

H. C. OF A.

1935.



FEDERAL  
COMMISSIONER OF  
TAXATION

v.

RILEY.



*Questions in the special case answered: Yes.*

*Pursuant to the agreement of the parties, enter judgment in the action for the plaintiff for £7 15s. 9d. together with an additional tax upon the amount of the tax unpaid at the rate of ten per cent per annum from 22nd November 1934 until payment. Defendant to pay costs.*

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

Solicitor for the defendant, *J. F. Arnott*.

J. B.

Discd  
Pacific Film  
Laboratories v  
Federal Comr  
of Taxation  
(1970) 121  
CLR 154

[HIGH COURT OF AUSTRALIA.]

THE FEDERAL COMMISSIONER OF TAXATION PLAINTIFF ;

AND

BUTCHER . . . . . DEFENDANT.

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SYDNEY,

June 13, 20.

Rich, Starke,  
Dixon, Evatt  
and McTiernan  
JJ.

*Sales Tax—Photographer—Films exposed by customers—Developed, and prints therefrom supplied to customers for reward—"Goods manufactured" or "produced"—Sales Tax Assessment Act (No. 1) 1930-1935 (No. 25 of 1930—No. 8 of 1935), secs. 3 (1), 17.*

The defendant carried on the business of developing photograph films exposed by amateur photographers and making prints from the films after development. The films and the prints were handed over to the defendant's customers on payment of a charge made by him.

*Held, by Rich, Starke, Dixon and McTiernan JJ. (Evatt J. dissenting), that the prints were "goods manufactured in Australia" within the meaning of the Sales Tax Assessment Act, and accordingly were liable to tax.*

## CASE STATED.

The Federal Commissioner of Taxation claimed, in a writ of summons, the sum of £4 11s. 11d., which he alleged was payable by the defendant, Walter Henry Butcher, as and for sales tax under the provisions of the *Sales Tax Assessment Act* 1930-1935. For the purpose of determining the defendant's liability to sales tax the parties stated, for the opinion of the High Court, a case which was substantially as follows:—

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1. At all material times the defendant carried on the business and still carries on the business of developing photographic films exposed by amateur photographers and in making prints from those films after development.

2. The defendant's place of business is at 17A Pitt Street, Sydney, and at this address he receives films for development and the making of prints therefrom both from amateur photographers direct and also from his agents throughout the city and the surrounding suburbs.

3. Films are received from customers rolled on spools and on receipt each is given a distinguishing number, which is indorsed on the outside wrapping, and particulars thereof are entered in books for identification and record purposes.

4. In carrying on the business the defendant employs the following method, process and procedure:—(a) The initial action is to take the films to the developing room where the films are unrolled from the spools and the customer's distinguishing number, which was indorsed on the outside wrapper, is marked on the film itself so that it will be visible on the film when it is developed. (b) In the developing room are three tanks, containing respectively (i.) developing solution, (ii.) water, and (iii.) fixing solution. (c) *Developing films*.—The developing tank is filled with a developing solution consisting of a mixture in certain proportions of a number of chemicals with water. (d) After the films have been unrolled they are attached at one end to clips which are fixed to iron rods covered with rubber. Small weights are attached with clips to the other end of the films to make them hang straight downwards and to prevent them curling. Each film has along its length six or eight exposures. (e) The films are lowered into the tank containing the developing solution until the iron rods rest on the top edges of the



