cases were cited :—

Stewart & Young v. *Walker*, 1926 S.C. 883, 11 T.C. 123; *Elliott* v. *The Duchess Mill, Ltd.*, [1927] 1 K.B. 182, 11 T.C. 56; *The Owl Mill Company* (1920), *Ltd.* v. *Croft*, 11 T.C. 56; *Kneeshaw* v. *Clay & Horsfall*, [1929] 1 K.B. 285, 14 T.C. 295.

IV. We, the Commissioners, after due consideration of the facts and arguments submitted to us, found that the profits had not fallen short from some specific cause since the succession took place, or by reason thereof, within the meaning of Rule 11 of the Rules applicable to Cases I and II of Schedule D, and we accordingly dismissed the appeal. We however allowed a reduction of the assessment appealed against to the agreed figure of £12,884, less wear and tear allowance, £534.

V. Whereupon dissatisfaction was expressed on behalf of the Appellants with the determination of the appeal as being erroneous in point of law and, they having duly required us to state and sign a Case for the opinion of the Court of Session as the Court of Exchequer in Scotland, this Case is stated and signed accordingly.

VI. The question of law for the opinion of the Court is, whether on the facts admitted or proved, we, the Commissioners, were entitled to find that the profits of the Appellants had not fallen short from some specific cause since the succession took place, or by reason thereof.

A. K. FOULIS,
JAMES CASSELS, } Commissioners.

Hamilton,
14th February, 1930.

The cases came before the First Division of the Court of Session (the Lord President and Lords Sands and Blackburn) on the 10th and 11th June, 1930, when judgment was reserved. On the 27th June, 1930, judgment was given against the Crown, with expenses, in both cases (the Lord President dissenting).

The Solicitor-General (Mr. J. C. Watson, K.C.) and Mr. A. N. Skelton appeared as Counsel for the Crown and Mr. T. M. Cooper, K.C., and Mr. J. L. Clyde for both the Company and Messrs. A. & G. Anderson.

I.—INTERLOCUTORS.

(1) *The Commissioners of Inland Revenue* v. *A. & G. Anderson.*

Edinburgh, 27th June, 1930. The Lords having considered the Case and having heard Counsel for the parties, Answer the Question of Law in the Case in the Affirmative; Refuse the Appeal; Affirm the determination of the Commissioners, and Decern; Find the Respondents entitled to the expenses of the Case, and remit the account thereof, when lodged, to the Auditor to tax and to report.

(*Signed*) J. A. CLYDE, I.P.D.

(2) *Alexander Frew & Co., Ltd.* v. *The Commissioners of Inland Revenue.*

Edinburgh, 27th June, 1930. The Lords having considered the Case and having heard Counsel for the parties, Answer the Question of Law in the Case in the Negative, Sustain the Appeal, Reverse the determination of the Commissioners and Decern; Find the Appellants entitled to the expenses of the Case, and remit the account thereof, when lodged, to the Auditor to tax and to report.

(*Signed*) J. A. CLYDE, I.P.D.

II.—OPINIONS.

The Lord President (Clyde).—These appeals relate to assessments to Income Tax on the profits of the taxpayers' businesses, under Schedule D of the Income Tax Act, 1918, for the year 1927–28. This was the first year in which Section 29 of the Finance Act, 1926, came into operation. Whereas formerly the profits were computed on an average of the three years preceding the year of assessment, now the computation is made on the results of the trading in the one year immediately preceding that year.

It is common ground in both cases that the businesses were converted from private partnerships into limited or unlimited liability companies in the year immediately preceding the year of assessment, and that, therefore, both companies became " successors " to the trades of the respective partnerships within the meaning of Rule 11 of Cases I and II of Schedule D. Under the opening part of that Rule, such successions make no difference in the mode of computing the annual profits of the trades: the trades are regarded as being continuous and uninterrupted by the *succession*; and it is the trades and not the traders that attract the tax (Schedule D, 1 (*a*) (ii) and (iii)). But the Rule goes on to provide an exception to this in any case in which the *successor* proves to the satisfaction of the Commissioners " that the profits or gains have fallen . . . . short from some specific cause, to be alleged " (by the taxpayer to the Commissioners) " since such change or succession took place."

