[HIGH COURT OF AUSTRALIA.]

DEPUTY FEDERAL COMMISSIONER OF TAXATION FOR THE STATE OF SOUTH AUSTRALIA . . . . } PLAINTIFF;

AND

ELLIS & CLARK LIMITED . . . . DEFENDANT.

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ADELAIDE, *Oct.* 4, 5.

SYDNEY, *Dec.* 13.

Rich, Starke, Dixon and McTiernan JJ.

*Sales Tax—Sales of second-hand goods by registered person—Purchasers not registered or not quoting certificates—Liability to tax—Sales Tax Assessment Acts* (*Nos.* 1 *to* 9) 1930-1932 (*Nos.* 25, 27, 29, 31, 33, 35, 37, 39, 41 *of* 1930—*Nos.* 39-47 *of* 1932).

A company which carried on business as electrical engineer and as wholesale and retail dealer in electrical goods was registered under the provisions of the *Sales Tax Assessment Acts* both as a manufacturer and as a wholesale merchant. As part of its business it purchased and resold second-hand electrical motors and other second-hand goods. Such resales were to registered persons who did not quote their certificates, and to unregistered persons.

*Held* that such resales of second-hand goods were not liable to sales tax.

CASE STATED.

In an action by the Deputy Federal Commissioner of Taxation for the State of South Australia against Ellis & Clark Ltd. the following special case was stated by consent for the opinion of the Full Court :—

1. The defendant carries on business in Adelaide as electrical engineer and dealer in electrical goods both wholesale and retail. The defendant is a manufacturer and a wholesale merchant and is registered under the provisions of the Sales Tax Assessment Acts.

2. As portion of its business the defendant engages in the purchase in South Australia of second-hand electrical and other goods (principally electrical motors) which the defendant resells either with or without first repairing them.

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3. The defendant has not included the second-hand goods resold by it in its returns for the purposes of sales tax and the plaintiff claims from the defendant £44 10s. 6d. for sales tax on second-hand goods sold by the defendant during the period from February 1931 to November 1932 inclusive amounting in all to £970 18s. 3d. in value to persons who were registered under the provisions of the *Sales Tax Assessment Acts* but who did not quote their certificates in respect of the purchase of these goods and to persons who were not so registered. It is agreed that if sales tax is payable the said sum of £44 10s. 6d. is the correct amount of the tax.

4. The question for the determination of the Court is whether the sales of second-hand goods made by the defendant to the persons specified in paragraph 3 are liable to sales tax and whether the defendant is liable for the said sum of £44 10s. 6d.

*Cleland* K.C. (with him *Brebner*), for the plaintiff. If the goods in question are otherwise subject to sales tax, the fact that they are second-hand goods does not render them exempt. The Acts contain no discrimination between new and second-hand goods, but include all goods manufactured in Australia or imported into Australia (Act No. 1, secs. 17, 18 and 19 ; Acts Nos. 2, 3 and 7, secs. 3, 4 and 5 ; Act No. 1, sec. 11 ; Acts Nos. 2, 3 and 7, sec. 12 ; Act No. 1, sec. 3 ; definitions of " wholesale merchant " and " sale of goods by wholesale "). Wherever a person is liable to tax, tax has to be paid on all goods sold by that person in the course of his business. The Acts must be construed literally.

*Ligertwood* K.C. (with him *E. Millhouse*), for the defendant. Sales tax applies only to new goods, i.e., goods that have not passed through a retailer to the general public. On the literal reading of Act No. 1 it can only apply to new goods. The phraseology of the other Acts is the same, and, therefore, prima facie, all should be interpreted in the same way. The emphasis is not on " goods " but on " goods manufactured in [or imported into] Australia." Even if the words of the Acts are capable of being applied to second-hand goods they should not be so applied, first, because the general intendment of the Acts was to limit the tax to new goods and, secondly,

because so to apply them would lead to hardship and injustice. Retailers as such are exempted from tax; there are provisions for obviating double taxation (Act No. 1, sec. 73; S.R. 1932, No. 79, reg. 9); the Acts aim at goods with a definite wholesale value, and that cannot be predicated of second-hand goods; the scheme is that goods pass from taxation when they pass into use; if tax is payable in this case, some persons will pay tax on goods which, if sold by another, would escape.

