

1965  
Ottawa  
Dec. 15  
1966  
Jan. 25

BETWEEN :

METROPOLITAN LIFE INSUR-  
ANCE COMPANY .....

APPELLANT;

AND

DEPUTY MINISTER OF NA-  
TIONAL REVENUE FOR CUS-  
TOMS AND EXCISE AND THE  
GRAPHIC ARTS INDUSTRIES  
ASSOCIATION .....

RESPONDENTS.

AND BETWEEN :

METROPOLITAN LIFE INSUR-  
ANCE COMPANY .....

APPELLANT;

AND

DEPUTY MINISTER OF NA-  
TIONAL REVENUE FOR CUS-  
TOMS AND EXCISE AND THE  
GRAPHIC ARTS INDUSTRIES  
ASSOCIATION .....

RESPONDENTS.

*Revenue—Customs Tariff, R.S.C. 1952, c. 60—Customs Act, S. of C. 1958, c. 26, s. 44—Tariff items 170, 171, 178—Appeal under s. 45 of the Customs Act is limited to a “question of law”—No appeal upon a question of fact.*

Appellant's position before this Court was that the unbound books should have been classified under Items 170 and 171 respectively under the *Customs Tariff, R.S.C. 1952, c. 60*, of the unbound pages of a book in

English entitled "Rate Book", imported on July 10, 1963, and of the unbound pages of a book in French entitled "Recueil de Tarifs", imported on Sept. 23, 1963, respectively.

The Tariff Board declared that the rate book pages, both in the English language and in the French language, were properly classified in Tariff Item 178

The appeal to this Court from that declaration under s. 45 of the *Customs Act* is limited to a "question of law". There is no appeal upon a question of fact as such, because the appellant accepted the description of the "Rate Book" and the "Recueil de Tarifs" as set out in the Tariff Board's decision except the part thereof that states that "As its title implies, by far the greater part of the book is devoted to premium rates and their variations according to different circumstances".

*Held*, that it is not possible to find a clear cut demarcation between certain parts of the books that deal with rates and other parts that do not.

- 2 That there are two quite different ways of appraising the books. One appraisal might be that the books are largely devoted to enabling the company's employees to know all the different types of insurance contracts that the company is prepared to make with prospective customers and that the information as to rates in the book is incidental information that plays a relatively minor role in the books.
3. That this Court cannot interfere with the finding of the Tariff Board decision, which conclusion is one open to the appraisal of the character of the books.
- 4 That these rules upon which the appellant relies cannot be applied in any mechanical or artificial way but must be used as tools to ascertain what Parliament intended cf. *Johnson et al v Canadian Credit Men's Trust Ass'n.* [1932] S C R. 219 at 220
5. That when the various specific classes of goods set out in Item 178 are examined they are found to be either "advertising" or "printed" matter. The rate books in issue have an advertising character.
- 6 In the general usage the word "price" has come to have a meaning that includes insurance premiums
7. That Items 170, 171 and 178, show that the letters "n o p" appear in Items 171 and 178 but do not appear in Item 170 These letters mean "not otherwise provided".
- 8 While the matter is not free from doubt, having regard to the manner in which the wording of Item 170 follows the wording of Item 171, in the Court's view what Parliament intended to admit free is that portion of the class of books, etc previously covered by Item 171 that are not in the English language
9. That the rate books in issue in this case not only fall within the meaning of the words in Item 178 "Advertising and printed matter" but also fall within the meaning of the words "Books... periodicals and pamphlets", which appear in Item 171.
- 10 That the "n o p" (not otherwise provided) applies to the whole of Item 178 as well as to the whole of Item 171. Items 169 to 173 inclusive deal with what may be referred to as "Book" items.