Two points which arise on this rather obscure enactment may be regarded, now at all events, as clear. In the first place, the words " since such change or succession took place " refer to the time when the fall in the profits occurred (*Miller* v. *Farie* (1878) 6 R.270, see especially per Lord President Inglis, at page 276). In the second place the exception refers to a case in which the actual profits of the year of assessment (ascertained in accordance with the Rules of Schedule D) fall short of the profits as assessed for that year (*Kneeshaw* v. *Clay and Horsfall*[1], [1929] 1 K.B. 285). It is

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(1) 14 T.C. 295.

(The Lord President (Clyde).)

plain that it is immaterial to the applicability of this second point whether the profits as assessed for the year of assessment have been so assessed on an average of the profits of the three preceding years or on the profits of the immediately preceding year. In other words the change effected by Section 29 of the Finance Act, 1926, is of no account in applying the principle of the decision in *Kneeshaw* v. *Clay and Horsfall*(1) which is equally applicable to a case in which the assessed profits are based on an average of the three preceding years as to a case in which the assessed profits are based on the results of the immediately preceding year. In either case the question whether the assessed profits or the actual profits for the year of assessment are either greater or less than the normal profits of the business over a wider period is irrelevant. Nor is it of any moment that the assessed profits are—in the sense referred to—abnormally or unusually high, or the actual profits—in the same sense—abnormally or unusually low; the only question is whether " some specific cause " has caused the actual profits to fall short of the assessed profits.

The *specific cause* alleged in *Frew's* case for the falling short of their profits in the year of assessment is the absence in that year of the conditions prevailing in the previous year owing to the notorious coal strike of 1926 which resulted, in said previous year, in an inflation of their profits from the sale of waste coal in bings and the like at high prices.

The *specific cause* alleged in *Anderson's* case is two-fold, or alternative. On the one hand it is alleged that the falling short of their profits in the year of assessment was due to the absence in that year of the conditions prevailing, on account of the said coal strike, in the previous year, which resulted (in said previous year) in an inflation of their profits from the sale at highly remunerative prices of coal imported from abroad. So far, *Anderson's* case is practically on all fours with *Frew's* case. But a further or alternative *specific cause* is alleged in *Anderson's* case, namely, that in the year of assessment there was a glut of coal in the home market with a consequent fall in prices, aggravated by the capture of foreign coal markets in that year by Polish and German exporters (a consequential result of said strike) which cut them off from the profits of coal export.

It will be seen that both taxpayers allege, as a *specific cause* of the falling short of profits in the year of assessment, an inflation of their profits in the preceding year, and point to the coal strike of 1926 (which undoubtedly induced high profits in the preceding year) as the *specific cause* of the falling short of the profits in the year of assessment, in respect that the coal strike did not continue to be an operative cause of profit in that year.

(1) 14 T.C. 295.

(The Lord President (Clyde).)

If this is right, the door to the form of relief provided by Rule 11 is opened very much more widely than in any of the cases which have come up for decision under the Rule, or than any of the judicial interpretations of the Rule hitherto would lead one to imagine. In all these cases, the specific causes which have been recognised were causes specifically referable to the conditions of trade prevailing in the year of assessment, and operating to depress the profits of that year (*Miller* v. *Farie* (*sup. cit.*); *Ryhope Coal Coy.* v. *Foyer*, (1881) 7 Q.B.D. 485(1); *Stewart & Young* v. *Inland Revenue*, 1926 S.C. 883(2); *Elliot* v. *Duchess Mill, Ltd.*, [1927] 1 K.B. 182(3); *Kneeshaw* v. *Clay and Horsfall*, [1929] 1 K.B. 285(4)). They were all cases of severe depression in the trade followed by the taxpayer which adversely affected the profitable character of his operations in the year of assessment, in a sense which could not be predicated of any of the ordinary variations and vicissitudes to which all businesses and trades are subject. Prosperity in trade—be its causes of a common or an uncommon kind—is inevitably followed by a relapse; and precisely for that reason such a relapse seems to me to be one of the most ordinary of the many variations and vicissitudes to which all businesses and trades are subject. A *specific cause* stands in contrast with a *generic* one; and I can imagine no better example of a *generic* cause (as cpposed to a *specific* one) than the operation of the natural law which ever seeks a mean. It is no doubt true that the relapse will be more or less severely felt according to the height of prosperity reached during the period which preceded the relapse. But the extent to which the profits actually made in the year of assessment fall short of the assessed profits (where these are based on the operations of a preceding prosperous year) is *in itself* no more than a measure of the height of that prosperity; and the *cause* of such shortage is neither the existence of favourable conditions in the past, nor the absence of such conditions in the present, but the operation of the ordinary rule which applies to all human affairs whereby a period of excess is liable to be followed by a period of shortage. That is not, in my opinion, a *specific cause* within the meaning of Rule 11. I think the *specific cause* of the phenomenon of a falling off of profits in a particular year must at least be such in its character and operation as to distinguish it from the *generic* causes of similar phenomena; and, if that is right, it follows that the uncommon character of the cause which produced prosperity in a former year is irrelevant to the question of the existence of a *specific cause* producing shortage in the year of assessment.