*Cleland* K.C., in reply. The conditions of liability are (1) a sale of (*a*) goods imported into Australia or (*b*) manufactured in Australia (2) by a registered person or a person who ought to be registered (3) to an unregistered person or to a registered person who has not quoted his certificate. This produces a "sale value" upon which the tax is imposed. Once it is admitted that goods are imported they retain that characteristic through their trade lives; so with manufactured goods. Directly those goods, in the course of trade, return to a registered person and a sale again takes place by him to an unregistered person, the "sale value" again comes into existence, and again the tax is imposed.

*Cur. adv. vult.*

Dec. 13.

The following written judgments were delivered:—

RICH J. I have had the opportunity of reading the judgment of my brother *Dixon* and agree with it.

I am of opinion that the question in the special case should be answered: No.

STARKE J. Special case stated by parties for the opinion of the Court.

The defendant is a dealer in second-hand electrical goods, which he resells: in some cases he first repairs them, in others he does not. The question is whether sales tax is payable upon the sales made by the defendant during the period from February 1931 to November 1932. It depends upon the construction of the *Sales Tax Acts* and the *Sales Tax Assessment Acts* 1930-1932. The Commissioner relied

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upon the general words in the *Assessment Acts* Nos. 3 and 7 of 1930-1932. The conditions of liability, according to his view, were simply the existence of manufactured or imported goods, and the sale of such goods by a person registered or required to be registered under the Acts to an unregistered person or to a registered person who had not quoted his certificate in respect of the purchase of those goods. (See *Assessment Acts* No. 3, No. 7, secs. 3 and 4.) The argument for the defendant established, I think, that the Commissioner's view is entirely opposed to the scope of the Acts and might work considerable hardship. But I shall not deal with the argument at length. The Acts emphasize that the tax is imposed upon the sale value of goods manufactured in or imported into Australia. Every person who is a manufacturer or a wholesale merchant must register under the Acts. The tax is not levied upon successive sales, but is one tax levied upon the wholesale value of goods. It is not a tax levied upon the retail value of goods. The scheme of the Acts lays a tax upon the sale value of goods preceding retail distribution. But if this is clear, as I think it is, then second-hand goods—that is goods which have already been distributed or gone into use—fall outside the scope of the tax. Indeed if this were not so, double taxation might result, which is clearly contrary to the provisions of the Acts. As goods manufactured in or imported into Australia, such secondhand articles would have already paid tax upon their wholesale value, and to levy it again in respect of their wholesale value as second-hand goods is not obviating double taxation, but imposing it. It is true that a refund might be claimed, but it could only be obtained by establishing that tax had already been paid in respect of the wholesale value of the goods, which would be difficult and in many cases wholly impossible.

The question stated should be answered: No.

DIXON J. The defendant company is registered under the *Sales Tax Assessment Acts* as a wholesale merchant and as a manufacturer. Its business is in electrical goods, and it sells them retail as well as wholesale. As part of its business, it buys second-hand electrical motors and other second-hand articles which it resells, in some cases after first repairing them. Some of the persons who buy these

second-hand articles from the defendants are registered under the *Sales Tax Assessment Acts*, and some are not, but none quotes his certificate. The question for decision is whether sales tax is payable in respect of sales of second-hand goods, that is, of goods which have already been retailed and have gone into use, but have again become the subject of sale. The answer depends upon the true meaning of the *Sales Tax Assessment Acts*.

