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REGINALD R. ORR

v.

CITY OF VANCOUVER

Supreme Court of British Columbia (No. 1082/55)

Before: MR. JUSTICE J.O. WILSON

Vancouver, June 2,3, 1955

C.K. Guild Q.C., for the Appellant
Senator J.W. deB. Farris, Q.C. for the Attorney-General
R.K. Baker for the City of Vancouver

Case Stated by Assessment Appeal Board

1. At the time of assessment the appellant owned said Lot 2 together with the one-story building which had been erected upon it for general rental purposes some years previously. The building had not been built for any particular tenant or for occupation or use by any particular class of tenant.

2. The premises were let on a monthly tenancy to a tenant who carried on a shoe-repair business there.

3. The property assessed for school purposes under the heading of "Improvements" consists, firstly, of the building which is attached to the land, and, secondly, of several articles belonging to the tenant which are situate in the building.

4. The articles belonging to the tenant consist of (a) a. finishing-machine, (b) a stitcher, (c) a soler. None of these articles are affixed to the land or to the building or to any fixture or structure therein, thereon, or thereunder. The finishing-machine is something like a small lathe with its metal legs attached to skids. The other articles each have three or four legs which rest on the floor. They each belong to the class of things intended to be moved about at will. None of them have been set in a permanent position. The evidence was to the effect that the tenant had in fact shifted their position from time to time.

5. On the assessment roll the name of the appellant has been entered as the person assessed. Under the heading "Land" the estimated value of the land is entered. Under the heading "Improvements, General Purposes" the estimated value of the building is entered. Under the heading "Improvements, School Purposes" is entered the aggregate estimated value of the building and the articles owned by the tenant.

6. The appellant who owns the land and building has no part in the ownership of any of the articles in question. They belong entirely to the tenant.

7. One claim by appellant's counsel was to the effect that the estimated value entered under the heading "Improvements, School Purposes" should be reduced by the amount of the estimated value of the articles owned by the tenant.

8. The grounds of appeal given by the appellant in his notice of appeal to the Assessment Appeal Board are as follows:

> (1) Improvements assessed for school purposes at too high a figure, which was erroneously confirmed.
>
> (2) Improvements belonging to a tenant or tenants were invalidly assessed against the owner of the real property, and each assessment in respect thereof is null and void, and the action of the Court of Revision purporting to confirm each of said assessments is also invalid and is null and void.

(3) Things belonging to a tenant or tenants were invalidly assessed against the owner of the real property, and each assessment in respect thereof is null and void; further, the action of the Court of Revision purporting to confirm each of said assessments is also invalid and null and void.

(4) Each assessment and purported confirmation thereof was against the evidence and the weight of evidence.

(5) Each assessment and purported confirmation thereof was contrary to law.

(6) Alternatively, each assessment was made as a step in a plan to impose a penalty on the owner of real property by reason of lawful circumstances relating to his real property and is beyond the jurisdiction of any assessment commissioner or taxation authority appointed or created by the Legislature or Government of the Province of British Columbia and is also beyond the jurisdiction of the said Province.

(7) In the alternative, each assessment was made as a step in a plan to impose indirect taxation, which is beyond the jurisdiction of any assessment commissioner or taxation authority appointed or created by the Legislature or Government of the Province of British Columbia and is beyond the jurisdiction of the said Province.

(8) In the further alternative, the assessments were invalidly made and invalidly confirmed in respect of things which were exempt under and by virtue of Order in Council No. 1204, approved the 1st day of June, 1954, and published in the B.C. Gazette on the 17th day of June, 1954.

(9) Such further and other grounds as counsel may advise.

Pursuant to subsection (1) of section 51 of the *Assessment Equalization Act* aforesaid, the Assessment Appeal Board submits this stated case and humbly requests the opinion of this Honourable Court on the following questions of law:

> "1. In the circumstances of this case should the definition of 'improvements' in section 2 of the *Assessment Equalization Act* be interpreted to include all or any of the following: The finishing-machine, the stitcher, or the soler, and which, if any, of such things should be included?
>
> "2. Was the estimated value of the finishing-machine, the stitcher, and the soler, or of any of them, validly entered on the assessment roll in the name of the person assessed as owner of the land, namely, Reginald R. Orr?
>
> "3. Does the language used in the definition of 'improvements' in section 2 of the *Assessment Equalization Act* mean that one or more movable things owned by a tenant

and brought by him upon land or buildings which he occupies as tenant is or are to be included as one or more improvements to the land upon which they are situate for the purposes of said Act in a case where the thing is neither affixed to the land or building or to any fixture or to any structure therein, thereon, or thereunder, or has not been set in a particular place with the intention that it shall remain there permanently?

