BETWEEN:

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January 25.

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

AND

PETER KARSON AND WILLIAM KARSON, FORMERLY CARRYING ON BUSINESS UNDER THE NAME AND STYLE OF "KARSON" AND THE SAID WILLIAM KARSON..... } DEFENDANTS.

Revenue—Special War Revenue Act, 1915, as amended by 11 Geo. V., c. 50—Excise tax on sales by manufacturers—Interpretation—"Manufacturer."

Defendants were carrying on a confectionery and café business in Ottawa on the 10th day of May, 1921, when the Act 11-12 Geo. V., c. 50, amending the Special War Revenue Act, 1915, came into force. In the interests of their business they were manufacturing candy as stated below. By such legislation, an excise tax of 3 per cent was imposed on sales and deliveries by manufacturers, etc. Defendants occupied two stories of a commercial building. On the first floor they had a factory with modern plant and equipment for the manufacture of candy in large quantities, with a capacity in excess of that required for the period in question. In this factory they manufactured candy which was sold by retail to consumers. The staff of employees in the factory varied according to the demands of the season and the trade. The sale of the candy by retail to consumers took place in their store on the ground floor of the building occupied, where they sold a varied assortment of candies, ice-cream, lunches and soft drinks to consumers. It was proved that during the period in question the total trade of the defendants amounted to $65,000.00 a year, of which 1-5 represented the sale of candy manufactured by them. The defendants had taken out a sale tax license and a manufacturer's tax license for the fiscal year 1920-21 and paid the tax for that year; but did not renew the licenses and failed to pay the tax for the current fiscal year.

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Held That the defendants were "manufacturers" within the meaning of the Special War Revenue Act, 1915, as amended as aforesaid. *The King* v. *Pedric et al* (1921) 21 Ex. C.R. 14 distinguished:

(2) That it is the plain and literal meaning attaching to the word "manufacturer" that should govern in construing the statute; and that when it is proved, as it was here, that the sense in which people engaged in the trade accept a word corresponds with its literal meaning, the construction of the statute is freed from difficulty. The literal construction of the word is also supported where it is not shown that the framers of the Act had any intention of departing from the meaning of the term in question as generally accepted.

(3) That the construction of a statute should not be obscured by assuming complexities of administration that may never arise. Reasonableness must be attributed to the officials who administer the law when hardships arise; and in such matters the courts must deal with actualities and not remote possibilities.

INFORMATION exhibited by the Attorney-General of Canada seeking to have it declared that the defendants are "manufacturers" within the meaning of the Special War Revenue Act, 1915, and liable to the tax imposed upon such.

January 12th, 1922.

Case now heard before the Honourable Mr. Justice AUDETTE at Ottawa.

W. D. Hogg, K.C., and *F. D. Hogg*, for the plaintiff.

T. A. Beament K.C., for defendants.

The facts are stated in the reasons for judgment.

AUDETTE J. now (this 25th January, 1922) delivered judgment.

This is an information exhibited by the Attorney-General of Canada, whereby it is sought, *inter alia*, to have an account taken of all confectionery and candy, etc., manufactured and sold by the defendants

from the 10th May, 1921, and for the payment upon the same of the tax on sales payable under the provisions of sec. 19 b.b.b. of the Special War Revenue Act, 1915 (5 Geo. V., ch. 8) as amended by 11-12 Geo. V., ch. 50. This latter amendment came into force on the 10th May, 1921.

As a prelude to the consideration of the present controversy it is well to state that the present case is distinguishable and must be distinguished from the *Pedric Case* (1)—a case recently decided by me and cited at bar—for the obvious reasons that the facts are materially different and further that the law has since been amended and changed.

The defendants Peter Karson and William Karson were on the 10th May, 1921, carrying on the business of confectioners and candy manufacturers, on Sparks Street, in the City of Ottawa.

On the 6th of July, 1921, the defendants dissolved their partnership, and William Karson continued the business alone on Sparks street, while Peter Karson started a similar business on Rideau street, in the City of Ottawa.

Under the provisions of this sec. 19 b.b.b. (11-12 Geo. V., ch. 50) a section too lengthy to be here recited, it is, among other things, enacted that upon "sales by manufacturers to retailers or consumers, etc., etc., the excise tax payable shall be three per cent, etc." The section furthermore provides for the manner in which this tax shall be levied.

Now, the nature of the business carried on at 200 Sparks Street, which is the subject of the present controversy, consists of a retail store on the ground

(1) [1921] 21 Ex. C. R. 14.