1965

METROPOLITAN  
LIFE INS. CO.  
v.  
DEPUTY  
MINISTER OF  
NATIONAL  
REVENUE  
FOR CUSTOMS  
AND EXCISE  
*et al.*

1965  
 METRO-  
 POLITAN  
 LIFE INS. CO.  
 v.  
 DEPUTY  
 MINISTER OF  
 NATIONAL  
 REVENUE  
 FOR CUSTOMS  
 AND EXCISE  
*et al.*

11. That Item 171 provides for a relatively small duty for books, etc. "not otherwise provided for". Each of the other items provides for a higher duty or free entry for the books, etc. specifically described in it without any exception (that is they are not "n.o.p." items). Item 178 is another "n.o.p." item and it begins "Advertising and printed matter".
12. That the Court has reached the conclusion that the words employed in Items 170 and 171 must be so interpreted as not to extend to the advertising and printed matter referred to in Item 178 *c.f. Accessories Machinery Ltd. v. The Deputy Minister of National Revenue for Customs and Excise et al.*, [1957] S.C.R. 358.
13. That the Court rejects the appellant's argument that by reason of the "n.o.p." symbol in Item 178 and the absence of an "n.o.p." symbol in Item 170 the "Recueil de Tarifs" should have been classified under Item 170.
14. That the appeals be dismissed.

APPEALS from decisions of the Tariff Board.

*John D. Richard* for appellant.

*R. A. Wedge* and *H. A. Newman* for respondent The Deputy Minister of National Revenue for Customs and Excise.

*D. D. Diplock, Q.C.* for respondent The Graphic Arts Industries Association.

JACKETT P.:—These are appeals, under section 45 of the *Customs Act* (Chapter 26 of 1958), from decisions by the Tariff Board under section 44 of the *Customs Act*, dismissing appeals from two decisions of the Deputy Minister of National Revenue for Customs as to the classification under the *Customs Tariff*, R.S.C. 1952, chapter 60, of the unbound pages of a book in English entitled "Rate Book", imported on July 10, 1963, and of the unbound pages of a book in French entitled "Receuil de Tarifs", imported on September 23, 1963, respectively.

The two books differ only in that one is in French and the other is in English.

The appellant's position, before this Court as well as before the Tariff Board, was that the unbound books should have been classified under Item 170 and Item 171, respectively, of the *Customs Tariff*. Those two items, at the relevant times, read as follows:

Tariff Item.	British Prefer- ential Tariff.	Most- Favoured- Nation Tariff.	General Tariff.	1965 METRO- POLITAN LIFE INS. CO v. DEPUTY MINISTER OF NATIONAL REVENUE FOR CUSTOMS AND EXCISE <i>et al.</i> Jackett P.
170 Books, periodicals and pamphlets, or parts thereof, printed, bound, unbound, or in sheets (not to include blank account books, copy books, or books to be written or drawn upon) in any other than the English language .....	Free	Free	Free	
171 Books, printed, periodicals and pamphlets, or parts thereof, n.o.p., not to include blank account books, copy books, or books to be written or drawn upon .....	Free	10 p.c.	10 p.c.	

The respondents' position was that both importations were properly classified under Item 178, which, at the relevant time, read as follows:

Tariff Item.	British Prefer- ential Tariff.	Most- Favoured- Nation Tariff.	General Tariff.
178 Advertising and printed matter, viz.:— Advertising pamphlets, advertising show cards, illustrated advertising periodicals; price books, catalogues and price lists; advertising almanacs and calendars; patent medicine or other advertising circulars, fly sheets or pamphlets; advertising chromos, chromotypes, oleographs or like work produced by any process other than hand painting or drawing, and having any advertisement or advertising matter printed, lithographed or stamped thereon, or attached thereto, including advertising bills, folders and posters, or other similar artistic work, lithographed, printed or stamped on paper or cardboard for business or advertisement purposes, n.o.p. ....per pound	5 cts.	10 cts.	15 cts.
but not less than .....		25 p.c.	35 p.c.

The evidence given before the Tariff Board was common to both appeals and it was common ground that the appeals to this Court are appeals on the evidence that was before the Tariff Board.

That part of the Tariff Board's reasons that summarizes the factual position, as the Board found it to be, reads as follows:

A copy of each rate book was filed as an exhibit and evidence was given by the staff supervisor of a division of the appellant company's Ottawa office concerning its use.