"4. If the answer to Question No. 3 is in the affirmative, does the wording of sections 38 and 39 of said Act, or either of them, require or permit the name of the tenant who is owner of the movable things in question to be entered in the assessment roll as the person assessed or, alternatively, do said sections, or either of them, require the name of the owner of the land to be entered on the assessment roll with respect to the movable things assessed?

"5. If the answer to Question No. 3 is in the affirmative, and if the meaning of the language used in said sections 38 and 39, or either of them, is to the effect that the estimated value of the movable things in question is to be entered on the assessment roll in the name of the person who is the owner of the land, are said sections 38 and 39 and said definition of 'improvements,' or any of them or any portion of them, ultra vires of the Legislature of the Province of British Columbia?

"6. Does the language used in the definition of 'improvements' in section 2 of the *Assessment Equalization Act* mean that one or more movable things owned by a tenant and brought by him upon land or building which he occupies as tenant is or are to be included as one or more improvements to the land upon which they are situate for the purposes of said Act in a case where the thing is neither affixed to the land or building or to any fixture or to any structure therein, thereon, or thereunder, but has been set in a particular place with the intention that it shall remain there permanently?

"7. If the answer to Question No. 6 is in the affirmative, does the wording of sections 38 and 39 of said Act, or either of them, require or permit the name of the tenant who is owner of the movable things in question to be entered in the assessment roll as the person assessed, or, alternatively, do said sections, or either of them, require the name of the owner of the land to be entered in the assessment roll with respect to the movable things assessed?

"8. If the answer to Question No. 6 is in the affirmative and if the meaning of the language used in said sections 38 and 39, or either of them, is to the effect that the estimated value of the movable things in question is to be entered on the assessment roll in the name of the person who is the owner of the land, are said sections 38 and 39 and said definition of improvements, or any of them or any portion of them, ultra vires of the Legislature of the Province of British Columbia?

"9. If the meaning of the language used in the *Assessment Equalization Act* as amended, the *Vancouver Charter* as amended, and the *Public Schools Act* as amended read together is to the effect that the estimated value of the movable things in question owned by the tenant is to be entered on the assessment roll in the name of the owner of the land, are those portions of said Statutes as amended which so require ultra vires of the Legislature of the said Province? "

Reasons for Judgment

Section 51 of the *Assessment Equalization Act*, Statutes of British Columbia, 1953, chapter 32, reads as follows:-

51. (1) At any stage of the proceedings, the Board may submit in the form of a stated case for the opinion of the Supreme Court a question of law arising in connection with the

appeal, and shall reserve its decision until the opinion of the Court has been given, when it shall decide the appeal in accordance with the opinion.

(2) Any person affected by the decision of the Board in an appeal, including a municipal corporation acting on the recommendation of the Assessor and on the resolution of its Council, may, within ten days of the decision, by correspondence addressed to the Board, require the Board to submit the case for the opinion of the Supreme Court on a question of law only.

(3) Within ten days after the receipt of the requirement, the Board shall submit in writing a stated case for the opinion of the Court.

(4) The costs of and incidental to a stated case shall be at the discretion of the Court.

(5) Where a case is stated, the secretary of the Board shall forthwith file the case, together with a certified copy of the evidence dealing with the question of law taken in the appeal, with the Clerk of the Supreme Court, who shall enter the same for argument before a Judge sitting in Chambers.

(6) The Court shall hear and determine the question, and within one month give its opinion and cause it to be remitted to the Board, but the Court may, if it thinks fit, cause any case to be sent back to the Board for amendment, and thereupon the Board shall amend the case accordingly, and the opinion of the Court shall be delivered after the amendment.

Under that section a case has been stated to this Court. I cite certain parts of the statement of facts:

1. At the time of assessment the appellant owned said Lot 2 together with the one-story building which had been erected upon it for general rental purposes some years previously. The building had not been built for any particular tenant or for occupation or use by any particular class of tenant.

2. The premises were let on a monthly tenancy to a tenant who carried on a shoe-repair business there.

3. The property assessed for school purposes under the heading of "Improvements" consists, firstly, of the building which is attached to the land and, secondly, of several articles belonging to the tenant which are situate in the building.

4. The articles belonging to the tenant consist of (a) a finishing-machine, (b) a stitcher, (c) a soler. None of these articles are affixed to the land or to the building or to any fixture or structure therein, thereon, or thereunder. The finishing-machine is something like a small lathe with its metal legs attached to skids. The other articles each have three or four legs which rest on the floor. They each belong to the class of things intended to be moved about at will. None of them have been set in a permanent position. The evidence was to the effect that the tenant had in fact, shifted their position from time to time.

