

1929

*Nov. 19.

*Dec. 9.

BANK OF NOVA SCOTIA (DEFENDANT) . . . APPELLANT;
AND
HIS MAJESTY THE KING (PLAINTIFF) . . . RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Revenue—Sales tax—Special War Revenue Act, R.S.C., 1927, c. 179, ss. 86 (a), 87 (d)—Bank printing books and stationery for its own use—“Manufacturer or producer”—Liability for sales tax.

The defendant bank maintained a stationery department through which it supplied its various offices with stationery and supplies required in the conduct of its business, and in said department it had, without any object of gain, but for convenience, expedition, and to secure secrecy, a printing plant with which it printed and made up ledgers, etc., forms, by-laws, letter papers and other printed material, required in carrying on its business.

Held, that in respect of said printed material the bank was a “manufacturer or producer,” and liable for consumption or sales tax, under ss. 86 (a) and 87 (d) of the *Special War Revenue Act, R.S.C., 1927, c. 179* (and under the corresponding provisions in the earlier legislation contained in s. 19BBB of the *Special War Revenue Act, 1915*, as amended by 13-14 Geo. V, c. 70, s. 6), and was also liable for licence fee (under said s. 19BBB as amended; now R.S.C., 1927, c. 179, s. 95).

Judgment of the Exchequer Court of Canada, [1929] Ex. C.R., 155, affirmed.

*PRESENT:—Anglin C.J.C. and Duff, Newcombe, Rinfret and Smith JJ.

APPEAL by the defendant from the judgment of Maclean J., President of the Exchequer Court of Canada, (1) holding that the defendant was liable for sales tax on certain account books, stationery, etc., printed and made up in its stationery department and furnished to its various offices and branches; and that it was also liable for licence fee. The tax was levied, and the licence fee demanded, under the *Special War Revenue Act, 1915* (as amended), now R.S.C., 1927, c. 179.

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The defendant is an incorporated bank, having its head office at Halifax, Nova Scotia, and its chief executive office at Toronto, Ontario. It maintained in Toronto a stationery department through which it supplied its various offices, including head office, executive office and branch offices, with stationery and supplies required in the conduct of the bank's business. Without any object of gain but for convenience and expedition and to secure secrecy, it had in its stationery department a printing plant with which it printed and made up ledgers, tellers' cash books, pass books, legal forms, by-laws, letter paper, ruled and printed forms, return forms of branches to the head office, minute books, stationery, pamphlets and other printed material required in carrying on the bank's business at its various offices throughout Canada and elsewhere.

In the bank's system of accounting, every office bore its share of all expenses incurred by the bank for such office, including salaries, rental of premises, and cost of stationery and supplies. The stationery and supplies were furnished to the various offices on their requisitions sent to the stationery department and were shipped to such offices direct from the stationery department. On making the shipment, the stationery department rendered statements to the receiving office and to the chief executive office showing the amount to be charged against the receiving office as the cost or estimated cost of the articles furnished.

The questions for the court were: (1) whether the defendant was liable to pay a consumption or sales tax on or in respect of the printed material aforesaid; and (2) whether the defendant was liable for a licence fee under s. 19BBB (6) of the *Special War Revenue Act, 1915* (as amended) (now R.S.C., 1927, c. 179, s. 95).

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W. N. Tilley, K.C., for the appellant, contended that from the history of the legislation, and the changes therein, it was indicated that the intention was, as to printers, to apply the tax to those who were in the business of manufacturing or producing printed matter; that the bank was not in any sense a manufacturer or producer within the meaning of the Act; that the tax was meant to apply only to a company or individual who was in the business of manufacturing or producing goods for sale, and did not apply to a bank merely because it made up into a form convenient for its own purposes materials on which the sales tax had already been paid; the printing of headings and column lines on ledgers, deposit slips and the like is a convenient way of doing what might otherwise be done by hand or by a typewriter. The tax was imposed by subs. 1 of s. 19BBB, and not by subs. 13 added in 1923. Subs. 13 merely enabled the value of taxable goods to be determined when a manufacturer used some articles of his own manufacture. The tax was really payable by a manufacturer or producer who was a manufacturer or producer by trade or calling and not by all persons who made up articles for their own convenient use.

M. H. Ludwig, K.C., for the respondent, relied upon the reasons in the judgment below. He contended that the bank, in carrying on a printing plant and making said printed material, was a producer or manufacturer of goods in Canada within the meaning of the legislation in question; a manufacturer or producer does not necessarily make things for sale; it has become the custom of many industries to maintain manufacturing departments for the production of articles essential to the conduct of the main business which may be quite remote from manufacturing; and such a department is as much a manufacturing establishment as if it were a distinct and separate enterprise (38 *Corpus Juris*, p. 975); the interpretation sought by the appellant to be placed on the legislation would exempt a corporation financially able to equip itself with a plant to make things, while one without sufficient means to acquire such equipment would have its burden increased at the expense of relieving its more opulent competitor from payment of any tax (in this connection, he referred to *Hogg v.*

Parochial Board of Auchtermuchty (1)); s. 87 (of R.S.C., 1927, c. 179) in effect provides that if a manufacturer uses goods made by him such use shall be deemed a sale and a tax to be fixed by the minister is to be paid in respect of such goods.

