

[HIGH COURT OF AUSTRALIA.]

THE FEDERAL COMMISSIONER OF TAXATION

PLAINTIFF ;

AND

ROCHESTER

DEFENDANT.

*Sales Tax—Fish and “chips”—“Production”—“Manufacture”—Sales Tax Assessment Act (No. 1) 1930-1931 (No. 25 of 1930—No. 25 of 1931), sec. 3\*—Sales Tax Assessment Act (No. 1) 1932 (No. 39 of 1932), sec. 2\*.*

H. C. of A.

1934.

MELBOURNE,

June 7.

Rich, Starke,  
Dixon, Evatt  
and McTiernan  
JJ.

The Federal Commissioner of Taxation brought an action against the defendant to recover money alleged to be payable as sales tax upon sales by the defendant of cooked fish and “chips.”

*Held* that by preparing and cooking the fish and “chips” the defendant had neither produced nor manufactured goods within the meaning of the *Sales Tax Assessment Acts*, and accordingly that no tax was payable by the defendant.

DEMURRER.

The Federal Commissioner of Taxation brought an action in the High Court against G. M. Rochester to recover £269 alleged to be payable as sales tax upon the sales of cooked fish and “chips” at the defendant’s fish and oyster saloon. The defendant demurred, and the demurrer was referred to the Full Court of the High Court.

\* The *Sales Tax Assessment Act* (No. 1) 1930-1931 provides, by sec. 3, that “manufacture” includes production; “manufactured” includes produced; and “manufacturer” means a person who engages, whether exclusively or not, in the manufacture of goods. The *Sales Tax Assessment Act* (No. 1) 1932, sec. 2 (a), amends sec. 3 of the Act of 1930-1931 by omitting the definitions of ‘manufacture’, and ‘manufacturer’ and inserting in their stead the following definitions:—“ ‘Manufacture’ includes production, and also the combination of parts or ingredients whereby an article or substance is formed which is commercially distinct from those parts or ingredients, except such combination as, in the opinion of the Commissioner, is customary or reasonably practicable for users or consumers of those articles or substances to undertake; ‘Manufactured’ has a meaning corresponding to that of ‘Manufacture’.”

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*McDonald*, for the defendant, in support of the demurrer. These goods were neither produced nor manufactured within the meaning of the *Sales Tax Assessment Act* (No. 1) 1930-1931, sec. 3, or of the *Sales Tax Assessment Act* (No. 1) 1932, sec. 2. [He was stopped.]

*Coppel*, for the Federal Commissioner of Taxation. The taxpayer in this case has not only to cook the fish, but has to prepare it for cooking. "Manufacture" as defined in the Act is wide enough to cover this business. "Goods" includes commodities, and the question is, does the taxpayer produce a commodity, that is a separate commodity, so far as commerce is concerned, from the raw material? (*In re Searls Ltd.* (1)).

[RICH J. referred to *Adams v. Rau* (2).]

The definition of "manufacture" was altered by Act No. 39 of 1932 and the defendant is taxable after such amendment, even if he is not liable in respect of any prior period.

The following judgments were delivered:—

RICH J. In my opinion these goods are neither manufactured nor produced, and I think the demurrer should be allowed and judgment entered for the defendant.

STARKE J. The definition in neither of the Acts extends to the case of fish or potatoes that have simply been cooked.

DIXON J. I agree. I think that in the interpretation of these very difficult provisions there is no safe guide but the common use of English terms. To attempt some logical analysis of the conceptions of manufacture and of production and to apply the analysis to any process or operation that appears to possess the attributes found to constitute these conceptions, although it would not ordinarily be described by the words "manufacture" or "production," must lead to results which do not represent the true interpretation of the Act. It may be difficult to distinguish one process by which things are constructed, obtained, prepared, or altered in condition from

(1) (1932) 33 S.R. (N.S.W.) 7; 49 N.S.W.W.N. 195.

(2) (1931) 46 C.L.R. 572, at pp. 577, 578.

another, but if we follow the method laid down in *Adams v. Rau* (1) and *Irving v. Munro & Sons Ltd.* (2) and simply apply the terms used in the Act as they are ordinarily applied in English speech, I think that it is inevitable that this demurrer should be allowed. It seems to me an odd and inappropriate use of terms to describe cooked fish as either produced or manufactured. In the same way, I think the use of oil or grease and condiments in cooking fish cannot be described properly as a "combination of parts or ingredients" producing "an article or substance commercially distinct from those parts or ingredients" within the new definition of "manufacture."

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EVATT J. In view of the decision in *Adams v. Rau* (1) I agree that in this case there is neither the manufacture nor the production of a commodity.

McTIERNAN J. I agree.

*Demurrer allowed.*

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

Solicitor for the defendant, *L. McL. White*.

H. D. W.

(1) (1931) 46 C.L.R. 572.

(2) (1931) 46 C.L.R. 279.