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(1) 1 T.C. 343. (2) 11 T.C. 123.
(3) 11 T.C 56. (4) 14 T.C. 295.

(The Lord President (Clyde).)

If, however, the argument presented for the taxpayers is right, the above reasoning is founded on a *petitio principii*. According to their construction of the Rule, the phenomenon whereof the *specific cause* has to be alleged and proved is simply the existence of a difference between the assessed and the actual profits. If that is right, then it necessarily follows that the *specific cause* of the difference may be found indifferently in the conditions of either the basic or the actual year; and no distinction remains between the *specific cause* of prosperous conditions in the basic year and the *specific cause* of adverse conditions in the actual year. On the facts of the cases before us, it is plain that the *specific cause* of the prosperity of the year on which the assessed profits were computed was the coal strike of 1926; and, if the taxpayers' construction of the Rule is sound, it is obvious that the *specific cause* of the prosperity of that year was also the *specific cause* of the *difference* between the assessed profits and the actual profits of the year of assessment.

I am far from saying that this is an impossible construction of an obscurely drafted Rule; and the fact that it has only been discovered at so late a stage in the history of the Income Tax Acts is by no means conclusive against it. But I think that when the Rule speaks of profits falling short from a *specific cause*, what is intended is something specific which operates causally on the profitable character of the trade during the actual year, and which can be proved to have had the effect of actually depressing the profits of that year. It is, in my opinion, more than a mere explanation of how it comes about that the profits of the actual year fall short of those of the basic year. As I read the Rule, it does not ask me to put my finger on the *cause* of the *difference* between the two years' profits, but on some *specific cause* which has operated adversely on the profits of the later year. The exception is a privilege allowed to certain taxpayers by which they escape from their ordinary fiscal liabilities. The case is not therefore one for extending the exception beyond the strict intendment of the Rule; and, if the intention of the legislature had been to make the exception so wide as the taxpayers contend for, it would have been easy to exclude the *prima facie* limitation of its application to the existence of a *specific cause* for a falling profit in the year of assessment and to apply it in terms to the existence of a *specific cause* for a difference between the profit of the one year as compared with that of the other. I do not think the words of the Rule can fairly be given this extended meaning, and I see nothing either in *Stewart & Young* v. *Inland Revenue* (*sup. cit.*) or in *Kneeshaw* v. *Clay and Horsfall* (*sup. cit.*) to warrant it being given.

I am therefore against both the taxpayers on the *specific cause* which they allege in common. That is the only *specific cause*

(The Lord President (Clyde).)

alleged in *Frew's* case; and I think accordingly the question put to us in *Frew's* case should be answered affirmatively.

It remains to dispose of the other and alternative *specific cause* alleged in *Anderson's* case. I was at first disposed to think that the facts found proved in paragraph (3) of the Case established a *specific cause* for the falling short of the taxpayers' actual profits in the year of assessment within the meaning of the Rule. But on reconsideration I have come to the conclusion—for the reasons expressed by Mr. Williamson, one of the Special Commissioners, who disposed of the case in first instance, and which are not dissented from by Mr. Braithwaite—that this is not so.

The first fact is that in the year of assessment the taxpayer did not enjoy the opportunities of profit-making which the coal strike of 1926 had enabled him to enjoy in the year preceding the year of assessment; but this is just another way of stating the kind of *specific cause* I have already rejected.

