

1956

*Apr. 30

*Jun. 11

UNIVERSAL FUR DRESSERS AND } APPELLANT;
 DYERS LIMITED }

AND

HER MAJESTY THE QUEEN RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Taxation—Excise tax—Sheepskin processed into “mouton”—Whether fur or not—Excise Tax Act, R.S.C. 1927, c. 179, s. 80A.

The appellant purchased the raw skins of mature shearlings (a sheep that has been shorn once) of the merino type and processed them into “mouton”. The Crown claimed that “mouton” was a fur and therefore subject to excise tax under s. 80A of the *Excise Tax Act*, R.S.C. 1927, c. 179. This claim was allowed by the Exchequer Court.

Held: The appeal should be allowed.

A consideration of all the evidence and of the authorities and dictionary definitions brings one to the conclusion that neither in technical terms nor in common speech nor in that of those who deal in such products would the skin of a mature merino sheep with the wool or hair attached to it be described as a fur. It does not appear to be possible to take an article or substance which is not fur and by dressing and dyeing it to produce a dressed or dyed fur. The merino sheep is a wool-bearing animal and not a fur bearing one.

APPEAL from the judgment of the Exchequer Court of Canada, Cameron J. (1), in an action to recover excise tax.

J. J. Spector, Q.C. and *H. Plaxton* for the appellant.

W. R. Jackett, Q.C. and *K. E. Eaton* for the respondent.

The judgment of the Court was delivered by:—

CARTWRIGHT J.:—This is an appeal from a judgment of Cameron J. dated March 17, 1954 declaring that the respondent is entitled to recover \$573.08 Excise Tax together with certain penalties and costs.

The action was brought for the purpose of determining whether the product sold by the appellant and described as “mouton” was subject to tax under s. 80A of the *Excise Tax Act* which, so far as relevant, reads as follows:—

80A 1. There shall be imposed, levied and collected, an excise tax equal to fifteen per cent of the current market value of all dressed furs, dyed furs and dressed and dyed furs,—

(i) imported into Canada, payable by the importer or transferee of such goods before they are removed from the custody of the proper customs officer; or

(ii) dressed, dyed, or dressed and dyed in Canada, payable by the dresser or dyer at the time of delivery by him.

*PRESENT: Kerwin C.J., Taschereau, Cartwright, Fauteux and Nolan JJ.

(1) [1954] Ex. C.R. 247.

The product in question and the methods used in preparing it for sale are described in detail in the evidence. The appellant purchases the raw skins of shearlings of the merino type usually from abattoirs but sometimes from wool pullers. A shearling is a sheep that has been shorn once. Most of the skins used by the appellant are purchased in car-load lots from the United States. After being subjected to processes which are described in detail in the reasons of the learned trial judge and being dyed the end product closely resembles certain types of fur such as beaver, nutria or seal.

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It should be mentioned that, while the learned trial judge refers in his reasons to the skins purchased by the appellant as coming from a young lamb of the merino type, both counsel agreed that in fact the skins are those of mature sheep.

The main contest at the trial was as to whether "mouton" was fur or was a product other than fur which had been prepared to simulate fur. The learned judge found that it was a fur, that it was unnecessary to decide whether it had been dressed as it had admittedly been dyed, and that, consequently, it was subject to tax.

The learned judge states that he had no reason to question the honesty or sincerity of any of the witnesses and his findings do not turn on any question of credibility.

In the course of his reasons the learned trial judge says:—

Counsel for the defendant submits that in order to bring his client within the liability imposed by s. 80A, the Crown must establish that what it did was to dress, or dye, or dress and dye, a fur, and he argues, therefore, that the first and main question for determination is this—Is a sheepskin (or the Merino type shearling which his client bought) a fur? He contends, of course, that no one would consider what he calls "a barn-yard sheepskin" to be a fur.

In my view, however, that is not the question to be answered. It is rather this. Was that which the defendant delivered ("mouton")—a dyed fur or a dressed and dyed fur?"

With the greatest respect, it seems to me that the form in which the learned judge states the question tends to becloud the issue. It does not appear to me to be possible to take an article or substance which is not fur and by dressing and

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dyeing it to produce a dressed or dyed fur. Its appearance may be changed so that no-one but an expert can say that it is not a fur but its substance remains unaltered.

The evidence relied upon by the respondent relates almost entirely to the end product rather than the original skin. A consideration of all the evidence and of the authorities and dictionary definitions to which we were referred, brings me to the conclusion that neither in technical terms nor in common speech nor in that of those who deal in such products would the skin of a mature merino sheep with the wool or hair attached to it be described as a fur.

The evidence shews that while "persian lamb" has long been described as a fur, it is distinguished from the pelts of other types of lamb or sheep. In the Encyclopaedia Britannica (1952) Vol. 20 at page 475, domestic sheep are grouped into six types. The Merino sheep is placed in the "Fine-wool type", while the only breeds placed in the "Fur type" are Karakul and Romanov, the former including "persian lamb".

While the regulations to be mentioned have an object different from that of the Excise Act, it is of some assistance in deciding the meaning commonly attributed to the words "fur" or "fur-bearing" to observe that in the regulations made by P.C. 2336 (1951) fur-bearing and wool-bearing animals are contrasted with each other. Clause 1(d) reads as follows:—

(d) "fur" means the skin of any animal, whether fur-bearing, hair-bearing, or wool-bearing, that is not in the un-haired condition;

No such definition is contained in the *Excise Act*.

In my opinion the merino sheep is a wool-bearing animal and not a fur-bearing one, its skin although with the wool attached is not a fur, and it is not, and could not be, transmuted into a fur by the processes to which it is subjected.

It follows that I would allow the appeal and dismiss the information with costs throughout.

Appeal allowed with costs.

Solicitors for the appellant: *Plaxton & Company.*

Solicitor for the respondent: *W. R. Jackett.*