5. On the assessment roll the name of the appellant has been entered as the person assessed. Under the heading "Land" the estimated value of the land is entered. Under the heading "Improvements, General Purposes" the estimated value of the building is entered. Under the heading "Improvements, School Purposes" is entered the aggregate estimated value of the building and the articles owned by the tenant.

6. The appellant who owns the land and building has no part in the ownership of any of the articles in question. They belong entirely to the tenant.

I also cite the first three questions asked in the stated case:

> "1. In ,the circumstances of this case should the definition of 'improvements' in section 2 of the *Assessment Equalization Act* be interpreted to include all or any of the following: The finishing-machine, the stitcher, or the soler, and which, if any, of such things should be included?
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> "2. Was the estimated value of the finishing-machine, the stitcher, and the soler, or of any of them, validly entered on the assessment roll in the name of the person assessed, as owner of the land, namely, Reginald R. Orr?
>
> "3. Does the language used in the definition of 'improvements' in section 2 of the *Assessment Equalization Act* mean that one or more movable things owned by a tenant and brought by him upon land or building which he occupies as tenant is or are to be included as one or more improvements to the land upon which they are situate for the purposes of said Act in a case where the thing is neither affixed to the land or building or to any fixture or to any structure therein, thereon, or thereunder, or has not been set in a particular place with the intention that it shall remain there permanently?"

There are other statement of facts and other questions asked, but I propose to commence this judgment with an exploration of the three questions cited in the light of the facts stated, referring later, as necessary, to other facts stated and questions asked.

I wish to avoid any irrelevant discussion of the Statute. Therefore. I make only the general observation that, as set out in subsection (4) of section 8, the assessments of land and improvements under the Act are binding on the City of Vancouver for the purpose of real property taxation only under the *Public Schools Act.* Under the *Vancouver Charter*, Statutes of British Columbia, 1953, chapter 55, taxation for general purposes other than schools is based on a different definition of improvements, while under the *Municipal Act* yet another formula is used for general taxation purposes in cities other than Vancouver.

The definition of improvements is given in section 2 of the *Assessment Equalization Act*, Statutes of British Columbia, 1953, chapter 32, and reads as follows:-

> "Improvements" includes:
>
> (a) All buildings, fixtures, machinery, structures, and similar things erected or placed in, upon, or under or affixed to land or to any building, fixture, or structure therein, thereon, or thereunder, and, without limiting the generality of the foregoing, shall include aqueducts, tunnels (excluding mine-workings), bridges, dams, reservoirs, roads. transformers, and storage-tanks of whatever kind or nature, and shall include such fixtures, machinery, and similar things of a commercial or industrial undertaking, business, or going-concern operation as, if so erected, affixed, or placed by a tenant, would, between landlord and tenant, be removable by the tenant, except such as are exempted by regulations of the Lieutenant-Governor in Council:
>
> (b) The pole-lines, cables, towers, poles, wires, transformers, and transmission equipment of any electric light, electric power, telephone, or telegraph company, and pipe-lines for transportation of water, petroleum, petroleum products, or gas:
>
> (c) The track-in-place used in the operation of a railway by any person other than a railway company:
>
> (d) Rafts, floats, and other such devices, whether anchored or secured to foreshore belonging to the owner or not, and buildings, fixtures, machinery,

> structures, storage-tanks, and similar things erected, affixed, or placed thereon, and also includes such fixtures, machinery, and similar things of a commercial or industrial undertaking, business, or going-concern operation as, if so erected, affixed, or placed by a tenant, would, between landlord and tenant, be removable by the tenant, except such as are exempted by regulations of the Lieutenant Governor in Council.

This definition was first used in the 1948 amendment to the *Public Schools Act* and replaced the following previous definition taken from an amendment to the *Public Schools Act* in the Statutes of British Columbia, 1946, chapter 64, section 6:

> "Improvements," for purposes of taxation under this Act, means all buildings, structures, fixtures, and things erected upon or affixed to land, or to any building, structure, or fixture thereon, including machinery, boilers, and storage-tanks erected upon, affixed to, or annexed to any building, structure, or fixture, or erected upon or affixed to the land, and includes the poles, cables, and wires of any telephone, telegraph, electric light, or electric power company, and the track-in-place used in the operation of a railway.

I also cite, for the purposes of comparison, the definition of improvements in the *Vancouver Charter*, section 2:

> "Improvements" includes buildings, structures, machinery and other things so affixed to the land as to make them in law a part thereof.

And in the *Municipal Act*, R.S.B.C. 1948, chapter 232, section 2:

> "Improvements" includes all buildings, fixtures, machinery, structures, and things erected upon or under or affixed to land or to any building, fixture, or structure therein, thereon, or thereunder, and, without limiting the generality of the foregoing, shall include aqueducts, tunnels, except mine-workings, bridges, dams, reservoirs, roads, transformers, and storage-tanks of whatever kind or nature, but shall not include such fixtures, machinery, or things other than buildings and storage-tanks as, if so erected or affixed by a tenant, would, as between landlord and tenant, be removable by a tenant as personal property.