Because of some apprehension as to the possible effect of sec. 55 of the Constitution on its validity, if the sales tax legislation were enacted in one assessment Act and one taxing Act, it was passed in the form of nine separate machinery statutes and nine separate taxing Acts. They constitute, however, a single legislative scheme to the complete operation of which all are necessary, and they should be construed together. Moreover, the legislation depends in a remarkable degree upon the regulations made under the power which it confers on the Executive. Without the regulations, not only is it unworkable, but the expression of legislative policy is so inadequate as almost to be unintelligible. Although the tax levied by the enactments is called a sales tax, it is not a tax upon all sales of commodities. It is a tax levied upon one only of the transactions which commonly take place in respect of goods before they reach the consumer after they are imported into or produced in Australia. It appears that it was not intended that the retail price of goods should be increased by the incorporation in it of more than one amount of tax. The general policy of the legislation is to levy this tax upon the last sale of the goods by wholesale, that is upon the sale to the retailer by the last wholesaler. To give effect to this policy, every person who engages, whether exclusively or not, in the sale of goods by wholesale is required to register. Upon registration, he becomes bound to keep proper books, make returns of his sales, and pay the tax. He receives a certificate bearing a number and this certificate he is bound to quote when he buys goods, unless, besides being a wholesale merchant, he is a retailer and he sells principally by retail. A sale to a person who quotes his certificate is not the subject of tax, and thus, if there be successive sales to wholesalers, the goods do not incur tax until the last wholesaler sells them to the retailer. Then an *ad valorem* duty is imposed on that sale, which

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presumably was considered likely to be at a price higher than the preceding sales. It was not the object of the legislation to levy the tax on sales by retail. But obviously the general policy of taxing the last sale by wholesale, the sale by a wholesaler to a retailer, did not admit of universal application. Manufacturers and importers might themselves sell by retail. Wholesale merchants, although they sold chiefly by wholesale and not principally by retail, owing to the exigencies of commerce might actually sell by retail goods which had been purchased with the intention of reselling them by wholesale. Manufacturers, importers, and wholesale merchants might take into their own consumption or use the goods they had acquired in the course of their businesses. Moreover, goods are introduced into Australia either by importation or manufacture, and until the tax is levied upon them, their course from that point towards consumption must be capable of check. Elaborate provisions are made in the Acts and regulations to deal with these matters.* Manufacturers must be registered and receive certificates. They must pay tax upon the first sale of manufactured goods, unless the buyer is himself registered and quotes his certificate. Manufacturers also must pay tax when they take their manufactured goods into use or consumption. The buyer from the manufacturer, if he is or ought to be registered, must pay tax when he sells, unless the buyer from him is registered and quotes his certificate, and he must pay tax if he takes into his own use or consumption the goods he has bought from the manufacturer. So with any subsequent buyer of goods manufactured in Australia, who resells the goods by wholesale, or who takes into his own use or consumption goods in respect of the purchase of which he quoted his certificate. The tax is levied on the actual sale price, if the sale be by wholesale. If it be by retail, a wholesale price ascertained by other means is adopted, and the tax is calculated upon that.

An importer must pay the sales tax upon the merchandise unless he is registered under the legislation, whether as a wholesale merchant or manufacturer, and unless he quotes his certificate upon his

* *Sales Tax Assessment Acts* (Nos. 1 to 9) 1930-1932. *Sales Tax Regulations* 1930 to 1933, S.R. 1930, No. 156; 1931, Nos. 63 and 87; 1932, Nos 79 and 144.

entry of the goods with the customs. He must so quote his certificate if he imports the goods for sale by him by wholesale, but he must not do so if he sells principally by retail, except in respect of goods specifically intended to be sold by wholesale or to be treated as stock for sale by wholesale, or for sale as occasion requires, by wholesale or by retail. The purchaser from the importer is liable to tax, if he sells the goods, unless the buyer is a registered person who quotes his certificate, and he is liable to tax if he takes the goods into his own use or consumption. If the taxable sale is by retail, a wholesale value is found. So with any other seller of imported articles, who is registered or ought to be registered.