The next facts are that in the year of assessment the supply of coal at home far exceeded the demand, a state of matters which was aggravated by the capture of foreign markets by foreign competitors as the result of the coal strike. The results of these two things were a fall in prices and a restriction in output. Now, I thought at first that these things were enough to establish a *specific cause* operating adversely on the profitable character of the taxpayers' trade in the year of assessment so as to depress his profits in that year and cause them to fall short. But Mr. Williamson's findings and the figures in the Appendix to which those findings refer, show that on ordinary sales in the year of assessment neither the tonnage dealt with, nor the price of purchases, nor the price received on sales, nor the gross profit, nor even the percentage of gross profit to sales, in fact shows any material shortage. The whole cause of the shortage of profits on ordinary sales was a slump in the average realised price per ton. As Mr. Williamson says: "Naturally, as prices were lower, a "similar rate of profit on sales of a similar quantity of coal produced "a smaller amount of profit." But what is this but an instance of the succession of a year of high prices by a year of relapsed prices? Again, the figures of the taxpayer's export trade show the utmost variability from year to year; and, with regard to the falling short in the year of assessment as compared with the preceding year, the figures reflect—in themselves—nothing more than the difference between a year of favourable opportunities and one of relatively unfavourable opportunities. If the Special Commissioners had found it proved that the slump in the taxpayers' profits on export were the effect of a glut in the home market aggravated by the capture of British markets abroad by foreign competitors, that finding would have been conclusive, so far as this Court is concerned,

(The Lord President (Clyde).)

and would have led to a conclusion favourable to the taxpayer. But, while expressing the opinion that it is probable that " factors " positively depressing the profits " actually made in the year of assessment might have been established by the taxpayer, Mr. Williamson finds that no attempt was made at the proof to connect the difficulties experienced by the taxpayer in disposing of his output with a shortage of his profits, and that the question whether either of the two departments of fact embraced in paragraph (3) of the Case did, or did not, constitute a *specific cause*, was not discussed. In short, the taxpayer rested his whole case on the point common between him and *Frew*. Mr. Braithwaite finds nothing to the contrary of this. He thought that the case of *Kneeshaw* v. *Clay & Horsfall* (*cit. sup.*) compelled a decision favourable to the taxpayers. I have already explained that I do not think there is any warrant for this view.

I do not see, in these circumstances, how we can deal with *Anderson's* case differently from *Frew's;* and I think the question in *Anderson's* case should be answered in the negative.

Lord Sands.—Under Income Tax legislation and practice, the tax upon the income of the year of assessment falls to be assessed and paid during the currency of the year. It is impossible, however, to make a return of profits of the year during the currency of the year. Accordingly the expedient was devised, in the case of a business or profession, of taking the average profits of the three preceding years and treating them as the statutory or assessable income for the year of assessment. Since 1927-28 the one year previous has been substituted for the average of three years. Under this system any anomaly corrected itself in time. The taxpayer was not in the long run called upon to pay tax upon any income which had not accrued to him. It was recognised, however, that there was a specialty in the case of a change in the ownership of a business. If the first year after the change was a lean year and the preceding three had been flat ones, the taxpayer would be called upon to pay tax in respect of an amount of income he had not enjoyed, and never would enjoy, and so far from this anomaly correcting itself its operation might be carried forward for three years. To meet this possible hardship an option was given to the new owner of the business to elect to be taxed upon the actual income of the year after he entered upon the business, when the fall in profits was due to a *specific cause*. This latter qualification is intelligible. It avoids the right to disturb the general system of collection by claims in respect of small discrepancies resulting from the ups and downs of business, and also the possibility of a benefit being given to slackness in the conduct of the business or adroit manipulation of accounts.

(Lord Sands.)

There have not been very many cases under this provision, but these propositions seem to be established :—(1) A general and severe depression of trade is a *specific cause* within the meaning of the provision. (2) The comparison to be made in determining whether there has been a fall due to a *specific cause* is with the profits of the years (now year) which normally fall to supply the standard for the statutory income to be assessed, and the profits actually earned in the year of assessment.

Mr. Braithwaite, one of the Special Commissioners, for whose rulings I have great respect, whilst bowing to authority as regards this last proposition, indicates that, apart from authority, he should have deemed such a conclusion " absurd ". I confess that, having regard to the reason which must be held to underlie the provision, I have difficulty in thinking that any other form of comparison would have been reasonable.