This last definition, it will be seen, specifically exempts "such fixtures, machinery, or things other than buildings and storage-tanks as, if so erected or affixed by a tenant, would, as between landlord and tenant, be removable by a tenant as personal property." It will be further noted that the exemption applies not just if the things so exempted are the property of the tenant, but also if they are the property of the landlord. The exemption does not relate to ownership but to character.

Although the case is stated under the *Assessment Equalization Act*, two other Statutes must be considered-the *Vancouver Charter*, 1953, chapter 55, and the *Public Schools Act*, R.S.B.C. 1948, chapter 297.

The principal object of the *Assessment Equalization Act* is, I think, stated in clause (c) of section 7, where the Assessment Commissioner is empowered to "establish equalized assessments of land and improvements in municipal corporations and rural areas." The use to be made of such equalized assessments is set out in subsection (4) of section 8, which reads thus:

> (4) The assessed value of land and improvements as equalized by the Commissioner shall be binding on the municipal corporation or Provincial Collector for the purposes of real-property taxation only under the "*Public Schools Act*" by the municipality or rural area in the year, but a Municipal Assessor, after approval of his municipal corporation or the Surveyor of Taxes on behalf of a Provincial Assessor, may appeal to the Assessment

> Appeal Board, as provided in section 31 of this Act, from equalization orders of the Commissioner."

The wording of section 38 of the *Assessment Equalization Act* raises some question in my mind as to the effectiveness of such limitation of use. While section 38 provides for separate assessments of improvements for school purposes and for municipal purposes, it provides for only one valuation of land for both school and municipal purposes. There seems to me to be some possible conflict between the two sections, but I do not think that need concern me, because I am only required to consider the assessment of improvements.

The *Assessment Equalization Act* provides for assessment, but it does not provide for the fixing or for the collection of taxes. The *Public Schools Act*, section 53, requires the city to pay to the School Board its requirements for the year, and the *Vancouver Charter* provides the machinery for the collection of taxes with which to pay, inter alia, the requirements of the School Board.

Previously the city could raise moneys for school purposes in any way it wished. Now it is required to raise those moneys by taxing real property; that is, land and improvements according to the definition of those things in the *Assessment Equalization Act*.

The result is that the city uses two formulae for the assessment of improvements. For ordinary municipal purposes it assesses improvements in the terms of its own Charter; for school purposes it assesses them (and hence, of course, taxes them) in the terms of section 2 of the *Assessment Equalization Act*.

But the *Assessment Equalization Act* does not provide a complete code of taxation for school purposes, and its provisions, where they are not repugnant to the *Vancouver Charter*, must be read as co-ordinate with it.

I see two main questions:-

> "1. Does the definition of improvements in the *Assessment Equalization Act* authorize the assessment against the owner of the land of the value of 'such fixtures, machinery, and similar things of a commercial or industrial undertaking, business, or going-concern operation as if so erected, affixed, or placed by a tenant would, between landlord and tenant, be removable by the tenant' despite the fact that such things are not owned by the owner of the land?
>
> "2. If so, does the cobbler's machinery referred to in the stated case come within the above description?"

Dealing with the first question I say this:-

> (a) Things of the nature of tenant's fixtures, no matter how owned, are not assessable under the *Municipal Act* for purposes other than school taxation. I do not think this statement requires elaboration. The definition of improvements under the *Municipal Act* has been cited and is self-explanatory. Under the *Vancouver Charter* I think it is arguable, in view of the decision in *City of Vancouver* v. *Attorney-General for Canada* (1944) S.C.R.25, whether or not such fixtures, even if owned by a tenant, are taxable.
>
> (b) The *Public Schools Act* does not provide for taxation in municipalities for school purposes. It only provides by section 53 that the municipalities find the required money. But it does provide for the taxation of rural areas for school purposes. The definition of improvements assessable for school purposes in rural areas is now the same as that in the *Assessment Equalization Act*. Before 1948 it did not contain any reference to tenant's fixtures.

(c) The new definition of improvements, applied to rural areas in 1948, has now, with some additions, been brought into force by the *Assessment Equalization Act* for the assessment of real property for school purposes in municipalities.
(d) The Legislature can, by the use of appropriate language, impose on the owner of land liability to pay taxes in respect of improvements on his land which are not owned by him.

