

1960  
\*Oct. 13  
Dec. 19

HER MAJESTY THE QUEEN (on the }  
information of Alexander F. Price) .. } APPELLANT;

AND

LOBLAW GROCETERIA CO. (MANI- }  
TOBA) LTD. .... } RESPONDENT.

HER MAJESTY THE QUEEN (on the }  
information of Alexander F. Price) .. } APPELLANT;

AND

DAVID THOMSON, trading under the }  
firm name and style of Niagara I.G.A. } RESPONDENT.  
Grocery .. }

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

*Criminal law—Trading stamps—Criminal liability—Whether Criminal Code definition of “trading stamps” exhaustive—Criminal Code, 1953-54 (Can.), c. 51, ss. 322(b), 369(2).*

The respondents in both appeals, the circumstances of which were the same or similar, were charged with unlawfully giving trading stamps to a customer, contrary to s. 369(2) of the *Criminal Code*. In each case the magistrate dismissed the charge, and an appeal by way of a stated case was dismissed by a majority in the Court of Appeal. The appellant appealed to this Court.

*Held:* The appeals should be dismissed.

*Per Curiam:* The only object in deleting the words “besides trading stamps commonly so called” from the definition of trading stamps section in the 1953 revision of the Code (s. 322(b)) was to make the present definition exhaustive. The word “include” had an exhaustive definition in the present case.

There was no general accepted definition of “trading stamps”. Here the stamp was not token currency, nor was it used in the obtaining of goods; it was not usable instead of money in procuring articles from the issuer of the stamps. The stamp could be redeemed only from the respondent from whom the article had been purchased and at the premises where it was sold; and the stamp showed upon its face the place where it was delivered and where it was redeemable upon demand, and in fact where it was so redeemed.

\*PRESENT: Kerwin C.J. and Locke, Fauteux, Abbott and Martland JJ.

*Per* Fauteux J.: The word "includes" in s. 322(b) of the Code was, in the context, exclusively related to the words "any form"; it was not referable to what the documents or other devices must be as to substance in order to come within the prohibition. While all-embracing or all-inclusive as to the forms which may possibly be adopted for such documents or devices, the definition was exhaustive as to the particular features required as constituent elements of the prohibited trading stamps. The precise specifications as to substance, contained in (b) (i), (ii) and (iii) of the section as well as in the saving clause did not justify the inference that Parliament intended, from the use of the word "includes", to extend the definition in order to cover any other documents or devices as to which it said nothing with respect to features attending issuance, nature of benefit and redemption.

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APPEALS from judgments of the Court of Appeal for Manitoba<sup>1</sup>, affirming orders of acquittal of a Police Magistrate.

*J. A. Scollin*, for the appellant in both appeals.

*Edward A. Pitblado, Q.C.*, and *David Procter*, for the respondent, Loblaw Groceterias Co. (Manitoba) Ltd.

*J. J. Robinette, Q.C.*, *H. Solway, Q.C.*, and *J. F. R. Taylor*, for the respondent, David Thomson (Niagara I.G.A. Grocery).

The judgment of Kerwin C.J. and of Locke, Abbott and Martland JJ. was delivered by

THE CHIEF JUSTICE:—These two appeals were argued together. I deal first with that in connection with Loblaw Groceterias Co. (Man.) Limited, which is an appeal against a judgment of the Court of Appeal for Manitoba<sup>1</sup> on an appeal to it by way of stated case against an order or judgment of acquittal of a Police Magistrate. By answering the three questions submitted to it in the affirmative the Court of Appeal held that on the facts found by the Magistrate, as to which there is no dispute, he had correctly dismissed the charge against that respondent company that it did on November 17, 1959, at Winnipeg, unlawfully, being a merchant or dealer in goods, by its employee or agent, directly, or indirectly, give trading stamps to William Hrycyk, a person who purchased goods from it.

<sup>1</sup> *R. v. Loblaw Groceterias Co. (Manitoba) Ltd.* (1960), 31 W.W.R. 433, 24 D.L.R. (2d) 324.

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The charge was laid under subs. 2 of s. 369 of the *Criminal Code*, 1953-54, c. 51:

(2) Every one who, being a merchant or dealer in goods, by himself or his employee or agent, directly or indirectly gives or in any way disposes of, or offers to give or in any way dispose of, trading stamps to a person who purchases goods from him is guilty of an offence punishable on summary conviction.