To carry out the scheme for placing the tax as nearly as may be upon the sale of goods which immediately precedes retail distribution, for collecting it and for avoiding double taxation, it is necessary that certificates shall always be quoted by registered persons on purchases which are not intended to bear tax, and never on transactions which are intended to bear tax. Accordingly, the Acts require that a registered person shall quote his certificate under the circumstances prescribed and not otherwise. The regulations, in prescribing those circumstances, proceed upon the basal principle that no one shall quote his certificate in respect of the purchase or importation of goods which are specifically intended to be sold by him by retail or immediately taken into stock for sale by retail, and no one who sells principally by retail shall quote his certificate in respect of the purchase or importation of goods by him, unless the goods are specifically intended to be sold by him by wholesale or treated immediately as stock for sale by wholesale, or for sale, as occasion requires, by wholesale or by retail, but that everyone shall quote his certificate in respect of the purchase or importation of goods for sale by him by wholesale. It is only the person who is registered or ought to be registered as a wholesale merchant or manufacturer who pays the tax, and the tax is levied upon a wholesale price or value.

In this scheme the goods may for a second time become the subject of a transaction which, in the absence of provisions to avoid double taxation, would bear sales tax. An importer, whose chief business is retail selling and who, therefore, pays tax on the entry

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of the goods at the customs, may afterwards sell them to an unregistered person, e.g., by wholesale to a retailer, or himself by retail, or he may take them into his own consumption or use. A merchant who sells by wholesale although his principal business is retail and he cannot, therefore, quote his certificate, may sell the goods by wholesale upon which his vendor has paid tax. Such a sale would, prima facie, expose the goods to another imposition of sales tax.

A manufacturer may sell his manufactured goods to an unregistered person, and, therefore, becomes liable to pay tax upon them, but some of the materials of which the goods are composed may have borne tax before he acquired them.

An importer who has paid tax on goods, or a merchant who has bought them tax paid at a price which incorporates the tax, may afterwards sell them to a registered person who quotes his certificate, by a transaction appropriate to wholesale dealing and, therefore, at a price which does not include the tax.

In all these cases, double taxation is avoided by means of regulations, which, in effect, prescribe that no tax is to be levied on the later transaction.

The whole plan of the legislation suggests that it is concerned only with the course of commercial dealing in goods between the time they first appear in Australia, either as a result of manufacture or importation, and the time when they are retailed. It takes them at the point of importation and manufacture and provides a scheme for following them to that point at which, in the actual course of commerce in the particular articles, they go into the retail market, and then, as nearly as possible, tax is imposed either upon the antecedent sale by wholesale or upon the immediately antecedent wholesale value which they possessed.

It might be expected that once goods had gone into distribution in Australia they could not find their way back into the course of dealing with which the Act so deals. In general this is clearly true. When the owner of articles, which have been in his use in Australia, sells them, he does not in doing so, engage in the sale of goods by wholesale. The transaction is not that of a wholesale merchant. The buyer does not resell them by wholesale. The tax is not a tax on retailing. It is true that if an importer or manufacturer himself

retails, he must pay tax, but the tax is levied on the wholesale value. In principle and policy it is a tax on sale by wholesale. In general, therefore, dealing in second-hand goods must fall outside the operation of the legislation, and but for what might be considered fortuitous circumstances sales of second-hand goods would never be included in the tax. Those circumstances are that persons who buy second-hand goods for the purpose of resale, may, because they happen also to be manufacturers or wholesale merchants, be registered under the *Sales Tax Assessment Acts*. If they do happen to be so registered, the exact words appear to apply in which tax is levied, in the case of goods manufactured in Australia, upon sales by persons other than the manufacturer or the purchaser from him, and, in the case of goods imported, upon sales by persons other than the importer. In the first case, sec. 3 of the *Sales Tax Assessment Act* (*No.* 3) 1930-1933 provides that sales tax shall be levied upon the sale value of goods manufactured in Australia and sold by a taxpayer, not being either the manufacturer of those goods or a purchaser from the manufacturer; and sec. 4 provides that the sale value shall be the amount for which the goods are sold by a registered person, or a person required to be registered, not being either the manufacturer of those goods, or a purchaser of those goods from the manufacturer, to an unregistered person or a person who has not quoted his certificate in respect of the purchase of those goods.