My principal authority for this last proposition is *City of Vancouver* v. *Attorney-General for Canada* (*supra*). Canadian National Railways had leased certain lands to the Crown. The Crown had erected certain buildings on the lands, which buildings remained the property of the Crown. Canadian National Railways was required to pay to the city taxes based on the value of the lands it owned plus the value of the improvements, the buildings, which it did not own. One of the contentions was that the city was attempting to tax Crown property. But the judgment of Duff, J., makes it clear that the result would have been the same if the improvements had been the property not of the Crown, but of a subject, and it was held that the owner of the land was rightly assessed on the total value of the land which he owned plus that of the improvements which he did not own.

In *Bennett & White Ltd.* v. *Municipal District of Sugar City* (1951) A.C. 786, Lord Reid said this at page 818:

> In cases, at least where land has been concerned, it has been held that if the language of the provincial statute is sufficiently explicit and compelling, *A* may be taxed in respect of property" belonging" to *B*. Even where *B* is exempt, e.g., where *B* is the Crown, property belonging to *B* may be taken as a fictional measure of the tax to be exigible from *A*, provided always that the Act makes this intention perfectly clear.

I do not think it necessary to refer to any of the other cases cited as establishing this general proposition.

(e) Knowing that the thing can be done, it remains to see if, in this case, it has been done. It will be noted that Lord Reid says the Act should make the intention perfectly clear. To see whether the intention has, in this case, been made clear, it is necessary to study the *Vancouver Charter* as well as the *Assessment Equalization Act*. I cite section 341 of the *Vancouver Charter*:

> 341. The Assessment Commissioner, assisted by the necessary staff, shall in each year estimate the value of each parcel of real property in the city, and shall cause a real-property assessment roll to be prepared annually in which he shall cause to be entered the following, and such other particulars as the Council shall direct:
>
> (a) A short description based on Land Registry Office records of each registered parcel of real property in the city, not being Crown lands:
>
> (b) The estimated value of the land:
>
> (i) Subject to taxation; and
>
> (ii) Exempt from taxation:
>
> (c) The estimated value of the improvements thereon:
>
> (i) Subject to taxation; and
>
> (ii) Exempt from taxation:

(d) The name of the registered owner thereof, if the parcel is not held by another person who is an owner under agreement:

(e) The name of the person who is the owner under agreement, if the parcel is so held:

(f) The address of such owner or owner under agreement:

(g) Each parcel of Crown lands in the city, whether registered or unregistered, using the best short description available to him:

(h) The estimated value of each such parcel of Crown land and the estimated value of the improvements thereon:

(i) The name and address of any occupier having any right or interest in such parcel of Crown lands:

(j) The estimated value of such right or interest.

Now this must be taken as modified by section 38 of the *Assessment Equalization Act*, which says this:

38.(1) The assessor of a municipal corporation or rural area shall complete a new assessment roll and give every person therein a notice of assessment not later than the thirty-first day of December annually.

(2) The roll and notice of assessment for the year 1955 and thereafter shall show the following:

(a) The name and last-known address of the person assessed:

(b) A short description of the land:

(c) The value at which the land is assessed:

(d) The value of improvements as defined in this Act for the purposes of levying school rates:

(e) The value of improvements for all purposes other than for levying school rates:

(f) The valuation of land and improvements exempt for the purposes of levying school rates:

(g) The valuation of land and improvements exempt for all purposes other than for levying school rates:

(h) The date of giving the assessment notice;

and such other information required by any Act of the Legislature not inconsistent with this subsection.

It will be noticed that there is a saving clause at the end of section 38 of the *Assessment Equalization Act*. The main difference in the two formula: is, of course, the separate valuation of improvements for the purpose of levying school rates provided for in section 38 of the *Assessment Equalization Act*. But there are other differences. Notably the *Assessment Equalization Act* requires only that the name of the person assessed be given, while the Charter

provides, in clauses (d) and (e), not for the naming of the person assessed, but for the naming of the registered owner or the owner under agreement.

But there must, in either case, be some investigation by the Assessor to see who is to be named, and this is provided for in section 347 of the Charter, which reads thus:

> 347. For the purposes of clauses (a), (d), and (e) of section 341, the records of the Land Registry Office as of the first day of November of the year in which such roll is prepared shall be conclusive.

I can see in this provision nothing irreconcilable with section 38 of the *Assessment Equalization Act*. It provides a procedure necessary both to section 38 of the *Assessment Equalization Act* and section 341 of the Charter.

Therefore, the names of persons assessed are to be obtained from Land Registry Office records, and if there is no agreement for sale, the registered owner will be the person to be named.

Section 38 of the *Assessment Equalization Act* provides both for the assessment roll and for notice to "every person therein." Section 341 of the Charter provides only for the assessment roll; notice is provided for by section 352, which requires notice to be given to "every person whose name is required to be entered on the roll and whose property is liable to taxation."