<p>1965</p> <p>—</p> <p>METRO- POLITAN LIFE INS Co. v. DEPUTY MINISTER OF NATIONAL REVENUE FOR CUSTOMS AND EXCISE <i>et al.</i></p> <p>—</p> <p>Jackett P.</p> <p>—</p>	<p>The contents of the rate book are described on the first page of text; a summary of this description follows</p> <p>Section A: Information on two series of policies, rules for computation of premiums, underwriting instructions and procedures, plans and supplemental benefits, dividend information, etc</p> <p>Section B: Information on personal health policies.</p> <p>Section C: Rates and non-forfeiture values for different policies</p> <p>Section D: Information on modes of settlement and interest tables</p> <p>Section E: Descriptive text, underwriting rules and rates for annuity contracts and certain life insurance policies and non-forfeiture values for deferred annuity contracts</p> <p>Section F: Description, underwriting rules, applications, rates and values for weekly premium policies</p> <p>Section G: Occupational ratings and health criteria for premium determination</p> <p>Section H: Information, premium rates, mortality table, income tax provisions, insurance regulations, etc, relating to certain types of insurance</p>
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The rate book was described in evidence as a reference book on life insurance for the use of agents or salesmen and other officers or employees of the appellant company, but not for the use of the public; it was stated in evidence that agents of the appellant company took a training course which included the subject matters of the rate book and that without such training, the rate book could not be used effectively.

From the foregoing it is clear that the rate book is basically a compilation of information pertaining to the types of insurance which the appellant company offers to the public, to information that an adequately informed agent must possess, to premium rates, to dividends and to other insurance matters. As its title implies, by far the greater part of the book is devoted to premium rates and their variations according to different circumstances

The rate book is descriptive of the insurance which the appellant company offers to the public and is largely devoted to setting out the premium rates, on a time basis of a year or shorter periods, to be paid to obtain the insurance. . . .

. . . It is true that the rate book cannot give the total amount that will be paid for most types of insurance because of the fortuity of the insured's death at any time. The contract of life insurance provides insurance coverage, and often other benefits as well, in return for the payment of certain sums of money each year; the contract is terminable upon the death of the insured or at some other specified time when certain agreed sums of money become payable to the beneficiary of the policy. The total price is often unascertainable until the death of the insured. Nevertheless, the rate book, properly used, does establish the premium to be paid in each period for the duration of the insurance . . .

The Tariff Board expressed the opinion that, in the general usage of the word "price", the premium is the price of the insurance expressed in dollars and cents and made a finding "that the rate books are properly classified in the second grouping of Tariff Item 178: 'price books, catalogues

and price lists' ". The Board thereupon declared that the rate book pages, both in the English language and in the French language, were properly classified in Tariff Item 178.

The appeal to this Court from that declaration, under section 45 of the *Customs Act*, is limited to a "question of law". There is no appeal upon a question of fact as such.

The appellant in this Court accepted the description of the "Rate Book" and the "Recueil de Tarifs" as set out in the Tariff Board's decision except the part thereof that states that "As its title implies, by far the greater part of the book is devoted to premium rates and their variations according to different circumstances".

In my opinion, this conclusion by the Board is a conclusion on a question of fact. While the books in question are written documents, the conclusion of the Board that is attacked by the appellant is not an interpretation of the meaning of those documents, which would be a question of law, but is an appraisal of the true nature or character of the document having regard to the question whether, or not, it falls within the words of Item 178. This in my view is a question of fact as to the proper inferences to be drawn from the basic facts. As long as the Board's conclusion can be supported by the basic facts, it cannot be attacked in this appeal which is limited to questions of law<sup>1</sup>.

