1933
Oct. 2 & 3.
1934
Jul. 28.

BETWEEN:

A. HOLLANDER & SON, LIMITED.. SUPPLIANT;

AND

HIS MAJESTY THE KING..... RESPONDENT.

Revenue—Sales Tax—Special War Revenue Act Regulations—"Manufacture"—Civil Code—Plaintiff required to have an interest in action brought.

Suppliant is engaged in the business of dressing and dyeing furs for others and not for its own account. It paid to the respondent certain sums of money as sales tax imposed by the Special War Revenue Act 1915, and amendments thereto. The suppliant was prepaid or repaid by the customer, the tax so paid, being out of pocket only such amounts as certain customers failed to repay it. Suppliant brought suit to recover all money paid by it as sales tax, alleging such payments to have been made by mistake of law and of fact.

Held: That under s. 87 (c) of c. 179, R.S.C. 1927, it is the goods of the owner, manufactured by the labour of another, that are to be taxed as a sale; it is not intended the person performing the labour should be taxed for the goods so manufactured or produced.

2. That the suppliant, not having paid the tax itself, but rather as an intermediary for and on account of its customers, has no right of action against the Crown to recover the same.

3. That the suppliant, not having an interest in the money in question, as required by Article 77 of the Code of Civil Procedure of Quebec, cannot maintain the action against respondent.

PETITION OF RIGHT by suppliant herein asking that the amount of money alleged to have been paid to the Crown as sales tax, by mistake of law and of fact, be refunded.

The petition was heard before the Honourable Mr. Justice Maclean, President of the Court, at Montreal.

L. A. Forsyth, K.C., P. Bercovitch, K.C., and *J. deM. Marler* for the suppliant.

J. A. Mann, K.C., and *L. Choquette* for the respondent.

The questions of fact and parts of the Act relevant to this case are stated in the reasons for judgment.

THE PRESIDENT now (July 28, 1934), delivered the following judgment:

The suppliant is a company engaged in the business of dressing and dyeing furs, for others and not for its own account. By virtue of the Special War Revenue Act 1915, and amendments thereto, and within the periods herein-

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after to be mentioned, the suppliant paid to the Crown, as sales tax, certain sums of money, by mistake of law and of fact it is claimed, and the suppliant by its petition herein seeks repayment of such moneys from the Crown.

The matters in issue relate to two different periods, that between May 19, 1920, and December 31, 1923, and that between December 31, 1923, and May 31, 1931, and for that and other reasons, it perhaps would be most convenient at this stage to set out the provisions of the statute applicable to those periods.

The Special War Revenue Act 1915, and amendments thereto, in force in the period between May 19, 1920, and December 31, 1923, provided, by chap. 47, s. 13, Statutes of Canada 1922, that:

19BBB (1) In addition to any duty or tax that may be payable under this Part, or any other statute or law, there shall be imposed, levied and collected an excise tax . . . on sales and deliveries by Canadian manufacturers or producers, . . .

The suppliant claims that during this period, it was not a manufacturer or producer within the meaning of the Act, that it made no sales or deliveries of goods then taxable under the Act, and that no tax was then exigible from the suppliant. It claims, however, that by mistake of law and of fact, during that period, it accounted to the Collector of Customs and Excise at the Port of Montreal, at the rate of tax then in force, upon the amount of all invoices issued to the suppliant's customers for dressing and/or dyeing of furs for such customers, although in fact and in law such transactions of the suppliant with its customers were not sales and deliveries of a Canadian manufacturer or producer, and that in respect of such accounting the Crown was paid by the suppliant, through error of law and of fact, $8,014.66.

The above mentioned section of the Act was repealed by chap. 70, s. 6 of the Statutes of Canada 1923, and for the period between January 1, 1924, and May 31, 1931, the following section was in force:

19BBB (1) In addition to any duty or tax that may be payable under this Part, or any other statute or law, there shall be imposed, levied and collected a consumption or sales tax . . . on the sale price of all goods produced or manufactured in Canada, . . which tax shall be payable by the producer or manufacturer at the time of the sale thereof by him; . . .

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By virtue of this section, which came into force on January 1, 1924, sales tax became payable "at the time of the sale thereof" and not "on sales or deliveries" as provided by the repealed section. The suppliant puts forward the same claim under this last mentioned section, for the period just mentioned, and upon the same grounds as in the first mentioned period, under the repealed section, and it alleges that in this period it paid sales tax in the amount of $201,530.37.