In the second case, sec. 3 of the *Sales Tax Assessment Act* (*No.* 7) 1930-1932 provides that sales tax shall be levied upon the sale value of goods imported into Australia and sold by a taxpayer not being the importer of the goods; and sec. 4 provides that the sale value shall be the amount for which those goods are sold by a registered person, or a person required to be registered, not being the importer of those goods, to an unregistered person, or a registered person who has not quoted his certificate in respect of the purchase of those goods. In each case sec. 4 of the respective Acts contains a proviso substituting as the sale value in the case of a retail sale an estimated wholesale value, but the proviso applies only "where the goods are sold . . . by a registered person who has quoted his certificate when purchasing the goods," a qualification which, conformably with the general scheme, is based on the assumption that only a person who

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has bought in accordance with the Act goods which up to that time have not been exposed to tax will be the proper object of the regular tax. In other cases the question will be one of immunity from double taxation, sc. under reg. 47 (2).

Now the question in the case is whether the general words of these respective sections, 3 and 4, should be treated as applying to goods which have already been retailed in Australia and gone into use. In my opinion, they should not be so treated. To understand them as applying to such sales of second-hand goods merely because they are "goods" is to ignore the whole scheme of legislation. It gives no effect to the evident intention of dealing with the course of commerce between the first appearance of the goods in Australia and the retail disposal of them, and of imposing one tax only upon them. It is impossible to know in many cases whether second-hand goods are imported or are manufactured in Australia. The discrimination between taxable sales of second-hand goods and sales free of tax would depend not at all upon the character of the transaction, but upon the circumstances that the vendor happened to carry on another business or kind of transactions which necessitated his registration. In the scheme of the legislation, this is a purely accidental circumstance. The provision for levying the tax upon the wholesale value is quite inapplicable. There is no wholesale value for second-hand goods. Moreover, the buyer of second-hand goods could never quote his certificate on the purchase and thus come within the provisoes to the sections 4, because he would never be in practice a person who did not principally sell by retail or who bought for sale by wholesale and did not intend specifically to sell by retail. On the other hand, it could seldom or never be established that the goods had borne tax in some anterior transaction so that a rebate or immunity under regs. 46 and 47 could be obtained. Further, the frame of these regulations is quite inappropriate to second-hand goods. A condition imposed by the regulations is that the goods which have borne tax are bought at a price which includes tax. This condition could scarcely be fulfilled on a purchase of second-hand goods. Yet the plan of the legislation is to impose one tax upon the goods and to impose it on a wholesale value. Further, it is apparent that the plan of the Acts is to affect trade in goods

uniformly and not differentially. The Acts deal separately with imported and locally manufactured goods, and in the exemptions make some slight differences in favour of the latter. The legislation attempts to trace the goods from commercial source to commercial destination by means of certificates. It attempts to avoid double taxation by a complete system of rebates and dispensations from a second tax. In all these respects it would fail of its purpose in respect of second-hand goods.

For these reasons I think that, upon the true interpretation of the whole series of Acts, the general words of secs. 3 and 4 of the Assessment Acts Nos. 3 and 7 do not apply to goods which have gone through the process of retailing into use or consumption in Australia and in this sense are second-hand.

The question in the special case should be answered: No.

McTIERNAN J. The question for decision is whether the defendant, who is registered under sec. 11 of the *Sales Tax Assessment Act (No. 1)* 1930-1932, and sold second-hand goods to persons registered as aforesaid, none of whom quoted his certificate in respect of the purchase, and also to persons who were not registered as aforesaid, is liable to pay sales tax on the sale value of the goods the subject of each of these sales.

Sec. 11 enacts that every manufacturer and wholesale merchant as defined by sec. 3 of this Act, must register, and that upon registration a certificate of registration must be issued to him. There are nine *Sales Tax Assessment Acts*, but the provisions of sec. 11, although not enacted by each Act, are necessary to the operation of all of them. The Acts adopt two classifications, which are fundamental to the legislative scheme contained in them, namely, goods manufactured in Australia, and goods imported into Australia. It is said that the goods sold by the defendant belong to one or other of these classes but there is no evidence upon which they can be said to belong to one class rather than the other.