In my opinion, the Tariff Board's conclusion that the greater part of the "Rate Book" or "Recueil de Tarifs" in question is devoted to premium rates and their variations can be supported on the basic facts. It is not possible to find a clear cut demarcation between certain parts of the books that deal with rates and other parts that do not. It is impossible, therefore, to survey the books on a quantity basis and say that the Board was clearly wrong in its conclusion. There are at least two quite different ways of appraising the books from the relevant point of view. One appraisal might be that the books are largely devoted to enabling the company's employees to know all the different types of insurance contracts that the company is prepared

1965  
 METRO-  
 POLITAN  
 LIFE INS. Co.  
 v.  
 DEPUTY  
 MINISTER OF  
 NATIONAL  
 REVENUE  
 FOR CUSTOMS  
 AND EXCISE  
*et al.*  
 Jackett P.

<sup>1</sup> Compare *Canadian Light Truck Co. Ltd. v. Deputy Minister of National Revenue for Customs and Excise*, (1956) 1 D.L.R. (2d), 497 at p. 498 (Supreme Court of Canada), and *Dominion Engineering Works Ltd. v. Deputy Minister of National Revenue (Customs and Excise)*, [1958] S.C.R. 652.

1965  
 METRO-  
 POLITAN  
 LIFE INS. CO.  
 v.  
 DEPUTY  
 MINISTER OF  
 NATIONAL  
 REVENUE  
 FOR CUSTOMS  
 AND EXCISE  
*et al.*  
 Jackett P.

to make with prospective customers, including the various incidental rights and privileges that may be attached to various contracts, and that the information as to rates in the book is incidental information that plays a relatively minor role in the books. Another appraisal might be that the primary purpose of the books is, as their names suggest, to inform employees as to the rates at which the various kinds of insurance contracts may be written and that the major part of the information in the books is necessarily incidental to conveying that rate information. Which is the correct appraisal of the character of the books is a question of fact that the Tariff Board had to decide and, as its conclusion is a conclusion open to it on the basic facts, this Court cannot, on this appeal, interfere with that finding.

The appellant made two further attacks on the Board's decisions that the books fall within the wording of Item 178. These are, in effect, as I understand them:

- (a) having regard to the introductory words of Item 178 "Advertising and printed matter, viz.", the words "price books, catalogues and price lists" must be restricted to "price books, catalogues and price lists" of an advertising character and do not therefore include the books that are the subject matter of these appeals in that they are not intended to come to the attention of potential customers; and
- (b) even if the words "price books, catalogues and price lists" are read by themselves they do not, properly construed, extend to the books that are the subject matter of these appeals.

Dealing with the first of these questions first, I do not find any assistance in the cases that apply such principles of construction as the *Ejusdem Generis* rule upon which the appellant relies. These rules cannot be applied in any mechanical or artificial way but must be used as tools to ascertain what Parliament intended<sup>1</sup>. Here, it seems reasonably clear that by Item 178 Parliament has provided certain rates of duty for certain "Advertising and printed matter", such advertising and printed matter being nothing more or less than what is enumerated in the following words of the item. This is clearly indicated by the use of the word "viz.", which is an abbreviation for "videlicet", which means "That is to say; namely; to wit" and is "used to introduce an amplification or more precise explanation of a previous statement or word". See Shorter Oxford Dictionary, Third Edition, Volume II, pages 2355 and 2367.

<sup>1</sup> Compare *Johnson et al. v. Canadian Credit Men's Trust Association*, [1932] S.C.R. 219 at p. 220

When the various specific classes of goods set out in Item 178 are examined, they are found to be either “advertising” or “printed” matter. I see no justification for introducing a further limitation on a particular specific class that it must be in the nature of advertising. In any event, the rate books in issue here have, in my view, an advertising character. When “price books, catalogues and price lists” are communicated to the potential customers of a commercial firm as part of the effort to sell its wares, they are unquestionably advertising matter in the sense in which the word is employed here. In my view, it follows that “price books, catalogues and price lists”, when used by employees of a commercial firm to aid them in selling their employer’s wares to customers, are only one step short of being advertising communicated to the customers and have therefore an advertising character. I therefore reject the first of the two attacks on the Board’s decision based on the interpretation of Item 178.

