

pany," which is thus by law required to be allotted to the participating shareholders, is taxable income within the meaning of the Assessment Act.

The relative sections of that Act (I refer to R. S. O., 1897, ch. 22) are section 2, sub-section 8. Property shall include both real and personal property as hereafter defined. Sub-section 10. "Personal Estate," and "Personal Property," shall include all goods, chattels, interest on mortgages, income and all other property, except land and real estate and real property as above defined, and except property hereinafter expressly exempted. Section 7. All property in this Province shall be liable to taxation, subject to the following exemptions:—Sub-section 16. So much of the personal property of any one as is secured by mortgage upon land or by vendor's lien or is invested in provincial or municipal debentures. Sub-section 26. Annual income to the amount of \$700, or \$400, if derived from any source other than personal earnings, but in no case more than \$700. Sub-section 27. Rental or other income derived from real estate, except interest on mortgages. Section 13. Duties of assessors: (1) to prepare an assessment roll in which they are to set down certain particulars in separate columns as follows:—

Col. 14. Value of personal property other than income.

Col. 15. Taxable income.

What that is we see by section 35. Subject to the provisions of section 9, which enable a person for the purpose of being placed on the voters' list to refuse exemption in respect of income, no person deriving an income from any trade, etc., or other source whatsoever, not declared exempt by the Act, shall be assessed for a less sum as the amount of his net personal earnings or income during the year then last past than the excess of such earnings or income over or above the exemptions specified in sub-section 26 of section 7, and such last year's income in excess of such exempted sums shall be held to be his net personal property, unless he has other personal property liable to assessment, in which case such excess of income and other personal property shall be added together and constitute his personal property liable to assessment.

The appeal involves the question which has been so frequently considered in recent years of the meaning of the term "income" as used in fiscal legislation, whether municipal or of more extensive scope.

In *Lawless vs. Sullivan*, 6 A. C. 373, the question was of the assessment of a bank, and arose upon the 15th section of the City of St. John Assessment Act, of 1850, by which a tax for municipal purposes was imposed in respect of the "whole amount of income" received by its agent or manager for any joint stock company or corporation established abroad or out of the limits of the Province carrying on business in the City of St. John. The Supreme Court decided that "income" meant all items of profit on the transactions of a business during a fiscal year without regard to any losses arising from the same business during that year. This view was dissented from by the Judicial Committee, in whose judgment it is said: "It must always be borne in mind that the tax is imposed on the income received during the fiscal year, and what therefore has to be ascertained for the purpose of assessment is the income for an entire year. There can be no doubt that in the natural and ordinary meaning of language the income of a bank or trade for any given year would be understood to be the gain, if any, resulting from the balance of the

profits and losses of the business in that year. That alone is the business (?) which a commercial business produces and the proprietor receives from it." And again: "There is nothing in the enactment imposing the tax nor in the context which should induce their Lordships to construe the word 'income' when applied to the income of a commercial business for a year otherwise than in its natural and commonly accepted sense as the balance of gain over loss, and consequently they are of opinion that, where no such gain has been made in the fiscal year, there is no income or fund which is capable of being assessed."

This case, though it clears the ground in one direction, showing that only the excess of receipts over expenditures—the balance of gain over loss—can be called the income of a commercial business, such as a bank or an insurance company, is yet not decisive of the case before us, because it was not there necessary to determine the question, which, under the circumstances, indeed could not have arisen, whether moneys payable out of profits—moneys which could not have been payable at all, unless profits had been realized—ought to be considered as part of the income of the corporation, part of the excess of gain over loss, of receipts over expenditure. That question arose and was decided in the subsequent case of *Last vs. London Assurance Corporation*, 10 A. C. 438. Mr. Bruce argued very earnestly that this case had little or no application to the present case, because it was a decision upon the language of the Imperial Income Tax Act, 16 and 17 Victoria, ch. 34, by which revenue is provided for the Imperial Government and turned upon the meaning of the words "annual profits and gains," as used in Schedule D. of the Act, upon which the income tax is payable. There is nothing, however, in that Act which indicates that these words are used in any larger sense as denoting income for taxable purposes than we should attribute to them under the authority of the case in the Privy Council. See per Lord Fitzgerald in *Last's Case*, at page 450, and *Mersey Docks vs. Lucas*, 8 A. C. cit. Nor can the meaning of the word "income" or the words "profits or gains" be affected by the fact that the one is used in an Imperial Act for the providing a revenue for the Imperial Government, while the other occurs in an Assessment Act for procuring one for domestic or municipal purposes only. The provisions of the latter are, if anything, more comprehensive, for section 35 expressly declares that taxable income is the excess of net personal earnings or income over the specified exemptions.

It is the same income which is dealt with in both cases, though, in the case of *Last vs. London Assurance*, we have it very clearly laid down by the majority of the law lords, and to my mind in the judgment of Lord Blackburn on very intelligible and satisfactory grounds, that so much of the "annual profits or gains, i. e., of the surplus of receipts over expenditure of the Company as were payable to the participating policy-holders were, as annual profits or gains" of the Company part of their income and liable to the income tax, and that the payments contracted to be made to such policy-holders were not an expenditure to be taken into account before the balance of taxable profits was ascertained, but, being payable out of profits, were themselves a part of such profits. Lord Blackburn held that a share in profits could by bargain be given to one who was not a shareholder, while Lord Bramwell, whose vigorous judgment shows how much may be said for the opposite side of the question, said that the whole difficulty had arisen from