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floor, where candies of almost every kind, ice cream, lunches, soft drinks are sold, including the operation of a soda fountain. However, besides this specific retail trade, the defendants have a candy factory on the second floor of this Sparks street establishment, where their candy is manufactured in large quantities and thereafter is sold through their retail store on the ground floor.

They have in the factory on the second floor a considerable and improved plant or equipment for such manufacture with a staff of employees varying from time to time, as required by the season and the trade.

The defendants were in possession of a sale tax license and manufacturer's tax license for the fiscal year 1920–1921; but have failed to renew the same for the current fiscal year and have failed to pay to the Crown the statutory taxes.

The evidence discloses that their plant is capable of manufacturing much more than they actually did manufacture. The evidence also discloses that in the course of his examination in the present case, Peter Karson frankly admits that his firm *manufactures* candy and states how they *manufacture* the same; that the Bunnell factory, in the City of Ottawa, with a very much smaller plant and machinery, selling to retailers, etc., but not retailing its goods, takes out the license and pays the tax. Furthermore that the Ardis Company, on Sussex street, with a plant almost equal in quantity but with less improved and modern appliances than those of the defendants, like the Bunnell factory, takes out the license and pays the tax.

It has further been established that large manufacturers, such as the "Laura Secord" concern, having extensive factories in Montreal and Toronto, yet selling and retailing their goods, also take out a license and pay the tax. Moir & Company, of Halifax, Goodwin & Co., of Montreal, Eaton Co., of Toronto, also manufacture their own candy and retail it in their own stores, take out licenses and pay the statutory tax. The evidence shows, too, that there are other firms, manufacturing in a similar manner and retailing also in a similar manner, that take out the license and pay the tax.

Discrimination alone would not of itself be a sufficient reason to make them liable. It is quite true that the fact that all these concerns carry on a similar business to that of the defendants and pay tax, will not of itself be a reason to exact the tax from the defendants if the law does not make them liable therefor; but this fact goes to show what is the custom of the trade and how traders understand the word "manufacturer" as used in our statute. It is the meaning attaching to the word "manufacturer" in its plain and literal sense that should govern us in construing the statute, and when it is proved, as it was here at the trial, that the sense in which the people in the trade accept it corresponds with that literal sense, the construction of the statute is freed from difficulty.

It is also to be observed that there is nothing to show that the framers of the Act had any intention of departing from the meaning of the term in question as generally accepted. See in this connection 24 Hals. 619.

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Much stress has been laid by the defendants on the difficulty in collecting the tax when selling from 10 cents worth of candy at a time, and therefore trying to show the impossibility of complying with the requirements of the statute, in that when selling 10 cents worth of candy, they would have to collect at least one cent, equal to 10 per cent of the sale. This argument lacks in soundness. Indeed, taking the sale of candies for the sum of $100,000.10 can it be said the tax cannot be levied because on the last 10 cents, at least 10 per cent would have to be collected? Under our Canadian currency, we have no coins smaller than one cent and that has to be collected when a fraction thereof is collectible. Stating the proposition is solving it.

It is futile to becloud so clear a case of construction by assuming complexities that need never arise in the practical administration of the Act. The courts must deal with actualities and not remote possibilities in deciding cases before them involving the construction of statutes. Reasonableness must be attributed to the officials who administer the law when hardships arise. The defendants were wise in the course they first pursued in taking out a license and paying the tax for 1920-21; they have seen fit to risk the consequences of a departure from that course the following year, and must therefore accept the full burden of that risk.

I have no hesitancy in reaching the conclusion that the defendants are "manufacturers" selling to consumers, and that they are liable to pay the above mentioned tax. They have a factory, they manufacture candies and they sell them to consumers, thus necessarily coming within the ambit of the section.

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Having found the defendants liable, the next question is that of fixing the amount collectible. At the opening of the trial when a general statement of the case was made, it was understood that the Court was to decide the question of liability and that there would be a reference to take account. However, as the case proceeded, it was elicited both on behalf of the defendants and on behalf of the Crown that the sale of candy so manufactured by the defendants represented one - fifth (1-5) of their total trade of $65,000 for the year. Under the circumstances, I fail to see the necessity of going to the expenses of a reference to establish a fact which is proved by both sides respectively, and I will accept that ratio and mode of operating in arriving at the amount of the tax.

Therefore there will be judgment ordering and adjudging the defendants liable to pay this above manufacturer tax of 3 per cent, and if there is any difficulty in arriving at the actual amount of the condemnation leave is hereby reserved to apply to the Court for further direction in respect of the same.

The liability of the defendant Peter Karson is limited to the period between the 10th of May, 1921, to the 6th July, 1921.

The whole with costs in favour of the Crown.

Judgement accordingly.