Section 39 of the *Assessment Equalization Act* says this:

> 39. To the completed assessment roll shall be attached a statutory declaration of the Assessor in the following form:-
>
> I, , of , in the Province of British Columbia, make oath and say as follows:
>
> 1. That I am Assessor for the .
>
> 2. That I have this day completed the within real-property assessment roll for the year in accordance with the provisions of the "Assessment Equalization Act" and ["Municipal Act," "Taxation Act," or "Vancouver Charter," as the case may be].
>
> 3. That I have therein set out to the best of my judgment and ability the actual value of the land and improvements within the municipal corporation or rural area, *as the case may be*, in accordance with the said Acts; and I have to the best of my information and belief entered and set out the names of the owners, owners under agreement, and occupiers of Crown lands in respect of each parcel and all other information required to be entered and set out by the "Assessment Equalization Act" and ["Municipal Act," "Taxation Act," or " Vancouver Charter," *as the case may be*].
>
> Sworn before me at in the Province of British Columbia, this day of ,19 .

This section, according to counsel for the appellant Orr, makes it quite clear that the owner of the land is to be assessed only in respect of improvements which he owns.

The *Vancouver Charter* goes on in sections 400 and 401 to provide for the preparation by the Collector of Taxes of a tax roll. The details to be given in it are much the same as those provided for in section 341, with the addition of a statement of the amount of taxes levied against the property. Presumably this form will now be altered to include the additional detail required by the

Assessment Equalization Act. Similarly affected will be section 403, which provides for the sending and form of tax notices.

Then section 413 of the Charter says this:

> 413. Real-property taxes levied on any real property shall, subject to any lawful exemptions, be payable by the person whose name appears as owner thereof on the real-property tax roll prepared pursuant to the provisions of this Act, except that if the name of some other person appears thereon as owner under agreement of such real property, the taxes shall be payable by such owner under agreement, and if the real property is Crown lands, the taxes shall be payable in respect of his right or interest by the occupier whose name appears on the roll as such.

The purpose of reviewing and comparing these sections has so far been only this: to establish negatively that there is no intention shown of assessing any person except the registered owner or owner under agreement.

I return to the definition of improvements in section 2 of the *Assessment Equalization Act*. The first thing to be noted is that this names as assessable something that has not hitherto been expressly named as assessable under any scheme of real-estate taxation; i.e., things having the nature of tenants' fixtures. The second thing to be noted is that if such things are owned by the owner of the land, there is no doubt as to their assessability. That is, if the owner of the land brings onto the land things which would, if owned by a tenant, be removable by a tenant, he is liable to be taxed in respect thereof.

This may have been all the Legislature intended to establish. If so, it may have done little or nothing. I cite article 128 from page 521 of Williams on Landlord and Tenant:

> Article 128. Fixtures of a chattel nature erected or placed by a tenant upon the leased premises for the purposes of carrying on a trade or for ornament or domestic convenience, become part of the freehold but may be severed (whereupon they cease to be" fixtures" and become chattels again), and removed by the tenant or his assigns, provided that that can be done without serious injury to the freehold: they must be removed before the expiration of the tenancy but by agreement the time for removal may be extended.

I also cite the fifth of the rules cited by Meredith, C.J., in *Stack* v. *Eaton* (1902) 4 O.L.R. at 338:

> (5) That, even in the case of tenant's fixtures put in for the purposes of trade, they form part of the freehold, with the right, however, to the tenant, as between him and his landlord, to bring them back to the state of chattels again by severing them from the soil, and that they pass by a conveyance of the land as part of it, subject to this right of the tenant.

I also cite Woodfall, 2nd ed., page 774:

> Fixtures which may be removed by the tenant during his term constitute part of the freehold until severed therefrom.

The authorities cited by Meredith, C.J., are, on perusal, convincing, and I do not think it necessary to review them here.

It appears to me to follow that if a landlord erected upon or affixed to the land, or (under certain circumstances of which more later) placed upon the land things which, if so erected, affixed, or placed by a tenant, would be removable by the tenant, those things might become part of the freehold and assessable as improvements under the wording of the first part of the definition of

improvements in section 2 of the *Assessment Equalization Act*. Therefore, if only things so erected, affixed, or placed by the landlord are to be assessed, the words in the definition beginning "and shall include" and ending "Lieutenant-Governor in Council" may serve no purpose. The effect might, as counsel for the city has pointed out, be the same if the definition in paragraph (a) of section 2 ended with the word "thereunder" in the fourth line of paragraph (a).

Viewed in this light the reference to tenants' fixtures does nothing to strengthen the city's position and indeed, I think, damages it. For it is certainly arguable that the words ending with "thereunder" might, by the application of the principles stated in *City of Vancouver* v. *Attorney-General* (*supra*) be held to cover not only things affixed to or erected or placed on the freehold by the landlord, but similar things so affixed, erected, or placed by the tenant.

