1921
May 19.

BETWEEN

HIS MAJESTY THE KING, UPON THE INFORMATION OF THE ATTORNEY GENERAL OF CANADA..... PLAINTIFF;

AND

FRANK J. PEDRICK AND FREDERICK A. PALEN, TRADING UNDER THE FIRM, NAME AND STYLE OF PEDRICK & PALEN AND THE SAID FRANK J. PEDRICK AND FREDERICK A. PALEN..... DEFENDANTS.

Revenue—Special War Revenue Act, 1915, as amended by 10-11 George V, c. 71—Construction—Sales Tax—Custom Tailors—"Manufacturers."

Defendants carried on the business of retail merchant tailors in the City of Ottawa,—taking orders for suits or garments to be made to measure, cutting the cloth, assembling the same and turning out or delivering the garments to the consumer.

Held, that they were not "manufacturers" within the meaning of sec. 19 b.b.b. of the Special War Revenue Act, 1915, as amended by 10-11 Geo. V, c. 71, and were not liable to pay the sales tax of one per cent therein imposed upon manufacturers in respect of their sales and deliveries.

THIS was an information by the Attorney-General of Canada seeking the recovery of penalties from the defendants for neglect and refusal to pay a Sales Tax leviable upon them under the provisions of sec. 19 b.b.b. of the Special War Revenue Act, 1915, as amended by 10-11 Geo. V, c. 71. The defendants were retail merchant tailors, doing business in Ottawa at the time the information was filed.

The case was heard at Ottawa on the 6th and 10th days of May, 1921.

F. D. Hogg for the plaintiff.

T. A. Beament for the defendants.

The facts are stated in the reasons for judgment.

AUDETTE, J. now (May 19th, 1921) delivered judgment.

This is an information exhibited by the Attorney-General of Canada, whereby it is sought to recover, from the defendants, penalties, in respect of which it is alleged they are liable, for the violation and transgression of sec. 19 b.b.b. of the Special War Revenue Act, 1915, (5 Geo. V, ch. 8) as amended by 10-11 Geo. V, ch. 71, in respect of taxes on sales.

This section, 19 b.b.b., under which the present action is instituted, reads as follows:

"19 b.b.b. (1) In addition to the present duty of excise and customs a tax of one per cent shall be imposed, levied and collected on sales and deliveries by manufacturers and wholesalers, or jobbers, and on the duty paid value of importations, but in respect of sales by manufacturers to retailers or consumers, or on importations by retailers or consumers, the tax payable shall be two per cent; the purchaser shall be furnished with a written invoice of any sale, which invoice shall state separately the amount of such tax to at least the extent of one per cent but such tax must not be included in the manufacturer's or wholesaler's costs on which profit is calculated; and the tax shall be payable by the purchaser to the wholesaler or manufacturer at

1921

THE KING v. PEDRIC AND PALEN

Reasons for Judgment.

Audette J.

the time of such sale, and by the wholesaler or manufacturer to His Majesty in accordance with such regulations as may be prescribed, and such wholesaler or manufacturer shall be liable to a penalty not exceeding five hundred dollars, if such payments are not made, and in addition shall be liable to a penalty equal to double the amount of the excise duties unpaid." . . . . . (2). The Minister may require every manufacturer and wholesaler to take out an annual license for the purposes aforesaid, and may prescribe a fee therefor not exceeding five dollars, and the penalty for neglect or refusal shall be a sum not exceeding one thousand dollars."

This Act came into force on the 19th day of May, 1920.

The defendants are carrying on, in the City of Ottawa, the business of retail merchant tailors,—taking orders for suits or garments, cutting their cloth, assembling the same and turning out the garments to the consumer.

Treating the defendants, under the said section 19 b.b.b., as manufacturers selling to consumers, the Crown claims and avers, by sec. 2 of the Information, that they were and are "under the obligation, since May 1920, to collect a tax of two per cent on all sales made of clothing manufactured by them, from consumers to whom the said clothing was and is sold and to pay the amount of the said tax to His Majesty."

The primary question which arises on the very threshold of the controversy is whether or not, the retail merchant tailor making garments for the consumers can be considered a *manufacturer* within the meaning of the provisions of sec. 19 b.b.b. above recited.

It is an elementary rule of statutory construction that every word ought to be construed in its ordinary or primary sense, *unless a second or more limited sense, is required by the subject-matter of the context.*

What is the primary and natural meaning of the word "manufacturer"? From its etymology the word obviously means to make by hand, that is *manus*, the hand, and *facturam* a making, from *facio*, to make. Under this primary signification every human being, it must be conceded, is a manufacturer in the sense that, owing to the rigor of the punitive dispensation to which our race was condemned after the fall of Adam, he has to use his hands, be he the man that handles the pick and shovel, the plough, the pen or the sword, etc. *Labores manuum tuarum quia manducabis.* That is our fate.

Now that is not the meaning that is to be attached to this word "manufacturer" in the present issue. The object of the Act cannot be to weld into the class of manufacturer all classes of men who manufacture, who make or do any work, or part thereof, with their hands. In legislating in respect of, as well as in construing a clause of, the tariff, reference must be had to the language, understanding and usage of trade. *Dominion Bag Co.* v. *the Queen* (1).

