QUEEN'S BENCH DIVISION (NORTHERN IRELAND)—
28TH AND 29TH MAY AND 27TH JUNE, 1963

COURT OF APPEAL (NORTHERN IRELAND)—4TH, 5TH AND
6TH NOVEMBER, 1963, AND 9TH JULY, 1964

HOUSE OF LORDS—27TH AND 28TH APRIL AND 27TH MAY, 1965

Cyril Lord, Ltd.

v.

Commissioners of Inland Revenue(1)

Excess Profits Levy—Valuation of trading stock—Finance Act, 1937 (1 *Edw.* VIII & 1 *Geo.* VI, *c.* 54), *Section* 20(1) *and Fourth Schedule; Finance Act*, 1952 (15 & 16 *Geo.* VI & 1 *Eliz.* II, *c.* 33), *Section* 45(1) *and Ninth Schedule.*

The Appellant Company carried on business as textile manufacturers and merchants. At 31*st December*, 1951, *as the result of a slump in its existing markets, the trading stock was written down in the Company's accounts from the cost figure of* £543,530 *to* £103,487, *the current market value. This figure was taken into account in assessments to Income Tax and Profits Tax based on the accounts for the year to* 31*st December*, 1951, *and onwards. After* 31*st December*, 1951, *the Company discovered a new market for its stock, and was able to sell a large part of it at a price exceeding the written-down value. The written-down value of the stock sold in the chargeable accounting periods to* 31*st December*, 1952, *and* 30*th November*, 1953, *was* £50,583, *but its value on a cost basis was* £456,344. *In the assessments to Income Tax and Profits Tax based on the accounts for these periods, the Company's profit was calculated by reference to the difference between the written-down values of the stock sold and the amounts realised on sale.*

On a rehearing by the Additional Recorder of Belfast of appeals against assessment to Excess Profits Levy for these chargeable accounting periods, it was contended for the Company that it was entitled to commence the account for Excess Profits Levy by bringing in its stock at cost. For the Crown it was contended that this stock should be brought in at the written-down value adopted for Income Tax and Profits Tax. The Additional Recorder upheld the Crown's contention.

Held, *that the Additional Recorder's decision was correct.*

CASE

Stated under Section 63 of the Finance Act, 1952, and Paragraph 4 of Part II of the Fifth Schedule to the Finance Act, 1937, by Mr. Bradley McCall, Q.C., Additional Recorder of Belfast, for the opinion of the High Court of Justice in Northern Ireland.

(1) Reported (Q.B.D. and C.A. (N.I.)) [1965] N.I. 77.

1. The Appellants, being dissatisfied with assessments to the Excess Profits Levy in the sums of £99,000 and £75,740 17*s*. for the chargeable accounting periods for the twelve months ended 31st December, 1952, and the eleven months ended 30th November, 1953, respectively, appealed to the Commissioners for the Special Purposes of the Income Tax Acts (hereinafter called " the Special Commissioners "), who dismissed the appeal and determined the assessments in the following agreed figures:

Chargeable accounting period to 31st December, 1952, £86,512 7*s*.

Chargeable accounting period to 30th November, 1953, £75,740 17*s*.

2. The Appellants, being aggrieved by the said determination of the Special Commissioners, required that their appeal should be re-heard by the Recorder of Belfast, and the Recorder of Belfast (His Honour Judge Fox, Q.C.) duly re-heard the said appeal on 5th, 6th and 9th December, 1957, and after reserving judgment dismissed the said appeal.

3. The Appellants, having declared their dissatisfaction with the determination of the said Recorder, duly required him to state and sign a Case for the opinion of the High Court of Justice in Northern Ireland, which he accordingly did on 23rd September, 1958.

4. The said Case came before McVeigh, J., on 2nd, 3rd, 4th and 7th March, 1960, who, on 23rd March, 1960, for the reasons stated in his judgment delivered on that day, declined to answer the questions submitted in the said Case and ordered that the Case Stated be discharged and that the matter be remitted to the Recorder of Belfast to rehear and, if asked, to state a fresh Case.

5. The said Recorder of Belfast, His Honour Judge Fox, Q.C., having retired from the office of Recorder of Belfast the said appeal came before me sitting as Additional Recorder of Belfast on 5th, 6th, 7th, 24th, 25th, 26th, 27th and 28th October, 1960.

6. The appeal involved two questions which the Special Commissioners had decided against the Appellants, first, whether a subsidiary company of the Appellants was, as the Appellants contended, resident in the United Kingdom on the material date so that losses made by it could be taken into account in computing the profits of the Appellants liable to Excess Profits Levy, and, secondly, whether the liability of the Appellants to Excess Profits Levy should be calculated with reference to the difference between the market value of the stock, as appearing in the audited accounts of the Appellants on 1st January, 1952, and 1st January, 1953, and the realised value of the stock in the relevant accounting periods or, as the Appellants contended, with reference to the difference between the actual cost of the said stock and the realised value thereof.

7. On 21st April, 1961, I delivered a written judgment, which is annexed to and forms part of this Case, marked exhibit "A"[1], accepting the Appellants' contention on the first question as to residence, and rejecting their contention on the second question as to the basis of calculation of the Appellants' profits for the purposes of Excess Profits Levy, and adjourned the hearing in order that, in the light of my judgment, the assessments might be agreed.

8. At a resumed hearing on 22nd November, 1961, the assessments having been so agreed without prejudice to the parties' rights of further appeal, I thereupon determined the appeal by reversing the decision of the Special

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[1] Not included in the present print.

Commissioners on the first question, by affirming their decision on the second question and by altering the assessments as follows:

for the chargeable accounting period ended
31st December, 1952 .. .. .. from £86,512 7*s*. to £91,295 14*s*.

for the chargeable accounting period ended
30th November, 1953 .. .. .. from £75,740 17*s*. to £70,334 14*s*.

The Appellants, having declared their dissatisfaction with my determination upon the second question, duly required me to state and sign a Case for the opinion of the High Court of Justice in Northern Ireland, which I accordingly do.

I found the following facts proved or admitted:

9. (i) The Appellants are manufacturers and merchants of textiles. At 31st December, 1951, they held a large stock the actual cost of which was £543,530. In that year a heavy slump took place in the textile trade both in the United Kingdom and in the United States of America, where they carried on their trade, and accordingly at 31st December, 1951, the stock was written down in their accounts to £103,487, which I was satisfied was its then true market value.

(ii) Subsequently to 31st December, 1951, the Appellants discovered a hitherto unexploited market in Africa and were able to dispose of large amounts of their stock at prices in excess of the written-down values at which they stood in their books.

(iii) On the basis of the said written-down values (no further writing down having taken place in subsequent years) the Appellants disposed of £19,587 worth of stock during the year to 31st December, 1952 (hereinafter called " the year 1952 ") and of £30,996 worth of stock during the eleven months to 30th November, 1953 (hereinafter called " the eleven months of 1953 "). On the basis of cost they disposed of £68,961 worth of stock in the year 1952 and of £387,383 worth of stock in the eleven months of 1953.