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tank. They are moved about slightly to prevent the formation of air bubbles and are then allowed to remain stationary in the solution for about fifteen minutes. The person developing the film has to judge from the strength and temperature of the solution the length of time required for developing. A temperature of from 60 to 70 degrees Fahrenheit is requisite and in the winter months the solution is warmed by means of a heated coil which passes through it. (f) *First washing*.—After developing, the rods still having the films suspended therefrom are removed from the developing tank and the whole are then immersed for a few seconds in a water bath of running water to wash the solution from the films. (g) *Fixing and hardening films*.—The rods with the films attached are then placed in a fixing and hardening bath consisting of a solution of certain chemicals which are mixed separately in certain proportions and are then added to water. At first the films are moved about in the solution but afterwards are left still, the time required for the operation depending on the strength of the solution; usually from fifteen to twenty minutes is sufficient. (h) *Second washing*.—After removal from the fixing and hardening bath the films are returned to the water tank, where they are washed in running water for from twenty to thirty minutes. (i) *Drying films*.—The films are next taken to a separate drying room. The films, which are still suspended on the same iron rods, are hung up on racks in a drying box. This has a gas flame underneath which warms the air and a fan above which draws the air and keeps it in circulation. Care has to be taken not to dry the developed films (now known as negatives) too quickly. Drying takes an average time of thirty minutes. The temperature in the drying box is ascertained by means of a thermometer and is regulated, as required, according to weather conditions, by adjusting the gas flame or the speed of the fan. (j) *Printing*.—After the drying of the films is completed printing boxes on a long table are used to make paper prints by contact. The negatives which are still on the same strip of film (that is to say they are not yet cut off individually) are slipped under a mask (which is affixed at the corners to a plain piece of glass) and are examined to ascertain their density by means of a light from beneath. Printing paper is then placed with the sensitized side against the negative, a hinged flap is let



down to press the negatives and paper together and an exposure is made by artificial light for the required time, which the printer estimates from experience. The flap is released, the exposed print is removed and the next negative is slipped along for printing in the same manner. (k) *Numbering prints*.—The prints are numbered in pencil on the back with the number which the negative bears, so that all can later be assembled together. (l) *Developing prints*.—After exposure the prints are placed in a developing solution consisting of a number of chemicals mixed with water. This mixture or solution is placed in shallow dishes. Two dishes are used, one containing a normal strength developing solution and another a stronger solution for use occasionally in bringing up light prints made from negatives. The prints are kept moving in the developing solution and are examined closely so as to avoid over-development. Development usually takes three to four minutes. (m) *Fixing prints*.—The next action is to immerse the prints for a few seconds in what is known as a “stop bath” consisting of acetic acid and water. The prints are then placed in a fixing bath made up of hypo-sulphite of soda and water and are stirred about at intervals. (n) *Washing prints*.—About ten minutes is required to fix the prints, which are then placed in another dish through which running water is passing. They are washed thoroughly for a minimum of twenty minutes. (o) *Drying prints*.—The drying process consists of placing the prints face down on what are known as “ferrotype sheets” made of tin plate with a bitumen base. These ferrotype plates with the prints on them are put through a wringing machine, where the pressure of the rollers removes surplus moisture and any air bubbles. The sheets are then taken to the drying room, where they are suspended from racks and are dried in the same manner as the films, that is to say by heated air kept in motion by an electric fan. Drying off prints occupies from fifteen to twenty minutes. When dry the prints either fall off the ferrotype sheets or they can easily be peeled off. The process incidentally gives the prints a glazed appearance. (p) *Sorting prints*.—The prints are now sorted out according to their numbers, placed with the negatives bearing the corresponding numbers and then put into envelopes or paper wallets. The charges

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payable by the respective customers are then marked on the respective envelopes or paper wallets. They are then ready for delivery to customers or for despatch to the agents from whom they were received for delivery to customers. (q) *Supply of further prints.*—If customers wish at a later date to obtain further prints the negatives are handed to the defendant or his agent with an order for the number of prints required. The printing process is the same as has already been described herein. Upon completion the negatives and the prints are placed in envelopes for delivery to customers. (r) *Printing from negatives not developed by the defendant.*—Occasionally customers bring to the defendant or his agents films developed by the customer himself or by other photographers and order prints therefrom. The prints are made according to the process described above. (s) *Enlargements.*—In addition to the above the defendant also makes, what are known as “enlargements.” For this purpose negatives are handed to the defendant, or his agents; a machine called an enlarger is used. Exposures are made by artificial light on what is known as a “masking table” underneath the enlarger, which points downwards. The size of the enlargement required is worked out by means of movable templates on the masking table. The negative is inserted in the enlarger, which is then focussed into a position to print to the required size. The printing paper is placed on the table and an exposure is made by switching on an electric light above the negative in the enlarger, which has the effect of throwing the image on the sensitized paper. The operator judges the time needed to print from the density and condition of the negative and his own experience. The operations of developing, fixing and printing enlargements are the same as have been hereinbefore described in the case of other prints.

