[HIGH COURT OF AUSTRALIA.]

IRVING . . . . . APPELLANT;
INFORMANT,

AND

MUNRO & SONS LIMITED . . . . RESPONDENT.
DEFENDANT,

H. C. OF A. 1931.

SYDNEY, *Nov.* 17.

Gavan Duffy C.J., Starke, Dixon, Evatt and McTiernan JJ.

Sales Tax—"Manufacturer"—Motor-cycles—Assembled and tested in country of origin—Imported into Australia in parts, less tyres and tubes—Re-assembled by importer, tyres and tubes added—Registration of importer—Sales Tax Assessment Act (*No.* 1) 1930 (*No.* 25 *of* 1930), *secs.* 11, 13.

The defendant company is the distributing agent in New South Wales and Queensland of a well-known English make of motor-cycles. The motor-cycles are imported by the defendant company from England in cases, each case containing all the parts necessary to complete a motor-cycle, with the exception of tyres and tubes. Before exportation the parts of each cycle are assembled and, with old tyres and tubes retained for the purpose, the motor-cycle is submitted to a practical test on a road. Upon arrival at the defendant company's works in Sydney the parts are removed from the particular case and re-assembled, usually by a lad with the aid of a spanner, and, tyres and tubes locally purchased having been fitted thereto, the motor-cycle is then ready for sale.

Held, that the defendant company is not a manufacturer within the meaning of the *Sales Tax Assessment Act* (*No.* 1) 1930, and is not obliged to register as such.

CASE STATED.

An information laid by Harold Rupert Irving, for and on behalf of the Deputy Commissioner of Taxation, alleged that "on or about 31st March 1931, Munro & Sons Ltd. . . . was a company carrying on business within the State of New South Wales as a

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manufacturer within the meaning of the *Sales Tax Assessment Act* (*No.* 1) 1930, and did at Sydney in the said State fail to become registered within twenty-eight days after it became a manufacturer as and when required under the said Act contrary to the Act in such case made and provided." According to the evidence adduced by the parties at the hearing of the information in Sydney before a Stipendiary Magistrate, the defendant Company was the distributor in New South Wales and Queensland of "Ariel" motor-cycles made by Ariel Works Ltd. of Birmingham, England. The motor-cycles are imported in cases from England by the defendant Company, each case containing all the parts necessary to complete a motor-cycle with the exception of the tyres and tubes, which the defendant Company purchases in Australia. Before exportation from England the parts of each motor-cycle are assembled by Ariel Works Ltd. and the motor-cycle so assembled, with old tyres and tubes retained for that purpose, is submitted to "road tests" of varying distances. Upon arrival at the defendant Company's workshops in Sydney the parts are taken out of the particular case and are again assembled, usually by a lad with the aid of a spanner only, and, upon being fitted with the locally procured tyres and tubes, the motor-cycle is ready for sale: the whole process occupies less than two hours. A typical invoice from the English principals was headed "Birmingham, 27th January 1931. Invoice of motor-cycle supplied by . . . Ariel Works Ltd. of Selly Oak, Birmingham, to . . . of . . . to be shipped per s.s. 'Orama.'—Order No. Letter 17/10/30," and was in respect of "Case No. 28, 1 Ariel model S.G.31, motor-cycle, chromium plated tank, minus tyres," the other items being "magdyno," "headlamp," "tail-lamp," "bulb" and "Smith's 8-day clock."

The Magistrate found (1) that on the date stated in the information the defendant was the importer of the "Ariel" motor-cycles, which were made in England; (2) that the said "Ariel" motor-cycles were placed in a case in England in parts without tyres and tubes, shipped to the defendant at Sydney, and that the defendant distributed them; and (3) that on arrival in Sydney the parts of the said "Ariel" motor-cycles were unpacked from the case, and put together without being in any way altered, were fitted with

tyres and tubes, and sold by the defendant. The Magistrate, holding that the defendant was not a manufacturer within the meaning of the *Sales Tax Assessment Act* (*No.* 1) 1930, and therefore not obliged to register as such, dismissed the information.

From this decision the Deputy Commissioner of Taxation appealed, by way of case stated, to the High Court.