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Section 369 appears in Part VIII and the first section in that Part reads as follows:

322. In this Part,

- (a) "goods" means anything that is the subject of trade or commerce; and
- (b) "trading stamps" includes any form of cash receipt, receipt, coupon, premium ticket or other device, designed or intended to be given to the purchaser of goods by the vendor thereof or on his behalf, and to represent a discount on the price of the goods or a premium to the purchaser thereof
- (i) that may be redeemed
- (A) by any person other than the vendor, the person from whom the vendor purchased the goods, or the manufacturer of the goods,
- (B) by the vendor, the person from whom the vendor purchased the goods, or the manufacturer of the goods in cash or in goods that are not his property in whole or in part, or
- (C) by the vendor elsewhere than in the premises where the goods are purchased; or
- (ii) that does not show upon its face the place where it is delivered and the merchantable value thereof; or
- (iii) that may not be redeemed upon demand at any time,

but an offer, endorsed by the manufacturer upon a wrapper or container in which goods are sold, of a premium or reward for the return of that wrapper or container to the manufacturer is not a trading stamp.

The respondent is a merchant or dealer in goods doing business at 1445 Main St. North, Winnipeg. On November 17, 1959, a member of the Winnipeg City police force, William Hrycyk, purchased from the respondent at that address, one tin of sardines for which he paid ten cents; at the time of the purchase Hrycyk was given by an employee of the respondent, one "Lucky Green stamp" and a book, called a stamp saver book, in which could be pasted that stamp and any others secured by the purchaser from time to time. On the face of the stamp appear the words:

Redeemable at any time  
 Merchantable Value 2 Mills  
 1445-Main St. N.  
 Winnipeg  
 B.C. Premium Company

and the stamp saver book states that the stamps are redeemable at any time and only at the store from which original purchases were made, and, further that the gifts illustrated in the premium catalogue are the property of the retailer. There were filed before the Magistrate as one exhibit a premium catalogue and supplements thereto and it was agreed that the lucky green stamp scheme was as detailed in that exhibit. Hrycyk presented the stamp and book to the manager of the respondent's store at the above address for redemption and he was handed by the manager two cake cups.

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The answer given by the majority of the Court of Appeal to each of the following questions submitted by the Magistrate was: "Yes".

1. Was I right in law in holding that the word "includes" in Section 322(b) of the Criminal Code is to be construed as "means and includes"?
2. Was I right in law in holding that the stamp given to the said William Hrycyk by the said Loblaw Groceterias Co. Manitoba Limited is not a trading stamp within the meaning of the term "Trading stamps" in Section 322(b) of the Criminal Code?
3. Was I right in law in holding that the stamp given to the said William Hrycyk by the said Loblaw Groceterias Co. Manitoba Limited is not a trading stamp within the meaning of the term "trading stamps" in Section 369(2) of the Criminal Code?

Tritschler J.A. and Miller J.A. would have answered "No" to the questions.

The problem to be decided is whether the lucky green stamp is a "trading stamp" within the meaning of the Code and more particularly whether the definition of "trading stamps" in s. 322(b) is exhaustive. The history of the *Criminal Code* dealing with trading stamps shows that the first legislation by Parliament was enacted by c. 9 of the Statutes of 1905, amending the 1892 Code by the introduction of ss. 526(a) and 526(b). Until the amendments made to the Code, when it was revised in 1953 (Statutes of Canada 1953-54, c. 51), the definition section read in part:

"trading stamps" includes, besides trading stamps commonly so called, any form of cash receipt, receipt, coupon, premium ticket or other device, designed or intended to be given to the purchaser of the goods by the vendor . . .

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The definition section 322 inserted in the revision of 1953 deleted the underlined words. I can conceive of no object in deleting these words except to make the present definition of trading stamps exhaustive. Counsel for the appellant relies upon the statement of Lord Watson delivering the judgment of the Judicial Committee in *Dilworth v. New Zealand Commissioner of Stamps*<sup>1</sup>. He was there referring to ss. 2 and 3 of the *Charitable Gifts Duties Exemption Act, 1883*, as to which he said:

Sect. 2 is, beyond all question, an interpretation clause, and must have been intended by the Legislature to be taken into account in construing the expression "charitable devise or bequest", as it occurs in s. 3. It is not said in terms that "charitable bequest" shall mean one or other of the things which are enumerated, but that it shall "include" them. The word "include" is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include.