5. The whole of the printing paper and other materials used in the business are purchased by the defendant from photographic supply houses. The chemicals are also purchased by the defendant either ready for use or ready to be mixed for use.

6. The defendant employs a staff of assistants. The whole of the work is carried out to the order of individual customers. The exposed films are owned by the customers and are returned to the customers



with the prints made therefrom. The prints and films in all cases are handed to customers by the defendant or his agents on payment of the charges due.

7. The defendant does not stock goods available for purchase by any customer who comes to his place of business and his business consists entirely of developing films and making prints in the manner aforesaid to the order of individual customers.

8. The defendant supplies the prints produced to individual customers for whom the work is done. The total value of the defendant's average yearly takings in respect of prints so supplied is in the opinion of the plaintiff in excess of £500.

9. At all material times the defendant has been registered and still is registered as a manufacturer under the Act.

10. The plaintiff claims that for the purposes of the *Sales Tax Assessment Act* 1930-1935 the several processes hereinbefore mentioned result in the manufacture and production by the defendant of goods, viz., prints whether enlarged or not, finished and in the condition in which they are supplied to customers and that the defendant is a "manufacturer" as defined by the Act.

11. The plaintiff claims that the prints, whether enlarged or not, are goods manufactured by the defendant and sold by him within the meaning of the Act.

12. Until December 1934 the defendant furnished returns of sales and of sales tax as required by the Act and paid the sales tax in respect thereof. For December 1934 the defendant furnished returns of sales and of sales tax as required by the Act.

13. The defendant has refused and still refuses to pay sales tax in respect of prints sold to customers in and for December 1934, and alleges that he is not liable under the Act for the payment of sales tax in respect of the prints supplied by him to customers, whether enlarged or not. The plaintiff does not charge the defendant with a desire to evade or make deliberate default in payment of the tax and the defendant has refused to pay the tax with the intention merely of testing the applicability of the Act to the production and disposal of prints in the manner stated herein.

14. The plaintiff claims that under the circumstances hereinbefore detailed the defendant is liable as a manufacturer in respect of the

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prints, whether enlarged or not, for the payment of sales tax ascertained in the manner prescribed by the Act and regulations thereunder on the sale value of all such prints.

The question reserved for the opinion of the Court was :

Are the prints goods manufactured in Australia within the meaning of the *Sales Tax Assessment Act* 1930-1935 ?

It was agreed between the parties that if the question were answered in the affirmative judgment was to be entered for the plaintiff for the amount claimed with costs, the amount so entered to be subject to a penalty, as prescribed by sec. 29 of the Act, at the rate of ten per cent per annum from 22nd January 1935 to the date of payment ; and that if the question were answered in the negative judgment was to be entered for the defendant with costs.

*E. M. Mitchell* K.C. (with him *Betts*), for the plaintiff.

*McIntosh*, for the defendant.

*Cur. adv. vult.*

June 20.

The following written judgments were delivered :—

RICH, DIXON AND McTIERNAN JJ. We think this case is stronger in favour of the Crown than that of *Riley* (1), judgment in which is delivered to-day.

In our opinion the order should be :—Question in the special case answered : Yes. Pursuant to the agreement of the parties, enter judgment in the action for the plaintiff for £4 11s. 11d. with costs.

STARKE J. The defendant carries on the business of developing photograph films exposed by amateur photographers, and making prints from the films after development. The films and the prints are handed over to the taxpayer's customers on payment of a charge made by the defendant. The question submitted by the parties is whether the prints are goods manufactured in Australia within the meaning of the *Sales Tax Assessment Act* (No. 1) 1930-1935. In my opinion, the answer should be in the affirmative, and for the reasons given by me in the photography case (*Federal Commissioner of Taxation v. Riley* (1) ).

Judgment should follow the agreement of the parties.

(1) *Ante*, p. 69.

EVATT J. Although the question is not so plain as in *Riley's Case* (1), here, too, the taxpayer should succeed. The question asked in the stated case should be answered in the negative.

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

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(1) *Ante*, p. 69.