(iv) The respective figures of stock at the end of each of the said periods as shown in the said accounts, together with the respective figures of cost thereof before the writing down referred to above, are as follows:

Accounts	*Value of stocks shown in the accounts at end of the accounting period*	*Cost of stock*
Year ended 31st December, 1952 ..	£83,900	£474,569
11 months ended 30th November, 1953	£52,904	£87,186

(v) For the purposes of assessment to Income Tax and Profits Tax in respect of the Appellant's trading for the year to 31st December, 1951, the said writing down was accepted and taken into account. For the purposes of assessment to Income Tax and Profits Tax in respect of their trading for the years 1952 and 1953, the Appellants were assessed on a profit calculated with reference to the difference between the written-down values of the stock sold and the amounts realised on sale.

10. The Appellants contended:

(1) that the profits for the year 1952 had, by reason of the writing down, been inflated by £49,374 (being the difference between £68,961 and £19,587) and for the eleven months of 1953 by £356,387 (being the difference between

£387,383 and £30,996), making a total inflation over the whole period of £405,761 above the profit based on actual cost which, they contended, was the true profit;

(2) that since the profit on a transaction of sale could not exceed the difference between the cost of the article sold and the amount realised, the actual cost of the articles sold must appear in the account at some stage and the Appellants were entitled to commence the account for Excess Profits Levy by bringing in their stock at cost;

(3) that for Income Tax and Profits Tax purposes in the year ending 31st December, 1951, the Appellants had been permitted to write down the value of their stock and so to anticipate and take credit in advance for a loss which had not been then realised, and were accordingly bound in future accounts for those purposes to bring that sum back by substituting the written down value for the cost, but since for Excess Profits Levy (which was a new tax) they had never made any deduction or taken credit for anticipated losses there was no reason to bring any sum back or to substitute any figure for the actual cost of stock in hand;

(4) that commencing the account with the stock at cost and not writing the stock down at 31st December, 1952, the result of the Appellants' trading over the two chargeable accounting periods, namely the year 1952 and the eleven months of 1953, would have shown in the earlier period a smaller profit than that upon which they were assessed and in the later period a substantial deficiency, and that the decision of the Special Commissioners should be set aside and the assessments altered accordingly.

11. The Commissioners of Inland Revenue contended:

(1) that by virtue of Section 45(1) of the Finance Act, 1952, and Section 20(1) of the Finance Act, 1937, the profits of the Appellants for the purposes of assessment to the Excess Profits Levy fell to be computed on Income Tax principles subject to certain adaptations which are immaterial for the purposes of this case;

(2) that for the purposes of assessment to Income Tax and Profits Tax in respect of their trading for the year to 31st December, 1951, the year 1952 and the eleven months of 1953, the Appellants admitted that their stock had been correctly brought in at the written-down values thereof shown in their accounts for the said periods;

(3) that accordingly for the purposes of assessment to the Excess Profits Levy in respect of the Appellants' trading for the year 1952 and the eleven months of 1953 the said stock fell to be treated in the same way, so that the profits assessed thereby correctly reflected in the case of stock sold the difference between the written-down values of that stock and the amounts realised on sale;

(4) that the appeal should be dismissed.

12. I came to the conclusion that the relevant statutory provisions (Finance Act, 1952, Section 45(1) and Ninth Schedule; Finance Act, 1937, Section 20(1) and Fourth Schedule) require that the liability to the Excess Profits Levy should be calculated in the same manner as the liability to Income Tax and Profits Tax, that is to say, on the profits shown in the accounts in respect of each accounting period for those purposes, and held that the audited accounts submitted and accepted for Income Tax purposes must be regarded as final accounts for the accounting periods in question, and that the profits shown therein must be treated as the profits on which the computation of the Appellants' liability to the Excess Profits Levy fell to be assessed. Accordingly I decided the second question in favour of the Crown.

13. The question for the opinion of the Court is whether I was correct in law in holding that the liability of the Appellants to Excess Profits Levy during the said chargeable accounting periods ought to be calculated with reference to the market value of the stock as appearing in the audited accounts of the Appellants on 1st January, 1952, and 1st January, 1953, and not with reference to the cost of the stock.

Bradley McCall

9th July, 1962.

The case came before McVeigh, J., in the Queen's Bench Division in Northern Ireland on 28th and 29th May, 1963, when judgment was reserved. On 27th June, 1963, judgment was given in favour of the Crown, with costs.

Mr. W. F. Patton, Q.C., and Mr. R. T. Rowland appeared as Counsel for the Company, and Mr. R. L. E. Lowry, Q.C., and Mr. R. W. Porter for the Crown.

McVeigh, J.—This matter comes before me by way of Case Stated from the learned Additional Recorder of Belfast. The relevant part of the Case Stated is as follows:

" 6. The appeal involved two questions which the Special Commissioners had decided against the Appellants, first, whether a subsidiary company of the Appellants was, as the Appellants contended, resident in the United Kingdom on the material date, so that losses made by it could be taken into account in computing the profits of the Appellants liable to Excess Profits Levy, and, secondly, whether the liability of the Appellants to Excess Profits Levy should be calculated with reference to the difference between the market value of the stock, as appearing in the audited accounts of the Appellants on 1st January, 1952, and 1st January, 1953, and the realised value of the stock in the relevant accounting periods or, as the Appellants contended, with reference to the difference between the actual cost of the said stock and the realised value thereof. 7. On 21st April, 1961, I delivered a written judgment, which is annexed to and forms part of this Case, marked exhibit "A", accepting the Appellants' contention on the first question as to residence, and rejecting their contention on the second question as to the basis of calculation of the Appellants' profits for the purposes of Excess Profits Levy, and adjourned the hearing in order that, in the light of my judgment, the assessments might be agreed. 8. At a resumed hearing on 22nd November, 1961, the assessments having been so agreed without prejudice to the parties' rights of further appeal, I thereupon determined the appeal by reversing the decision of the Special Commissioners on the first question, by affirming their decision on the second question and by altering the assessments as follows: for the chargeable accounting period ended 31st December, 1952, from £86,512 7*s*. to £91,295 14*s*.; for the chargeable accounting period ended 30th November, 1953, from £75,740 17*s*. to £70,334 14*s*. The Appellants, having declared their dissatisfaction with my determination upon the second question, duly required me to state and sign a Case for the opinion of the High Court of Justice in Northern Ireland, which I accordingly do.

