

BURNET, COMMISSIONER OF INTERNAL REVENUE, *v.* NATIONAL INDUSTRIAL ALCOHOL COMPANY, INCORPORATED.

CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 109. Argued January 21, 22, 1931.—Decided February 24, 1931.

Under § 234 (a) (7) of the Revenue Act of 1918, a brewing company was entitled to a reasonable allowance for obsolescence of tangible property caused by prohibition legislation. *Gambrinus Brewery Co. v. Anderson*, *ante*, p. 638. P. 647.

38 F. (2d) 718, affirmed.

CERTIORARI, 281 U. S. 717, to review a judgment of the Court of Appeals of the District of Columbia, which reversed a decision of the Board of Tax Appeals, 7 B. T. A. 1241, affirming a determination of deficiencies in income and excess profits taxes.

Mr. Claude R. Branch, Special Assistant to the Attorney General, with whom *Solicitor General Thacher*, *Assistant Attorney General Youngquist*, and *Messrs. Sewall Key, J. Louis Monarch and John MacC. Hudson*, Special Assistants to the Attorney General, and *Clarence M. Charest*, General Counsel, Bureau of Internal Revenue, and *Robert L. Williams*, Special Attorney, were on the brief, for petitioner.

Mr. R. M. O'Hara for respondent.

MR. JUSTICE BUTLER delivered the opinion of the Court.

The Board of Tax Appeals affirmed the Commissioner's determination of deficiencies in respondent's income and profits taxes for fiscal years ending May 31, 1919, and 1920. The taxpayer claimed allowances for obsolescence, resulting from prohibition legislation, of a part of a build-

ing. It was denied. 7 B. T. A. 1241. The Court of Appeals reversed. 38 F. (2d) 718.

The taxpayer, a Louisiana corporation organized in 1911, was engaged in making and selling beer. November 3, 1919, it abandoned that business and commenced the manufacture of near beer which it continued until 1923. For the manufacture of beer the taxpayer had a brewery building and a cellar building having three floors. After prohibition the brewery building and one floor of the cellar building were used in the production of near beer. Two floors of the cellar building and certain steel and wooden vats thereon formerly used for aging beer were not needed and their use was discontinued on November 3, 1919. The Board found that the vats had no salvage value and held their depreciated cost deductible as obsolescence over the period from December 18, 1917, the date of the submission of the Eighteenth Amendment, to January 16, 1920, the date that prohibition took effect. But it denied any allowance for obsolescence of the two floors on the ground that, while the taxpayer ceased to use them, there was nothing in the record to indicate that the structure was obsolete or becoming so. The Court of Appeals held the evidence ample to support the taxpayer's contention that after abandonment the two floors possessed no residual or salvage value. The Government has raised here only the question whether under the Revenue Act of 1918, § 234 (a) (4) or (a) (7) a deduction may be allowed for loss or obsolescence of tangible property caused by prohibition legislation, and concedes that it is not in position to contend that the evidence was not sufficient to establish obsolescence of the two floors.

The Government relies on *Clarke v. Haberle Brewing Co.*, 280 U. S. 384, and *Renziehausen v. Lucas*, 280 U. S. 387. But we have held in the *Gambrinus* case just decided that under § 234 (a) (7) a brewing company is

entitled to allowance for obsolescence of its building that was caused by the imminence and taking effect of prohibition. That case rules this one.

Judgment affirmed.

BURNET, COMMISSIONER OF INTERNAL REVENUE, *v.* NIAGARA FALLS BREWING COMPANY
ET AL.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT.

No. 61. Argued January 21, 1931.—Decided February 24, 1931.

1. Under § 234 (a) (7) of the Revenue Act of 1918, a brewing company was entitled to a reasonable allowance for obsolescence of tangible property caused by prohibition legislation. *Gambrinus Brewery Co. v. Anderson, ante*, p. 638. P. 651.
2. The Court takes judicial notice that, prior to the submission of the Eighteenth Amendment in 1917, more than thirty States had enacted prohibitory laws; that a federal war measure, effective August 10, 1917, required the reduction of the alcoholic content of beer; that the proposed Amendment was ratified by twelve States in the first six months of 1918 and by three more before the expiration of that year; that twenty-one States ratified it in the early part of January, 1919; that in that month the Amendment became a part of the Constitution and that it took effect one year later, January 16, 1920. P. 651.
3. Obsolescence is not necessarily confined to particular elements or parts of a plant, but may affect the whole of it; and it may result from laws regulating or forbidding the particular use to which the property has been put as well as from other causes. P. 653.
4. The purpose of the statute in allowing deductions for obsolescence, § 234 (a) (7), *supra*, is to guide the ascertainment of taxable income each year; and, like other tax laws, it should be construed liberally in favor of the taxpayer. P. 654.
5. The burden of proving the existence and amount of obsolescence may be sustained by such weight of evidence as would reasonably support a verdict for the plaintiff in an ordinary action for money. P. 654.