By chap. 70, s. 6, ss. 13, Statutes of Canada 1923, there was enacted for the first time, the following section, now section 87 of the Act as found in the Revised Statutes of Canada 1927, chap. 179, but in precisely the same language, and it will be convenient hereafter to refer to sec. 19BBB (13) as enacted in 1923, as sec. 87. The relevant portion of this new section reads:

87. Whenever goods are manufactured or produced in Canada under such circumstances or conditions as render it difficult to determine the value thereof for the consumption or sale tax because

(*a*) . . . . .

(*b*) . . . . .

(*c*) such goods are manufactured by contract for labour only and not including the value of the goods that enter into the same, or under any other unusual or peculiar manner or conditions; or

(*d*) . . . . .

the Minister may determine the value for the tax under this Act and all such transactions shall for the purposes of this Act be regarded as sales.

This section, as sec. 19BBB (13), came into force on January 1, 1924. It is because of the coming into force of this section, on January 1, 1924, and the changes effected in the Act thereby, that the time material here is divided into two periods.

Effective on September 1, 1924, the Minister of Customs and Excise, purporting to act under authority conferred by the Act, issued certain regulations among which was the following:—

Furriers are not to be granted a consumption or sales tax licence on and after the 1st September, 1924. Licences issued to furriers prior to that date are to be cancelled.

Dressers and dyers of furs, however, are required to take out a sales tax licence and account to the Collector of Customs and Excise for consumption or sales tax on furs dressed or dyed by them.

Such tax is to be computed on the current market value of the dressed furs whether the dresser is the owner of the furs or not.

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The suppliant contests the validity of this regulation and says it was wholly or partially, *ultra vires* of any power or authority conferred upon the Minister of Customs and Excise by the Act, and that such regulations therefore imposed no liability for the payment of the sales tax upon the suppliant, except possibly in part and this will be mentioned later, and that the cancellation of licences to furriers was void.

From September 1, 1924, until May 31, 1931, through error of law and of fact, it is alleged, the suppliant accounted in the usual way for the sales tax, in respect of furs dressed or dyed by it for its customers, the tax being computed upon the current market value of the dressed and dyed furs, and that during this period it paid to the Crown the sum of $564,444.38, of which sum $501,791.07 represents sales tax paid in respect of furs dressed or dyed, or both, for customers of the suppliant whose licences had been cancelled, illegally it is claimed, by virtue of the regulation.

The suppliant claims, in its petition, that it is entitled to recover altogether from the Crown the sum of $574,539.96, subject to a slight deduction in respect of the first mentioned period, but which I need not delay to explain. The suppliant also claims that the sums mentioned were paid to the Crown, at Montreal, in the province of Quebec, and that the provisions and dispositions of the Civil Code of the Province of Quebec apply thereto.

In the case of *Vandeweghe* v. *The King* (1), the suppliant, Vandeweghe Ltd., dressed and dyed its own furs and later sold them, the reverse of this case. On appeal to the Supreme Court of Canada, it was there held that the furs dressed and dyed by the suppliant fell within the description of goods "manufactured or produced in Canada" within the meaning of sec. 86 of the Act, and were taxable under that section of the Act. Duff C.J., who delivered the judgment of the court, said:

> Although it does not strictly enter into the argument, it may not be out of place to observe that the dyer and dresser who neither owns the fur nor sells the fur, within the proper meaning of the word, is clearly not within s. 86. He may come within s. 87, and, if so, the transaction between him and the owner of the fur, which is not truly a sale at all, is deemed to be a sale for the purposes of the Act. The respondents,

(1) 1933, Ex. C.R. 59.

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as we have already observed, are not within s. 87 but, if they are a "producer" or "manufacturer" they are within s. 86.

The Supreme Court of Canada thus definitely held, that in the facts of this case, the suppliant would not be taxable under what is now sec. 86 of the Act, which for all purposes here may be regarded as of the same effect as the earlier and corresponding sections of the Act which I have already referred to; that means that the suppliant here would not be liable to the sales tax upon the furs dressed and dyed by it for its customers, under sec. 86 of the Act, because it was neither the owner nor seller of the furs, but that it might be liable under sec. 87 of the Act.

It occurs to me that I should supplement my reference to the regulation in question, in order that there be no misunderstanding as to the authority under which it purports to have been enacted. The introductory clause of the regulation I omitted to mention, and it is as follows:

> Under authority of section 19BBB, subsection 3, and section 19C of The Special War Revenue Act, 1915, the regulations contained in Memorandum No. 39, Supplement D, as affecting furriers are hereby cancelled.