I found the following facts proved or admitted: 9. (i) The Appellants are manufacturers and merchants of textiles. At 31st December, 1951, they held a large stock, the actual cost of which was £543,530. In that year a heavy slump took place in the textile trade both in the United Kingdom and in the United States of America, where they carried on their trade, and accordingly at 31st December, 1951, the stock was written down in their accounts to £103,487, which I was satisfied was its then true market value. (ii) Subsequently to 31st December, 1951, the Appellants discovered a hitherto unexploited market in Africa and were able to dispose of large amounts of their stock at prices in excess of the written-down values at which they stood in their books. (iii) On the basis of the said written-down values (no further writing down having taken place in subsequent years) the Appellants disposed of £19,587 worth of stock during the year to 31st December, 1952 (hereinafter called 'the year 1952') and of £30,996 worth of stock

(McVeigh, J.)

during the eleven months to 30th November, 1953 (hereinafter called 'the eleven months of 1953'). On the basis of cost they disposed of £68,961 worth of stock in the year 1952 and of £387,383 worth of stock in the eleven months of 1953. (iv) The respective figures of stock at the end of each of said periods as shown in the said accounts, together with the respective figures of cost thereof before the writing down referred to above, are as follows:

Accounts	*Value of stocks shown in the accounts at end of the accounting period*	*Cost of stock*
	£	£
Year ended 31st December, 1952	83,900	474,569
11 months ended 30th November, 1953	52,904	87,186

(v) For the purposes of assessment to Income Tax and Profits Tax in respect of the Appellants' trading for the year to 31st December, 1951, the said writing down was accepted and taken into account. For the purposes of assessment to Income Tax and Profits Tax in respect of their trading for the years 1952 and 1953, the Appellants were assessed on a profit calculated with reference to the difference between the written-down values of the stock sold and the amounts realised on sale. 10. The Appellants contended (1) that the profits for the year 1952 had, by reason of the writing down, been inflated by £49,374 (being the difference between £68,961 and £19,587) and for the eleven months of 1953 by £356,387 (being the difference between £387,383 and £30,996) making a total inflation over the whole period of £405,761 above the profit based on actual cost which, they contended, was the true profit; (2) that since the profit on a transaction of sale could not exceed the difference between the cost of the article sold and the amount realised, the actual cost of the articles sold must appear in the account at some stage and the Appellants were entitled to commence the account for Excess Profits Levy by bringing in their stock at cost; (3) that for Income Tax and Profits Tax purposes in the year ending 31st December, 1951, the Appellants had been permitted to write down the value of their stock and so to anticipate and take credit in advance for a loss which had not then been realised, and were accordingly bound in future accounts for those purposes to bring that sum back by substituting the written-down value for the cost, but since for Excess Profits Levy (which was a new tax) they had never made any deduction or taken credit for anticipated losses there was no reason to bring any sum back or to substitute any figure for the actual cost of stock in hand; (4) that commencing the account with the stock at cost and not writing the stock down at 31st December, 1952, the result of the Appellants' trading over the two chargeable accounting periods, namely the year 1952 and the 11 months of 1953, would have shown in the earlier period a smaller profit than that upon which they were assessed and in the later period a substantial deficiency, and that the decision of the Special Commissioners should be set aside and the assessments altered accordingly. 11. The Commissioners of Inland Revenue contended: (1) that by virtue of Section 45(1) of the Finance Act, 1952, and Section 20(1) of the Finance Act, 1937, the profits of the Appellants for the purposes of assessment to the Excess Profits Levy fell to be computed on Income Tax principles subject to certain adaptations which are immaterial for the purposes of this case; (2) that for the purposes of assessment to Income Tax and Profits Tax in respect of their trading for the year to 31st December, 1951, the year 1952 and the eleven months of 1953, the Appellants admitted that their stock had been correctly brought in at the written-down values thereof shown in their accounts for the said periods; (3) that accordingly for the purposes of assessment to the Excess Profits Levy in respect of the Appellants' trading for the year 1952 and the eleven months of 1953 the said stock fell to be treated in the same way, so that the profits assessed thereby correctly reflected in the case of stock sold the difference between the written-down values of that stock and the amounts realised on sale; (4) that the appeal be dismissed.

12. I came to the conclusion that the relevant statutory provisions (Finance Act, 1952, Section 45(1) and Ninth Schedule; Finance Act, 1937, Section 20(1) and Fourth Schedule) require that the liability to the Excess Profits Levy should be calculated in the same manner as the liability to Income Tax and Profits Tax, that is to say, on the profits shown in the accounts in respect of each accounting period for those purposes, and held that the audited accounts submitted and accepted for Income Tax purposes must be regarded as final accounts for the accounting periods in question, and that the profits shown therein must be treated as the profits on which the computation of the Appellants' liability to the Excess Profits Levy fell to be assessed. Accordingly I decided the second question in favour of the Crown. 13. The question for the opinion of the Court is whether I was correct in law in holding that the liability of the Appellants to Excess Profits Levy during the said chargeable accounting periods ought to be calculated

(McVeigh, J.)

with reference to the market value of the stock as appearing in the audited accounts of the Appellants on 1st January, 1952, and 1st January, 1953, and not with reference to the cost of the stock."

Much depends in this case upon the construction to be given to the relevant statutory provisions, and I now proceed to look at these. Excess Profits Levy is charged under the Finance Act, 1952, Section 36, in the following words:

> " Where the profits for any chargeable accounting period of a body corporate which is carrying on a trade or business to which this Part of this Act applies exceed its standard profits, there shall . . . be charged on it in respect of the excess a tax (to be called the excess profits levy) equal to thirty per cent. of the excess."

This Levy, by Section 36(4),

> " shall be charged in addition to income tax and the profits tax and, in computing any income, profits or losses for the purposes of income tax or the profits tax, no deduction shall be made on account of liability to pay, or payment of, the excess profits levy."

The standard profits, with which the profits of the chargeable accounting period are to be compared for the purpose of seeing if there has been an excess profit in that period, are those of a " standard period " which is defined in the Act.

I should have thought that these provisions envisaged a situation where one looks at the profits of the trade or business of an earlier period with the profits of a later period in order to see if an excess profit has arisen. One would have thought that such a process would involve comparing " like with like ", namely, that the accounts prepared for Income Tax purposes on Income Tax principles would be the basis for ascertaining the excess profits in the relevant years. And, indeed, this appears to receive confirmation from the provisions of Section 45(1) of the Finance Act, 1952, which provides:

> " Subject to the provisions of this Act and, in particular, to the provisions of the Ninth Schedule to this Act, the profits or loss of a body corporate for any accounting period shall be computed for the purposes of the excess profits levy as if the computation were the computation for the purposes of the profits tax of the profits or loss arising from its trade or business in that period."

This provision leads one to look at the statutory provisions which declare how profits are to be " computed for the purposes of the profits tax ". This tax was originally called " the national defence contribution ", but was renamed " profits tax " by Section 44 of the Finance Act, 1946, and accordingly one turns to the legislation relating to the National Defence Contribution, which is found in the Finance Act, 1937. Section 19 of that Act provides:

> " There shall be charged, on the profits arising in each chargeable accounting period . . . from any trade or business to which this section applies, a tax (to be called the ' national defence contribution ')".

Section 20 of the 1937 Act declares that:

> " . . . the profits arising from a trade or business in each chargeable accounting period shall be separately computed, and shall be so computed on income tax principles as adapted in accordance with the provisions of the Fourth Schedule to this Act."