Nicholas, for the respondent. There is a preliminary objection to this appeal being proceeded with. By virtue of sec. 58 of the *Sales Tax Assessment Act* (*No.* 1) 1930, appeals to this Court from the decision of a Magistrate are governed by sec. 101 of the *Justices Act* 1902 (N.S.W.). Appeals under the latter section are confined to questions of law, and therefore it is not competent to bring an appeal in this case as the conclusions the Magistrate came to were conclusions of fact only.

[DIXON J. referred to *Bell* v. *Stewart* (1).]

The word "manufacturer" in the *Sales Tax Assessment Act* is not a term of art. The appeal is not properly constituted.

THE COURT. The appeal can go on in the meantime.

Jordan K.C. (with him *Gallagher*), for the appellant. The English company from which the respondent procured the parts is the manufacturer of such parts, and, having regard to the process followed, the respondent is the manufacturer of the motor-cycle. The fact that before forwarding them to Australia the English company put the parts together to make sure that they would work does not affect the position of the respondent in this matter. The assembling of the various parts was not an isolated transaction on the part of the respondent: it was done as a business. The respondent bought parts only, and some further acts by a skilled person were necessary before such parts became a machine. In performing such acts the respondent was engaged as a manufacturer, within the meaning of the *Sales Tax Assessment Act*, carrying on business as a manufacturer of motor-cycles. A manufacturer is a person who, by labour and the application of skill, works up or fabricates material

(1) (1920) 28 C.L.R. 419.

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into forms suitable for use. The verb "manufacture" means make or fashion by working up or combining material.

[STARKE J. The respondent neither fashions nor fabricates.]

The respondent combines the parts into a useful machine, and it is immaterial that it does not also manufacture the constituent parts. The motor-cycle does not come into existence in Australia until it has been manufactured out of those parts, that is, by combining them in the proper way. A manufacturer is one who gives new shapes, new qualities or new combinations to matter which has already gone through some artificial process (*City of New Orleans* v. *Le Blanc* (1) and *The People* v. *Morgan* (2)), referred to in *Judicial and Statutory Definitions of Words and Phrases*, vol. v., pp. 4349-4351). What constitutes a person a manufacturer is also dealt with in *Cyclopedia of Law and Procedure*, vol. XXVI., at p. 520.

[STARKE J. referred to *Chickasaw Cooperage Co.* v. *Police Jury* (3), referred to in *Judicial and Statutory Definitions of Words and Phrases*, vol. v., p. 4348, where it was held that one who sets up the component parts prepared for completing barrels is not a manufacturer.]

If a particular manufacturer restricts himself to the last stage of the process of manufacture, he is none the less a manufacturer; the fact that some or all of the parts were made by another person is immaterial. Even though the parts had previously been assembled in England, the assembling of them again by the respondent was, nevertheless, a process of manufacture. (See *Guildford Corporation* v. *Brown* (4), which distinguishes *Gamble* v. *Jordan* (5).)

Nicholas, for the respondent. An appeal in this matter is not competent inasmuch as the question involved is one of fact and not of law. The invoice before the Court clearly shows that the respondent purchases in, and imports from, England motor-cycles with the necessary accessories. For convenience of packing, the exporters remove parts of each cycle and pack them in the same case as the bulk of the cycle, which is not interfered with at all. Portions of the cycles are packed separately to avoid freight, which is the main

(1) 34 La. Ann. 596.
(2) 63 New York Supp. 76.
(3) 48 La. Ann. 523.
(4) (1915) 1 K.B. 256.
(5) (1913) 3 K.B. 149.

object. All that the respondent does is to reassemble the various parts into the motor-cycle as it existed immediately prior to exportation. In the circumstances the respondent cannot be regarded as a "manufacturer" within the meaning of the *Sales Tax Assessment Act*. [He was stopped.]

THE COURT delivered the following judgment:—

We all agree with the Stipendiary Magistrate that the defendant Company was not a "manufacturer" within the meaning of the *Sales Tax Assessment Act* (*No.* 1) 1930, and that it was, therefore, not obliged to make application for registration as such.

The appeal must be dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellant, *W. H. Sharwood*, Crown Solicitor for the Commonwealth.

Solicitors for the respondent, *Sly & Russell*.

J. B.