

BETWEEN:

HIS MAJESTY THE KING ON THE
 INFORMATION OF THE ATTORNEY-
 GENERAL OF CANADA.....

PLAINTIFF;

AND

B. C. BRICK & TILE COMPANY
 LIMITED

DEFENDANT.

1935
 Sep. 23.
 Nov. 29.

Revenue—Special War Revenue Act—Sales tax—Limited companies controlled by same person dealing with each other—Agency.

S. 86 of c. 179, R.S.C. 1927, the Special War Revenue Act, reads in part as follows:—

In addition to any duty or tax that may be payable under this Act or any other statute or law, there shall be imposed, levied and collected a consumption or sales tax of four per cent on the sale price of all goods.

(a) produced or manufactured in Canada, payable by the producer or manufacturer at the time of the sale thereof by him; * * *

Defendant company manufactured bricks and sold its entire output to the Victoria Tile and Brick Supply Company Limited, paying the sales tax on the sale price of such bricks. The Victoria Company sold these bricks by retail together with other builders' supplies, and bricks purchased from other manufacturers. For all practical purposes the control of both companies was in one J. A. Wickson and his wife.

The Crown contends that the Victoria company was merely the agent of the defendant company in the sale of its bricks and that defendant company was therefore taxable on the sales price of the Victoria company.

Held: That the two companies are separate entities even though controlled by the same persons, and though the officers and shareholders of the two companies are much the same and the companies have business relations with each other those facts alone do not constitute the one company the agent of the other.

INFORMATION exhibited by the Attorney-General of Canada to recover from the defendant sales tax and penalties alleged to be due the Crown under the provisions of the Special War Revenue Act, c. 179, R.S.C. 1927, and amendments thereto.

The action was tried before the Honourable Mr. Justice Maclean, President of the Court, at Vancouver, B.C.

L. C. Ford for the plaintiff.

A. R. Creagh and *J. A. MacInnes* for defendant.

The facts and questions of law raised are stated in the reasons for judgment.

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THE PRESIDENT, NOW (November 29, 1935) delivered the following judgment:—

This is an information exhibited by the Attorney-General of Canada, whereby it is sought to recover from the defendant, under the provisions of the Special War Revenue Act, 1915, chap. 179, R.S.C. 1927, and amendments thereto, a sales or consumption tax upon certain goods produced or manufactured by it, namely, building bricks, and which were sold throughout the period commencing August 1, 1927, and ending December 31, 1933. The amount sued upon is for an alleged balance of \$1,443.34 due and owing as sales tax by the defendant to the plaintiff, together with penalty interest calculated to the 30th day of June, 1935, amounting altogether to the sum of \$1,940.95. The precise provision of the Special War Revenue Act applicable here is sec. 86 which in part reads as follows:—

In addition to any duty or tax that may be payable under this Act or any other statute or law, there shall be imposed, levied and collected a consumption or sales tax of four per cent on the sale price of all goods.

(a) produced or manufactured in Canada, payable by the producer or manufacturer at the time of the sale thereof by him; * * *

The Vancouver Brick and Tile Company Ltd., was incorporated under the laws of the Province of British Columbia in May, 1927, and in May, 1935, its name was changed to the B.C. Brick and Tile Company Ltd., now the defendant herein. The defendant company manufactures common building bricks at Sullivan, some 20 miles distant from Vancouver, B.C. Its entire production of bricks during the period in question was sold annually to the Victoria Tile and Brick Supply Company Ltd., a company incorporated in 1923 and since that date carrying on the business of selling, by retail usually, builders' supplies such as lime, mortar, gravel, sand, tiles, bricks, and other material, and which would be purchased by the Victoria Tile & Brick Company usually in wholesale quantities; it will be convenient hereafter to refer to this company as the "Victoria company." In addition to the annual output of bricks produced by the defendant company, the Victoria company purchased similar bricks and bricks of other types, from other manufacturers. The total annual sales of the Victoria company would amount to \$200,000 and over;

the value of the bricks manufactured annually by the defendant company and sold to the Victoria company amounted to somewhere between \$8,000 and \$9,000. The defendant company has paid the sales tax on the sale price of the bricks which it sold to the Victoria company, but the Crown now contends that the tax should be calculated on the sale price of the Victoria company.

