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*Oct. 12.

ARTHUR BRADSHAW (DEFENDANT). APPELLANT;

AND

MINISTER OF CUSTOMS AND EXCISE (PLAINTIFF) ..... } RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL OF BRITISH COLUMBIA

Taxation—Sales Tax—S. 19BBB of Special War Revenue Act, 1915 (c. 8), as amended (Dom.)—Exemption of "nursery stock" in subs. 4 of s. 19BBB—Cut flowers—Potted plants.

Sales by florists of cut flowers and potted plants are not exempt from the sales tax imposed by s. 19BBB of the *Special War Revenue Act, 1915* (c. 8) (Dom.) as amended, such articles not being covered by the phrase "nursery stock" in subs. 4 of s. 19BBB.

APPEAL by the defendant (by special leave granted by the Court of Appeal of British Columbia) from the judgment of the Court of Appeal of British Columbia affirming the judgment of Murphy J (1).

The action was brought for consumption or sales tax, pursuant to s. 19 BBB of the *Special War Revenue Act, 1915* (c. 8) (Dom.) as amended, and for the penalty for failure by the defendant to take out an annual license pursuant to subs. 6 of s. 19 BBB.

The question in dispute was whether cut flowers and potted plants, as sold by the defendant, came within the expression "nursery stock" in subs. 4 of s. 19 BBB, so as to be exempt from the sales tax imposed by that section.

The defendant admitted the following facts:

1. That he was during the year 1926, and previously thereto, a producer of the products of flori culture, plant culture and vegetable culture.

2. That he did during the year 1926, produce flowering plants of miscellaneous varieties and having cut flowers from the plants so produced, did sell the same within British Columbia, namely, cut flowers to the retail trade and did not account for and pay consumption or sales tax in respect thereof.

3. That he did, during the year 1926, and previously thereto, produce and sell to the retail trade within British Columbia, potted plants which said potted plants were not capable of being propagated and grown from year to year wholly out of doors and without the protection of glass or any like protection.

*PRESENT:—Duff, Newcombe, Rinfret, Lamont and Smith JJ.

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The plaintiff admitted the following facts:

1. That the defendant operates a green-house with an adjoining plot of land classed and assessed as agricultural land as distinguished from building lot, and either in the green-house or on the adjoining land he grows the following classes or products:

(*a*) Cut flowers from plants or bulbs, such as chrysanthemums, carnations, hyacinths, tulips, etc.

(*b*) Flowering plants sold in pots so that the ultimate purchaser will have them at the time of their early and full blooming, such as lilies, begonias, azaleas, calceolaria, geraniums, fuschias, cinnerarias, calceolaria (hybrid).

(*c*) Bulb plants, likewise in pots sold so that the ultimate purchaser will have them at the time of early and full bloom, such as cyclamen, primulas, hyacinths.

(*d*) Plants sold in pots such as ferns, palms, rubber plants, auralias.

(*e*) Annual flowering plants sold sometimes in pots or flats, sometimes as individual plants such as asters, stocks, zinnias, lobelia, sunflowers, marigolds.

(*f*) Annual plants for the growth of vegetables sold in flats or pots, or as individual plants such as cabbage, celery, tomatoes, cucumber, cauliflower.

(*g*) Perennial plants such as calceolaria, lupin, digitalis, poenies, primulas, delphinium, bellis, pyrethrum.

(*h*) Vegetable and fruit products such as grapes, tomatoes, lettuce and cucumber.

(*i*) Shrubs and trees such as rhododendrum, laurel, holly, etc.

2. That the defendant sells his products to the retail and/or wholesale trade.

(*a*) Entirely within the province of British Columbia.

3. That all of the products grown by the defendant are grown either under glass or in special plots of ground where they are reared and nurtured either to maturity as a finished product such as sub-paragraphs (*a*) and (*h*) of paragraph 1, herein, or reared to partial or near maturity or readiness for use or consumption such as the products mentioned in sub-paragraphs (*b*) to (*g*), inclusive, and sub-paragraph (*i*) of paragraph 1 herein.

4. That the products mentioned in sub-paragraphs (*e*), (*f*), (*g*), and (*i*) of paragraph 1 are grown by the defendant to partial maturity only and require further growth and cultivation before they are ready for consumption or achieve the object of their growth, and the products mentioned in sub-paragraphs "*b*," "*c*" and "*d*" of paragraph 1 hereof, may or may not, but generally do require further growth and cultivation before they are ready for consumption or achieve the object of their growth.

5. That all of the products grown by the defendant up to the time or sale or delivery by the defendant require and receive nurture and special care, attention and protection (including artificially controlled moisture and temperature) for production.

6. That the products mentioned in paragraph 1 hereof, sub-paragraphs (*b*), (*c*), (*e*), (*f*), and (*h*), are largely if not entirely nurtured by the defendant under glass or with special care and production in order to advance and stimulate their growth in advance of their natural season beyond what is possible if the same were grown without such care for production.

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7. That all of the products grown by the defendant are products of the soil of his own production and are sold in their natural state by the defendant individually.

8. That the defendant is a member of the British Columbia Hot House Association, an Association with an expressed aim or object to test the validity of the tax herein sued for in its application to the various products such as are grown by the defendant and that this action is a test action to that end and that the defendant in the bona fide belief that there is a question to be so tested has refused to take out any license or account for, up to commencement of this action, any tax for this purpose only.

Murphy J. gave judgment for the plaintiff (1) which was affirmed by the Court of Appeal. The defendant appealed to this Court.

R. L. Reid K.C. for the appellant.

E. Lafleur K.C. for the respondent.

At the conclusion of the argument the judgment of the Court was orally delivered by

DUFF J.—We are all of the opinion that this appeal should be dismissed.

The question shortly is, whether or not the phrase "nursery stock," as used in subs. 4 of s. 19 BBB of c. 8 of 5 Geo. V, includes cut flowers and potted plants, with the result that sales of such articles by florists are exempt from the sales tax.

It is not necessary to say anything further with regard to cut flowers. It seems perfectly clear to us that cut flowers cannot be brought within the term "nursery stock."

As to potted plants—"nursery" implies a place devoted to the cultivation of trees, shrubs, and plants—for the purpose of transplantation; bringing them to a degree of maturity in which that is practicable.

That this is the signification of the word as used in the phrase in question is indicated by the quotation made from the *Customs Tariff Act* at page 4 of Mr. Lafleur's factum (*a*), and this view of the effect of the phrase is also borne out by the French version, in which nursery stock is described as "*plants de pépinière.*" The nursery is conceived

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(*a*) "Trees, plants and shrubs, commonly known as nursery stock" in item 82, schedule A of *The Customs Tariff, 1907,* 6-7 Edw. VII, c. 11.

by the statute as a "*pépinière,*" a place in which "*plants*" are grown for the purpose mentioned; the word describing the articles, as Mr. Lafleur points out, is "*plants*", not "*plantes*". Potted plants, in our view, are not within the ordinary meaning of the phrase "nursery stock." We think the appeal should be dismissed, with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Dickie & De Beck.*

Solicitors for the respondent: *Congdon, Campbell & Meredith.*