

1929
June 12.
June 28.
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HIS MAJESTY THE KING.....PLAINTIFF;

vs.

MIRAMICHI LUMBER COMPANY }
LIMITED.....} DEFENDANT.

Revenue—Special War Revenue Act, 1915—Sec. 19 B.B.B., ss. 4—Sales Tax—“ Manufactured ”—“ Leads.”

The defendant carried on both the business of a saw mill and the business of coal mining, and manufactured at its mills “ Leads ” for use in its mining operations. In some isolated cases it would purchase such

"Leads" in the market for the same purpose. It now refuses to pay sales tax upon these "Leads" manufactured by it, claiming that they come within the exceptions contained in ss. 4 of sec. 19 B.B.B. of the Special War Revenue Act, 1915. These "Leads" are logs put through the mill, sawn in half longitudinally and again into the required lengths for the use aforesaid.

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Held, that such "Leads" are manufactured at the defendant's mill and used by them not in the course of manufacturing the same, but are used in a different and distinct undertaking or operation quite apart from manufacturing of the same at their mill, and that they are manufactured articles bought and sold on the market, and clearly come within the provisions of section 19 B.B.B. aforesaid, and do not fall within the ambit of ss. 4 of said section of said Act, and are subject to the sales tax.

Audette J.

INFORMATION by the Attorney General of Canada to recover from the defendant the sales tax alleged to be due on the sale of certain "Leads" used in mining operations.

Action was tried before the Honourable Mr. Justice Audette at Saint John, N.B.

J. Winslow, K.C. and *A. Lawson* for the plaintiff.

P. J. Hughes, K.C. for the defendant.

The facts are stated in the reasons for judgment.

AUDETTE J., now (June 28, 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 \$215.55, being the balance of the amount claimed for unpaid sales tax and penalties.

The defendant carries on both the business of a saw mill and the business of coal mining and manufactures at its mills, or purchases in some isolated cases, *leads* for the purpose of its mining operations; a sample lead is filed as *Exhibit No. 1*. It is a sawn piece of lumber going through the mill; but has been manufactured of certain size and lengths. It is very much like a railway tie, which is subject to the tax but which, however, is exempted when it is the product of the forest produced and sold by the individual settler or farmer.

The tax is claimed upon the leads under section 19 B.B.B. of the Special War Revenue Act, 1915, and amendments

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thereto; but the defendant claims, under subsection 4 of this section, that the leads are not subject to sales tax being:

- (a) Logs and round unmanufactured lumber; or
- (b) Materials, including plant equipment, commenced in the process of manufacture or production which enters directly into the costs of goods subject to sales tax produced by the defendant which licensed as manufacturers or producers under the provisions of the Act; or
- (c) Articles and materials, not being permanent equipment, which enter into the cost of production of goods produced by the defendant as a licensed producer as aforesaid; or
- (d) Not being liable to sales tax under any provision of the said War Revenue Act.

In answer to these four grounds of defence, I find that none of them apply to the case in question. Obviously it does not come within the classification (a). Then it must be borne in mind that these leads are manufactured at the defendant's mills and used by them not in the course of manufacturing the same, but are used in a different and distinct undertaking or operation, quite apart from the manufacturing of the same at their mill. They hold a license as such manufacturer but no license is necessary for coal mining as coal is not subject to taxation.

The subject matter of this case comes clearly within the provisions of section 19 B.B.B. and does not fall within the ambit of subsection 4 thereof. These leads are manufactured articles and are bought and sold on the market and are therefore subject to the tax.

The particulars of the claim, as set forth in the information, have been admitted by the defendant's witness.

Therefore there will be judgment as prayed for the sum of \$215.55 and costs.

Judgment accordingly.