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The judgment of the court was delivered by

ANGLIN, C.J.C.—The bank appeals from the judgment of the Exchequer Court, delivered on the 17th of May last, and reported in [1929] Ex. C. R. at p. 155. The material facts are there fully stated in the terms of the special case submitted for the consideration of the court.

While the special case purports to submit two questions, viz.,

(1) Whether on the facts as stated and admitted herein the Defendant is liable to pay His Majesty the King a consumption or sales tax on or in respect of the stationery referred to in paragraph 3 hereof for the period aforesaid.

(2) Whether the Defendant is liable for the licence fee mentioned in paragraph 5 hereof.

in reality, there is only one question to be determined, viz., whether or not the appellant bank is a manufacturer or producer of the stationery supplies, furnished by it to its head office and branches, within the meaning of that term as used in the *Special War Revenue Act*, because it is admitted that if the appellant bank is such a manufacturer or producer it is liable for consumption or sales tax, and paragraph 9 of the special case provides as follows:

9. If this Honourable Court shall hold that the Defendant is liable to pay His Majesty the King a consumption or sales tax as aforesaid, it is admitted that the Plaintiff shall have:

(1) Judgment for consumption or sales tax in the sum of \$10,205.72, in respect of the said stationery, referred to in paragraph 3 hereof for the period aforesaid.

(2) Judgment for \$10, licence fee mentioned in paragraph 4 hereof.

(3) Judgment for interest at the rate of five per centum (5%) per annum from the dates when the taxes became due and owing to the first day of June, 1927, and thereafter, at the rate of two-thirds of one per centum (1%) per month, as provided by Section 106, subsection 3 of the *Special War Revenue Act*.

The Exchequer Court would appear to have dealt with the case as governed by ss. 86 (a) and 87 (d) of the R.S.C. 1927, c. 179. But that statute came into force only on the 1st of February, 1928, and the claim is for taxes on "sales"

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between the 1st of January, 1924, and the 30th of April, 1928. It is, therefore, obvious that, except for transactions during the months of February, March and April, 1928, the liability must be determined by reference to the earlier law. That law is to be found in s. 6 of c. 70 of the Statutes of 13-14 Geo. V (1923), amending the *Special War Revenue Act* of 1915.

Under s. 19BBB (1), as there enacted, a consumption or sales tax of 6 per cent. is imposed on "the sale price of all goods produced or manufactured in Canada * * * payable by the producer or manufacturer at the time of the sale thereof by him."

"Sale price" is defined to mean "the price before any amount payable in respect of the consumption or sales tax is added thereto."

Subs. 6 of s. 19BBB (as enacted by 13-14 Geo. V, c. 70, s. 6) provides for the taking out of an annual licence by manufacturers or producers. Subs. 13 reads:

(13) Whenever goods are manufactured or produced in Canada under such circumstances or conditions as render it difficult to determine the value thereof for the consumption or sales tax because, * * *

(d) such goods are for use by the manufacturer or producer and not for sale

the Minister may determine the value for the tax under this Act and all such transactions shall for the purposes of this Act be regarded as sales.

Under the legislation, as it then stood, it was determined in *Minister of Customs and Excise v. Dominion Press Limited* (1), that a job printer is a "producer" within the meaning of the statute.

By amendment of 1926-27, 17 Geo. V., c. 36, s. 4, it was enacted that, for the purposes of s. 19BBB, printers, publishers, lithographers and engravers shall be regarded as producers or manufacturers. This section has been carried into the R.S.C. (1927) as clause (f) of s. 85.

The effect of these several provisions is that a construction of the clauses of ss. 85, 86 and 87 of the *Special War Revenue Act*, c. 179, R.S.C. 1927, suffices to determine the question at issue, because if the appellant bank is "a manufacturer or producer in Canada," within the meaning of those earlier provisions, it must also be regarded as such a manufacturer or producer within the legislation of 1927.

Having regard to the foregoing, we are of the opinion that the bank is liable as claimed and that the appeal therefore fails.

We agree with the learned President of the Exchequer Court that as a printer, lithographer or engraver, which produced, for its own use and not for sale, the goods in question, viz., stationery supplies for its head office and branches, the bank was a producer within the meaning of that term, as used in clause (a) of s. 86 of the *Special War Revenue Act*, R.S.C. 1927, c. 179, and that the goods in question were produced in Canada by it within the meaning of that clause.

We cannot find anything in the statute to support the view put forward by counsel for the appellant that its application is confined to a manufacturer or producer whose business is manufacturing or producing for sale. That construction of the Act would involve the exclusion from our consideration of clause (d) of s. 87, which, in our opinion, was introduced to remove any doubt that the statute was intended to apply to a case such as that at bar.

For these reasons we dismiss the appeal with costs.

Appeal dismissed with costs.

Solicitors for the Appellant: *Tilley, Johnston, Thomson & Parmenter.*

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

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