Mr. J. A. Wickson, during the period in question, was the president of the defendant company and also of the Victoria company. His holding in the capital stock of the defendant company was 71 shares out of a total issue of 165 shares, and in the Victoria company he held 51 shares out of a capital stock issue of 112 shares. His wife was also a shareholder in both companies and was as well a director of both companies. When the defendant company was organized the Victoria company made advances to the former company for the purchase of machinery and equipment, taking shares, as I understand it, in such company for such advances; at any rate the Victoria company was a shareholder in the defendant company at the time material here. A Mr. Ayling, manager of the defendant company's plant was also a shareholder in that company, but he was not a shareholder in the Victoria company. The shareholders in the defendant company were therefore J. A. Wickson, his wife, the Victoria company, and Ayling. The deceased father of J. A. Wickson was a shareholder in the Victoria company and his share holdings are presently registered in the name of his executors; a brother of J. A. Wickson was also a shareholder in the Victoria company, but in 1933 his shares were acquired by J. A. Wickson. I think it may fairly be conceded that for all practical purposes the control of both companies was in J. A. Wickson and his wife.

The books of account of the defendant company, during the period in question, were kept by the Victoria company at its office in Vancouver for which service an annual allowance was made by the former company; it seems that presently the offices of both companies are at Sullivan, B.C. Neither company's business operations were financed in any way by the other. The defendant company's annual manufacturing operations were largely financed by means of advances made by some bank under sec. 88 of the Bank Act.

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The Crown contends that the Victoria company was merely the agent of the defendant company in the sale of its bricks, and was therefore taxable on the sales price of the Victoria company; this contention cannot, I think, be maintained. While the same persons may control the two companies yet they are separate entities, and even the shareholders are not precisely the same; their respective business operations are really quite distinct and were intended, I think, so to be. Each company finances and conducts its own operations, each hires and pays its own employees, and their business records are separately maintained; there is no division of profits or sharing of losses between the two companies. During the period in question the defendant company sold its annual production of bricks to the Victoria company at the current wholesale price just as other manufacturers of bricks would sell their product to similar business-concerns. There is no evidence to show that the business of the Victoria company was in fact influenced, controlled or directed, by the defendant company, and in all the circumstances here that would seem improbable. That the defendant company sells its entire annual output of bricks to the Victoria company does not appear to me to be an irregular or unusual thing, or of itself suggestive of a concealed effort to defeat the revenue; in all the circumstances it was not unnatural to find the Victoria company a willing customer of the defendant company. It would be going to dangerous limits to say, that because the officers and shareholders of the two companies were much the same, and because the companies had business relations the one with the other, that therefore the one was the mere agent of the other; there must, in my opinion, be a state of facts established outside that disclosed here, to make the defendant company liable for the sales tax on the basis of the price received by the Victoria company, and not upon the price at which in fact the defendant company sold its bricks to the Victoria company.

Counsel for both parties referred me to the judgment of the Supreme Court of Canada in the Palmolive case, (1). The important facts of that case are to be found very fully and concisely set forth in the judgment of Cannon J., par-

ticularly at pages 135 and 136, and I need not repeat them here. It will be seen, I think, that the principal or controlling facts appearing in that case are not at all similar to the facts in the case presently under consideration. It was held by the Supreme Court of Canada, in the Palmolive case, that upon all the facts disclosed, and upon the authorities mentioned, the manufacturing company was merely the agent of the selling company, and that it was the latter that was liable for the sales tax. In the case under consideration I am unable to see how, upon the facts disclosed, it could be held that the Victoria company was the agent of the defendant company, and to make the Palmolive case applicable here some such agency would have to be established. Conceivably it might be argued that the defendant company was the agent of the Victoria company, and that it was that company that was liable for the sales tax, but that company is not a party to this action. It seems to me that there is nothing in the facts appearing in this case that would support the contention that the Victoria company was the agent of the defendant company. The facts in the Palmolive case are so dissimilar that I really do not think any assistance is to be gained from it one way or the other.

It is my opinion therefore that the contention of the Crown cannot prevail and that the information must be dismissed with costs. Other defences were raised but in view of the conclusion which I have just expressed it is not necessary to discuss them.

Judgment accordingly.

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