It should also be borne in mind that a company may be liable to Income Tax, Profits Tax and Excess Profits Levy. It is clear, it seems to me, from these statutory provisions that a company must: (*a*) put forward a computation of its profits on Income Tax principles for Income Tax purposes, and (*b*) put forward a computation of its profits for Profits Tax on Income Tax principles, and (*c*) put forward a computation of its profits for Excess Profits Levy on Income Tax principles. The Profits Tax and the Excess Profits Levy are, it seems to me,

(McVeigh, J.)

firmly related and are tied to the computation for Income Tax purposes. Thus, it would seem to follow that a company having adopted an accountancy method of computation of profits which is in accordance with Income Tax principles is bound to use that method of computation for the purpose of Excess Profits Levy. It is not permissible, in my view, to offer another and different method of computation for Excess Profits Levy even although such an alternative method might have been justified (within Income Tax principles) in the first place for ascertaining liability to Income Tax.

As against this interpretation Counsel for the Appellant sought to rely on the words to be found in paragraph 1 of the Fourth Schedule to the Finance Act, 1937, viz:

> " The profits shall be taken to be the actual profits arising in the chargeable accounting period ".

I do not consider that these words prevent me from construing the statutory provisions as I have done, because any legitimate computation according to Income Tax principles is one which ought to show the actual profits. As Viscount Simonds said in *Ostime* v. *Duple Motor Bodies, Ltd.*(1), [1961] 2 All E.R. 167, at page 170,

> " The important thing is that the method which is in fact adopted should not violate the taxing statute."

The main thing is to get at the true figure of profit for Income Tax purposes; this is what I understand by " the actual profits ".

In the case of this Company it is found by the Additional Recorder that it held a large stock of textiles as at 31st December, 1951, the actual cost of which was £543,530. A heavy slump took place in the textile trade in that year in both the United Kingdom and in the United States of America, and, accordingly, as at 31st December, 1951, the stock was written down in the Company's accounts to £103,487, which the Judge found as a fact " was its then true market value ". He also found that, for the purposes of assessment to Income Tax and Profits Tax in respect of the Appellant's trading for the year to 31st December, 1951, the said writing down was accepted and taken into account. He further found that, for the purposes of assessment to Income Tax and Profits Tax in respect of its trading for the years 1952 and 1953, the Appellant was assessed on a profit calculated with reference to the difference between the written-down values of the stock sold and the amounts realised on the sale. This method of computation, which was adopted by the Company and accepted by the Revenue for those purposes, has not been challenged, nor has it been suggested that it was in any way unfair or unjust. It was one which was not, in my view, inconsistent with any Income Tax principle nor with any of the authorities cited in this case.

The method, therefore, adopted by the Company to show the results of its trading and thereby its true or actual profits was one which set out the value of the stock at its written-down value, which the Recorder found was its " true value ", one could say its actual value. In my view, both in law and common sense (and this latter is a useful guide in the tax field as elsewhere—see Lord Reid in the *Duple Motor Bodies* case(2), [1961] 2 All E.R., at pages 173–4) the trading accounts and the methods therein adopted for ascertaining Income Tax and Profits Tax are the accounts and methods to be used for ascertaining Excess Profits Levy. It is not permissible, in my view, to rewrite the accounts

(1) 39 T.C. 537, at p. 567. (2) *Ibid* at p. 571.

(McVeigh, J.)

for the purpose of the Excess Profits Levy. This conclusion is not based upon any principle of estoppel or analogous doctrine, but is what I believe to be the result of the true construction of the statutory provisions.

The question submitted to me by the Additional Recorder is:

"Whether I was correct in law in holding that the liability of the Appellants to Excess Profits Levy during the said chargeable accounting periods ought to be calculated with reference to the market value of the stock as appearing in the audited accounts of the Appellants on 1st January, 1952, and 1st January, 1953, and not with reference to the cost of the stock."

I would answer this question "yes".

The Company having appealed against the above decision, the case came before the Court of Appeal in Northern Ireland (Black and Curran, L.JJ.) on 4th, 5th and 6th November, 1963, when judgment was reserved. On 9th July, 1964, judgment was given in favour of the Crown, with costs.

Mr. W. F. Patton, Q.C., and Mr. R. T. Rowland appeared as Counsel for the Company, and Mr. R. L. E. Lowry, Q.C., and Mr. R. W. Porter for the Crown.

Black, L.J.—This appeal raises a point in regard to the measure of the liability of the Appellants to the Excess Profits Levy in respect of two chargeable accounting periods, the first being the twelve months ended 31st December, 1952, and the second the eleven months ended 30th November, 1953.

The case comes before this Court on appeal from a decision of McVeigh, J., on a Case stated by the Deputy Recorder of Belfast. The facts which were proved or admitted are set out by the learned Deputy Recorder in the Case Stated. It appears that the Appellants are manufacturers and merchants of textiles and that at 31st December, 1951, they held a large stock the actual cost of which was £543,530. In that year a heavy slump took place in the textile trade both in the United Kingdom and in the United States of America, where the Appellants carried on their trade, and accordingly at 31st December, 1951, the stock was written down in the Appellants' accounts to £103,487, which the Deputy Recorder in paragraph 9(i) of the Case Stated states he was satisfied was its then true market value. Subsequently to 31st December, 1951, the Appellants discovered a hitherto unexploited market in Africa and were able to dispose of large amounts of their stock at prices in excess of the written-down values at which they stood in their books. On the basis of the said written-down values the Appellants disposed of £19,587 worth of stock during the year to 31st December, 1952, and of £30,966 worth of stock during the eleven months to 30th November, 1953. On the basis of cost, however, they disposed of £68,961 worth of stock during 1952 and of £387,383 worth of stock in the eleven months of 1953. The Case Stated also sets out that the values of the stocks as shown in the Company's accounts at the end of December, 1952, and at the end of November, 1953, were respectively £83,900 and £52,904, and that the respective costs of those stocks were £474,569 and £87,186.

For the purposes of assessment to Income Tax and Profits Tax in respect of the Appellants' trading for the year to 31st December, 1951, the foregoing writing-down was accepted and taken into account. For the purposes of assess-

(Black, L.J.)

ment to Income Tax and Profits Tax in respect of their trading for the years 1952 and 1953 the Appellants were assessed on a profit calculated with reference to the difference between the written-down values of the stock sold and the amounts realised on sale. In assessing the Appellants to the Excess Profits Levy in respect of the two chargeable accounting periods ending 31st December, 1952, and 30th November, 1953, the Commissioners of Inland Revenue proceeded on the same basis, namely, that the value of the Appellants' stock at the beginning of 1952 should be treated as the (written-down) value at which it was shown in their accounts at 31st December, 1951. From those assessments the Appellants appealed to the Special Commissioners, who, however, affirmed the assessments. The Appellants then required their appeal to be reheard by the Recorder of Belfast, contending that their liability to the Excess Profits Levy should be calculated, not with reference to the difference between the market value of the stock as appearing in their audited accounts on 1st January, 1952, and 1st January, 1953, and the realised value of the stock in the relevant accounting periods, but with reference to the difference between the actual original cost of the stock and its realised value. The learned Deputy Recorder rejected the Appellants' contention and made certain alterations in the assessments which had been agreed between the parties without prejudice to their rights of further appeal. The Appellants having declared their dissatisfaction with the Deputy Recorder's determination duly required him to state a Case for the opinion of the High Court of Justice in Northern Ireland. The question submitted by the Deputy Recorder for the opinion of the Court was whether he was correct in holding that the liability of the Appellants to Excess Profits Levy during the said chargeable accounting periods ought to be calculated with reference to the market value of the stock as appearing in the audited accounts of the Appellants on 1st January, 1952, and 1st January, 1953, and not with reference to the cost of the stock. McVeigh, J., answered this question in the affirmative and the present appeal to this Court is from the decision of McVeigh, J.