With reference to the second attack based on the interpretation of Item 178 (that the words “price books, catalogues and price lists” read by themselves do not extend to the subject matter of the appeals), once the Board’s conclusion that the greater part of the books in question are devoted to premium rates is accepted, the appellant’s contention, which is in effect that the books are a sort of insurance man’s manual or “Bible” and not a mere price book or list, loses its force. I have more difficulty in applying the word “price”, which in its normal sense means the consideration for the sale of property, to the business of life insurance, which does not consist in selling property but rather in entering into contracts whereby the insurance company binds itself, in consideration of certain payments—premiums—being made to it, to make specified benefit payments upon the happening of specified events. I have come to the conclusion, however, that the Board was right in its conclusion that “In the general usage” the word “price” has come to have a meaning that includes insurance premiums. I therefore reject the appellant’s second attack on the Board’s interpretation of Item 178.

This brings me to the appellant’s final attack on the decision appealed from. This attack is restricted to the Board’s decision concerning the French language “Recueil de Tarifs”.

1965  
 METRO-  
 POLITAN  
 LIFE INS. Co.  
 v.  
 DEPUTY  
 MINISTER OF  
 NATIONAL  
 REVENUE  
 FOR CUSTOMS  
 AND EXCISE  
*et al.*  
 Jackett P.



1965  
 METRO-  
 POLITAN  
 LIFE INS. Co.  
 v.  
 DEPUTY  
 MINISTER OF  
 NATIONAL  
 REVENUE  
 FOR CUSTOMS  
 AND EXCISE  
*et al.*  
 Jackett P.

An examination of Items 170, 171 and 178, quoted above, shows that the letters "n.o.p." appear in Items 171 and 178 but do not appear in 170. These letters mean "not otherwise provided". See paragraph (g) of subsection (1) of section 2 of the *Customs Tariff*. The appellant says that if the French language "Recueil de Tarifs" falls in Item 178, it also falls in Item 170 and that, as Item 178 only covers goods that fall in it when they are "not otherwise provided"—i.e., not covered by some other item—it follows that Item 178 does not apply to the French language book. (It would seem to be clear that, if the "n.o.p." symbol does not apply to the relevant part of Item 178, that item prevails because it is of a more specific character than Item 170.)

As something may turn on the physical arrangement as well as the words, figures and punctuation used, I here reproduce a photocopy of the three items to which I have referred as they appear in the schedule to chapter 60 of R.S.C. 1952, together with part of the context in which they appear:

Sch.

*Customs Tariff*

Chap. 60.

GOODS SUBJECT TO DUTY AND FREE GOODS—*Continued*

Tariff Item.		British Preferential Tariff.	Most-Favoured-Nation Tariff.	General Tariff.
GROUP V. <i>Pulp, Paper and Books.</i>				
169	Books, viz.:—Novels or works of fiction, or literature of a similar character, unbound or paper bound or in sheets, but not to include Christmas annuals, or publications commonly known as juvenile and toy books.....	Free	22½p.c.	25 p.c.
170	Books, periodicals and pamphlets, or parts thereof, printed, bound, unbound, or in sheets (not to include blank account books, copy books, or books to be written or drawn upon) in any other than the English language.....	Free	Free	Free
171	Books, printed, periodicals and pamphlets, or parts thereof, n.o.p., not to include			