Then follows the balance of the regulation as already quoted. Subsection 3 of sec. 19BBB, one of the sections under which the regulation purports to have been enacted, is as follows:

> Notwithstanding anything contained in this section, if at any time it appears to the Minister of Customs and Excise that payment of the consumption or sales tax is being evaded by a licensed manufacturer or producer or licensed wholesaler or jobber the Minister may require that the consumption or sales tax shall be imposed, levied and collected on any material specified by the Minister sold to any licensed manufacturer or producer or licensed wholesaler or jobber . . . . . specified by the Minister, at the time of sale of such material when produced or manufactured in Canada . . . . .

Ss. 19 (*c*) of sec. 19BBB reads:

> The Minister may make such regulations as he deems necessary or advisable for carrying out the provisions of this Part.

It is clear, I think, that the regulation (requirement) in question was enacted under ss. 3 of 19BBB. It could hardly have been enacted under sec. 19 (*c*) above mentioned, or under any other provision of the Act. I quite agree with Mr. Mann, that it is for the Minister to decide, under ss. 3 of 19BBB, if the sales tax were "being evaded," and if that is so decided it is not open to question by the taxpayer. In a circular letter addressed to the Collector of Customs at Montreal, by the Deputy Minister of Customs

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and Excise, dated September 2, 1924, it is stated that under the provisions of this regulation, the "consumption or sales tax is to be computed on the value of the furs, including the dressers' and dyers' charges for dressing and dyeing." The letter then states that each dresser and dyer is to furnish the local Collector of Customs with a daily statement of all furs received by him, such statement to show the names of the owners of the furs and the number and kinds of skins received; and these statements are to be retained by the Collector. Then it is directed by the letter that a competent officer of the staff of the Collector of Customs and Excise is to determine the value of such furs for sales tax purposes, such valuation to be determined as soon as possible after the receipt of the daily statement from the dresser and dyer, and such officer is required to furnish the dresser and dyer with a separate memorandum, showing, in respect of each owner of furs, the amount of sales tax payable. The letter then proceeds to state that each dresser and dyer is required to make a monthly return to the Collector of Customs and Excise covering the amount of the tax on the furs dyed or dressed during any month, and to attach thereto the separate memorandum prepared by the revenue officer just above referred to. All these directions will appear to have been followed when I describe, as I am about to do, the procedure followed in actual practice in this case, by the revenue officers, the suppliant, and the customer or owner of the furs. It will be sufficient for the present to point out, that if the authority for the regulation is to be found in ss. 3 of sec. 19BBB, and I think it is only to be found there, then the tax became payable only at the time of sale of any specified material, to a licensed manufacturer or producer, or a licensed wholesaler or jobber; if it were enacted under 19 (*c*) of the same section then it should contain only such directions or requirements as would be necessary for carrying out the provisions of Part IV of the Act, and should not purport to effect any substantive change in the provisions of that part of the Act.

In this case, the following procedure was in practice followed, subsequent to the regulation coming into force, in determining the value of the dressed and dyed furs, and in ascertaining the amount of the tax. This procedure will

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disclose that the tax was paid by the suppliant to the Collector of Customs at Montreal, and it was prepaid or repaid the tax by the owner of the furs. The suppliant reported daily to the Department of National Revenue at Montreal, on form E163, supplied by the revenue officers, and this would show the number and description of skins, the name of the owner, the nature of the work performed upon the skins by the suppliant, and the customer's valuation of the skins. On the form there is a column headed "Officer's Valuation," to be filled in by a revenue officer, and next a column wherein is to be filled out the amount of the sales tax by a revenue officer. The customer's valuation of the skins would, in practice generally, be forwarded to the suppliant with the raw skins and when this form, Exhibit 5, was completed, except the last two columns, it would be sent to the proper revenue officer by the suppliant, when the valuation of the fur, and the amount of the tax would be finally determined by the former. Then form E162, Exhibit 4, prepared by a revenue officer, showing the name of the skins, the quality, the value, the dressing and dyeing charges, the total value for taxation, and the total amount of tax payable, would be forwarded the suppliant. The amount of the tax was determined by applying the tax, at the rate then in force, upon the value of the raw skin, or the dressed and dyed fur,—it is difficult to say which—and upon the charges for dressing and dyeing the furs, the combined figures constituting the aggregate of the tax on each dressed and dyed fur. The total tax was then paid, subject to rare exceptions, by the customer to the suppliant, and by it paid over to the Collector of Customs and Excise at Montreal. It would appear that the suppliant was instructed by revenue officers not to part with the possession of the furs until it had been paid the tax mentioned, by the customer. The suppliant would of course also be paid for its charges for dressing and dyeing the fur. The revenue officers were of course aware of this practice, and apparently it was not intended that the suppliant should bear the burden of the tax. It therefore appears that, at all the times material here, while the tax was paid upon the dressing and dyeing charges, and the value of the raw skin or fur, by the suppliant in the first instance, yet the suppliant was prepaid or repaid, by the customer, the tax so paid, and in the result, the suppliant