Be this, however, as it may, the rule as recognised appears to me to have an important bearing upon the present case, as indeed the Special Commissioners recognised. It shows that what has to be taken into account is relativity of conditions as between the year of assessment and the years or year which supply the standard.

The question at issue is not an absolute one as regards profits. It is a relative one in regard to the profits of two particular years taken by themselves. It is not whether, in the year of charge the profits were low for a business of this volume, or according to the experience of the trade or a comparison with the profits of a number of previous years, and this being so, whether this is due to any *specific cause*. But the question as I conceive it is this : It being conceded that the actual profits of the year of assessment are less in amount than the profits of the previous year or years by the amount of which the tax payable for the current year of charge falls, in ordinary course, to be measured, can this discrepancy be attributed to any *specific cause*?

The statute speaks of a fall of profits. But when two successive years are compared, a fall of profits means just that the profits are smaller than they were in the previous year, and this again is just equivalent to the statement that they were larger in the previous year. There is only one phenomenon. It may be that there were certain peculiarly favourable factors operative in the first year which were absent in the second, or it may be that there were some peculiarly adverse factors operative in the second year which were not operative in the first. In the view which I take, the question would have been the same if the second year, though falling far short of the first year, had been, taking one year with another over a term of years, quite a normal year with no special adverse factors. The question remains—why has there been a fall

(Lord Sands.)

as between the two years; why are the profits less in the second year than they were in the first? Doubtless it would be absurd to say that the *specific cause* of the fall was that the profits were high in the first year. But, as it seems to me, it is proper to ascribe the discrepancy to the presence of certain favourable factors in the first year which were absent in the second. The absence of these favourable conditions may not be the cause of the profits being absolutely low in the second year if they be low. But with that one is not concerned. They are the cause of the discrepancy or fall when the one year is compared with the other.

We had a number of illustrations in the course of the argument. I venture to give another. A certain stock is quoted to-day at a certain figure on the Exchange. Last week it was quoted at a much higher figure. One enquires the cause of the *fall*. One is told that the price of the stock was inflated last week by the prospect of a new issue on favourable terms to shareholders. To-day it is being sold " Ex rights ". Now no doubt it would under such circumstances be absurd to attribute the present price, which may be quite a good price, to the fact that there was an inflation last week. But, on the other hand, the *specific cause* of the *fall* is undoubtedly the absence this week of the attraction of the prospect of the new issue.

When two things are compared with the view of discovering the cause of a discrepancy between them, it is necessary to examine both. . If I affirm that the harvest was early this year because the autumn was dry, that is a good statement of the cause why the harvest was early, speaking generally. But it is not a good statement of the cause why the harvest of the year was earlier than that of last year, unless it be stated or implied that last year the autumn was wet.

I take the case of *Anderson*. In the year 1927-28 the profits were £2,167 as against £162,043 in the year 1926-27. On the other hand the profits of 1925-26 were £19,608, and this seems to have been about the normal. 1927-28 seems to have been a poor year, and this impression is confirmed to any one familiar with company accounts on comparing the turn-over with the profits. Now the Respondents in this appeal may be able to show that there were certain disturbing conditions which caused the profits of this year to be small without any reference to 1926-27 at all. But that is not what I conceive to be the issue—the issue is the cause of the fall—the discrepancy as between 1927-28 and 1926-27. What is the cause of this and is it specific? I quite accept it that simply to say that the profits of 1926-27 were inflated is an explanation—not a statement—of the cause. But it is in my view a statement of the cause of the fall or discrepancy that certain extraordinary circumstances existed in 1926-27 which were absent in 1927-28.

(Lord Sands.)

There may be no causal relation between the subsistence of these extraordinary conditions in 1926-27 and the peculiarly low profits of 1927-28. But their presence in one case and their absence in the other is the cause of the discrepancy as between the two years. It may be very warm to-day. Various explanations may be suggested why it should be so. It would be absurd to suggest that the cause was a cold east wind yesterday. But if the issue be not—why is to-day warm? but why is to-day warmer than yesterday?—it seems quite a reasonable statement of the cause of this discrepancy in temperature that there was a cold east wind yesterday which is absent to-day. If I am right in thinking that the cause of this extraordinary fall as between 1926-27 and 1927-28 was the presence in the former year of conditions which were absent in the latter, this is, in my view, a *specific cause* of the fall or discrepancy when the one year is compared with the other. I can find no warrant in the statute for enquiring further, or introducing subtleties as to positives or negatives in the one year or the other.