Now, assuming that there is some doubt that the last proposition is correct, what do the additional words do to resolve it? The doubt is as to whether there is an intent, to paraphrase the words of Lord Reid in the Sugar City case, to tax A in respect of property belonging to B. If the Legislature had wanted to grant this power and resolve this doubt, it need only have said "and shall include such fixtures, machinery, and similar things of a commercial undertaking, business, or going-concern operation so erected, affixed, or placed by a tenant." This, at any rate, would have made the intention clear. Instead the Legislature has, in effect, qualified rather than extended the wording of the initial part of the definition. The words "such. . . thing. . . as, if so erected, affixed, or placed by a tenant, would, as between landlord and tenant, be removable by the tenant "do not suggest to me an intent to tax the landlord for the tenant's property. Rather, they modify the effect of the earlier words, which might have given such a power, and indicate that the Legislature was, throughout, thinking only of property owned by the landlord and trying to make it clear that the owner of the land was assessable in respect of things he brought onto the land which might, if owned by a tenant, be removable as tenant's fixtures.

The argument is that A is to be taxed for property belonging to B. But the section does not say that A is to be taxed for property belonging to B. It says that A is to be taxed in respect of certain property, notwithstanding the fact that, if the property had been installed by B, it would, in the eyes of the law, belong to B. This seems to me entirely inconsistent with an intent to tax property which has, in fact, been installed by B and does belong to B.

The only way in which I can give effect to the contentions of counsel for the city and the Province is by disregarding the words relating to tenant's fixtures. One might say that a phrase commencing "and shall include" is ordinarily to be read as showing an intent to extend and not to curtail the class of property assessable.

O'Halloran, J.A., in *R.* v. *McLeod* (1950) 2 W.W.R. 456, cites, at page 462, this passage from the judgment of Lord Watson in *Dilworth* v. *N.Z. Stamp.v Commr.* (1899) A.C. 99:

> 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*.

Naturally I accept this as correct. But I do not accept it as meaning that when it is argued that A's real estate is to be assessed, in part, on the basis of the value of B's property (surely an unusual procedure), I may not, in my search for guidance, look at a clause commencing with the words "and shall include" in order to assist my decision as to what the earlier words in the same section mean.

The phrase commencing "shall include" obviously is not meant to cover property belonging to the tenant, but to cover property of the landlord of a certain character, of such a character that if the tenant had installed it he could remove it. But this indicates that the Legislature thought that the

initial words of the definition did not include such property, hence the necessity to cover it by an added clause.
And, if the initial words of the section did not cover property of this description owned by the landlord, then, a fortiori, they did not cover such property installed and removable by the tenant. It must be assumed that the Legislature, having this afterthought and wanting to be sure that a certain type of landlord's property would be assessed, would, if it had further intended to assess tenant's property of the same nature, have said so. But it did not say so, and its use, in the words beginning "shall include," of a subjunctive clause only applicable to landlord's property makes it clear that there is no intent in the preceding words to tax tenant's property of the same nature.

For here was the very meat of the matter before them, the assess ability of things of the nature of tenant's fixtures, and their decision to limit assessment to such of those fixtures as belonged to the landlord clearly indicates that there was no original or final intention to assess anything which belonged to the tenant.

The Legislature may have intended to tax A for B's property. And it may be that if they had left well enough alone, they would have succeeded in doing so. But I cannot decide this matter by speculation as to what they may have intended, but only by considering their words in the light of existing law. The Courts ought not to obstruct, but to facilitate the enforcement of the will of the Legislature, and I have approached this problem with that object, tempered only by my acceptance of Lord Reid's statement that an intention to tax A for the property of B should be clearly expressed. The general principle applicable to the interpretation of taxing Statutes is thus stated by Lord Penzance in *Pryce* v. *Monmouthshire Canal and Railway Companies* 4 A.C. 197 at 205:

> But however this may be, on which I give no opinion, I think the principle on which clauses such as those now in question have hitherto been construed in Courts of Justice, is undoubted.
>
> That principle, my Lords, was stated very clearly in your Lordships' House in the case of *The Stockton Railway Company* v. *Barrett*, 11 Cl. & F. 590 at p. 607, by Lord Brougham as follows: "It must be observed that 'in dubio' you are always to lean against the construction which imposes a burden on the subject; the intention of the Legislature to impose a tax must be clear; it was so held in the case of T*he Hull Dock Company* v. *Browne*, 2 B. & Ad. p. 58, which both parties in this case relied on for other purposes, and which the Plaintiffs in error especially cited in support of their view. 'These rates,' said Lord Tenterden, 'are a tax upon the subject, and it is a sound general rule that a tax shall not be considered to be imposed (or at least not for the benefit of a subject) without a plain declaration of the intent of the Legislature to impose it.'"