Not only by the usage of trade, but in common parlance, the word manufacturer would seem to come within the ambit of the definitions given by the best dictionaries of the day, such as Littré and the Oxford's, under which a manufacturer in our days, is one who produces by labour on a large scale.

(1) 4 Ex. C.R. 311.

1921

THE KING v. PEDRIC AND PALEN

Reasons for Judgment.

Audette J.

As stated *In re the Queen* v. *Peters* (1), it may be that dictionaries are not to be definitely taken as authoritative exponents of the meaning of words used in Acts of Parliament, but it is a well known rule of courts of law that words should be taken to be used in their ordinary sense.

Apart from any legal rule of construction would it not seem to submit the word to an undue straining, to do violence to the English language to hold for instance a humble seamstress, dress-maker, making a few dresses for consumers to be a manufacturer—or, as in the present controversy, a humble merchant tailor making suits for consumers to be a manufacturer? When speaking of a manufacturing centre, one would not mean a centre where dressmakers or retail merchant tailors carry on business. If a meeting of manufacturers were called to discuss matters relating to their business, neither dressmakers nor retail merchant tailors would be expected or even allowed to attend such gathering. There is but one sane conclusion to be arrived at, if one is to be guided by common sense and that is the retailer is not a manufacturer in the general acceptance of the word.

Approaching under a legal aspect the question of the construction of the word manufacturer as found in the statute in question, it may be said that noswithstanding the interpretation clause, under subsec. 2 of the Customs Act, which provides that customs law shall receive such liberal construction as will best insure the protection of the revenue . . . etc., in cases of doubtful interpretation, it was held by Sir William Ritchie, C.J. in the *Queen* v. *Ayer Company* (2), that its construction should be in favour of the

(1) L.R. 16 Q.B.D. 636, at 641. (2) 1 Ex. C.R. 232.

importer. However, in *Algoma Central Ry. Co.* v. *the King* (1), the Courts held that a taxing act is not to be construed differently from any other statute and that is the accepted doctrine to-day. See *Attorney-General* v. *Carlton Bank* (2); *O'Grady* v. *Wiseman* (3).

And Elmes, Law of Customs, p. 22, sec. 49, says: "Laws imposing duties on importations of goods are intended for practical use and *application by men engaged in commerce*, and hence it has become a settled rule of interpretation of Customs statutes to construe the language adopted by the legislature, and particularly in the denomination of articles, according to commercial understanding at the time."

Sitting here to interpret the statute, am I not entitled to assume that the construction and meaning attaching to the word "manufacturer" shall be what the people in the trade would take it to be, as proved at trial, and what is of public notoriety, used in common parlance and accepted by all of us, assuming also that the framers of the Act did not indicate any intention of departing from the general acceptance respecting the meaning of that word?

Then under the provisions of sec. 15 of the Interpretation Act (R.S.C. 1906, ch. 1) it is enacted that "every Act and every provision and enactment thereof, etc., . . . shall receive such *fair, large and liberal* construction and interpretation as will best ensure the attainment of the object of the Act and of such provision or enactment, according to its *true intent, meaning and spirit.*

(1) 32 S.C.R. 277; (1903) A.C. 478. (2) (1899) 2 Q.B. 158, at 164.
(3) Q.R. 9 K.B. 169.

1921

THE KING v. PEDRIC AND PALEN

Reasons for Judgment.

Audette J.

Section 19 b.b.b. states: "In addition to the present duty of excise and customs a tax of 1% shall be imposed, levied and collected on sales and deliveries by *manufacturers and wholesalers or jobbers*, and on the duty paid value of importations, but in respect of sales by *manufacturers to retailers or consumers, etc.*

It would seem obvious that when that word "manufacturer" is mentioned in the section, associated as it is with the words "wholesalers and jobbers," that it means one who manufactures and carries on business on a large scale, alike the wholesalers and jobbers, with whom he is classified. The controversy arising herein is with respect to the meaning of the word "manufacturer" appearing, two lines lower, when associated with these words "but in respect of *sales by manufacturers to retailers or consumers.*" Should the word "manufacturer" in the latter case be given a different meaning than when used a couple of lines before, associated as it is with the words wholesalers and jobbers?

Why should this word have different and distinct meaning when used in one and the same section? Why should this word "manufacturer" in the latter cases be deprived of its primary and natural meaning? Its meaning must be gathered from the whole context and the intention is to be taken and governed according to what is consonant with reason and good sense.

The words "manufacturers, wholesalers and jobbers" found at the beginning—but two lines above—must control, restrict and determine the meaning of such word as therein mentioned of cognate character and description; *noscitur ex sociis.* That is the necessary conclusion we are led to under the well known canon of construction of *ejusdem generis.* Indeed, *verba generalia restringuntur ad habilitater rei vel personæ,* as said by Lord Bacon, Hardcastle 2nd, 182.

And Maxwell, on Interpretation of Statutes, 6th Ed. 465, says: "Where an enactment may entail penal consequences, no violence must be done to its language in order to bring people within it, but rather care must be taken that no one is brought within it who is not within its express language."

