

70.13 7/1952 (8)

IN THE HIGH COURT OF AUSTRALIA

THE DEPUTY COMMISSIONER OF
TAXATION

V.

GUNN & TAYLOR PTY. LTD.

ORIGINAL

REASONS FOR JUDGMENT

Judgment delivered at Sydney

on Tuesday, 14th April, 1953.

DEPUTY COMMISSIONER OF TAXATION

v.

GUNN AND TAYLOR PROPRIETARY LIMITED

JUDGMENT

KITTO J.

DEPUTY COMMISSIONER OF TAXATION

V.

GUNN AND TAYLOR PROPRIETARY LIMITED

JUDGMENT

KITTO J.

This action has been brought as a test case to obtain a decision of the question whether sales tax is payable in respect of certain children's colouring books. Twenty books are in evidence, and it is admitted that they were manufactured in Australia by the defendant company, a registered person within the meaning of the Acts relating to sales tax, in the course of and as part of its business of manufacturing and publishing books. It is also admitted that the books were sold by the defendant to one F. J. Long, who was not a registered person, and who purchased the books for the purposes of resale by retail.

The Sales Tax (Exemptions and Classifications) Act 1935-1951 (C'wlth) provides in s. 5 that notwithstanding anything contained in any Sales Tax Assessment Act, sales tax shall not, subject to the section, be payable upon the sale value of any goods covered by any item or sub-item in the first column of the First Schedule to the Act, under any Act specified in the second column of that Schedule opposite that item or sub-item. There is no other material provision in the section.

In Division LX of the First Schedule there appears in the first column item 51 together with ten other items. In the second column, all nine Sales Tax Assessment Acts are specified opposite sub-item (1) of item 51. This

sub-item covers books, pamphlets, leaflets, periodicals, magazines and printed music, but not including a variety of goods described in six paragraphs, (a) to (f) inclusive.

Paragraph (a) is as follows :

"(a) books of account; books of receipts, cheques, deposit slips, bank withdrawal forms, tickets, dockets, labels or order forms; books of blotting paper, books of blank sheets, or of sheets ruled or printed, for writing notes, letters, exercises, accounts or for record purposes, or for sketching, drawing or painting; albums, books of samples, menus or calendars; booklets of printed matter conveying greetings or sympathy; diaries; other stationery in book form;"

The Commissioner contends that the defendant's colouring books are not exempt from sales tax as being covered by the main provision of sub-item (1), because they fall within the description "books of blank sheets, or of sheets ruled or printed, for sketching, drawing or painting". The defendant, on the other hand, denies that its books answer that description as correctly understood, and relies upon the exemption which sub-item (1) creates in respect of "books". Considerations in favour of each contention have been urged upon me, and I shall not pretend that I have found the answer altogether easy. The defendant's books are clearly not books of blank sheets, but in one sense they are books of sheets printed for painting. Nevertheless I have come to the conclusion that my decision ought to be in favour of the defendant.

I do not find it very helpful to endeavour to deduce, from characteristics which may be thought common to all or most of the goods covered by Division LX as a whole, an indication of policy throwing light on the material words in paragraph (a) of item 51(1). I do think that one obtains from a perusal of the whole Division an impression more favourable to the view that children's colouring books are books in the sense of the exemption than to the view that they fall within paragraph (a). But I find more assistance in paragraph (a) itself. The general character of the goods

it describes is in line with the concluding drag-net description, "other stationery in book form". Apart altogether from the evidence given by Mr. Thorpe, (which was only admitted subject to objection and contained a good deal that in my opinion was inadmissible), I should have thought that colouring books do not fall within the notion which the word stationery suggests, and do not fit at all naturally into the same category as the general run of books to which paragraph (a) applies.

The consideration which chiefly influences me relates to the phrase "for sketching, drawing or painting". "Painting" is, of course an ambiguous word. If I say I have painted a house, I may mean that I have produced by a creative effort a pictorial representation of a house in colour, or I may mean that I have applied paint to a house. In association with "sketching" and "drawing", the word must surely have the former of these meanings. The case is eminently one for the application of the maxim noscitur a sociis. Then what does a child do when he uses a colouring book in the manner intended by the manufacturer? I should have thought that he simply applies colour to it. True, he applies different colours to different parts of the page; but he delineates nothing, he makes no creative effort, he simply colours so much of the page as the lines printed on it suggest that he should. He is not attempting to exercise an art, but is amusing himself in a manner calculated to increase his power of concentration and his hand control. To say when he has finished that he has been painting a picture is true only in the sense that there was a picture on the page beforehand and he has been putting paint on that picture. But this is to use the word "painting" in a sense quite out of harmony with the notions suggested by the allied words "sketching" and "drawing", for the child has certainly not been using paint as his medium for the making of a picture.

It was suggested in argument that the whole

phrase "books of blank sheets, or of sheets ruled or printed, for sketching, drawing or painting" shows that the books in contemplation include not only painting books such as are used by artists, which are books of blank sheets, but also books printed for painting; and that therefore "painting" must include the use of paint in a manner conforming to printed lines. I do not think that this suggestion should prevail. It is true that the adjectives "blank", "ruled" and "printed" are used as if to qualify "sheets" in relation to books for each of the purposes in the list - writing notes, letters, exercises, accounts or records, or sketching, drawing or painting. But it is not, I think, correct to allow the words used for the purpose of defining the selected purposes to take on a wider meaning than they naturally bear in the context, simply in order to give an effect to each adjective in relation to sheets of each type of book. As I read the paragraph, the intention is to define a wide class of books by reference to a variety of purposes for which they are designed, and the words "of blank sheets, or of sheets ruled or printed" are added for the purpose only of making it plain that all books having any of the stated purposes are caught by the paragraph, whether their sheets are blank or are ruled or printed so as the better to serve their particular purpose. This accords with the general notion which the word "stationery" suggests.

So far I have assumed, in favour of the Commissioner, that the books in question in the action are books for colouring by the use of paints. Many of them have the word "coloring" in their title, and some of them bear on their covers a guide to the mixing of "colors". None of them, however, specifies painting as the only, or even the main, contemplated method of colouring, or refers specifically to paints or painting at all. The mixing of colours usually connotes paints rather than other colouring materials such as crayons or chalks, but exhibit 3 shows that chalks as well as

paints may be mixed to produce secondary colours; and in any event the illustrations given on some of the books of the manner of mixing colours indicate no more than that painting is one method of colouring which is likely to be used. And it is a matter of common knowledge that children frequently colour such books by using coloured pencils, crayons, ohalks or the like. The books are therefore books for colouring, but not particularly for painting, and in my opinion they would not answer the description of books for painting, even if "painting" were to be understood in its widest sense. But the absence of any reference to any method of colouring other than painting tends strongly to confirm the view that what is referred to is the creative art known as painting, and not the mere application of colour over a surface or a pre-determined part of a surface.

These considerations lead me to hold that the colouring books in suit are not exoluded by paragraph (a) from the exemption conferred by the operation of s. 5 in relation to item 51(1). I should add that at the hearing the Commissioner abandoned a contention which had been foreshadowed in paragraph 9 of the statement of claim, that the books in question are toys within the meaning of item 14 of the Fourth Schedule to the Sales Tax (Exemptions and Classifications) Act.

There will be judgment for the defendant with costs.