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was out of pocket only such amounts as certain customers failed to repay the suppliant, and to such cases I shall have occasion to refer later.

Some further facts should also be mentioned before proceeding further. In the period from May 31, 1921, down to September 1, 1924, when the regulation came into force, the tax was paid by the suppliant only on its dressing and dyeing charges, on the ground I assume that it was a manufacturer or producer of goods. After September 1, 1924, the tax was paid by the suppliant on the amount of its dressing charges and the value of the skin or fur, as just explained, except that during the eight-month period between January 1, 1924, when section 87 came into effect, and September 1, 1924, when the regulation came into effect, it would appear that the sales tax was paid by the suppliant only on its dressing and dyeing charges, and I assume that the amount so paid in that period was prepaid or repaid the suppliant by its customers.

The question for decision is reduced to somewhat narrow limits. In respect of the period ending December 31, 1923, the suppliant was apparently taxed on account of the dressing and dyeing of furs for customers, under sec. 19BBB. But the suppliant was not taxable under that section, upon the ground laid down in the Vandeweghe case by the Supreme Court of Canada in regard to the effect of sec. 86, in the case where the dresser and dyer did not own or sell the furs. Sec. 87 was not in force during that period, and neither was the regulation in question. I think it is beyond controversy that the suppliant was not taxable in this period.

Now in regard to the second period. If the tax were imposed upon the suppliant, in exercise of the power conferred upon the Minister by ss. 3 of sec. 19BBB, and if the regulation in question expresses the decision of the Minister to exercise such power and the manner of so doing, then the tax was not, I think, payable by the suppliant, because the material or goods on which the tax was in fact imposed, levied and collected, was not sold to a licensed manufacturer or producer, or to a licensed wholesaler or jobber. The suppliant did not own or sell any dressed or dyed furs that are in question here. Ss. 3 of s. 19BBB contemplates an actual sale; this provision would seem to be applicable to the case where the

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dresser and dyer owned the furs so processed, and sold them to a person licensed under the Act. I understand it to be suggested at the trial, by counsel for the Crown, that the regulation was enacted because there was an attempt on the part of some licensed persons, in some way, to evade the tax in connection with dressed or dyed furs. Further, I seriously doubt if the Minister had any authority under the Act to cancel the licences hitherto issued to furriers, so called. If any sales tax were payable by the suppliant it therefore must have been authorized by sec. 87 (*c*), and such contention is made on behalf of the Crown; and I understood it to be also contended that the regulation in question was enacted by virtue of the general powers to enact regulations, granted by ss. 19 (*c*) of sec. 19BBB, and as being necessary "for carrying out the provisions of this Part," and therefore a necessary regulation in the carrying out of sec. 87 (*c*). It remains therefore to consider the interpretations to be placed upon sec. 87 (*c*), and whether the regulation is applicable to sec. 87 (*c*).

Under sec. 87 (*c*), either the suppliant or the owners of the furs which it dressed and dyed were liable for the sales tax, or sec. 87 (*c*) has no application whatever to the state of facts here. The first part of sec. 87 refers to goods "manufactured or produced," and "the consumption or sales tax," just as in sec. 86. It is the primary purpose of sec. 87 to confer upon the Minister the power to determine the "value" of goods manufactured or produced, for the purposes of the sales tax because, in the cases mentioned, there may be some difficulty in determining such "value." I am unable myself to see how there could be any difficulty in determining the value of dressed and dyed furs, once it was determined to tax them. The value of the dressed and dyed furs would be the same, whether the owner or another dressed and dyed them. If the Minister in fact decided there were any difficulty in that connection, that decision I apprehend would be final; there is no suggestion in the evidence here that the Minister decided that in this particular trade or business there was any difficulty in determining the value of dressed and dyed furs, for the purposes of the tax. However, I cannot see that I can say that the Minister could not say that this was a case where he could exercise that power, even if the grounds for it do not seem convincing to me. While by no means free from

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doubt, I am not convinced that I should disregard sec. 87 (*c*) in this issue. If that provision were not intended to confer upon the Minister the power to "value" goods for the purpose of the tax, I can see no reason for constituting the transaction mentioned as a statutory sale. It is difficult for me to see any reason for differentiating between the case where the owner dresses and dyes his own furs, and this case, yet I can hardly say that such was not the intention of sec. 87 (*c*).