My decision turns on the wording of section 2 of the *Assessment Equalization Act*. I have, at some length, reviewed other applicable statutory enactments. The effect of the legislation I have referred to is, as I have said, to show that there is nowhere, outside of section 2, any slightest indication of an intention to "tax A for B's property." If such an intent is to be found, it must be found in section 2. I cannot find it there. In fact, I find it negatived there.

I am afraid I was little impressed by Mr. Guild's contention that section 2, if it does tax A for B's property, is ultra vires as imposing a penalty. In view of the decision I have already made, the point need not be decided.

The general proposition that the enactment was ultra vires as imposing an indirect tax was abandoned by the appellant. In any event, in view of my earlier decision, the point does not arise.

I would, in any event, even if I had decided that the landlord was assessable for the tenant's property, have held that the finishing-machine, the stitcher, and the soler were, on the basis of the description given in the stated case, not assessable. They are, by definition, not affixed to or

erected upon the property. Therefore, they are assessable only if the word "placed" makes them so. In its largest interpretation this word could apply to any chattel brought on the property, such as a desk or a chair. But it must be interpreted in the context in which it is used and in the light of existing law. I refer to *Northern Broadcasting Co.* v. *District of Mountjoy* (1950) S.C.R. 502. There it was sought to assess as part of the land a transformer and a transmitter owned by the appellant which rested by their own weight on the land. Land was defined in the taxing Statute as including" all buildings or any part of any building, and all structures, machinery, and fixtures erected or placed upon, in, or under or affixed to land."

I cite from the judgment of Kellock, J., at page 510:-

> Prima facie, therefore, the words "erected," "placed" and "affixed" do not connote the same things, and the word "placed" at least must connote something less than is involved in the word "affixed."
>
> With respect to "placed," I do not think it is used in the Statute as equivalent merely to "brought upon" so as to take in mere personal property which is intended to be shifted about at will. It involves the idea of setting a thing in a particular position with some idea of permanency. Thus, merely to bring a gas engine and portable saw upon premises would not be to "place" them upon the land within the meaning of the Statute, any more than would be the case of a table, or a chair, or a typewriter, or similar articles.
>
> "Placed" is defined in the Shorter Oxford Dictionary as to put or set in a particular place, position or situation.
>
> In the context of the Statute, I think the Legislature must be taken to have had in mind the including of things which, although not acquiring the character of fixtures at common law, nevertheless acquire "locality," which things which are intended to be moved about do not."

Kellock, J., found the transmitter and transformer assessable.

Kellock, J., naturally relates his finding to the context of the Statute he had before him. I venture further to relate the word "placed" to the common law. I cite from the judgment of Blackburn, J., in *Holland* v. *Hodgson* L.R. 7 C.P. 327 at pages 334 and 335:

> When the article in question is no further attached to the land, than by its own weight, it is generally to be considered a mere chattel; see *Wiltshear* v. *Cottrell* 1 E. & B. 674, 22 L.J. (Q.B.) 177, and the cases there cited. But even in such a case, if the intention is apparent to make the articles part of the land, they do become part of the land: see *D'Eyncourt* v. *Gregory* L.R. 3 Eq. 382. Thus blocks of stone placed one on the top of another without any mortar or cement for the purpose of forming a dry stone wall would become part of the land, though the same stones, if deposited in a builder's yard and for convenience sake stacked on the top of each other in the form of a wall, would remain chattels.
>
> . . . . . .
>
> Perhaps the true rule is, that articles not otherwise attached to the land than by their own weight are not to be considered as part of the land, unless the circumstances are such as to shew that they were intended to be part of the land, the onus of shewing that they were so intended lying on those who assert that they have ceased to be chattels, and that, on the contrary, an article which is affixed to the land even slightly is to be considered as part of the land, unless the circumstances are such as to shew that it was intended all along to continue a chattel, the onus lying on those who contend that it is a chattel.

These words make it clear that a thing not affixed to the freehold but only "placed" thereon may, under certain circumstances, become part thereof.

I think that statutory enactments are to be read as made in awareness of the framework of existing law. Hence, whether the word "placed" is to be given the special meaning assigned to it by Kellock, J., or is to be interpreted in the light of the observations of Blackburn, J., it is clearly not applicable to the cobbler's machinery, which, as stated in the case, belongs to the class of things intended to be moved about at will and which has not been set in a permanent position.

I now answer the questions in the stated case:

1. No.

2. No.

3. No.

4. Need not be answered.

5. Need not be answered.

6. No, if it is, in law, removable by the tenant. Yes, if it is not removable by the tenant, because in such event it is the landlord's property when placed.

7. Need not be answered.

8. Need not be answered.

9. Need not be answered.