I quite appreciate the view which has been presented to us, *viz.*—The trader taking over a business must pay his tax, hardship or not, according to the ordinary rule, unless he can show that through the operation of some positively adverse factor operating in the year he has been unable to earn normal profits. But, as it seems to me, this is countered by the provision that account is to be taken of a " fall " which must be taken to be a fall from the profits of the previous year, not a fall from normal profits, and that in comparing one year with another to ascertain the cause of the fall it is necessary to take into account the respective factors in each year. The legislature, as it seems to me, in effect says to the trader : " You deem it a hardship to be assessed on the amount " of your predecessor's profits. Very good, you may elect to be " assessed on your own if you can show a specific cause why his " were greater and yours less."

I venture to try and make clear what I conceive to be the two possible views, thus. There are two successive years in the life of a business which I shall call years " 6 " and " 7 ". The profits in 7 were one-third of the profits in 6. This cannot be regarded as fortuitous. There must be some cause of this fall. To discover this we begin by examining the conditions in 7. We find that nothing particularly toward or untoward happened in that year. The conditions were normal. Plainly, therefore, we have as yet made no approach to discovering the cause. Next we turn to 6, and we find that extraordinarily favourable conditions prevailed in that year which did not obtain in 7. Here we have, I think, got the cause why the profits of 7 are less than those of 6. We might have gone the other way about and beginning with 6 have proceeded to ascertain why the profits were larger in that year. If we had

(Lord Sands.)

done so I do not think that anyone could have contested the proposition that the cause of the profits being larger in 6 than in 7 was the prosperous conditions peculiar to the former year, and that this cause was a specific one. But the specific cause why the profits in 7 show a fall as compared with those in 6 must be identical with the specific cause why the profits in 6 were higher than those of 7. The specific cause then of the fall is the presence in year 6 of certain abnormally favourable conditions which were absent in year 7. That might seem to be an end of the matter. But no. As I understand it, the argument is that it is not enough that there should be a specific cause of the fall or discrepancy. It is necessary that in so far as there enters into this any element of abnormality in the one year or the other, the abnormality must be within the second year. I do not find any warrant for this in the statute or any reason behind it seeing that the problem is the comparison of two years the one with the other, so that the taxpayer may avoid being prejudiced by the discrepancy.

As I understand, in the view taken by your Lordship in the Chair, *esto* that the profits this year were less than those of last year, then, if there be a ***specific cause*** depressing the profits of this year, that will suffice. But the same cause tending to depression may have been operative last year. The home coal trade, for example, may have been every bit as bad last year as this year. But last year there was an inflated foreign trade which is absent this year. In these circumstances it seems to me very difficult to affirm that the *specific cause* not of this year being a poor year, but, to use the language of the statute, that the "gains " have fallen or will fall short " of those of last year was the depressed home trade which obtained equally in both years.

For the reasons I have indicated I am of opinion that the appeal fails in *Anderson's* case and succeeds in *Frew's* case.

Lord Blackburn.—The assessment of the profits of a business on the basis of the profits earned by the business in the preceding year is a convenient one and, where the business continues in the same partnership, involves no hardship upon the parties assessed, they themselves having received the actual profits earned in the preceding year. But it is nevertheless merely a method of estimating what the profits will amount to during the year of assessment, and it is clear that if there has been a change in the partnership followed by a substantial drop in the profits, the new partnership may, by this method, be assessed upon an income which has not in fact been received by the new partnership. To minimise this inconsistency, Rule 11 of Schedule D Cases I and II of the Act of 1918, provided that where the partners or person succeeding to the business can prove to the satisfaction of the Commissioners that the profits have fallen or will fall short from some " *specific cause* "

(Lord Blackburn.)

