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MONTAGUE G. CAPLE

v.

CITY OF VANCOUVER

Supreme Court of British Columbia (No. 1181/55)

Before: MR. JUSTICE J.O. WILSON

Vancouver, June 8, 1955

John R. Lakes for the Appellant
Senator J.W. de B. Farris, Q.C. for the Attorney-General
R.K. Baker and R.E. Emerson, for the City of Vancouver

Case Stated by Assessment Appeal Board

The appellant Caple is the owner of lands and premises situate in the City of Vancouver described as Lot 36, Block 3, District Lot 318, and was assessed as owner of the said premises by the assessment department of the said city for the year 1955, and included in the said assessment were certain articles assessed for school purposes pursuant to the said Act, to wit, certain machinery and equipment owned by a Mr. T.R. Binnie and used by the said Binnie in his business as Marpole Cleaners as a tenant under lease in the said premises, the assessed value of which, as determined by the Court of Revision in the appeal brought thereto by the appellant, was in the amount of \$8,132, and it is on this portion of the assessment only that the appellant brought this appeal to the Board.

The machinery and equipment aforesaid, the date of their installation, their cost and assessed value are as follows:-

	Date Installed	Original Cost	Installation Cost	Assessed Value
1 used 2.9 upright boiler (Robt. Bell & Co. Ltd.)	Jan 1, 1954	-----	-----	\$754
1 Petro oil burner	"	\$450.00		339
1 underground 636-gal. tank				
1 rebuilt press, No. VC 05	"	350.00		264
1 Cissell steam iron	"	69.00		52
1 Adjustaform, Serial No. P1-00395	"	587.10		346
1 Cissell ironing board	"	83.40		48
1 Butler 45" utility press, model 211-45, Serial 5209189	"	775.00		424
1 two-way Cissell puff iron, Set No. 12 and No. 4x	"	214.00	\$650.00	117
1 Detrex automatic Coronet dry-cleaning unit, Model 421, Serial No. 421	Feb., 1954	5,900.00		3,398

1 Detrex still, Model DCS-20, Serial No. 421	"	650.00		374
1 Detrex solvent recovery unit, Model 325, Serial No. 1923	"	2,200.00		1,267
1 Cissell spotting board	"	445.00		259
1 Westco boiler feed system, No. 1-4R4-½C/W15	"	421.00		490
Grand total, 1955	-----	-----	-----	\$8,132

The appellant has leased that portion of the said premises known as the Marpole Cleaners to the said Binnie under a fixed rental without regard to the provisions of the said Act. The appellant has no interest in the said articles, all of which could be removed without damage to the premises by the said Binnie in the event that Binnie quit the premises.

The Assessor who assessed the said articles at no time consulted with the appellant regarding them but visited the Marpole Cleaners, discussed the matter with the said Binnie, and applied as the assessed value of the said articles their cost according to information provided by the said Binnie as amended by certain valuation rates provided by instruction given by the office of the Assessment Commissioner appointed to administer the said Act at Victoria in the Province of British Columbia. The Assessor prepared the required return, which was signed by Marpole Cleaners & Dyers, and the form was then deposited in the assessment department aforesaid, and the appellant's first notice of assessment and valuation as aforesaid was his said assessment notice.

Counsel for the appellant argued before the Board that the assessment as against the appellant was illegal and ultra vires, and exceeded the Assessor's jurisdiction, and that if the articles which were subject to that part of the assessment under appeal were subject to assessment at all under the said Act, such assessment should have been made as against the owner of the articles, to wit, the said Binnie, in view of the fact that the Act did not specifically state that the assessment must be against the owner of the land, and in the absence of such specific provision the owner of the articles was the only proper person to assess.

Wherefore the following questions are humbly submitted to this Court by the Board for opinion:"

1. Did the Assessor exceed his jurisdiction in the manner by which he arrived at the actual value of the said articles?

"2. (a) Is the assessment invalid as against the appellant because he has neither ownership nor interest in the said articles; and

"(b) Should that part of the assessment under appeal have been made in the name of the said Binnie by the addition of his name as owner thereof to the 1955 assessment roll?

"(c) Can an assessment of articles owned by a tenant and in which the owner of the premises on which they are situate has no interest be lawfully included in the said owner's assessment made pursuant to the provisions of the *Assessment Equalization Act*?

"3. If the answer to (c) above be in the affirmative, is the *Assessment Equalization Act* ultra vires by causing the said owner to be liable to an indirect tax? "

Reasons for Judgment

The answers to questions asked in this stated case are dictated by the answers I have already given in my judgment in Orr's appeal; therefore, I need only give my answers without reasons.

The answers to the questions asked are as follows:

1. No need to answer.

2. (a) Yes.

(b) No need to answer.

(c) No.

3. No need to answer.