The circumstances in which sec. 87 comes into play are referred to at the end of the section as "transactions," which is as appropriate and convenient a term as any other for describing the several matters mentioned in the sub-paragraphs of the section. In so far as 87 (*c*) is concerned, it refers to goods manufactured by contract for labour for the person who supplies and owns the raw material or goods. This provision of the section was never intended, I think, to mean that the "labour" entering into or applied to the owner's goods was of itself the whole "transaction," or that the value of the labour was alone subject to the tax and payable by him who performed the labour; the "transaction" relates to goods manufactured in the circumstances therein mentioned, that is to say, by the owner supplying the material or goods, and some one else the labour. Supplying the raw material or goods necessarily constituted a part of the contract or transaction. It is the goods of the owner, manufactured under contract by the labour of another, that are to be taxed as a sale; "manufacture," I think, here means a "manufacture" for and on account of the owner who has supplied the goods, not a manufacture by the person who has performed the labour, and it is "the value" of the goods after the "labour" has been applied to or bestowed upon the goods or material that the Minister is authorized to determine. The meaning to be attributed to sec. 87 (*c*) is, I think, that in the case where goods or raw material are, by contract for labour, manufactured or converted from one commodity class into another, and the raw material or goods so manufactured or converted are provided by the owner, and their value is not included in the contract for labour, then, the Minister may determine the value of the goods so manufactured or produced. In this case, as in all others, the contract would indicate the value or cost of the

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labour for dressing and dyeing the furs, and it would also indicate that the raw furs were to be supplied to the dresser or dyer by the owner, but the contract would be silent as to the value of the raw furs or the dressed and dyed furs. "Value" in sec. 87 (*c*) means that the value of the raw material or goods to be supplied was not included in the contract for labour, and probably it was for that reason that sec. 87 (*c*) was enacted so as to provide a summary and final method of determining the value of the goods manufactured and produced under such conditions. There is no suggestion in sec. 87 (*c*), so far as I can observe, that the person performing the labour was the person to be taxed for the goods manufactured or produced, and I do not think that was intended. If "transactions" means that the contract for the labour involved in dressing and dyeing the furs of customers was taxable as a sale against the dresser and dyer that would give to "sale" a meaning utterly foreign to the whole spirit of the Act, including even sec. 87 (*a*), (*b*) and (*d*). Take, for example, the case where one contracts to manufacture clothing, from goods and material supplied by the owner; it seems impossible to believe that the legislature intended that in such a case the contractor should be liable for the sales tax, or that such labour was intended to constitute a sale. One could understand the legislature intending by sec. 87 (*c*), that the owner of the furs should be taxed, and why goods manufactured under such conditions should be deemed a sale. But I cannot believe that sec. 87 (*c*) was intended to mean that the dresser and dyer of furs which he did not own, could not sell, could not consume, and which I think he was bound to deliver back to the owner on payment of the labour charges, should be made liable for the tax, and put to the possible inconvenience, annoyance and expense, of paying the tax in such circumstances. If "transaction" here relates only to the labour of dressing and dyeing, then the dresser and dyer would, at the most I think, be taxable only on the contract price of the labour. but that is not, I think, the meaning or intention of the section. The regulation does not seem to be one framed for the purpose of assisting in the determination of the "value" of the goods manufactured or produced, under the conditions set forth in sec. 87; it seems to be legislation and not regulation. I am therefore of the opinion that

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the true construction of sec. 87 (*c*) is, in so far as this case is concerned, that it was the owner of the dressed and dyed furs—and that is what was really done here—and that the regulation is one not authorized by, or pertinent to, this section. If that is not the meaning of sec. 87 (*c*) then it is arguable that the section is inoperative on account of uncertainty. Were it not for what I am about to say I think the suppliant would be entitled to recover the amount claimed.

