

HIS MAJESTY THE KING.....PLAINTIFF;
 AND
 MILN-BINGHAM PRINTING COM- }
 PANY LIMITED } DEFENDANT.

1929
 April 30.
 May 14.

Special War Revenue Act, 1915—Sales Tax—Magazine—Exemption—Advertisement

The defendant printed a pamphlet for the Canadian Kodak Company called "Kodakery" for which it was paid from \$1,100 to \$1,200 a month. It refused to pay sales tax on the ground that the pamphlet in question was a "magazine" and as such exempt therefrom. The pamphlet was nothing but one of the numerous means of advertising, and the articles and advertisement therein referred only to the goods sold by the C.K. Co., and such articles with their illustrations were all intended to draw the attention of the public to the superiority of their goods. This pamphlet was given away with each kodak sold, and only brought in a sum of between \$30 and \$40 a month by way of subscription.

Held, that such a pamphlet was a mere advertisement for the Kodak company's goods which was meant to increase their sales and was not a "magazine" within the meaning of subsection 4 of section 19 B.B.B. of the Special War Revenue Act, 1915.

2. That as both the Customs Tariff Act and the Tax Act are revenue acts, a clear definition in one of these enactments of a term common to both may reasonably be referred to for the purpose of dispelling any ambiguity of meaning in the other. [*Bradshaw v. Minister of Customs and Excise* (1927) 2 D.L.R. 490; (1927) 4 D.L.R. 278; (1928) 2 D.L.R. 352 referred to.]

INFORMATION exhibited by the Attorney-General of Canada seeking to recover the sum of \$2,426.42 for sales tax.

The action was tried before the Honourable Mr. Justice Audette, at Toronto.

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 v.
 MILN-
 BINGHAM
 PRINTING
 Co. LTD.

G. Wilkie, K.C., and Mr. Hill for the plaintiff.

W. N. Tilley, K.C., and Mr. Boland for the defendant.

The facts are stated in the reasons for judgment.

AUDETTE J. now, May 14, 1929, delivered judgment.

This is an information exhibited by the Attorney-General of Canada, whereby it is sought to recover from the defendant the sum of \$2,426.42, as sales tax.

The defendant company prints for the Canadian Kodak Co. Limited "Kodakery" (Ex. "A"), a pamphlet intituled "a magazine for amateur photographers." This publication started in 1913.

The tax is claimed thereon under sec. 19BBB of the Special War Revenue Act, 1915, and amendments thereto; but the defendant claims, under subsection 4 of this section 19BBB, that the tax does not apply to a pamphlet such as this, being a magazine coming within the enumerated exceptions mentioned in said subsection, such as:— newspapers and quarterly, monthly, and semi-monthly magazines and weekly literary papers unbound.

Therefore, the question to be determined is whether or not the printed matter known as "Kodakery" filed as exhibit "A" at trial, is a "magazine" within the contemplation and meaning of the statute.

A number of dictionary definitions of the word magazine were quoted at trial. These definitions are all more or less in harmony, but I am prepared to accept as authoritative that which is given in the Oxford Dictionary, namely:

A periodical publication containing articles of various writers; chiefly, a periodical publication for general rather than learned or professional readers and consisting of a miscellany of critical and descriptive articles, essays, works of fiction, etc.

I find that exhibit "A", the "Kodakery" does not fall within that definition. It is nothing but one of numerous means used to advertise directly and indirectly its Kodaks, its photographic machines, etc. All through the pamphlet, the Kodak is advertised, most of the illustrations therein mentioned are entered as having been made from a Kodak or enlarged by a Kodak, etc. This word Kodak appears all through the book. Some pages are entirely used for advertising the Kodak Company.

The defendants are paid by the Kodak Company for printing this pamphlet between \$1,100 and \$1,200 a

month and the Kodak Company gets in return between \$30 and \$40 a month.

The subscription is sixty cents a year, or one dollar for two years and five cents a copy.

It is sent to retailers, who handle the "lines" of the Canadian Kodak Company, and who charge dealers. Each purchaser of a kodak takes a copy of Kodakery for each camera and gets a six months subscription free, which can be renewed for another six months, upon his signing the form provided in exhibit "B."

The pamphlet advertises the cameras, the kodaks, of the description sold by the Kodak Company and is also applied to the purpose of giving directions for obtaining good results from the proprietors' own machines.

The expense of the publication is charged up by the company as part of their "selling expenses."

The publication is not sold to news dealers as a magazine.

The publication is not a publication coming within the class of magazines covered by the statutory exemption; it is more in the nature of an advertising pamphlet, and were it not so, it is quite obvious that the publication of such work at such great loss would not be maintained. It is maintained because it advertises the goods of the Canadian Kodak Company Limited.

Filed as exhibit "F" items Nos. 184, 178 and 171 of the Canadian Customs tariff (filed for convenience sake) we find therein pamphlets of the same nature therein described and as exhibits No. 2 and No. 3 a ruling of the Board of Customs, confirmed by an Order in Council, as to the nature of periodical publications entitled to entry free under item 184, defined as follows:—

Declared that periodical publications consisting almost wholly of fiction and not containing a reasonable amount of critical and descriptive articles, news, items or articles relative thereto or to current topics, are not entitled to entry under tariff item 184 as magazines.

The *Kodakery* would therefore come under item 178 of the Customs Act, and would be subject to taxation. The company could not escape the tax under the Customs Tariff Act, and attaching the same meaning under the Special War Revenue Act, it must meet the same fate.

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Now both the Customs Tariff Act and the Tax Act are revenue Acts and a clear definition in one of these enactments of a term common to both may reasonably be referred to for the purpose of dispelling any ambiguity of meaning in the other. *Bradshaw v. Minister of Customs and Excise* (1).

The name of the publication embodies the very name of the articles the company sells. The company did not earn any profit from the subscription to the publication, but from the advertising it contains.

There will therefore be judgment in favour of the plaintiff for \$2,426.42 and costs.

Judgment accordingly.