GOODS SUBJECT TO DUTY AND FREE GOODS—Continued

Tariff Item.	—	British Preferential Tariff.	Most-Favoured-Nation Tariff.	General Tariff.
	blank account books, copy books, or books to be written or drawn upon.....	Free	10 p.c.	10 p.c.
172	Books, pamphlets and charts, printed or published by any government abroad; official financial and business reports and statements issued by companies or associations abroad; books, pamphlets and reports, for the promotion of religion, medicine and surgery, the fine arts, law, science, technical training, and the study of languages, not including dictionaries. Scripture and prayer cards, and religious pictures and mottoes, not to include frames; books, bound or unbound, which have been actually printed and manufactured more than twelve years; manuscripts; insurance maps; freight rates, passenger rates and timetables issued by transportation companies abroad and relating to transportation outside of Canada, in book or in pamphlet form	Free	Free	Free
172a	Tourist literature issued by national or state governments or departments thereof, boards of trade, chambers of commerce, municipal and automobile associations, and similar organizations.....	Free	Free	Free
172b	Prayer books, missals, psalters, religious pictures and mottoes, not to include frames	Free	Free	Free
173	Books which are included in the curriculum of any university, college or school in Canada for use as text books or as works of reference, not to include dictionaries; printed books, pamphlets and cards for use in schools to test the degree of intelligence of pupils; all books for bona fide libraries, and being the property of the organized authorities of such libraries and not in any case the property of individuals or business concerns, under such regulations as may be prescribed by the Minister; directories for free reference libraries; books received from free lending libraries abroad, subject to return under Customs supervision within sixty days.....	Free	Free	Free
178	Advertising and printed matter, viz.:— Advertising pamphlets, advertising show cards, illustrated advertising periodicals; price books, catalogues and price lists; advertising almanacs and calendars; patent medicine or other advertising circulars, fly sheets or pamphlets; advertising chromos, chromotypes, oleographs or like work produced by any process other than hand painting or drawing, and having any advertisement or advertising matter printed, lithographed or stamped thereon, or attached thereto, including advertising bills, folders and posters, or other similar artistic work, lithographed, printed or stamped on paper or cardboard for business or advertisement purposes, n.o.p.....per pound but not less than	5 cts. .....	10 cts. 25 p.c.	15 cts. 35 p.c.

GOODS SUBJECT TO DUTY AND FREE GOODS—Continued

Tariff Item.		British Preferential Tariff.	Most-Favoured-Nation Tariff.	General Tariff.
	<p>Goods specified in this Item shall be exempt from customs duty when produced in countries entitled to the British Preferential Tariff and relating exclusively to products or services of such British countries, but not relating to Canadian products or services.</p> <p>On goods specified in this Item when forwarded to Canada by mail, duties may be prepaid by customs duty stamps, under regulations by the Minister, at the rate specified in the Item, except that on each separate package weighing not more than one ounce, the duty shall be each.....</p> <p>Bona fide trade catalogues and price lists not specially designed to advertise the sale of goods by any person in Canada, when sent into Canada in single copies addressed to merchants therein, and not exceeding one copy to any merchant for his own use, but not for distribution, shall be exempt from customs duty under all Tariffs.</p> <p>Advertising and printed matter, whether imported by mail or otherwise, when in individual packages valued at not more than \$1.00 each and when not imported for sale or in a manner designed to evade payment of customs duties, shall be exempt from customs duty when produced in countries entitled to the British Preferential or the Most-Favoured-Nation Tariff.</p>	1 ct.	2 cts.	2 cts.
179	<p>Labels for cigar boxes, fruits, vegetables, meats, fish, confectionery or other goods or wares; shipping, price or other tags, tickets or labels, and railroad or other tickets, whether lithographed or printed, or partly printed, n.o.p.....</p> <p>Tickets issued by railway systems in the British Commonwealth (not including railway systems operating in Canada), shall be exempt from customs duty, when produced in countries entitled to the benefits of the British Preferential Tariff.</p>	17½ p.c.	22½ p.c.	35 p.c.
180	<p>Photographs, chromos, chromotypes, artotypes, oleographs, paintings, drawings, pictures, decalcomania transfers of all kinds, n.o.p., engravings or prints or proofs therefrom, and similar works of art, n.o.p.; blueprints, building plans, maps and charts, n.o.p.....</p>	12½ p.c.	22½ p.c.	22½ p.c.
180a	<p>Photographs for use only as news illustrations, under regulations by the Minister.....</p>	Free	Free	Free
180b	<p>Artists' proof etchings unbound, such as are printed by hand from plates or blocks etched or engraved with hand tools and not such as are printed from plates or blocks etched or engraved by photochemical or other mechanical processes...</p>	Free	Free	Free