The Excess Profits Levy was introduced by the Finance Act, 1952. Section 36(1) of that Act provided that, where the profits for any chargeable accounting period of a body corporate engaged in carrying on a trade or business to which the Act applied exceeded its standard profits, there should be charged on it in respect of the excess a tax (to be called the Excess Profits Levy) equal to thirty per cent. of the excess. Section 36(2) defined " chargeable accounting period " as meaning:

> " (*a*) any accounting period of the body corporate which falls wholly within the period of charge to the excess profits levy; and (*b*) so much of any accounting period of the body corporate falling partly within and partly outside the said period of charge as falls within the said period of charge,"

and the same Sub-section defined

> " the period of charge to the excess profits levy "

as meaning the period beginning with 1st January, 1952, and ending with such day as Parliament might thereafter determine. By the combined effect of Sections 36(3), 38(1) and 38(5) of the Act of 1952 the " standard profits " of a company such as the Appellants which had commenced business on or before 1st January, 1947, were to be half its aggregate profits for such two of the years 1947, 1948 and 1949 as the company might elect. And by Section 45(1) of the Act it was enacted that (subject to certain provisions which do not fall for consideration in the present case) the profits or loss of a body corporate for any accounting period should be computed for the purposes of the Excess Profits Levy as if the computation were the computation for the purposes of the Profits Tax of the profits or loss arising from its trade or business in that period.

(Black, L.J.)

In order, therefore, to ascertain how the profits of the Appellants for the two chargeable accounting periods with which this case is concerned should be computed for the purposes of the Excess Profits Levy we must turn to the provisions regarding the computation of profits for the purposes of the Profits Tax. The Profits Tax was first introduced under the name of National Defence Contribution by Part III of the Finance Act, 1937. Its name was subsequently altered to Profits Tax by Section 44 of the Finance Act, 1946. By Section 20(1) of the Act of 1937 it was enacted that for the purposes of this contribution (or tax, as it was later called) the profits arising from a trade or business in each chargeable accounting period should be separately computed, and should be so computed on Income Tax principles as adapted in accordance with the provisions of the Fourth Schedule to the Act. And for the purposes of Section 20(1) the expression " income tax principles " in relation to a trade or business was defined by the Sub-section as meaning the principles on which the profits arising from the trade or business were computed for the purpose of Income Tax under Case I of Schedule D.

The only part of the Fourth Schedule to the Act of 1937 which need concern us is Paragraph 1 of that Schedule, which reads:

> " 1. The profits shall be taken to be the actual profits arising in the chargeable accounting period; and the principles of computing profits by reference to any other period . . . shall not be followed."

It appears clear to me from these provisions, and indeed from the whole framework of the provisions relating to the tax, that the Legislature was concerned to direct the assessing authority, when calculating the profits of the chargeable accounting period for the purposes of the contribution or tax, to have regard to the profits of that period itself calculated on Income Tax principles. For the purpose of calculating the profits of the chargeable accounting period the assessing authority was to focus its attention on that period alone. What mattered were the profits of that particular period, and in calculating those profits no regard whatever was to be paid to the profits or losses of any earlier or subsequent period.

What then are the principles on which the profits arising from a trade or business are to be computed for the purpose of Income Tax under Case I of Schedule D? What is now recognized as an authoritative statement of those principles is found in the judgment of the Lord President (Clyde) in *Whimster & Co.* v. *Commissioners of Inland Revenue* (1925), 12 T.C. 813. At page 823, Lord Clyde says:

> " In computing the balance of profits and gains for the purposes of Income Tax, or for the purposes of Excess Profits Duty, two general and fundamental commonplaces have always to be kept in mind. In the first place, the profits of any particular year or accounting period must be taken to consist of the difference between the receipts from the trade or business *during such year or accounting period* and the expenditure laid out to earn *those receipts*. In the second place, the account of profit and loss to be made up for the purpose of *ascertaining that difference* must be framed consistently with the ordinary principles of commercial accounting, so far as applicable, and in conformity with the rules of the Income Tax Act, or of that Act as modified by the provisions and schedules of the Acts regulating Excess Profits Duty, as the case may be. For example, the ordinary principles of commercial accounting require that in the profit and loss account of a merchant's or manufacturer's business the values of the stock-in-trade at the beginning and at the end of the period covered by the account should be entered at cost or market price, whichever is the lower; although there is nothing about this in the taxing statutes."

In *Patrick* v. *Broadstone Mills, Ltd.*[1], [1954] 1 W.L.R. 158, Singleton, L.J., says, at pages 169–70[2], that this principle enunciated by Lord Clyde has been accepted generally and that it is sound in practice. And in *Minister of National*

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[1] 35 T.C. 44. [2] *Ibid.*, at p. 65.

(Black, L.J.)

Revenue v. *Anaconda American Brass, Ltd.*, [1956] A.C. 85, Viscount Simonds, delivering the judgment of the Privy Council, says, at page 100:

> " The income tax law of Canada, as of the United Kingdom, is built upon the foundations described by Lord Clyde in *Whimster & Co.* v. *Inland Revenue Commissioners* (1)".

He then proceeds to repeat the passage which I have just quoted from Lord Clyde's judgment, and continues (at page 101):

> " For many years before and ever since this decision what is to be valued at the beginning and end of the accounting period has for tax purposes been taken to be the actual stock so far as it can be ascertained."

I am accordingly of opinion that, in calculating the liability of the Appellants to the Excess Profits Levy and in seeking to compute on Income Tax principles the profits arising from the Appellants' trade or business in the two relevant chargeable accounting periods, the Commissioners of Inland Revenue were correct in making their calculations with reference to the difference between the market value of the Appellants' stock as appearing in their audited accounts of 1st January, 1952, and 1st January, 1953, and the realised value of the stock in the relevant accounting period.

Mr. Patton, on behalf of the Appellants, relied strongly on the phrase used in Paragraph 1 of the Fourth Schedule to the Act of 1937 that the profits shall be taken to be the actual profits arising in the chargeable accounting period. He contended that the phrase " actual profits " must mean the difference between the original cost of the stock and the price ultimately realised for it. To my mind this is to misconstrue the intention of the Legislature in enacting Paragraph 1. The Legislature was concerned with the profits of the actual chargeable accounting periods, and, while directing by Section 20(1) of the Act of 1937 that the profits from a trade or business in each chargeable accounting period should be computed on Income Tax principles, was directing by Paragraph 1 of the Fourth Schedule that the profits should be the actual profits arising in the relevant chargeable accounting period itself, computed on those principles, and was excluding that part of Income Tax practice which prescribed (by Section 29 of the Finance Act, 1926) that Income Tax chargeable under Case I of Schedule D should be computed, not upon the actual profits or gains of the year of assessment but upon the profits or gains of the year preceding the year of assessment.