The *Sales Tax Assessment Acts* Nos. 1 to 4 are concerned with the sale of goods manufactured in Australia. Secs. 3, 4 and 5 of the *Sales Tax Assessment Act (No. 3)* 1930-1932 are as follows:—

"3. Subject to, and in accordance with, the provisions of this Act, the sales tax imposed by the *Sales Tax Act (No. 3)* 1930

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shall be levied and paid upon the sale value of goods manufactured in Australia, either before or after the commencement of this Act, and sold on or after the first day of August One thousand nine hundred and thirty by a taxpayer, not being either the manufacturer of those goods or a purchaser of those goods from the manufacturer.

4. (1) For the purposes of this Act, the sale value of goods which are sold on or after the first day of August One thousand nine hundred and thirty shall be the amount for which those goods are sold by a registered person, or a person required to be registered, not being either the manufacturer of those goods or a purchaser of those goods from the manufacturer, to an unregistered person or to a registered person who has not quoted his certificate in respect of the purchase of those goods:

Provided that where goods are sold by retail by a registered person who has quoted his certificate when purchasing the goods the sale value of the goods shall be the amount which would be the fair market value of those goods if sold by him by wholesale, but if the Commissioner is of opinion that the amount set forth in any return by the registered person as the sale value of any such goods is less than the amount which would be their fair market value if sold by wholesale, the Commissioner may alter the amount set forth in the return to the amount which, in his opinion, would be the fair market value of the goods if sold by wholesale, and the amount as so altered shall be the sale value of the goods for the purposes of this Act.

5. Sales tax shall be paid by the vendor of goods the sale value of which is specified in the last preceding section."

Assuming the goods sold to have been manufactured in Australia, the words " a registered person " in sec. 4 (1) used to describe the vendor, who is to be the taxpayer, are capable of applying to the defendant, and the words used in the sub-section to describe the sale in respect of which a liability to sales tax is imposed, are capable of applying to the respective sales of goods made by the defendant. The defendant is therefore liable unless upon the true construction of the Act these words should not be held to have this application.

By Act No. 1, the manufacturer of goods who sells or treats them as stock for sale by retail or applies them to his own use, is liable to pay sales tax on the " sale value " of the goods. Act No. 2 does not

levy tax on the sale value of goods sold by a retailer or user who bought them from the manufacturer. The operation of this Act is limited to a sale of goods made by a registered person, who purchased them from the manufacturer, to an unregistered person, or a buyer who is registered, but does not quote his certificate (*Sales Tax Assessment Act* (*No.* 2) 1930-1932, secs. 3, 4 and 5). It follows that when the goods are the subject of an intermediate sale from manufacturer to wholesale merchant, before passing to the retailer, that sale is free, but the sale from the wholesale merchant to the retailer bears the tax. There may be more than one intermediate sale before the goods reach the retailer. Act No. 3 determines who is to be the taxpayer, when goods are sold by a person who is not the manufacturer or the person who purchased the goods from the manufacturer. This Act does not impose any liability on a retailer who bought the goods from the purchaser from the manufacturer and sold them, although it is a sale by "a person not being either the manufacturer or a purchaser of those goods from the manufacturer." The vendor on whom Act No. 3 imposes liability is a registered person who sells to an unregistered person or a registered person who does not quote his certificate. The criterion of liability is the same as that created by Act No. 2. Liability is imposed on a registered person who sells the goods either to an unregistered person or a registered person who does not quote his certificate. Act No. 4 imposes the liability on a registered person who applies goods to his own use which he purchased from the manufacturer and in respect of which he quoted his certificate.

These Acts bring into operation machinery for following goods from the manufacturer until they pass into use or become goods for sale in the hands of a retailer, whether they do so immediately from the manufacturer or by one or more intermediate sales. At that stage when they do pass into use or to the retailer, the legislation imposes the tax. The quotation by the purchaser of his certificate, whenever there is a sale from one registered person to another registered person, prevents the liability to taxation recurring as often as the goods are sold. None of the Acts in terms compels the purchaser to quote his certificate; but sec. 12 (1) of the *Sales Tax Assessment Act* (*No.* 1) 1930-1932, provides that a registered person

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shall quote his certificate in such manner and under such circumstances as are prescribed by regulations, which the Governor-General is empowered by sec. 73 to make. But apart from the regulations it would appear that, if a wholesale merchant, for example, did not quote his certificate in respect of a purchase of goods from the manufacturer, the latter would be liable to pay sales tax on the sale value of the goods. Ordinarily this tax would be added by the manufacturer to the price of the goods. It would appear that the provisions of the Act making immunity from taxation dependent, in certain cases, on the quotation of the certificate, have the practical effect of forcing the purchaser who is a registered person to quote his certificate, whenever, at least, the goods are bought by him for re-sale.