GOODS SUBJECT TO DUTY AND FREE GOODS—Continued

Tariff Item.		British Preferential Tariff.	Most-Favoured-Nation Tariff.	General Tariff.
180c	Decalcomania transfers, when imported exclusively for use in the manufacture of vitreous enamelled products or of table ware of china, porcelain or semi-porcelain.....	Free	10 p.c.	12½ p.c.
180d	Photographs, paintings, pastels, drawings and other art work and illustrations of all kinds, n.o.p., whether originals, copies or proofs, for reproduction in periodical publications enjoying second-class mailing privileges.....	Free	9 p.c.	25 p.c.
	Goods which are entitled to entry free of duty or at a lower rate than as indicated in this item shall not be entered at the rates specified in this item.			
180e	Engineers' plans, drawings or blue-prints of machines and plant equipment, plant layouts, foundations for machinery and other plant equipment, structural supports and towers and similar outside structures, dams, spillways and other hydro construction, wiring, piping, platforms, ladders, stairs, etc., not to include office or other buildings. . . . .	Free	Free	Free
181	Bank notes, bonds, bills of exchange, cheques, promissory notes, drafts and all similar work, unsigned, and cards or other commercial blank forms printed or lithographed, or printed from steel or copper or other plates, and other printed matter, n.o.p.....	22½ p.c.	32½ p.c.	35 p.c.

The respondents argue that the letters "n.o.p." in Item 178 apply only to the last of the specific classes of goods covered by Item 178 and do not, therefore, apply to the goods in question here. I see some basis for this in that the other specific classes of goods in Item 178 are each separated from what follows, including the "n.o.p." symbol, by a semicolon, whereas the "n.o.p." symbol is apparently a part of the description of the last specific class. This somewhat slender basis for curtailing the effect of the "n.o.p." character to the last part of Item 178 receives some support from a comparison of Item 178 with Item 180 where the "n.o.p." is repeated at the end of each of the three classes of goods of which that item consists.

1965  
 METRO-  
 POLITAN  
 LIFE INS. CO.  
 v.  
 DEPUTY  
 MINISTER OF  
 NATIONAL  
 REVENUE  
 FOR CUSTOMS  
 AND EXCISE  
*et al.*  
 Jackett P.

1965  
 METRO-  
 POLITAN  
 LIFE INS. CO.  
 v.  
 DEPUTY  
 MINISTER OF  
 NATIONAL  
 REVENUE  
 FOR CUSTOMS  
 AND EXCISE  
*et al.*  
 ———  
 Jackett P.  
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Such a line of reasoning for the determination of a problem in the interpretation of the Schedule to the *Customs Tariff* is not very satisfying. It is, I think, possible to find many quite inconsistent formulae followed in the construction and punctuation of the various items in that Schedule. This is not surprising when the history of this document is examined and it is appreciated that it is the product of many many different brands of draftsmanship over a period of many decades. In these circumstances, I doubt the soundness of drawing conclusions from a minute examination of the form of an item and a comparison of it with other items without regard to the relevant history of the amendment of the Schedule<sup>1</sup>.

An alternative approach to the problem is to look at the state of the relevant items as they were immediately before Item 170 was added in 1939 and then to consider what effect Parliament intended by the addition of Item 170.

Items 171 and 178 appeared in the Schedule to the *Customs Tariff* prior to 1939 in substantially their present state. See R.S.C. 1927, chapter 44. Assuming, for purposes of this approach to the problem, that the "n.o.p." symbol in Item 178 applied to the whole of that item, nevertheless, there being a similar "n.o.p." in Item 171 and Item 178 being, relatively, much more specific than Item 171, Item 178 clearly prevailed over Item 171 to the extent that there was overlapping in the application of the two items. In other words, while Parliament, as of that time, provided that, as a general rule, books, periodicals and pamphlets were subject to a customs rate of 10 per cent., the advertising and printed matter specifically described in Item 178 was subject to the higher rates therein set out.