The provision contained in Paragraph 1 of the Fourth Schedule to the Act of 1937 was no new thing. In making provision for the Excess Profits Duty introduced by Part III of the Finance (No. 2) Act, 1915, Section 40(1) of that Act enacted that the profits arising from any trade or business in any accounting period should be separately determined for that Part of the Act, but should be so determined on the same principles as the profits and gains of the trade or business would be determined for the purpose of Income Tax, subject to the modifications set out in the First Part of the Fourth Schedule to the Act. By Paragraph 1 of Part I of the Fourth Schedule it was enacted as follows:

> " 1. The profits shall be taken to be the actual profits arising in the accounting period; and the principle of computing profits by reference to any other year or an average of years shall not be followed."

Income Tax under Case I of Schedule D was normally computed in 1915 on the average of the profits and gains of the three years immediately preceding the year of assessment, and this practice was continued under the Rules applicable to

(1) 12 T. C. 813.

(Black, L.J.)

Schedule D in the Income Tax Act, 1918. In *C.M. Legg & Son, Ltd.* v. *Commissioners of Inland Revenue* (1920), 12 T.C. 391, Molony, C.J., says (at page 396):

> " In estimating Excess Profits Duty you must first compute the profits arising in the accounting period in the ordinary way in which profits are computed for Income Tax, the only difference being that you are to take the actual profit arising in the accounting period, and not the average profit over three years as in the case of Income Tax."

In my opinion this is the sense in which the phrase " actual profits " is used in Paragraph 1 of the Fourth Schedule to the Act of 1937. To read it with the meaning contended for by Mr. Patton would in my judgment be quite out of accord with the intention of the Act and could, I should imagine, lead to some extraordinary results. To my mind the conclusion arrived at by the Special Commissioners, by the Deputy Recorder, and by McVeigh, J., was right and I would dismiss the appeal.

Curran, L.J.—The Appellants admit that for the purpose of assessment to Income Tax and Profits Tax in respect of their trading for the year to 31st December, 1951, the year 1952 and the eleven months of 1953, their stock has been correctly brought in at the written-down values shown in their accounts for the said period.

Section 45(1) of the Finance Act, 1952, provides:

> " (1) Subject to the provisions of this Act and, in particular, to the provisions of the Ninth Schedule to this Act, the profits or loss of a body corporate for any accounting period shall be computed for the purposes of the excess profits levy as if the computation were the computation for the purposes of the profits tax of the profits or loss arising from its trade or business in that period."

In my opinion it would be inconsistent with these provisions, coupled with the aforesaid admission by the Appellants, to hold that the Appellants are entitled to compute their profits or loss for the purpose of the Excess Profits Levy on a different basis, namely, by substituting cost for written-down values.

A separate computation is, of course, required to ascertain the excess profits, and this is provided for in Section 20(1) of the Finance Act, 1937—but that does not affect the basis of the computation. It is also provided in Paragraph 1 of the Fourth Schedule to the Finance Act, 1937, as follows:

> " 1. The profits shall be taken to be the actual profits arising in the chargeable accounting period; and the principles of computing profits by reference to any other period . . . shall not be followed."

The meaning of the word " actual " in this context was correctly stated, in my opinion, by Mr. Lowry in his argument on behalf of the Crown. He contended that the word " actual " is not to be contrasted with notional or artificial profits; the contrast is between profits in the chargeable accounting period and profits arising in another period. He referred to what was said by Molony, C.J., in *C. M. Legg & Son, Ltd.* v. *Commissioners of Inland Revenue*, 12 T.C. 391, at page 396:

> " In estimating Excess Profits Duty you must first compute the profits arising in the accounting period in the ordinary way in which profits are computed for Income Tax, the only difference being that you are to take the actual profit arising in the accounting period, and not the average profit over three years as in the case of Income Tax."

Molony, C.J., was dealing with a provision in Paragraph 1 of Part I of the Fourth Schedule to the Finance (No. 2) Act, 1915, similar to that found in Paragraph 1 of the Fourth Schedule to the Finance Act, 1937.

I agree that the appeal be dismissed.

The Company having appealed against the above decision, the case came before the House of Lords (Lords Reid, Hodson, Guest, Upjohn and Pearson) on 27th and 28th April, 1965, when judgment was reserved. On 27th May, 1965, judgment was given unanimously in favour of the Crown, with costs.

Mr. M. W. Gibson, Q.C., and Mr. R. T. Rowland appeared as Counsel for the Company, and the Attorney-General for Northern Ireland (Mr. E. W. Jones, Q.C.), Mr. J. Raymond Phillips and Mr. R. W. Porter for the Crown.

Lord Reid.—My Lords, I have had an opportunity of reading the speeches of my noble and learned friends Lord Guest and Lord Upjohn, and I agree with them that this appeal should be dismissed.

Lord Hodson.—My Lords, I concur.

Lord Guest.—My Lords, the issue in this case resolves itself into a dispute between the Crown and the taxpayer as to whether for the purposes of the Excess Profits Levy imposed by the Finance Act, 1952, stock must in the circumstances of the case be taken at cost price or at market value. The Appellants, who are manufacturers and merchants of textiles, held as at 31st December, 1951, a large stock, the purchase price of which was £543,530. During that year a heavy slump took place in the textile trade and the stock was accordingly written down in their accounts as at 31st December, 1951, to £103,487, which was their then market value. Subsequently the Appellants discovered an unexploited market for this stock, and they sold some of the stock for a price very much in excess of its market value although less than its cost price. For the purposes of the Excess Profits Levy computation the Crown say that the figure to deduct from the realised figure is the market value, and this results in a profit. The Appellants say that the opening figure should be the cost price, which would result in a loss. The Appellants claim, not unnaturally, that it is unfair that they should be mulcted in a profit which was never in fact realised. But Income Tax law is seldom logical and sometimes unfair.

The matter depends upon a consideration of the Finance Acts of 1937 and 1952. Section 45(1) of the Finance Act, 1952, provides as follows:

> "Subject to the provisions of this Act and, in particular, to the provisions of the Ninth Schedule to this Act, the profits or loss of a body corporate for any accounting period shall be computed for the purposes of the excess profits levy as if the computation were the computation for the purposes of the profits tax of the profits or loss arising from its trade or business in that period."

The Profits Tax was first introduced under the name of the National Defence Contribution by Part III of the Finance Act, 1937. It was subsequently called the Profits Tax by Section 44 of the Finance Act, 1946. Section 20(1) of the 1937 Act governed the computation of profits for the purposes of this tax and was in the following terms:

> ". . . the profits arising from a trade or business in each chargeable accounting period shall be separately computed, and shall be so computed on income tax principles as adapted in accordance with the provisions of the Fourth Schedule to this Act."

