

|                                       |  |                                   |
|---------------------------------------|--|-----------------------------------|
| 1929<br>*Nov. 19.<br>1930<br>*Feb. 4. | MILN-BINGHAM PRINTING COM-<br>PANY LIMITED (DEFENDANT)..... }<br><br>AND<br><br>HIS MAJESTY THE KING, ON THE<br>INFORMATION OF THE ATTORNEY-GEN-<br>ERAL (PLAINTIFF) ..... } | APPELLANT;<br><br><br>RESPONDENT. |
|---------------------------------------|--|-----------------------------------|

## ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

*Revenue—Sales tax—Exemption—“Magazine”—Special War Revenue Act, 1915 (as amended), s. 19BBB (4)—Construction of word in statute with reference to usage or definition in statute in pari materia.*

It was held, reversing judgment of Audette J., [1929] Ex. C.R., 133, that the pamphlet in question, printed by defendant monthly for the Canadian Kodak Co. Ltd., and called “Kodakery”, was a “magazine”, and as such exempt from sales tax, under subs. 4 of s. 19BBB of the *Special War Revenue Act, 1915*, and amendments.

The word “magazine” in the exempting provision is used in its ordinary sense and must be construed and applied in that sense. Its meaning in ordinary usage discussed, with regard to its application to the pamphlet in question.

While, for the purpose of ascertaining the meaning of a word in a statute, its usage in other statutes may be looked at, especially if the other statutes are *in pari materia*, it is altogether a fallacy to suppose that because two statutes are *in pari materia* a definition clause in one can be bodily transferred to the other.

APPEAL by the defendant from the judgment of Audette J., of the Exchequer Court of Canada (1), holding that the plaintiff was entitled to recover from the defendant the sum of \$2,426.42, claimed by the plaintiff for sales tax, under the *Special War Revenue Act, 1915*, and amendments, on sales of a pamphlet known as “Kodakery” and described on the cover as “a magazine for amateur photographers,” and published monthly at the city of Toronto, Ontario. The defendant claimed that “Kodakery” was a magazine and exempted from the tax by subs. 4 of s. 19BBB of said Act.

The appeal was allowed with costs and judgment directed to be entered dismissing the action with costs.

*W. N. Tilley K.C.* and *J. F. Boland K.C.* for the appellant.

*Geo. Wilkie K.C.* and *J. Edward Hill* for the respondent.

---

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

The judgment of the court was delivered by

DUFF J.—The question on this appeal can be very briefly stated. The claim is made under subs. 4 of s. 19BBB of the *Special War Revenue Act, 1915*, and the amendments thereto. And the whole point for discussion is whether or not a certain booklet printed by the defendants for the Canadian Kodak Co. Ltd., having attached to it the name “Kodakery”, falls within one of the exceptions to that subsection which is expressed in these words: “Newspapers and quarterly, monthly and semi-monthly magazines and weekly literary papers unbound.”

One preliminary observation. No doubt, for the purpose of ascertaining the meaning of any given word in a statute, the usage of that word in other statutes may be looked at, especially if the other statutes happen to be *in pari materia*, but it is altogether a fallacy to suppose that because two statutes are *in pari materia*, a definition clause in one can be bodily transferred to the other.

The word “magazine” in the exception under consideration is used in its ordinary sense, and must be construed and applied in that sense. No doubt a publication, containing nothing but puffings and praising of the goods of the publishers, and invitations to purchase those goods, would not in accordance with ordinary usage come under the denomination “magazine.” On the other hand, the fact that a magazine was published by a firm of publishers with the deliberate intention of encouraging an interest in literature and incidentally in books published by themselves, would not be a ground for saying that it was not a magazine according to ordinary parlance. Nor could I conceive, if a firm engaged in publishing and selling, as its sole business, books dealing with various subjects of applied science, were to publish a periodical devoted exclusively to such subjects, and very largely to the reviews of books upon them, that it could successfully be argued that such a periodical would not fall within the category of “magazine” according to the ordinary notions of men. The same may be said with regard to what are called “trade journals” which are media for information in relation to their respective trades.

“Kodakery” is stated in the evidence to be a journal, having for its subject matter technical information as re-

1930

MILN-  
BINGHAM  
PRINTING  
CO. LTD.v.  
THE KING.Duff J.  
—

1930  
MILN-  
BINGHAM  
PRINTING  
CO. LTD.  
v.  
THE KING.  
Duff J.

gards photography; "how to make better pictures." One copy only is put in. The learned trial judge seemed to object to more than one copy being produced, which I think is rather unfortunate. However, I have looked through the copy produced and I have found it to be very far from a mere advertising production. I should hesitate to set limits to the skill or the subtlety of the commercial advertiser, and it may be that in this case he has succeeded in deluding me. But I think we must look at, for the purpose of this statute, which is a taxing statute, the thing we have to deal with as a thing in fact. If we attempt for the purpose of applying this Act to penetrate the designs of the writers, we shall set before ourselves a task, in which we are much more likely to be misled than if we are content not to be too perspicacious and to look at the real thing as it reveals itself. I think this booklet is just what Mr. Best describes it to be in his evidence; and I do not think a magazine ceases to be a magazine because the publisher, or somebody who pays the publisher, or some number of persons paying the publisher, is or are using it for the purpose of advertisement.

I think the appeal should be allowed with costs here and below.

*Appeal allowed with costs.*

Solicitors for the appellant: *Macdonell & Boland.*

Solicitors for the respondent: *Wilkie, Delamere & Hill.*

---