While that was the state of the law, Parliament, by chapter 41 of the Statutes of 1939, amended the Schedule by adding Item 170 in substantially its present form. In terms, a further exception was created by this new item from the general rule that "Books . . . periodicals and pamphlets" were subject to a duty or 10 per cent., the exception being that if the "Books, periodicals and pamphlets" were "in any other than the English language" they should be entered "Free". The question is whether this exception was carved out of what was immediately prior thereto covered

<sup>1</sup> Compare *Kensington Commissioners v. Aramayo*, [1916] 1 A.C. per Lord Wrenbury at page 227-9, and Earl Loreburn at page 236.

by Item 171 or whether it was carved out of what was then covered by Item 171 and also out of what had already been carved out of Item 171 by Item 178. In other words, having already provided a higher protective rate for the Item 178 goods, can Parliament be assumed, when it was providing for the free entry of books, etc., that are not in English, to have intended to extend free entry to a substantial portion of the class of goods previously chosen for special protection. While the matter is not free from doubt, having regard to the manner in which the wording of Item 170 follows the wording of Item 171, I am of opinion that what Parliament intended to admit free is that portion of the class of books, etc., previously covered by Item 171 that are not in the English language. In the absence of some more precise indication, I am not prepared to hold that it was intended to remove a substantial part of the special protection previously provided by Item 178<sup>1</sup>.

In what I have said so far, I have been assuming that the rate books in issue here not only fall within the words in Item 178, "Advertising and printed matter", but also fall within the words "Books . . . periodicals and pamphlets", which appear in Item 171.

Another approach to this very difficult problem of interpretation is to consider whether it was ever intended that there could be any overlapping in the application of Items 171 and 178. In making this approach, I assume that the "n.o.p." symbol applies to the whole of Item 178 as well as to the whole of Item 171. Items 169 to 173, inclusive, deal with what may be referred to as "Book" items. They all begin with a reference to books except Item 172a which begins with "Tourist literature". Item 171 provides for a relatively small duty for books, etc., "not otherwise provided for". Each of the other items provides for a higher duty or free entry for the books, etc., specifically described in it, without any exception (that is, they are not "n.o.p." items). When we come to Item 178, which is the next item, we have another "n.o.p." item and it begins, "Advertising

1965  
 METRO-  
 POLITAN  
 LIFE INS. CO  
 v.  
 DEPUTY  
 MINISTER OF  
 NATIONAL  
 REVENUE  
 FOR CUSTOMS  
 AND EXCISE  
*et al.*  
 Jackett P.

<sup>1</sup> Not only must an exemption provision such as Item 170 be read strictly but the rule of interpretation in subsection (2) of section 2 of the *Customs Act*, R.S.C. 1952, chapter 58, should not be overlooked. That subsection provides *inter alia*, in effect, that provisions in the *Customs Tariff* shall receive such fair and liberal interpretation "as will best ensure the protection of the revenue" and the attainment of the purpose for which such law was made.

1965  
 METRO-  
 POLITAN  
 LIFE INS. CO.  
 v.  
 DEPUTY  
 MINISTER OF  
 NATIONAL  
 REVENUE  
 FOR CUSTOMS  
 AND EXCISE  
*et al.*  
 Jakkett P.

and printed matter". In my view, Parliament was not here carving another exception out of Item 171 but was rather looking at advertising and printed matter as specified in Item 178 as falling completely outside the concept of books, periodicals and pamphlets with which it was dealing in Items 169 to 178. Here again, the problem is a difficult one, but I have reached the conclusion that the words employed in Item 170 and Item 171 must be so interpreted as not to extend to the advertising and printed matter referred to in Item 178<sup>1</sup>.

For these several reasons, and not without considerable hesitation, I reject the appellant's argument that, by reason of the "n.o.p." symbol in Item 178 and the absence of an "n.o.p." symbol in Item 170, the "Recueil de Tarifs" should have been classified under Item 170.

The appeals are dismissed with costs payable by the appellant to the Deputy Minister.

<sup>1</sup> Compare *Accessories Machinery Limited v. The Deputy Minister of National Revenue for Customs and Excise, et al*, [1957] S.C.R. 358.