The result of these statutory provisions is that for the purposes of the Excess Profits Levy the Appellants' profits have to be computed upon Income Tax principles as adapted by the provisions of the Fourth Schedule to the 1937 Act. In making the computation the Appellants must make the computation as if it was being made for the purposes of the Profits Tax. When the

(Lord Guest)

Excess Profits Levy became operative in 1952 there was no previous accounting period upon which the new computation could start. So the figure which must appear as the opening figure for the purposes of the Excess Profits Levy is the same figure as would appear in a computation for Profits Tax purposes. It is a finding of fact by the Additional Recorder of Belfast that:

> " For the purposes of assessment to Income Tax and Profits Tax in respect of their trading for the years 1952 and 1953, the Appellants were assessed on a profit calculated with reference to the difference between the written-down values of the stock sold and the amounts realised on sale."

The opening figure for the stock in the Profits Tax computation was the written-down value of the stock, and the same figure must, therefore, also be the opening figure for the Excess Profits Levy computation.

In my view, Section 45(1) of the 1952 Act is conclusive of the matter in the Crown's favour. The only escape from the operation of this Section is the Ninth Schedule. It was argued for the Appellants that, having regard to Paragraph 2 of the Ninth Schedule, which provides that no loss shall be carried forward from any previous accounting period, the effect of taking the written-down value of the stock was the carrying forward of a loss which was prohibited by Paragraph 2. It is clear, however, to me that the " loss " referred to is a general loss in the carrying on of the business and not a loss on a particular transaction.

The main argument put forward by the Appellants was based on the provisions of Paragraph 1 of the Fourth Schedule to the Finance Act, 1937, which is in the following terms:

> " The profits shall be taken to be the actual profits arising in the chargeable accounting period; and the principles of computing profits by reference to any other period . . . shall not be followed."

The 1937 Act introduced the National Defence Contribution, the predecessor of the Excess Profits Levy, and the Fourth Schedule provided the adaptation of the Income Tax provisions as to the computation of profits for the purposes of the National Defence Contribution. It was argued that the expression " actual profits " meant that the cost price of the stock must be taken in order to bring out the " actual profit " upon realisation, and not a hypothetical or notional figure such as the written-down or market value. There is, in my opinion, no substance in this argument. Paragraph 1 of the Fourth Schedule to the 1937 Act has its counterpart in Paragraph 1 of Part I of the Fourth Schedule to the Finance (No. 2) Act, 1915. That Act introduced the Excess Profits Duty, which, according to Section 40, was to be determined on the same principles as Income Tax, subject to the modifications in the First Part of the Fourth Schedule. It was, therefore, necessary to provide that the profits to be taken were to be the actual profits arising in the accounting period and not by reference to any other period or an average of years, because at that date Income Tax was computed upon a three-year average. This idea is carried forward into the Finance Act, 1937, when the National Defence Contribution was introduced, and it again had to be made clear that it was the " actual profits " for the chargeable accounting period that had to be taken and not, as under Income Tax principles, the profits of the previous year. The expression " actual profits " is a carry-forward from the 1915 Act to the 1937 Act and has, in my opinion, no significance in regard to the computation of profits for the purposes of the Excess Profits Levy.

I would for these reasons dismiss the appeal.

Lord Upjohn.—My Lords, the sole issue which your Lordships have to determine in this appeal is that put by the learned Additional Recorder of Belfast (Mr. Bradley McCall, Q.C.) in paragraph 13 of his Case Stated, namely, whether he was correct in law in holding that the liability of the Appellants to Excess Profits Levy for certain chargeable accounting periods ought to be calculated with reference to the market value of certain stock as appearing in the audited accounts of the Appellants on 1st January, 1952, and 1st January, 1953, respectively, and not with reference to the cost of the stock.

The relevant facts are fully set out in the Case Stated and need only the briefest recapitulation. The Appellants are manufacturers and merchants of textiles. On 31st December, 1951, which was the last day of their financial year, they held a large stock of material, the actual cost of which was £543,530. In that year a heavy slump took place in the textile trade and accordingly as on that date the stock was quite properly written down in their accounts to the sum of £103,487; the Additional Recorder was satisfied that this figure was then the true market value of the stock so written down. Apart from questions of tax this was a most prudent, commonsense and above all realistic appraisal of the true facts of the situation by the Appellants. This written-down figure was of course also the opening stock figure for the financial year beginning on 1st January, 1952. Subsequently, the Appellants discovered a hitherto unexploited market in Africa and were able to dispose of large amounts of this stock at prices substantially in excess of the written-down values. For the two relevant accounting periods, namely, 1st January to 31st December, 1952, and 1st January to 30th November, 1953 (and parenthetically I may say that the difference in the length of these two periods was due solely to a change by the Appellants during 1952 in bringing their financial year to an end on the 30th November, and is without significance) the Appellants prepared their accounts on the footing of the written-down stock values as on 31st December, 1951. Accordingly, as the learned Additional Recorder found:

> " For the purposes of assessment to Income Tax and Profits Tax in respect of the Appellants' trading for the year to 31st December, 1951, the said writing down was accepted and taken into account. For the purposes of assessment to Income Tax and Profits Tax in respect of their trading for the years 1952 and 1953, the Appellants were assessed on a profit calculated with reference to the difference between the written-down values of the stock sold and the amounts realised on sale."

The Appellants have always accepted that such assessments for the purposes of Income Tax and Profits Tax were entirely correct and computed in accordance with proper Income Tax principles.

The Excess Profits Levy was a temporary tax introduced by Part V of the Finance Act, 1952, and it continued only until the end of the calendar year 1953. The tax was charged by the opening Section 36, which provided that, where the profits for any chargeable accounting period of a body corporate engaged in carrying on a trade or business to which the Act applied exceeded its standard profits, there should be charged on it in respect of the excess a tax (to be called the Excess Profits Levy) equal to thirty per cent. of the excess. I need not detain your Lordships with any reference to the definitions of " standard profits " or " chargeable accounting period ", for no point turns thereon in this appeal. The periods and the figures are all agreed. The vital Section is Section 45(1) of the Finance Act, 1952, which is in these terms:

> " Subject to the provisions of this Act and, in particular, to the provisions of the Ninth Schedule to this Act, the profits or loss of a body corporate for any accounting period shall be computed for the purposes of the excess profits levy as if the computation were the computation for the purposes of the profits tax of the profits or loss arising from its trade or business in that period."

(Lord Upjohn)

As the Appellants relied on Paragraph 2 of the Ninth Schedule I must set it out. It was in these terms:

> " No loss shall be carried forward from any previous accounting period, and no sum shall be deducted in respect of wear and tear under sub-paragraph (2) of paragraph 3 of the Fourth Schedule to the Finance Act, 1937."

As Section 45 of the Finance Act, 1952, throws one back to the legislation relating to Profits Tax and much the greatest part of the argument before your Lordships turned on the meaning to be attributed to that legislation, I must turn to the relevant legislation relating to Profits Tax, and, in view of the arguments that have been addressed to your Lordships, I shall start with the Finance (No. 2) Act, 1915, which by Part III imposed a new duty known as Excess Profits Duty on profits which exceeded by more than £200 the pre-war standard of profits as defined therein. The Fourth Schedule to that Act, by Part I, Paragraph 1, provided that:

> " The profits shall be taken to be the actual profits arising in the accounting period; and the principle of computing profits by reference to any other year or average of years shall not be followed."