If the construction which I place on 87 (*c*) be correct, then it was the owners of the furs which were taxable, and they could not, I think, recover the moneys paid by them on account of the tax, from either the suppliant or the Crown. Now, in the state of facts explained, can the suppliant recover such moneys from the Crown? Mr. Mann suggested that on equitable grounds the suppliant should not succeed, because the moneys it paid to the Crown as taxes were paid to it by the owners of the furs, for the purpose to which in fact they were applied by the suppliant. Mr. Forsyth argued that the suppliant having paid the taxes mentioned, which in law were not exigible from it, it was entitled to recover the same, and the court need not and should not enquire if such amounts were prepaid or repaid by the owners of the furs, to the suppliant, or what disposition the suppliant might make of such moneys if recovered. As I have already explained, the moneys which the suppliant paid to the Crown, on account of the sales tax, were in fact generally prepaid to the suppliant by its customers, and any amounts that were paid the suppliant after the latter paid the tax, was owing to a courtesy extended the customer by the suppliant, and such postponed payments may be placed in the same category as those that were prepaid. It seems to me that the suppliant not having really paid the taxes itself, but rather as an intermediary for and on account of the customers, it has no right of action against the Crown to recover the same. It is true, I understand, that in some few instances the suppliant paid the tax prior to the receipt of the same from some of its customers, and were never repaid, but to this exception I shall refer later. It appears to me that, in this state of facts, if the suppliant could now recover such moneys it would be against principle and justice; and it would not be a case of giving relief to the suppliant

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because it had been injured, or because its position was altered to its disadvantage, or because it ever expected that the taxes should be repaid it by the Crown. It is not on the other hand unconscionable, in the circumstances, for the Crown to resist repayment. Even if the tax were properly payable under the statute by the owners of the furs, but invalidly or by mistake, or owing to some irregular procedure, the payments were made through the suppliant, the latter knowing the application to be made of such payments, it seems to me it should not now be able to recover the same. If the suppliant were wrongfully required to pay the tax in the first instance, it wrongfully received the same from its customers, and I do not think the suppliant can now be heard to say it is entitled to recover the moneys so paid just because it was once in possession of the same. It is a principle of law, I think, that in order to have a right of action one must have some interest in the thing sought to be recovered or the right sought to be enforced, unless he sues in a representative capacity which is not the case here. The suppliant here either collected the tax from the customer for the use of the Crown, or, it paid the tax for the customer with moneys advanced by the customer. The Crown seems to have made the dresser and dyer its medium for the collection of the tax, and the dresser and dyer acted accordingly. In a letter dated July 7, 1931, addressed to the Commissioner of Excise, the suppliant refers to "burdening the dresser and dyer with the collecting of the tax . . ."

In any event, the suppliant does not appear to have any interest of right in the taxes received from its customers and paid over to the Crown. It seems to me that it is the owner of the furs alone, who has a right of action for the recovery of the taxes paid, that is, if any is maintainable at all. If the dresser and dyer were a seller of the furs under the statute it was liable for the tax; if no statutory sales were made by the suppliant then the taxes irregularly paid through it were for the account of its customers, and this it received from its customers. The principle which I have stated, I apprehend, expresses the rule of the common law. If it is the law of Quebec which applies here, and the suppliant relies on Articles 1047 and 1140 of the Civil Code of Quebec, then Article 77 of the

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Code of Civil Procedure would seem applicable. That article is as follows:

77. No person can bring an action at law unless he has an interest therein.

Such interest, except where it is otherwise provided, may be merely eventual.

The suppliant, in my opinion, has not an interest in the moneys in question here, and on this ground, I think, it must fail. Whether the tax were paid over by the suppliant to the Crown, in error of law or fact, matters not in the facts of this case. Therefore I think the petition must be dismissed subject however to what follows.

It would appear from the evidence that in some instances, the suppliant was never repaid by its customers, sales taxes which it had paid to the Crown, owing, for example, to the bankruptcy of such customers, either before or after the return of the dressed and dyed furs to such customers. I am not prepared to decide presently what should be done in respect of such tax payments. Upon the settlement of the minutes I shall be pleased to hear counsel fully argue this point, and until then it is reserved. If it should be decided that the suppliant is entitled to recover such amounts, it is probable that a reference to the Registrar or Deputy Registrar would be made. Until then I also reserve the question of the disposition of the costs of this petition, including of course the costs relative to the point just above mentioned and reserved.

Judgment accordingly.