since the change of partnership, then the profits of the preceding year are not to be taken as representing the income of the year of assessment. In my opinion, the words "*specific cause*" do not mean merely a cause which can be specified but implies a special and unusual cause not likely to occur from year to year in the carrying on of the business. It cannot, I think, be intended to refer to ordinary and every day fluctuations in trade which the new partners would be bound to anticipate. But the precise meaning of a "*specific cause*" is not of any special importance in these two cases, because I do not think it was disputed that the coal strike of 1926 was undoubtedly a specific cause if the parties assessed were entitled to found on it as accounting for the falling off of the profits of their business. It is an admitted fact that the strike came to an end shortly before the new partnership was constituted in each case, while in both cases the parties found on the strike as being the cause of the discrepancy between their actual profits in the year of assessment, and the profits earned in the preceding year. It was argued for the Inland Revenue that the "*specific cause*" referred to in Rule 11 must originate after the change of partnership has taken place, and that in respect that the strike had ended before the new partnership came into existence, the parties were not entitled to found upon it. In my opinion this argument, although ingenious, is not well-founded. The strike had a double effect. During the subsistence in the basic year it enabled the then existing partnership to earn large profits by the sale of waste material and by dealing in imported coal. The aftermath of the strike only came into effect after the change of partnership and resulted in its being equally impossible to sell imported coal in this country, or to find a market abroad for coal exported from this country. In fact, strange as it may sound, it would appear that the existence of the strike was highly lucrative to the former partnership, while its termination made it difficult for the new partnership to carry on the business at a profit. If, on the close of the strike, the working of the businesses had immediately resumed normal conditions, it may be that the parties would not have been entitled to found upon the fact that extra large profits had been made during the year in which the strike lasted. But normal conditions did not return immediately, and indeed have not yet returned, and the conditions which have emerged since the new partnership commenced cannot, in my opinion, be described otherwise than as special and unusual causes following on the strike, which have resulted in the profits for the year of assessment being less than those earned in the preceding year. If that is so, then the parties are entitled to invoke the privilege conferred upon them by the Rule. That is the conclusion to which the Special Commissioners have come in the case of *A. & G. Anderson*, and I think in that case the question should be answered in the affirmative.

(Lord Blackburn.)

I am myself unable to distinguish the circumstances of their case from that of *Alexander Frew & Coy.* It is true that in the latter case the averments as to the fall of profits in the year 1927 are not so specific as they are in the former case, but it is averred that the *specific cause*, since the succession took place, was " the " abnormal variation in the conditions existing in the coal trade in " the year 1927 compared with those existing in the coal trade in " the year 1926, which caused " their profits to fall very far short of the profits of the preceding year, and this, in my opinion, is sufficient. I think in this case the Commissioners misdirected themselves by comparing the profits of 1927 with the profits earned by the business in the years from 1922 to 1926, and also in holding that the abnormal and exceptional circumstances in the year 1927 could not be a *specific cause*, and, accordingly, in my opinion, the question in this case should be answered in the negative.

The Crown having appealed against the decisions of the Court of Session, the case came before the House of Lords (Lords Buckmaster, Atkin, Tomlin, Thankerton and Macmillan) on the 7th December, 1931, when judgment was given unanimously against the Crown, with costs, in both cases, confirming the decisions of the Court below.

The Lord Advocate (the Rt. Hon. C. M. Aitchison, K.C.), Mr. R. P. Hills and Mr. T. B. Simpson appeared as Counsel for the Crown and Mr. T. M. Cooper, K.C., and Mr. J. L. Clyde for both the Company and Messrs. A. & G. Anderson.

JUDGMENTS.

(1) *The Commissioners of Inland Revenue* v. *A. & G. Anderson.*

Lord Buckmaster.—My Lords, the Respondents in this case are a company incorporated on the 3rd January, 1927. By an agreement dated on the 29th March in that year they took over a business of coal masters and coal merchants which had previously been carried on for many years by a partnership firm of the same name. The Company has been assessed to Income Tax for the year from the 6th April, 1927, to 5th April, 1928, in the sum of £168,000. They appealed against that assessment, the Commissioners allowed their appeal, and the Court of Session, by a majority of two judges to one, confirmed the finding of the Special Commissioners. The question before this House is whether the judgment of the Court of Session shall be supported or no.

(Lord Buckmaster.)

