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 Sept 27.
 1942
 March 2

BETWEEN:

HIS MAJESTY THE KING, on }
 the Information of the Attorney- }
 General of Canada } PLAINTIFF;

AND

GUARANTEE HOUSEHOLD STER- }
 ILIZERS } DEFENDANT.

Revenue—Sales tax—Special War Revenue Act, R S C, 1927, c 179, s 86—Used mattresses renovated or rebuilt for customers—No liability for sales tax.

Defendant, a manufacturer of mattresses for sale to the public, also renovates or rebuilds old mattresses and supplies certain material and labour therefor. These rebuilt mattresses are then delivered to the owner or customer who pays for such labour performed and material supplied.

Held That defendant is not liable for sales tax on mattresses renovated or rebuilt and returned to customers.

INFORMATION exhibited by the Attorney-General of Canada to recover from defendant money alleged due for sales tax on mattresses alleged to have been manufactured and sold by it.

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

A. G. Duncan Crux for plaintiff.

A. H. Fleishman and *J. F. Meagher* for defendant.

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

THE PRESIDENT, now (March 2, 1942) delivered the following judgment:

This proceeding is one to recover from the defendant the sum of \$849.31, for the consumption or sales tax imposed under the provision of the Special War Revenue Act, and for certain statutory penalties. The particulars of the claim for the taxes due and payable, and penalties, are set forth in paragraph 4 of the Information. Assuming that there is liability on the part of the defendant for the taxes and penalties claimed it is agreed that the particulars of the same as set forth in the Information are correct.

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The defendant is a manufacturer of mattresses which it sells to the public, but such sales are not involved in this issue. The defendant also renovates and repairs for customers mattresses that have been in use and for which it makes certain charges for material supplied and labour performed. These mattresses are referred to as "rebuilt" mattresses, and it is in respect of such mattresses that it is here sought to recover the sales tax in question. The Crown claims that such transactions constitute taxable sales within the terms of the Special War Revenue Act, and this claim the defendant resists. The defendant also purchases from owners old or used mattresses which it rebuilds and sells to the public and it pays the sales tax upon the selling price of the same, and no question arises here as to the sales tax on such transactions.

The labour and services performed, and the material supplied, by the defendant, in connection with the mattresses delivered by customers to it, and with which we are here concerned, are the following. First, any mattress so delivered is sterilized or disinfected by some chemical process. Then the covering or ticking of the mattress is removed and a new cover or ticking is made up, the material for which is supplied by the defendant. The original mattress filling or felt is then put through a picking machine to loosen up or refluff the same; that is to say, any portion of the felt that has become wadded or matted is restored to its original fluffy condition, or nearly so, and the felt as thus treated is then blown into the new mattress cover or ticking. The final operation is to bind or sew the cover and its contents together, I assume by vertical binding or sewing at predetermined points through the mattress cover. The mattress is then ready for return delivery to the owner or customer. It was stated by Mr. Crux, for the Crown, that in the case where the mattress

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covering was merely patched or repaired, and the sterilizing and reffuffing operations were performed, the sales tax was not claimed.

For the material supplied and the labour performed a charge of \$5.75 is made to the customer. This amount is made up as follows—\$2.25 would be the charge for the new mattress cover or ticking supplied or sold the customer; 18 cents would be the sales tax on the new cover or ticking supplied the customer and which in all cases here the defendant paid to the Crown and was credited therefor; 50 cents would be the charge to the customer for the sterilization, and the remainder, \$2.82, would be the charge for the labour performed in the rebuilding of the mattress. The Crown is here claiming the sales tax upon the total charge to the customer less the tax which has been already paid for the new mattress cover or ticking supplied or sold to the customer. I assume the customer might, if he desired, furnish his own mattress cover or ticking to the defendant.

The question for decision then seems to be: Does the material supplied and the labour performed by the defendant in the rebuilding of the customer's mattress constitute a sale of goods by a manufacturer, within the meaning of s. 86 of the Act?

In the case of *The King v. Boulton Limited* (1), I decided that the defendant there was not liable for the sales tax where it retreaded automobile tires for customers and to whom it returned the identical tires given it for treatment. It would seem to me that what I said in my reasons for judgment in connection with that class of transactions, and which appear on pages 190 and 191 of the Report of that case, are applicable here and I need not repeat what I there said. I do not think that the transactions here in question fall within the meaning and intendment of sec. 86 of the Special War Revenue Act. It is true that the mattresses in question did undergo quite extensive repairs but I do not think it can be said that the defendant manufactured and sold the same. My conclusion is that the Information must be dismissed and with costs to the defendant.

Judgment accordingly.