None of the Acts is expressed to extend beyond the stage at which goods first pass into use or first become goods for sale by retail. If that stage is reached through what the manufacturer does, he is the taxpayer (Act No. 1). But if not, Act No. 2 follows the goods into the hands of the registered person who purchases from the manufacturer. If the stage at which tax is imposed is not reached because he sells the goods to another registered person, Act No. 3 follows the goods into the hands of this purchaser, and, if he does not become the taxpayer, into the hands of every successive registered person, until the goods are sold to a retailer or user or a registered person who does not quote his certificate. The registered person making that sale is the taxpayer (Act No. 3, secs. 3, 4 and 5).

It follows that the identity of that vendor is not to be ascertained merely by eliminating the persons whom secs. 3 and 4 (1) say he must not be, that is, the manufacturer or a purchaser from the manufacturer. Each is to be eliminated because the goods have not heretofore been sold under the conditions necessary to attach liability to either of these persons. But the taxpayer is obviously not every registered person left after the manufacturer and the purchaser from him are eliminated. The problem remains of ascertaining the person, among those left after the elimination, whom the Act intends to be the taxpayer. The person necessarily indicated is the registered person, who, after the goods had been sold by the purchaser from the manufacturer, made the last purchase in the continuous series of sales, whereby

the goods passed from one registered person to another, and who made the first sale of the goods to an unregistered person or a person who did not quote his certificate. The making of that sale attaches the liability to taxation to the party who is the vendor. The operation of Act No. 3 does not extend beyond that stage. A sale of second-hand goods is subsequent to that stage. The goods were second-hand because they have been discarded or acquired from persons who bought them for use. A sale of goods as second-hand goods is not the last sale in a continuous series of sales to which registered persons are parties. *Ex hypothesi* the series ended before such sale was made. The operation of the Act with respect to manufactured goods is, in my opinion, spent before they are sold as second-hand goods.

For these reasons the generality of secs. 3, 4 and 5 of Act No. 3 must, upon the true construction of the Act, be limited. In my opinion the Legislature intended them to be read subject to a limitation which prevents them operating to impose liability to taxation upon the vendor of goods manufactured in Australia and subsequently sold as second-hand goods. If it be assumed that the goods were imported, the defendant is also entitled to succeed. It is unnecessary to refer in detail to the Acts relating to the sale of imported goods.

In my opinion secs. 3, 4 and 5 of the *Sales Tax Assessment Act* (No. 7), which is one of the Acts concerned with imported goods, do not, for reasons similar to those already given, operate to impose a tax on the vendor of goods imported into Australia and subsequently sold as second-hand goods.

*Question answered in the negative.*

Solicitors for the plaintiff, *Fisher, Powers, Jeffries & Brebner*, agents for *W. H. Sharwood*, Commonwealth Crown Solicitor.

Solicitors for the defendant, *Baker, McEwin, Ligertwood & Millhouse.*

C. C. B.

[After the decision in this case the definition of " goods " in sec. 3 of the *Sales Tax Assessment Act* (*No.* 1) 1930-1934 was amended by adding the words " but does not include goods which have, either through a process of retailing or otherwise, gone into use or consumption in Australia " (Act No. 8 of 1935, sec. 2). See also sec. 2 of the *Sales Tax Procedure Act* (No. 12 of 1935), and as to refunds, sec. 3, inserting sec. 12A in the *Sales Tax Procedure Act* 1934-1935. As to goods hired, see the *Sales Tax Assessment Act* (*No.* 9) 1935 (No. 9 of 1935), and the *Sales Tax Act* (*No.* 9) 1935 (No. 10 of 1935).—*Ed.*]