My Lords, the real point depends upon Rule 11 of the Rules applicable to Cases I and II of the Income Tax Act, 1918, a Rule which had application to the circumstances in which the Respondents found themselves and which has application no longer, since it has subsequently been repealed and another Rule put into its place. The Rule was one of considerable importance. It was undoubtedly designed for the purpose of preventing a newcomer into a firm being affected by the amount of profits previously earned which, owing to special conditions, were earned no more, and it provides that: "If within the year of assessment or the period of "average upon which the assessment is to be based a change occurs "in a partnership of persons engaged in any trade or profession, "by reason of death, or of dissolution of the partnership as to all "or any of the partners, or by the admission of a new partner, "or if any person succeeds to a trade or profession, the tax payable "in respect of the partnership, or any of the partners, or of the "person so succeeding shall be computed according to the profits or "gains of the trade or profession during the respective periods "prescribed by this Act,"—that leaves the old law as it was, unless the following provision operates, that is: "unless the partners or "the person succeeding to the trade or profession prove to the "satisfaction of the commissioners that the profits or gains have "fallen or will fall short from some specific cause, to be alleged "to them, since such change or succession took place, or by reason "thereof." The Respondents here allege that they are in a position to establish the necessary conditions there laid down and so to escape the liability of being assessed at a figure which depends for its magnitude upon the fact that during the previous year the amount of profits of the firm acquired by the Company amounted to £162,043.

The reasons why the profits fell so rapidly, as they did after the present Respondents had taken over the business, were due to facts found by the Commissioners, and they were these: During the year 1926 there was a coal strike, and the coal strike, which ruined some firms, enabled others to make unusual profits, and the firm whose business was acquired by the Respondent Company were one of the fortunate few. As found by the Commissioners, the coal strike enabled the firm to make extraordinary profits through the importation and sale of foreign coal, while during the year of assessment there was no coal strike, no importation of foreign coal, and no opportunity of making such extraordinary profits. These circumstances, the Respondents assert, are a specific cause why profits and gains have fallen short from those of the preceding years.

My Lords, the real question depends upon what is the true meaning to be assigned to this phrase "from some specific cause"

(Lord Buckmaster.)

in the Rule I have read. Let me, in the first place, say that I do not think the argument—which was not, I think, seriously advanced but which was referred to—that the cause itself must have taken place after the change or succession, is sound. I think that the Rule means that the profits or gains have fallen or will fall short since such change or succession took place from some specific cause to be alleged to the Commissioners. The real question, therefore, is: Were the circumstances to which I have referred a specific cause within the meaning of the Rule? Without finding it necessary to give a legal definition to what is meant by a " specific cause ", it appears to me quite clear that the circumstances I have referred to are within the meaning of the words. The cause is found in plain language to be the cessation of the conditions which had enabled unusual profits to be obtained, and I do not think it would be disputed that the cause was specific but for this, that it is suggested that the words " specific cause " cannot be intended to apply to a condition which might be regarded as the resumption of normal trade after abnormal interference. My Lords, I can find no reason whatever for such a limitation of the words. The whole purpose of the Rule is to prevent a new partner from being rendered liable to pay or to share in the payment of Income Tax upon profits the benefit of which he never gained, and it seems to me there is no particular reason why you should assume that, if a coal strike itself had caused the profits to go down, it should be a specific cause, while, if a coal strike had caused the profits to go up and then they had subsequently fallen, the resumption of work should not be just as much a specific cause as the going out on strike.

My Lords, for these reasons, it appears to me in this case the Respondents have alleged a specific cause that has caused the profits and gains to fall short, and for that reason the judgment appealed from is correct, and this appeal should be dismissed.

Lord Atkin.—My Lords, I concur.

Lord Tomlin.—My Lords, I concur.

Lord Thankerton.—My Lords, I agree.

Lord Macmillan.—My Lords, I also concur.

Questions put:—

That the Interlocutor appealed from be reversed.

The Not Contents have it.

That this appeal be dismissed with costs.

The Contents have it.

(2) *Alexander Frew & Co., Ltd.* v. *The Commissioners of Inland Revenue.*

Lord Buckmaster.—My Lords, this second case, which has been opened here, is obviously covered by the reasons I have given in the first case in which this House has just pronounced judgment, and I therefore move your Lordships that this appeal be also dismissed.

Lord Atkin.—My Lords, I concur.

Lord Tomlin.—My Lords, I concur.

Lord Thankerton.—My Lords, I agree.

Lord Macmillan.—My Lords, I also concur.

Questions put:—

That the Interlocutor appealed from be reversed.

The Not Contents have it.

That this appeal be dismissed with costs.

The Contents have it.

[Agents:—Solicitor of Inland Revenue, England, for the Solicitor of Inland Revenue, Scotland; Beveridge and Co., for Drummond and Reid.]