The section, dealing first with "manufacturers and wholesalers or jobbers," imposes a tax of 1% on sales made by them. Then, pursuing to deal with another branch of that case, linking the first branch with the second with the preposition "but" (which means excepting however when such sales made as above mentioned) are made to retailers and consumers by manufacturers to retailers and consumers a different tax is payable . . . "in respect of sales by manufacturers to retailers and consumers *or* on importations by retailers or consumers"—The word *or* then means in the alternative case. Therefore it is always the class of vendor or manufacturer who sells to a special class of purchasers, that is to retailers and consumers, and that is made doubly clear by the words which follow "or on importation by retailers and consumers." That is, what is there provided is the case where a foreign manufacturer is selling to a retailer like the defendant or to a consumer who may have the privilege of buying direct from the manufacturer, who is always a manufacturer of the class first mentioned in the section as associated therewith. In no case can the word manufacturer used in the section, be given any other meaning than it usually bears and I am gratified to be able to so find, in approaching its consideration, both from a legal and a common sense standpoint, confirming thereby the construction I have already accepted, under the well known canon of construction of *ejusdem generis* mentioned above.

1921

THE KING v. PEDRIC AND PALEN

Reasons for Judgment.

Audette J.

There is nothing in section 19 b.b.b. which would authorize to depart from the meaning usually attaching to the word manufacturer; but if the whole statute must be examined in order to decide whether or not it does contain anything to that effect, as decided in the case of *Harris* v. *Runnels* (1), we will find in sec. 19 b.b., in the third sub-paragraph of sub-section (b) of sec. 2 that the meaning of merchant tailor is there defined and he is not called a manufacturer. The statute there states: "Provided that on clothing covered by this item made to the order [not manufactured] and measure of such individual customer by a merchant tailor or journeyman, tailors in his employ."

Therefore it must result that such merchant tailor is not a manufacturer and he is not so called in that section 19 b.b. Section 19 b.b.b. without doubt deals exclusively with manufacturers and wholesalers or jobbers,—earmarking that very class, as distinguished from the merchant tailors defined in section 19 b.b. who cannot be at the same time a manufacturer and a merchant tailor selling to consumers, as therein provided. Section 19 b.b. would seem to put a limitation upon the word "manufacturers" in sec. 19 b.b.b., and thus remove any perplexing doubt.

William J. in *Cooney* v. *Covell* (2) said: "There is a very well known rule of construction that if a general word follows a particular and specific word of the same nature as itself, it takes its meaning from that word, and is presumed to be restricted to the same genus as that word."

Among the cases, cited in Bouvier's Law Dictionary, 3rd Ed., under verbo Manufacturer, is the case of *Cohn* v. *Parker* (3), wherein it was decided that "one

(1) 12 How. (53 U.S.) 79. (2) (1902) 21 N.Z.L.R. 106.
(3) 41 La. Ann. 894; 6 South Rep. 718.

engaged in cutting and making coats and trousers out of cloth which is already manufactured by another is not a manufacturer." See also the case of the *City of Toronto* v. *Foss* (1), which decides that a place where three or four persons make clothes for customers, etc., is not a "manufactory." *McNichol et al.* v. *Pinch* (2).

The word "manufacturer" used and associated with the words "wholesalers and jobbers" when first used in the section, retains its original, recognized and accepted meaning, nature and character when used the second time in the same section, a couple of lines lower. This interpretation is more consistent with the text of the enactment and is in accord with common sense and the meaning given to this word by the public generally.

Why, indeed, should we depart from the general and plain meaning of this specific word "manufacturer," which is of common and dominant feature, to endeavour, for the convenience of a special case, to extend to it, by doing violence to the English language, a meaning which to every one would so strain it as to nearly amount to an absurdity on its very face. Common sense alone rebels at accepting and applying to this word "manufacturer" the narrowest meaning of which it is susceptible and which is contrary to the understanding of the public, the language and usage of trade and of what is commonly and commercially known.

With the policy of Parliament on the legislation the Court has nothing to do. The duty of the Court is to construe the language used in the statute and if that construction does not fully carry out the intention

(1) 10 D.L.R. 627. (2) [1906] 2 K.B. 352.

1921

THE KING v. PEDRIC AND PALEN

Reasons for Judgment.

Audette J.

of Parliament (a very doubtful matter!) and if a narrower and new meaning is to be attached to the word "manufacturer" in the Customs Act, the Act can easily be amended.

In the view I take of the case, it becomes unnecessary to pass upon other questions raised at bar and more especially that stressed with respect to the nature and effect of the document filed as exhibit No. 2, and termed "Regulations" because such regulations must always be subject to the statute and could not *proprio vigore* create a tax. See *Belanger* v. *the King* (1).

I therefore find that the defendants are not liable to the penalties sued for and the action is dismissed with costs.

Judgment accordingly.

Solicitors for plaintiff: *Beament & Armstrong.*

Solicitors for defendants: *Hogg & Hogg.*

(1) 54 S.C.R. 265.