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* Feb. 22.
* Mar. 19

BILTRITE TIRE COMPANY (DEFENDANT) ..... APPELLANT;

AND

HIS MAJESTY THE KING, ON THE INFORMATION OF THE ATTORNEY-GENERAL OF CANADA (PLAINTIFF)..... RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Sales tax—Excise tax—Special War Revenue Act (R.S.C. 1927, c. 179, and amendments), ss. 86 (1) (a) ("goods produced or manufactured"); 80 (1) (b) and Schedule II, item 3 ("tires manufactured or produced")—Old tires bought, treated and retreaded, and retreaded tires sold—Liability to said taxes.

Appellant purchased in bulk lots, by the pound, old and worn-out motor vehicle tires and put them through a process of repair, treatment and retreading, and sold the retreaded tires. Throughout the process the sidewall of the tire was not dismantled or destroyed, the numerical identification of the original tire was not destroyed, the name of the manufacturer of the original tire was still clearly marked upon its sidewalls, upon which appellant also marked a serial number.

Held: What appellant sold after said process were "goods produced or manufactured" by appellant within the meaning of s. 86 (1) (*a*) of the *Special War Revenue Act* (R.S.C. 1927, c. 179, and amendments) and were "tires manufactured or produced" by appellant within the meaning of s. 80 and Schedule II (item 3) of said Act; and appellant was liable to pay in respect thereof the sales tax and excise tax imposed by said sections respectively.

APPEAL by the defendant from the judgment of Angers J. in the Exchequer Court of Canada whereby the plaintiff recovered judgment against the defendant for $5,318.46 and costs.

The action was brought in the Exchequer Court of Canada by information filed by the Attorney-General of Canada on behalf of His Majesty the King, to recover sums alleged to be due from the defendant (a firm carrying on business in Toronto, Ontario) for sales tax and excise tax under the *Special War Revenue Act* (R.S.C. 1927, c. 179, and amendments), by reason of the alleged manufacture or production, and sale, of tires or tubes. Plaintiff also claimed penalties and licence fees. The defendant claimed that it was not a "producer or manufacturer," within said Act, of tires or tubes and that the provisions in question of said Act did not apply to it.

* PRESENT:—Duff C.J. and Rinfret, Davis, Kerwin and Hudson JJ.

A statement of facts was agreed upon, the material parts of which are set out in the judgment now reported. The appeal to this Court was dismissed with costs.

Wilfrid Heighington K.C. for the appellant.

J. E. Day K.C. and *B. Matthews* for the respondent.

The judgment of the court was delivered by

KERWIN J.—Section 86 of the *Special War Revenue Act* (R.S.C. 1927, chapter 179, and amendments) provides:—

86. 1. There shall be imposed, levied and collected a consumption or sales tax of six per cent. on the sale price of all goods,—

(*a*) produced or manufactured in Canada, payable by the producer or manufacturer at the time of the delivery of such goods to the purchaser thereof.

The first question arising for determination on this appeal is whether the appellant produced or manufactured goods within the meaning of this enactment and is therefore liable for the payment of sales tax.

Section 80 of the same Act, so far as applicable, enacts:—

80. 1. Whenever goods mentioned in Schedules I and II of this Act are imported into Canada or taken out of warehouse, or manufactured or produced in Canada and sold, there shall be imposed, levied and collected, in addition to any other duty or tax that may be payable under this Act or any other statute or law, an excise tax in respect of goods mentioned

(*a*) * * *

(*b*) In Schedule II, at the rate set opposite to each item in the said schedule.

Item 3 of Schedule II referred to reads as follows:—

3. Tires and Tubes:

(iii) Tires in whole or in part of rubber for automotive vehicles of all kinds, including trailers or other wheeled attachments used in connection with any of the said vehicles—two cents per pound.

The second question is whether the appellant manufactured or produced tires within the meaning of this section and schedule and is therefore subject to the payment of excise tax.

The matter was presented before the Exchequer Court on an agreed statement of facts from which it appears that the appellant "purchased, in bulk lots, by the pound, old and worn-out motor vehicle tires," generally from "junk dealers or storage yards" in Canada and the United States. Furthermore, "any duty that was exacted upon the articles when brought into Canada was paid on entry." After receipt of the tires by the appellant at its place of business,

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the first step was to place them in a heater where "all dampness was taken from the tires, both inside and out." Each tire was next placed upon a rack where the holes or "blow-outs" in it were buffed and cleaned. The tire was then placed in a frame against which a sharp dented wheel revolved and the tread was removed.

Following this the tire was cemented on the inside and the holes patched with cord material and the tire was then cemented on the outside. After being placed in another machine, each tire received an application of "callendered-tread stock," a plastic preparation.

As to the subsequent steps, the statement of facts continues:—

> The tire was then taken to what was termed the "cure-room," where it was placed first in an iron mould which was firmly clamped about it. The mould was in the shape of a wheel and the mould, complete with its encased tire, was placed flat on a press inside a large boiler. A number of tires, each in a clamp as stated, were piled one on top of the other until the boiler was filled with twenty tires or so. A lid was then placed upon the boiler and firmly sealed. Hydraulic pressure was then applied for an hour or an hour and a half. This had a squeezing effect upon the clamped tires, they were firmly held and cooked into a state in which the repairs to the holes and blow-outs, the cementing inside and without, and the new tread, were firmly and permanently affixed to the carcass, i.e., the fabric and side walls of the original tire. In no part of these steps, including the final one, was the numerical identification of the original tire destroyed. The name of the manufacturer of the original tire was still clearly marked upon its side walls upon which the defendant company also marked a serial number.

The only other feature, and one upon which the appellant lays particular stress, is that throughout all the steps taken by it "the sidewall of the tire was not dismantled or destroyed."

So far as the claim for sales tax is concerned, what the appellant sold, after these proceedings in its establishment, would undoubtedly be termed "goods." Are they goods manufactured or produced by appellant? What the appellant did was to remove part of the old or worn-out tire and add to the remnant the plastic rubber preparation. It would appear that the position is the same as if the appellant had purchased an old or worn-out tire which had already been treated by the vendor in the manner described above, down to and including the cutting off of the old tread. If then the appellant had purchased from a third party the rubber preparation and had applied the latter and continued with the subsequent steps, could it be suggested

that the article in its final condition had not been produced or manufactured by the appellant? The definitions of the words "manufacture" and "produce" as nouns or verbs, in the standard dictionaries, clearly indicate that such proceedings would constitute the appellant a manufacturer or producer. And the mere fact that the appellant has itself performed the defined operations on the old tire cannot exclude it from the operation of the section.

The point for determination in connection with the claim for excise tax is a little different from that involved in the question of the liability for sales tax. Is the appellant a manufacturer or producer of tires? It is suggested that the old or worn-out tire did not lose its identity *qua* tire and that, therefore, the appellant could not be said to have manufactured or produced a tire. However, when one bears in mind the various steps taken by appellant and particularly the state of the article when the tread was removed, it would appear that appellant cannot be any less the manufacturer of a tire because it started with something that had once been a usable tire than if, as suggested in the preceding paragraph, it had commenced with two substances purchased from different sources.

The liability of the appellant for licence fees follows from what has been said, and, since we understand no question is raised as to the proper amount for which judgment should go, the appeal must be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Symons, Heighington & Shaver.*

Solicitor for the respondent: *W. Stuart Edwards.*