However, Lord Watson continues:

But the word "include" is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to "mean and include", and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions.

If authority were needed, the last part of Lord Watson's statement shows that "include" may be an exhaustive definition and for the reasons above stated that is the case in the present appeal.

Furthermore, a reference to the dictionaries mentioned by counsel for the respondent and for the appellant shows that there is no general accepted definition of "trading stamps". Certainly the stamp here in question is not token currency; it is not used in the obtaining of goods; it is not usable instead of money in procuring articles from the issuer of the stamps, B.C. Premium Company. The stamp delivered to Hrycyk could be redeemed only from the respondent from whom the tin of sardines had been purchased and at the premises where it was sold; and the stamp shows upon its

<sup>1</sup>[1899] A.C. 99 at 105.

face the place where it was delivered and where it was redeemable upon demand, and, in fact, where it was so redeemed.

In the Thomson case, the purchaser, Hrycyk, purchased a tin of sardines from David Thomson, trading under the name and style of Niagara IGA Grocery, and upon demand received one safety pin. Hrycyk had received a stamp and a stamp saver book similar to the articles described in considering the Loblaw appeal and the same or similar circumstances existed.

The appeals should be dismissed.

FAUTEUX J.:—Respondents were charged under subsection (2) of s. 369 Cr. C., 1953-1954, c. 51:

(2) Every one who, being a merchant or dealer in goods, by himself or his employee or agent, directly or indirectly gives or in any way disposes of, or offers to give or in any way dispose of, trading stamps to a person who purchases goods from him is guilty of an offence punishable on summary conviction.

The expression "trading stamps" is defined as follows in s. 322(b):

322 (b) "trading stamps" includes any form of cash receipt, receipt, coupon, premium ticket or other device, designed or intended to be given to the purchaser of goods by the vendor thereof or on his behalf, and to represent a discount on the price of the goods or a premium to the purchaser thereof

(i) that may be redeemed

(A) by any person other than the vendor, the person from whom the vendor purchased the goods, or the manufacturer of the goods,

(B) by the vendor, the person from whom the vendor purchased the goods, or the manufacturer of the goods in cash or in goods that are not his property in whole or in part, or

(C) by the vendor elsewhere than in the premises where the goods are purchased; or

(ii) that does not show upon its face the place where it is delivered and the merchantable value thereof; or

(iii) that may not be redeemed upon demand at any time,

but an offer, endorsed by the manufacturer upon a wrapper or container in which goods are sold, of a premium or reward for the return of that wrapper or container to the manufacturer is not a trading stamp.

In essence, the question is whether this definition of trading stamps is exhaustive, or whether, as contended for by both appellants, it contemplates a class of trading stamps other than the one as to which specifications are given:

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The word "includes", appearing in the first line of the definition is, in the context, exclusively related to the words "any form"; it is not referable to what the documents mentioned or other devices must be as to substance in order to come within the prohibition. While all-embracing or all-inclusive as to the forms which may possibly be adopted for such documents or devices, the definition is exhaustive as to the particular features required as constituent elements of the prohibited trading stamps. The precise specifications as to substance, contained in (b)(i), (ii) and (iii) of the section as well as in the saving clause appearing at the very end of it, do not justify the inference that Parliament intended, from the use of the word "includes", to extend the definition in order to cover any other documents or devices as to which it said nothing with respect to features attending issuance, nature of benefit and redemption.

For the reasons given by the Chief Justice and the reasons above, I would dismiss the appeals.

*Appeals dismissed.*

*Solicitor for the appellant in both appeals: The Attorney-General of Manitoba, Winnipeg.*

*Solicitors for the respondent, Loblaw Groceries Co. (Manitoba) Ltd.: Pitblado, Hoskin & Company, Winnipeg.*

*Solicitors for the respondent, David Thomson (Niagara I.G.A. Grocery): Johnston, Garson, Forrester, Davison and Taylor, Winnipeg.*

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