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## NORTHLAND NAVIGATION COMPANY

v.

## CITY OF PRINCE RUPERT

Supreme Court of British Columbia (No. 431/56)

Before: MR. JUSTICE H.W. MCINNES

Vancouver, June 13, 1956

J.R. Cunningham and C.C. Ryan for the Appellant  
J.T. Harvey for the Respondent

### **Case Stated by Assessment Appeal Board**

1. By indentures of lease dated the 23rd day of March, 1953, and the 23rd day of September, 1955, Her Majesty the Queen in the right of the Province of British Columbia entered into agreement with Northland Navigation Company Limited whereby there were leased to the appellant the buildings and premises known as Sheds 7 and 8 and Sheds 4 and 5 (formerly known as Freight Sheds Nos. 5 and 6) located upon a wharf owned by Her Majesty and situate on Block F in the harbour of the City of Prince Rupert, upon the terms and conditions therein set out. Copies of the said leases are attached hereto and marked Exhibits 3 and 4 respectively.

2. The premises demised to Northland Navigation Company Limited by Exhibits 3 and 4 are as follows:

(a) By Exhibit 4, Sheds 4 and 5, being a portion of one continuous building under one continuous roof, such sheds being divided from other sheds in the same building by partitions.

(b) By Exhibit 3, Sheds 7 and 8, being one building under one roof, divided by a partition.

3. The above sheds are set upon a public wharf which is owned and controlled by Her Majesty the Queen in the right of the Province of British Columbia. The top of such wharf forms the first floor of the demised buildings and premises.

4. Public pedestrian and vehicular traffic have free access to the said wharf on all sides of the said sheds, except the sides where the said sheds are joined to another building, or where other sheds in the same building adjoin the sheds in question herein.

5. In addition to using the wharf for mooring its vessels, the appellant uses it for piling and sorting freight taken from its vessels.

6. The said wharf is constructed as follows:-

(a) Wooden and cement pilings extending above and below high-water mark in the said harbour and driven into the ground and harbour bed.

(b) Timbers measuring approximately 12 by 12 inches laid upon the top of these piles.

(c) On top of the said timbers, pieces of lumber measuring approximately 6 by 10 inches laid on edge.

(d) Pieces of lumber measuring approximately 3 by 12 inches laid side by side to form a floor or decking on top of the wharf.

7. Vessels other than those owned and (or) operated by the appellant may and do dock along the face of the said wharf, subject to the rights of the appellant set out in the leases held by the appellant.

8. The said pilings are so placed as to allow access between the said pilings and below the said timbers.

9. The Assessment Appeal Board, after considering the evidence and the arguments advanced by counsel, doth hereby submit this stated case pursuant to subsection (1) of section 51 of the said *Assessment Equalization Act*, and humbly requests the opinion of this Honourable Court on the following questions of law:-

"1. Is the appellant the 'holder or occupier' of lands together with the improvements thereon within the meaning of section 241, subsection (1), of the *Municipal Act*.

"2. Alternatively, if the appellant is not the 'holder or occupier' of lands, is it the 'holder or occupier' of the improvements only, situate on land belonging to the Crown, and therefore assessable thereon?"

#### **Reasons for Judgment** (by Court Order)

Upon reading the case stated submitted herein by the Assessment Appeal Board pursuant to the provisions of section 51, subsection (1), of the *Assessment Equalization Act, 1953*, chapter 32, and upon hearing Mr. J.R. Cunningham and Mr. C.C. Ryan, of counsel for the appellant, and Mr. J.T. Harvey, of counsel for the respondent, this Court is of the opinion that in relation to the questions submitted in and by the said case, the answers thereto are as follows:-

*Question 1:* Is the appellant the "holder or occupier" of lands together with the improvements thereon within the meaning of section 241, subsection (1), of the *Municipal Act*?

*Answer:* No.

*Question 2:* Alternatively, if the appellant is not the "holder or occupier" of lands, is it the "holder or occupier" of the improvements only, situate on land belonging to the Crown, and therefore assessable thereon?

*Answer:* Although the appellant may well be the "occupier" of the improvements, in the circumstances of this case, it is not assessable on them alone.