The Profits Tax, originally known as the National Defence Contribution, was imposed by Part III of the Finance Act, 1937. Section 20(1) provided that:

> " For the purpose of the national defence contribution the profits arising from a trade or business in each chargeable accounting period shall be separately computed, and shall be so computed on income tax principles as adapted in accordance with the provisions of the Fourth Schedule to this Act. For the purposes of this subsection the expression ' income tax principles ' in relation to a trade or business means the principles upon which the profits arising from the trade or business are computed for the purpose of income tax under Case I of Schedule D, or would be so computed if income tax were chargeable under that Case in respect of profits so arising."

By Paragraph 1 of the Fourth Schedule it was provided:

> " The profits shall be taken to be the actual profits arising in the chargeable accounting period; and the principles of computing profits by reference to any other period and, save as provided in the next following paragraph, of allowing losses sustained in any other period to be carried forward, shall not be followed."

I return to the governing Section, that is Section 45 of the Finance Act, 1952. That Section makes it clear that the computation for the purposes of Excess Profits Levy is to be as if the computation were the computation for the purposes of the Profits Tax arising from the trade or business in that period.

The computation for Profits Tax was made and accepted based on the written-down stock figures for the relevant periods. That would *prima facie* seem to be sufficient to dispose of this case, for the words of Section 45, the governing Section, are quite plain and do not seem to admit of any doubt.

Met with this difficulty, the Appellants have argued that, although they are compelled by the 1937 legislation to compile their accounts on Income Tax principles, this only means on quite general principles and they are not bound by any computations which they may have in fact made for the purposes of computation of Profits Tax for the relevant periods. They are entitled, they argue, to submit new accounts altogether, for this was a completely new tax introduced for the first time in 1952.

The Appellants' main argument before your Lordships in this appeal, as in the Courts below, fastens upon the phrase " actual profits " in Paragraph 1 of the Fourth Schedule to the Finance Act, 1937. It was submitted that, as the " actual profits " are to be the subject of assessment, any notional or anticipated loss not yet realised must be excluded. Therefore, it was quite wrong to take any written-down value of stock, and cost is the only proper figure to be taken into account when ascertaining actual profits, for actual profits can

(Lord Upjohn)

only be ascertained by taking the cost and subtracting that from the sum realised on sale. It was suggested that the word " actual " in this connection had some well-defined legal or accountancy meaning, that only ascertained and not notional profits were to be brought into computation, which led to the conclusion that, with regard to figures of stock brought into account, cost must be taken and not some written-down value.

My Lords, I am quite unable to accept this argument. I have ventured to trace the statutory history behind the Act of 1952 to show how it has come about that the word " actual " is used in this connection. In 1915, for the purposes of Income Tax, profits were ascertained on the average profits of the three previous years. When Excess Profits Duty was imposed Parliament made it quite plain, in Paragraph 1 of the Fourth Schedule to the 1915 Act, that it did not want this principle to be followed for the purposes of that duty, but that it wanted the assessment to be upon the profits actually arising in the accounting period, and so appropriately the phrase " actual profits " was used to make this quite clear. The same method of assessment was to be followed in 1937, and so the first Paragraph of the Fourth Schedule followed the phraseology of the 1915 Act by the use of the phrase " actual profits ", making such verbal alterations in the remainder of the Paragraph as were necessary because for the purposes of Income Tax the basis had changed from the three-year average to the profits of the previous year. So in the Act of 1952 the same phraseology was employed. That seems to me the full and sufficient explanation of the phrase " actual profits " appearing in the Act of 1952, and I cannot ascribe to the use of that phrase any special method of computation which involves bringing in stock necessarily at cost and not at a written-down value where that has been appropriate and accepted for the purposes of the Profits Tax.

But, apart altogether from this historical explanation, the phrase " actual profits " does not, to my mind, connote any clear or specific method of calculating profits different from the calculation of profits according to ordinary Income Tax principles. The phrase is not a term of art either to the lawyer or to the accountant versed in Income Tax matters, and in ascertaining " actual " profits I see nothing to prevent the taxpayer in a proper case from starting with a written-down stock figure if that is a true and proper figure in any particular case. So far as I know, the phrase has never been judicially construed; in *C. M. Legg and Son, Ltd.* v. *Commissioners of Inland Revenue*, 12 T.C. 391, and in *Commissioners of Inland Revenue* v. *Gardner Mountain & D'Ambrumenil, Ltd.*, 29 T.C. 69, this phrase was considered in connection with the Acts of 1915 and 1937 but was assumed to have a perfectly ordinary colloquial meaning and no special accountancy or legal meaning was given to it. The Appellants were indeed faced with this dilemma, that if their argument is correct then not only has Profits Tax been wrongly assessed for the relevant periods in this case but the Act of 1937 has always been wrongly interpreted for nearly 30 years, for it cannot be doubted that many cases have been dealt with upon the footing that it has been correct to take the written-down value where that is the proper figure to take on general Income Tax principles. It was suggested that this was due to some extra-statutory concession or oversight but I am quite unable to accept this.

My Lords, it seems to me, with all respect to the argument so persuasively put before your Lordships, that this reliance on some special meaning of the phrase " actual profits " is misconceived.

The Appellants present a further argument based on a comparison between the phrase " no loss " in the Ninth Schedule to the Act of 1952 and what is admittedly the very different phraseology dealing with losses in Paragraph 2

(Lord Upjohn)

of the Fourth Schedule to the Act of 1937, and it is argued that this contrasting language drives one to the conclusion that " no loss " in the Act of 1952 means no particular loss, such as, for example, a loss on stock values, so that it is improper to carry forward any written-down value of stock; the cost must be the starting figure. The phraseology is admittedly different, but I cannot reach the conclusion that the phrase " no loss " is referring to a particular loss on some particular account. It seems to me quite clear that the phrase " no loss " is referring to a general trading loss in an accounting period; no such loss is to be carried forward into any subsequent period.

My Lords, this is a harsh case and that is, perhaps, the strongest point in favour of the Appellants, for they have no doubt been assessed for the purposes of Excess Profits Levy on profits that they have not really earned in a popular sense. But this unfortunately avails them nothing. Anomalies and hardships in taxing Statutes are no safe guide to the proper principles to be applied. These must be ascertained solely from the language of the relevant taxing Statute. For my part, I think the Court of Appeal, McVeigh, J., and the learned Additional Recorder all came to a clearly correct conclusion and I would dismiss this appeal.

Lord Pearson.—My Lords, I concur.

Questions put:

That the Order appealed from be reversed.

The Not Contents have it.

That the Order appealed from be affirmed and the appeal dismissed, with costs.

The Contents have it.

[Solicitors:—Tuck & Mann & Geffen & Co. (for White, McMillan & Wheeler, Belfast); Solicitor of Inland Revenue; Chief Crown Solicitor, Northern Ireland.]